



REPORT OF THE TRIBUNAL OF INQUIRY INTO SUGGESTIONS THAT MEMBERS OF  
AN GARDA SÍOCHÁNA OR OTHER EMPLOYEES OF THE STATE COLLUDED IN THE  
FATAL SHOOTINGS OF RUC CHIEF SUPERINTENDENT HARRY BREEN AND RUC  
SUPERINTENDENT ROBERT BUCHANAN ON THE 20<sup>TH</sup> MARCH 1989

Set up pursuant to the

Tribunals of Inquiry (Evidence) Act 1921 – 2004

CHAIRMAN: His Honour Judge Peter Smithwick





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**CHAIRMAN:** His Honour Judge Peter Smithwick

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Invaluable assistance was provided to the legal team and myself by the Tribunal's permanent staff. The Tribunal Manager, Mr Michael Sweeney, and the Registrar, Mr Derek Mills, both of whom have been with the Tribunal since its inception, have continuously ensured the smooth functioning of the work of the Tribunal. Their efforts in this regard can not be overstated. The administrative assistance provided by Mr John Ryan, Ms Ann Walsh and Ms Ciara Hughes before they transferred to various other offices within the public service in 2011, 2012 and 2013 respectively, is greatly appreciated. In 2013, Mr Vincent Casserly replaced them and did enormous work assisting me in collating and preparing this report. Retired Commandant Frank Delahunty served as Court Marshal and witness liaison officer until he retired in 2012.

I would like to express my deep thanks to the different legal teams that were present before the Tribunal for their diligence, perseverance and courtesy throughout.

Garda Paul Comerford and Detective Garda Darren Martin kept a watchful eye on security throughout the public hearings and I would like to thank them both for their assistance in this regard.

An Garda Síochána's Liaison Officer with the Tribunal was originally Detective Chief Superintendent Timothy Maher, and, subsequently, Detective Superintendent Brian Brunton. Both were ably assisted by Detective Garda William Kinlough. Our liaison with the Northern Irish and British authorities was chiefly through Mr Mark Lamour of the Northern Ireland Office and Mr Colin Stafford of the PSNI. All of the above provided invaluable assistance and without their co-operation, the task of fulfilling the terms of reference of this Tribunal would have been rendered a great deal tougher.

HIS HONOUR JUDGE PETER SMITHWICK TRIBUNAL- 29<sup>TH</sup> NOVEMBER 2013

# Chapter 1

## Introduction

### 1.1 The Deaths of Chief Superintendent Harry Breen and Superintendent Bob Buchanan

1.1.1 On the afternoon of Monday, 20<sup>th</sup> March 1989, Chief Superintendent Harry Breen and Superintendent Bob Buchanan of the Royal Ulster Constabulary (RUC) were ambushed and killed by the Provisional IRA on the Edenappa Road near Jonesboro, Co. Armagh in Northern Ireland. The ambush occurred just a few hundred yards north of the border between Northern Ireland and the State. The two RUC officers were travelling northwards, en route from a meeting with a senior An Garda Síochána officer at Dundalk Garda Station.

1.1.2 At the time of his death, Chief Superintendent Breen had been a member of the RUC for almost 32 years, having joined the police force on 5<sup>th</sup> May 1957. He was the Divisional Commander of 'H' Division, which covered an area taking in Co. Armagh and large parts of south Co. Down, including the Newry area.

1.1.3 Superintendent Buchanan had been a member of the RUC for almost 33 years, having joined on 13<sup>th</sup> August 1956. He was the Border Superintendent for the border area within 'H' Division, and was responsible for matters of cross – border security. A key function of his post was liaison with members of An Garda Síochána.

### 1.2 Establishment of the Tribunal

1.2.1 The terms of reference of this Tribunal are to enquire into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of Chief Superintendent Harry Breen and Chief Superintendent Bob Buchanan.

1.2.2 While the Tribunal was established almost two decades after the events which it is required to investigate, suggestions of collusion occurred in the immediate aftermath of the killings of the two officers. These suggestions of collusion resulted in an immediate internal investigation (commonly referred to as the 'O'Dea Investigation' after Assistant Commissioner Edward (Ned) O'Dea, the reporting officer; his Report is referred to as the '*O'Dea Report*') which is the subject of a more detailed analysis in the main body of this Report. That investigation concluded that there had been no collusion by members of An Garda Síochána in the deaths of the two RUC officers.

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1.2.3 However, subsequent to the publication of a book entitled “*Bandit Country*” by the journalist Toby Harnden (Hodder and Stoughton, 1999) and an article by Kevin Myers in *The Irish Times* on 10<sup>th</sup> March 2000, the suspicion of collusion was reignited. At the same time, Jeffrey Donaldson M.P. alleged, under parliamentary privilege in the House of Commons, that retired Detective Sergeant Owen Corrigan, who had served almost all of his career in Dundalk Garda Station, had given information to the IRA which had led to the deaths of Chief Superintendent Breen and Superintendent Buchanan. A further internal investigation was carried out by An Garda Síochána (this was conducted by Chief Superintendent Sean Camon, with the assistance of then Detective Inspector Peter Kirwan, and is referred to as the ‘Camon Investigation’; his Report is known as the *Camon Report*).

1.2.4 The Camon Investigation and Report specifically identified three former officers of An Garda Síochána who were posted in Dundalk Garda station in March 1989 and about whom there had, at one time or another, been suggestions of inappropriate contact with subversives. These were: Mr Corrigan, already referred to above; former Sergeant Finbarr Hickey, who, on 15<sup>th</sup> May 2001 pleaded guilty to uttering false documents, namely passport applications, before the Special Criminal Court; and retired Sergeant Leo Colton, whom Mr Hickey implicated in the offence committed by him, but who, it must be emphasised, was never prosecuted in this respect. The false application forms were used to procure false passports some of which were found in the possession of senior members of the Provisional IRA. The *Camon Report*, like the earlier *O’Dea Report*, concluded that there was no evidence to support the allegations of collusion in the killings.

1.2.5 Around this time, there were various calls in Northern Ireland for public inquiries into a number of other killings which had occurred in the course of ‘the Troubles’. In the context of efforts to secure the full implementation of the Good Friday or Belfast Agreement of 10<sup>th</sup> April 1998, intensive negotiations took place between the Governments of Ireland and the United Kingdom and the political parties of Northern Ireland at Weston Park, Staffordshire, England, in 2001. These negotiations culminated in the Irish and British Governments agreeing the Weston Park Accord in the summer of that year. As part of the Accord, the Governments agreed to appoint a retired judge of international standing to examine a number of specified killings and to make a recommendation as to whether there should be a public inquiry in respect of any of them. Peter Cory, a retired judge of the Canadian Supreme Court, was subsequently appointed to perform this function.

1.2.6 In his Report on the killings of Breen and Buchanan, Judge Cory stated as follows:

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“During the Weston Park negotiations, which were an integral part of the implementation of the Good Friday Accord, six cases were selected to be reviewed to determine whether a public inquiry should be held with regard to any of them.

This case, like that of *Finucane, Hamill, Wright, Nelson* and the *Gibsons*, was specifically selected as one of those to be reviewed to determine if there was collusion, and, if so, to direct a public inquiry. In light of this provision in the original agreement, failure to hold such inquiry as quickly as possible might be thought to be a denial of the original agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the Peace Accord.

Further, if, as I have found there is in this case, evidence capable of constituting collusion, then members of the community would undoubtedly like to see the issue resolved quickly. Indeed, a speedy resolution is essential if the public confidence in the police and the administration of justice is to be restored. In this case only a public inquiry will suffice. Without public scrutiny, doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Republic and the Northern Ireland community. No prosecutions appear to be contemplated. Therefore the public inquiry should proceed as soon as it is reasonably possible to do so.”

1.2.7 It is noteworthy that Judge Cory, in the unredacted version of his Report, indicated that the terms of reference might be confined to an inquiry into the activities of retired Detective Sergeant Owen Corrigan during the period from 1987 – 1992. Ultimately, more general terms of reference were adopted but Judge Cory’s suggestion ensured that, in performing its task, the Tribunal would, by necessity, have to carefully consider, inter alia, the activities of retired Sergeant Corrigan in Dundalk, as well as those of the two other officers identified in the *Camon Report*, namely former Sergeants Hickey and Colton.

1.2.8 Pursuant to the agreement made between the Irish and British Governments and in accordance with Judge Cory’s recommendation that a public inquiry be held, this Tribunal was established by Order of the Minister for Justice, Equality and Law Reform, Michael McDowell T.D., made on 31<sup>st</sup> May, 2005. This Ministerial Order was made consequent on the adoption of resolutions by Dáil Éireann and Seanad Éireann, on 23<sup>rd</sup> March 2005 and 24<sup>th</sup> March 2005 respectively, that it was expedient that a Tribunal be established

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under the Tribunals of Inquiry (Evidence) Acts 1921 – 2002. Further, the Tribunal is to report to the Clerk of Dáil Éireann and to make such findings and recommendations as it sees fit.

1.2.9 The Ministerial Order of 31<sup>st</sup> May 2005 also appointed me as Sole Member of the Tribunal.

### **1.3 Work of the Tribunal – An Overview of Difficulties Encountered**

1.3.1 While the Tribunal was established on 31<sup>st</sup> May 2005, most of the first year of its existence was taken up with securing appropriate premises and retaining Counsel to advise it. It was not until March 2006 that the Tribunal was in occupation of its offices and had in place a legal team to commence the private investigation. The Tribunal sat in public for the first time on 3<sup>rd</sup> March 2006. On that date, I outlined my approach to the terms of reference and invited applications from interested parties who sought to be legally represented before the Tribunal. The granting of representation was dealt with at sittings of the Tribunal on 3<sup>rd</sup> March 2006, 16<sup>th</sup> October 2006 and 25<sup>th</sup> October 2006. The parties granted representation, as well as the identities of their solicitors and counsel, are set out in Appendix 1 to this Report.

1.3.2 After the initial public sitting, hearings were adjourned to permit the Tribunal to carry out its private investigation. In summary, the private investigation involved identifying, seeking access to and reviewing potentially relevant documents and identifying, interviewing and taking a statement from persons who may have information relevant to the terms of reference. As matters progressed, new potential lines of inquiry arose and were investigated to determine whether they were of substance and relevant to the terms of reference. Throughout and at the conclusion of this process, I reviewed the information gathered and determined what was of sufficient substance and relevance to warrant being put into evidence in a public sitting of the Tribunal.

1.3.3 I wish to state at the outset that this Tribunal is unique in the history of the State by virtue of the fact that its task was to inquire into suggestions of collusion in a most serious criminal offence which took place outside this jurisdiction and, therefore, outside the jurisdiction of the Tribunal. The shootings of Chief Superintendent Breen and Superintendent Buchanan occurred in Northern Ireland. However, in reality, the operation which led to their deaths was a cross – border one and any inquiry into aspects of that operation, by necessity, would have to carry out its work on both sides of the border. This had significant consequences in terms of securing relevant evidence.

1.3.4 I wish to acknowledge that the work of the Tribunal took longer to complete than I had originally envisaged. It was simply not possible to complete the private investigation as expeditiously as one might have

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wished. However, this was in large measure due to the cross – border aspect of the Tribunal’s work and, in particular, to the fact that the Tribunal’s statutory powers ceased at the State’s borders. As is clear from the balance of this Report, a very significant proportion of the information gathered in the private investigation and of the evidence put before me in the public hearings originated outside the jurisdiction. This evidence, both documentary evidence and oral testimony, was provided on the basis of voluntary co-operation, a co-operation that could only be achieved after painstaking efforts on behalf of this Tribunal to secure the trust and confidence of government officials, security officials, serving and retired police officers and other persons living outside the jurisdiction. Members of the Tribunal’s legal team and I had many meetings with officials from the Northern Ireland Office (NIO), the Police Service of Northern Ireland (PSNI), the British Home Office, the British Ministry of Defence, the British Army, and the British Security Services to persuade these agencies to provide the fullest co-operation in terms of providing us with relevant information within their possession. My legal team had many meetings across the length and breadth of Northern Ireland to persuade former RUC officers, in the first instance, to meet and speak to them, and, ultimately, to come before this Tribunal whether in person or by video – link to give evidence. When the Tribunal started this process, many of those potential witnesses who resided in Northern Ireland were uncertain, perhaps even somewhat sceptical, about the extent to which a Tribunal of Inquiry operating south of the border would get to the truth of the issues surrounding the deaths of their former colleagues. However, for the most part, this initial wariness was overcome.

1.3.5 I wish to put on record how pleased and grateful I am at the level of voluntary co-operation that the Tribunal ultimately received. The number of witnesses from Northern Ireland and from further afield who gave evidence during the sittings of the Tribunal, as well as the extent of documentation originating from outside this jurisdiction, is a testimony both to the efforts of the Tribunal team to secure voluntary co-operation and to the will that exists outside this jurisdiction to see this Tribunal succeed in conducting as thorough an Inquiry as possible. Without such co-operation from outside the State, the Tribunal would simply not have been able to properly complete its task. However, in terms of the duration of the Tribunal’s work, there are unquestionably lessons to be learned from the complications that arose by virtue of the fact that the Tribunal did not have the power to compel evidence from Northern Ireland and beyond.

1.3.6 A secondary factor in the length of time which the Tribunal required to complete its task has been the fact that the events under investigation occurred so long ago. As a result, the Tribunal was not handed at the commencement of its work by An Garda Síochána or the authorities in Northern Ireland a list of potentially relevant witnesses who were party to the events and investigations of 1989. Certainly, some such witnesses

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could be immediately identified. However, there were significant gaps. It was only through talking to those persons who could be identified at the outset, that the Tribunal was able to identify other persons serving within the respective police services north and south who might well have been within the relevant circle of knowledge of the events of March 1989. Thus, incrementally, the pool of potential witnesses grew. Most of these people had retired, and the Tribunal travelled to various locations in this jurisdiction and in Northern Ireland to speak with them. Unfortunately, however, as is inevitable given the passage of time, some potential witnesses had died and, regrettably, a small number from Northern Ireland refused to cooperate. I also note that a number of potential witnesses spoke confidentially to Dáil Deputies, but, most regrettably, did not come forward to provide information to the Tribunal. The journalist Kevin Myers undertook to request his sources, who are not named in his article, to volunteer to speak to the Tribunal but, so far as we are aware, these sources did not do so.

1.3.7 A further factor in the duration of the private investigation and, to a lesser extent, the public hearings of the Tribunal, was the sensitive nature of some of the intelligence to which I sought access. In the context of an inquiry into a how a paramilitary operation was carried out, intelligence gathered by security agencies on both sides of the border is, unsurprisingly, of very significant relevance. Equally unsurprisingly, for reasons connected with national security and the protection of informants, such intelligence is zealously guarded by the agencies which possess it. It took a considerable period of time to work out with the relevant agencies how intelligence material could be disclosed and put into evidence in a manner which advanced the work of the Tribunal, whilst ensuring the preservation of life and respecting the protection of national security. These are matters which will be dealt with in greater detail later in this Report.

#### **1.4 Work of the Tribunal – A More Detailed Chronology and Methodology**

1.4.1 The starting point for the private investigation which commenced in March 2006 was the documentation which was submitted to Judge Cory and upon which he based his recommendation for the establishment of the Tribunal. The Tribunal received from the Department of Justice, Equality and Law Reform a copy of the un – redacted Report of Judge Cory. After some months, the Tribunal also received copies of the materials with which Judge Cory had been provided by the Government. Around the same time, those of Judge Cory’s papers which were the property of the British Government were transferred from storage in the Cabinet Office in London to a secure location in Northern Ireland. The Tribunal’s legal team and I were then provided the facility to read all of those papers at that location.

1.4.2 On reviewing the papers with which Judge Cory had been provided, the Tribunal was able to identify other areas where further information and documentation was required. This was then sought from the

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relevant agency, whether in this jurisdiction, in Northern Ireland, or in Great Britain. I wish to acknowledge the assistance of both the Police Service of Northern Ireland (PSNI) and An Garda Síochána in relation to the provision of relevant documentation.

1.4.3 In respect of An Garda Síochána, the Tribunal made an Order for Discovery with which An Garda Síochána complied, as required by law. I can confirm that the Tribunal had access to all of the relevant material sought from An Garda Síochána in an un – redacted form. This included sensitive intelligence reports. In respect of such reports, a précis of the information contained in each report was provided by An Garda Síochána. The précis was designed as a means of putting the relevant information into evidence in a – for the most part – public hearing of the Tribunal, whilst removing elements which might tend to lead to the identification of an informant or undermine national security.

1.4.4 In respect of the PSNI documentation, the Tribunal agreed with the PSNI a mechanism whereby it viewed requested documents in their original form at a secure location in Northern Ireland, and identified those documents of relevance such that copies were required for the Tribunal’s hearings. The selected documents were then reviewed by the PSNI and other relevant security agencies in the United Kingdom for the purposes of making any necessary redactions, or, in certain cases, drafting a précis of the information contained therein, and were ultimately provided to the Tribunal by the Northern Ireland Office (NIO) in a format which could be put into evidence in a public hearing. On certain occasions, where the Tribunal had concerns that the essence of the information had been redacted such that the evidential value of the document had been eliminated, we entered into negotiations with the relevant authorities in Northern Ireland and Britain so as to ascertain whether alternative redactions or alternative précis of intelligence could be agreed. This generally proved to be a fruitful exchange such that an agreement which preserved the evidential value of the material was reached.

1.4.5 I want to emphasise that for the most part I have found this process to be extremely successful, and I am very grateful to the PSNI, and the other relevant authorities, for their ongoing voluntary co-operation and their commitment to assisting the work of the Tribunal. Until the summer of 2012, when the Tribunal was provided by the NIO with 22 strands of what I describe here as ‘modern’ as opposed to ‘historic’ intelligence, the Tribunal’s legal team had full access to PSNI intelligence in its original, un – redacted form. As regards the ‘modern’ intelligence, for reasons which are outlined more fully later in this Report, the NIO, the Security Service and the senior witnesses provided by the PSNI in relation to that material were not prepared to permit the Tribunal to inspect the original, underlying intelligence documentation. This was a matter of considerable

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controversy during the final phase of the Tribunal’s public hearings, and I shall comment further on this at a later point.

1.4.6 This one issue in relation to the ‘modern’ intelligence notwithstanding, I consider that the co-operation and assistance received from *all* of the security agencies of the United Kingdom to be a novel and unprecedented aspect of the work of this Tribunal of Inquiry. In this respect, I have already outlined the process of co-operation from the PSNI, but I also wish to comment on co-operation with the British Security Service. While the Tribunal’s legal team was not given access to underlying Security Service intelligence, the Tribunal’s legal team met representatives of the Security Service on a number of occasions. At the Tribunal’s request, the Security Service conducted various searches and informed the Tribunal of the outcome of those searches. Furthermore, some of the intelligence documentation provided by the Northern Ireland Office to the Tribunal in a redacted form originated from the Security Service. I am also of the view, from the evidence I have heard, that the Security Service played a significant if not determinative role in deciding that the ‘modern’ intelligence referred to above be provided to and put into evidence before the Tribunal, albeit in a somewhat limited format and without access to the underlying documents. While I acknowledge that a process which does not allow the Tribunal to verify, by checking the underlying information, that what it is being told by the Security Service in response to our various requests is accurate, is not a perfect process, I am nonetheless of the view that the Tribunal has done well to secure an unprecedented level of co-operation from the Security Service of another sovereign state.

1.4.7 Securing relevant documentation, including intelligence information, was one of two central pillars of the private investigation. The search for potential witnesses was the other. In the course of its private investigation, the Tribunal interviewed in excess of 250 potential witnesses.

1.4.8 Any witness before the Tribunal would have protection in this jurisdiction from criminal prosecution on the basis of evidence given before it. This protection is enshrined in section 5 of the Tribunals of Inquiry (Evidence) Act 1979 which provides as follows:

“A statement or admission made by a person before a tribunal or when being examined in pursuance of a commission or request issued under subsection (1) of section 1 of the Principal Act shall not be admissible as evidence against that person in any criminal proceedings (other than proceedings in relation to an offence under subsection (2) (c) (as inserted by this Act) of

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that section) – [and that is a reference to the offence of providing false testimony to the Tribunal] – and subsection (3) of that section shall be construed and have effect accordingly.”

1.4.9 However, given the cross – border aspects of the Inquiry, it was equally important to securing the attendance of witnesses that such protection be extended to the United Kingdom. The Tribunal therefore sought and received an undertaking from the then Attorney General of England and Wales, the Right Hon., the Baroness Scotland, Q.C., to similar effect. Subsequent to the devolution of policing and justice powers to Northern Ireland on 12<sup>th</sup> April 2010, Sir Alistair Frasier, the Director for Public Prosecutions for Northern Ireland, confirmed that he would continue to honour Baroness Scotland’s undertaking. After the change of Government in the United Kingdom on foot of the general election of May 2010, the new Attorney General of England and Wales, the Right Hon., Dominick Grieve, Q.C. M.P., provided the Tribunal with confirmation that Baroness Scotland’s undertaking would continue to apply. The Tribunal subsequently, at the request of Freddie Scappaticci, sought and received a similar undertaking from the Lord Advocate, in relation to Scotland. This was given in terms specific to Mr Scappaticci, though the Lord Advocate also indicated that he would be happy to consider a similar request in respect of any other witness. This did not arise.

1.4.10 Ultimately, 198 witnesses gave evidence in public sittings of the Tribunal. Twenty two witnesses made more than one appearance. The opening statement by Counsel for the Tribunal was delivered on 7<sup>th</sup> June 2011. The final evidence was heard on 31<sup>st</sup> May 2013. A number of witnesses, for the most part former members of the RUC, applied to be permitted by the Tribunal to give evidence anonymously. In this regard, mindful of the ongoing threat from subversive republicans and conscious of the voluntary nature of the co-operation being offered by these witnesses, I acceded to all such applications. Anonymity comprised two elements: witnesses could give evidence under a cipher number rather than their own name and they could also give evidence from behind a screen or, in the case of video link evidence, off – camera. Some witnesses availed of both a cipher and screening, some of cipher only and others gave their evidence in their own name but screened from the persons in the hearing room. I should add that with the exception of those witnesses who gave evidence off – camera by video link, I was able to observe the demeanour of every witness who gave evidence before the Tribunal.

1.4.11 At all times, I was mindful of my statutory obligation, under The Tribunals of Inquiry Act 1921 (as amended), to hear evidence in public, subject only to a limited number of exceptions. In the course of the hearings of the Tribunal, I acceded to a small number of applications that evidence be heard in a private sitting of the Tribunal. For the most part, this arose where the evidence to be given related to intelligence

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matters and was therefore of a sensitive nature having regard to security and the potential to identify informants. In total there were 13 private sittings of the Tribunal. In respect of four of these, however, the transcript of the private hearing, with limited redactions to protect informants and national security of this State or the United Kingdom, was subsequently read into evidence at a public sitting of the Tribunal.

1.4.12 Once the Tribunal concluded public hearings, I invited any party which wished to do so to make a written submission. I also gave all represented parties an opportunity to make a brief oral submission. Eight parties availed of the opportunity to submit written submissions on or before 21<sup>st</sup> of June 2013 and five parties availed of the opportunity to make an oral submission on that date.

1.4.13 I wish to confirm that I have carefully considered all of the written and oral submissions made to me in preparing this Report and in reaching my conclusions and making my recommendations. I do not intend, in this Report, to summarise the submission made to me by each party at the conclusion of the evidence. However, pursuant to a commitment I gave to the parties, I am placing each written submission received in Part II of this Report. There is one exception to this: a second written submission received from the Commissioner of An Garda Síochána which addressed sensitive matters of intelligence and which was submitted on the basis that it would not be included in the appendices. In reviewing this submission I was satisfied, in the interest of protecting the lives of informants, that it should not be included in the appendices.

## **1.5 Contact with Former Personnel of the Provisional IRA**

1.5.1 At an early stage of its private investigation, the Tribunal sought contact with former members of the Provisional IRA who had knowledge of the operation which led to the deaths of Chief Superintendent Breen and Superintendent Buchanan. Such persons are uniquely well – placed to shed light on the matters which are the subject of this Tribunal of Inquiry.

1.5.2 The Tribunal secured a level of formal engagement with former members of the PIRA which, I think, is unprecedented for a public Tribunal of Inquiry. The Tribunal approached former personnel through an intermediary and, after a period of time, was provided with a document entitled “*Final Note*” which provides an account of the operation which took place on Monday, 20<sup>th</sup> March 1989. The note was purportedly prepared by former personnel who had been involved on the IRA operation on that date. It indicates that the operation was the culmination of a period of careful surveillance of Superintendent Buchanan’s car, and that the Provisional IRA received no assistance from an agent of the State. The Tribunal required clarification in respect of a number of aspects of the statement provided and, again through the intermediary, posed a number

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of written questions to the authors of the note. After a considerable period of time, the Tribunal received replies in writing.

1.5.3 Subsequently, the Tribunal requested that a meeting take place between the authors of the note and members of the Tribunal's legal team. Discussion as to the modalities of such a meeting took place over a number of months. It must be acknowledged that there was an initial reluctance on the part of the former members of the IRA and, in particular, a concern about the adverse consequences of participating in such a meeting. Ultimately, however, in what was a significant development from the point of view of the Tribunal's work, three members of the Tribunal's legal team had a face to face meeting with three former personnel of the Provisional IRA, in the presence of two intermediaries. The three individuals with whom the Tribunal's legal team met included persons who had been in a leadership level at both national and local (South Armagh) level. One of the three persons had first – hand knowledge of the Provisional IRA operation of 20<sup>th</sup> March 1989 and had a command role in that operation. The former personnel gave a detailed account of the events leading to the deaths of Chief Superintendent Breen and Superintendent Buchanan and replied to questions posed by the three members of the Tribunal's legal team. A full note of what said at this meeting was prepared by the intermediaries, in consultation with the Tribunal. This meeting occurred in late April 2011.

1.5.4 Over the remainder of 2011 and throughout 2012, the Tribunal continued to engage, through the intermediaries, with the former members of PIRA. I was anxious to try and secure the attendance of one of those three former members as a witness before the Tribunal. I considered it to be very important, from my perspective as the adjudicator of facts, to hear from the former personnel first – hand. It was desirable that any evidence they had to give be given on oath and tested by cross – examination like all other evidence before the Tribunal. Regrettably, however, in early 2013 the Tribunal received final confirmation that none of the former personnel who had been engaged in this process was willing to provide evidence. In these circumstances, I directed that the full written record of the Tribunal's engagement with the former personnel be read into the record of the Tribunal and this was done at a public sitting on 1<sup>st</sup> February 2013.

1.5.5 The account of the former personnel will be the subject of more detailed analysis later in this Report. While I am of the view that oral evidence from at least one of the former personnel would have been of significantly greater assistance to me in the performance of my functions, I nevertheless wish to acknowledge the co-operation by the former members of the Provisional IRA with this Tribunal.

## **1.6 Areas of Evidence**

1.6.1 The evidence of the Tribunal did not readily lend itself to division into discrete modules. However, it is possible to identify in broad terms the areas of evidence which I considered relevant such that they warranted being dealt with at public hearings.

1.6.2 The first of these was the circumstances which led to Chief Superintendent Breen and Superintendent Buchanan being in Dundalk on 20<sup>th</sup> March 1989. The details of the arrangement of the meeting on that date are important because they establish how widely known it was that the two officers were coming to Dundalk. Advance knowledge of the officers' travel plans is obviously one means by which the Provisional IRA may have been able to mount the operation.

1.6.3 It was also important to establish, with as much precision as possible, the time at which various events unfolded on the day in question. Therefore, a considerable number of witnesses gave evidence as to the events of 20<sup>th</sup> March 1989. These include witnesses who were in Dundalk Station on that date and witnesses who were caught up in the terrible events which occurred on the Edenappa Road. Comparing the timing of the officers' movements with those of the IRA Active Services Units (ASUs) involved in the paramilitary operation may point to conclusions about when the Provisional IRA gained the requisite knowledge to carry out this operation. That, in turn, may point to conclusions as to how that knowledge had been gained.

1.6.4 A third area of evidence concerned events in the immediate aftermath of the ambush. This relates to media speculation as to the possibility of information having been leaked from An Garda Síochána, the official reaction on both sides of the border to that speculation, the results of police investigations carried out on both sides of the border and the intelligence received by both An Garda Síochána and the RUC in the days that followed the killings.

1.6.5 Fourthly, the Tribunal heard evidence in relation to the investigation carried out by Assistant Commissioner O'Dea in the days following the killings.

1.6.6. Fifthly, evidence was called in relation to the events that precipitated a second internal investigation in 2000. In this regard, evidence was heard from the journalist Kevin Myers and from Jeffrey Donaldson M.P. who had made the allegation of collusion in the House of Commons on 13<sup>th</sup> April 2000.

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1.6.7 Sixthly, the content and result of the second internal investigation, the Camon investigation, were considered.

1.6.8 Seventhly, throughout the course of the Tribunal's hearings, evidence was heard of other intelligence material dating from the years before March 1989 to the present day. This intelligence addressed a whole range of matters, including suggestions as to how the operation of 20<sup>th</sup> March 1989 was carried out, allegations of wrongdoing against the individual former Garda officers represented before the Tribunal and other material suggestive of a security issue in Dundalk. In this category, I include some items which had been brought to light for the first time in this Tribunal, and which had not formed part of the information on which Assistant Commissioner O'Dea, Chief Superintendent Camon or Judge Cory had based their reports. These items included: evidence as to the identity of the source of information received by the RUC in 1985 to the effect that then Owen Corrigan was passing information to the IRA; evidence of a senior Garda officer in Monaghan, Superintendent Tom Curran, receiving information in 1988 to the effect that there was a threat to the life of Bob Buchanan; and evidence from retired Detective Inspector Dan Prenty of Dundalk Garda Station suggesting that a Garda search of a well – known subversive's house in the Dundalk area was compromised in early 1990.

1.6.9 The eighth area of evidence concerns the allegations made by former British agent, Kevin Fulton, and former British soldier, Ian Hurst. Kevin Fulton, previously known as Peter Keeley, was an agent for various British agencies at different times. He claims to have been associating with subversives in Dundalk in March 1989 and to have heard information suggestive of collusion in the killings of Chief Superintendent Breen and Superintendent Buchanan. His statement to Judge Cory was a significant, if not determinative, factor in the recommendation that a public inquiry be held in relation to the Breen and Buchanan matter. Ian Hurst was an employee of the British Army's Force Research Unit (FRU), a unit the primary function of which appears to have been the handling of informants from both republican and loyalist paramilitary organisations. He claims to have seen documents suggesting collusion by Gardaí in Dundalk (primarily by Owen Corrigan but also, to a lesser extent, Leo Colton) with the Provisional IRA. The Tribunal heard evidence from both Mr Fulton and Mr Hurst, as well as evidence from other witnesses with a view to helping me assess Mr Fulton's and Mr Hurst's credibility.

1.6.10 The ninth, tenth and eleventh areas of evidence relate to the three former Garda officers who are alleged or suspected of having had inappropriate contact with subversives, former Detective Sergeant Corrigan and former Sergeants Hickey and Colton. The Tribunal heard evidence from each of these officers,

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as well as evidence from other witnesses in relation to their careers, conduct and allegations of wrongdoing made against them.

1.6.11 The Tribunal also heard evidence from a series of witnesses in relation to an allegation, made in an article published in *The Phoenix* magazine, on 3<sup>rd</sup> June 2005, that the Provisional IRA became aware of the intended visit of Chief Superintendent Breen and Superintendent Buchanan from a telephone tap. The allegation suggested that a telephone line going into Dundalk Garda Station had been tapped at the ‘Ramparts’ telephone exchange in Dundalk. A number of former Telecom Éireann/Eircom employees were of great assistance to the Tribunal in assessing the credibility of the allegation made in the article, and I also heard evidence from Detective Inspector Chris Kelly who had carried out an extensive Garda investigation into the allegation. Detective Inspector Kelly had concluded that no such telephone tap had occurred.

1.6.12 Finally, as noted above, on 1<sup>st</sup> February 2013, the full written record of the Provisional IRA’s engagement with the Tribunal was read into the record of the Tribunal. I was then able to assess the account of the former members of the Provisional IRA with reference to all the other evidence, whether corroborative or contradictory, that I had heard.

1.6.13 These broad areas of evidence have dictated, to a considerable extent, the structure of this Report. For the most part, I have adopted a chronological structure. However, information uncovered by the Tribunal in relation to a number of significant events which occurred prior to March 1989, while referred in a contextual fashion when referring to the events of that month, is addressed in greater detail in later chapters.

1.6.14 I should add that in compiling this Report, I have not considered it necessary to summarise the evidence of every witness. Rather, I have referred only to evidence which I considered relevant to the central issues of fact that I have to determine. In this respect, the greatest level of detail is to be found in my treatment of the evidence in relation to events during the period from 16<sup>th</sup> March 1989 to 22<sup>nd</sup> March 1989, as I am of the view that it is important to establish the timeline of events with as much precision as possible. My approach of not summarising all evidence should not be taken as indicating that I have not had regard to all of it. I have carefully reviewed and considered all of the evidence put before the Tribunal in the preparation of this report, in forming my conclusions and in making my recommendations.

## **1.7 Guiding Principles**

1.7.1 Finally, I wish to identify three broad principles which have guided me in reaching my conclusions in accordance with my terms of reference.

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1.7.2 The first of these relates to the burden and standard of proof to be applied by me in reaching factual conclusions. This was an issue that arose in at least one of the written submissions made to me. I wish to emphasise that I view this Tribunal of Inquiry as performing an inquisitorial rather than an adversarial function: the purpose of the Tribunal is to inquire into suggestions that the killings of Chief Superintendent Breen and Superintendent Buchanan were carried out with collusion by agents of the State. To this end, the Tribunal's legal team, under my direction, conducted a private investigation. I reviewed the fruits of this investigation and determined what information was of sufficient relevance to warrant being put into evidence before me in hearings. At that stage of the process, I had made no conclusions on the information submitted to me. The public hearing phase of the inquiry entailed the Tribunal's Counsel placing before me relevant evidence, subject to cross – examination by represented parties. The evidence led by the Tribunal in this respect was not the prosecution of any single theory as to how the Provisional IRA carried out these shootings, nor was it the prosecution of any individual person as having colluded with the IRA.

1.7.3 The terms of reference of the Tribunal were to enquire into 'suggestions' of collusion. Some of these 'suggestions' were that a named individual colluded in the commission of the attack on Chief Superintendent Breen and Superintendent Buchanan. In addition, as already noted above, the Camon Investigation referred to three former Garda officers suspected of inappropriate contact with subversives. Inevitably, therefore, during the course of the public hearings the Tribunal heard evidence in relation of the conduct and career of former officers of An Garda Síochána. While I appreciate that, at times, this may have led to such persons to feel that they were under scrutiny, this was essential to fulfilling the terms of reference of the Tribunal and to establishing whether there was any truth to the suggestions of collusion. Not least, it was important to inquire properly into the conduct of persons suspected of having inappropriate contact with subversives so that if rumours, suggestions or allegations implicating them in collusion were manifestly unfounded, this would be publicly exposed.

1.7.4. At all times, I regarded my function as inquisitorial and I listened to all of the evidence with an open mind. In this context, it is wrong to talk of a burden of proof. There is no prosecuting party or adversarial party upon whom such a burden rests.

1.7.5 The question of whether or not there was collusion in the killings of Chief Superintendent Breen and Superintendent Buchanan is a broad question of fact which I consider ought to be determined on the balance of probabilities. The application of any other standard could, I feel, lead to an inconclusive and possibly

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contradictory outcome. For example, if I were to apply a higher standard to the question “was there collusion?”, and, looking at the matter from the other side, an equally high standard to the question “did the IRA carry out this operation on the basis of their own surveillance?”, I could find myself in the position where I conclude that the operation was not carried out with collusion, but nor was it carried out without collusion. This would be a manifestly absurd outcome.

1.7.6 However, mindful of what the Supreme Court decided in *Lawlor v Planning Tribunal* [2010] 1 I.R. 170, and having regard to the written submissions provided on behalf of Owen Corrigan, I do consider that a somewhat different approach is required in the event that I conclude that there was collusion and go on to consider whether it is possible to identify the responsible individual or individuals. This is because of the seriousness of a finding that a person colluded in the killings of RUC officers and the massive reputational damage such a finding would inflict. As the Supreme Court stated in the *Lawlor* case, this is not to say that I have adopted a ‘sliding scale’ of proof, but rather, that a finding that a named individual was responsible for collusion must be proportionate to the evidence upon which it is based. I would only base such a finding on evidence that I considered to be authoritative and deserving of significant weight.

1.7.7 The second broad principle which has guided me in reaching my conclusions relates to how the term ‘collusion’, which is central to the terms of reference, is to be interpreted. At the first public sitting of the Tribunal on 16<sup>th</sup> March 2006, I set out my proposed definition in the following terms:

“... the issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or pretended ignorance or unawareness of something one ought morally, legally or officially, oppose. Judge Peter Cory defined the word collusion in similar terms when considering the evidence before him and considering whether or not the murders under review as part of the Weston Park Agreement merited further investigation.”

1.7.8 In adopting this definition, I was largely endorsing the approach of Judge Cory. No party has challenged this definition and I remain of the view that it is the correct one.

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1.7.9 Finally, the third principle which has guided me in reviewing evidence and reaching my conclusions concerns what one might describe as the behavioural signifiers in respect of a police officer in collusion with criminals or subversives. Retired Deputy Chief Constable of the RUC, Blair Wallace, gave me some very useful of evidence as regards what one should look out for when investigating a suggestion that a police officer was leaking information.

1.7.10 He stated:

“I would look to see if he was living beyond his means insofar as the type of property he had, the type of vehicle that he was driving and the amount of spending money that he had available in that in both forces, your living ability was dictated by your salary, at the end of the day, and that you had to use it wisely. You would also consider places that he was frequenting, people that he was meeting and whether or not such meetings, if he was dealing with people who had a known background in subversion, were those in relation to his job or were they of a social nature or otherwise. Whether or not he always worked on his own, in other words, done solo runs, as such, when no one else was present, and that he was there meeting people or going to do particular things and it was always as a solo run without any accompaniment.”

1.7.11 He went on to state that if an officer suddenly went absent for a period during the working day and was not prepared to account for where he was for that time, that would “immediately give rise to suspicions as to what he was, in fact, doing.” Another factor identified by Mr Wallace was whether the officer in question was being effective in this job:

“Was he producing intelligence which was leading to success against terrorism? [.....] if there was intelligence coming in, how often was it coming in, how often was it ending up as a damp squib? In other words, that there was no end product to that intelligence. And where people were offering good intelligence and it was being acted upon, were those people being compromised?”

1.7.12 In relation to the question of the officer’s means, Mr Wallace elaborated that one would have to consider whether he had:

“a properly profile or property portfolio, and how did he acquire that property, his bank accounts would have to be looked at to see what money was passing through, his salary was obviously something that

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could be paid in direct to the bank, but were there other monies suddenly appearing and if so, where were they appearing from and how were they sort of coming into his possession?”

1.7.13 When asked by Counsel for the Tribunal what view he would take of a member of the police force who when questioned about alleged wrongdoing, refused to make a statement, he stated that his suspicious police mind would immediately think that that person “must have something to hide:”

1.7.14 This evidence was endorsed by the retired Commissioner of An Garda Síochána, Pat Byrne, and I have borne these signifiers in mind throughout my review and analysis of the evidence I have heard.

## Chapter 2

### Events Leading up to 20<sup>th</sup> March 1989

#### 2.1 – Context in Terms of Border Security

2.1.1 Before dealing with the events immediately preceding the journey of Chief Superintendent Harry Breen and Superintendent Bob Buchanan to Dundalk on 20<sup>th</sup> March 1989, I wish to place the events of that date in a broader context in terms of border security in the late 1980s. The logical starting point in this respect is the Anglo – Irish Agreement of 15<sup>th</sup> November 1985.

2.1.2 The Agreement between the Irish and British Governments counted among its principal aims the promotion of cross – border co-operation. An Anglo – Irish Inter – Governmental Conference, made up of officials from the Irish and British Governments, was established and this body was to be concerned with political, legal and security matters in Northern Ireland. I heard evidence from the journalist Chris Ryder, formerly of *The Sunday Times* and *The Daily Telegraph*, that in the negotiations around the Anglo – Irish Agreement, the British Government was particularly concerned to ensure a strengthened security presence along the border. Article 9(a) of the Agreement provided as follows:

“With a view to enhancing cross – border co – operation on security matters, the [Inter – Governmental] Conference shall set in hand a programme of work to be undertaken by the Commissioner of the Garda Síochána and the Chief Constable of the Royal Ulster Constabulary and, where appropriate, groups of officials, in such areas as threat assessments, exchange of information, liaison structures, technical co – operation, training of personnel, and operational resources.”

2.1.3 The Tribunal heard evidence from the former Deputy Chief Constable of the RUC, Blair Wallace, who was the Chief Constable’s representative on the Working Party established pursuant to Article 9(a). Then Deputy Commissioner, John Paul McMahon, represented An Garda Síochána. Mr Wallace gave evidence that there were seven meetings of the Working Party. He confirmed that Superintendent Bob Buchanan and Detective Superintendent Tom Curran of Monaghan were both members of the Working Party.

2.1.4 The Working Party produced a 100 – page Report covering a wide range of aspects in relation to policing. The report included a section setting out the principles governing the responsibilities of RUC Border Superintendents. These principles reflected the current practice within the RUC at the time, and the Report

contained a recommendation that the existing responsibilities be continued. The responsibilities identified in the Working Party Report included:

“ensuring adequate communication exists between the Garda and the RUC in joint operations when an operational response is requested and to avoid confusion, misunderstanding and accident between security forces.”

The Report also stated that a Border Superintendent was required:

“To acquire a detailed and in – depth knowledge of the area of the border for which he has responsibility and to liaise with divisional, district and sub – district officers and members of the detective and special branch with a view to keeping himself up to date and conversant with current intelligence on the movements and general activities of terrorists and suspects.”

2.1.5 Mr Wallace confirmed to the Tribunal that there was not a direct equivalent of RUC Border Superintendent within An Garda Síochána. He stated that the Working Party had recommended that such a post be created, but this was not a recommendation which ultimately found favour. Rather, it was decided that the Garda Divisional Superintendent should also carry out the role of border liaison officer. I note that this can be illustrated, in the context of the Tribunal’s work, by the frequent contact between Bob Buchanan and the District Officer in Dundalk, Superintendent Pat Tierney. It is worth adding, however, that there was a Detective Superintendent – Tom Connolly in March 1989 – in Dundalk Garda Station who had a particular role in terms of the subversive threat and who was sometimes referred to during the course of the Tribunal’s hearings as the Garda ‘Border Superintendent’.

2.1.6 It appears that one of the practical consequences of the Anglo – Irish Agreement and the work carried out by the Working Party was the introduction of a much more formal and structured co-operation between the RUC and An Garda Síochána. I heard evidence from several witnesses in relation to the establishment of bi – monthly meetings between senior representatives of the two police forces. The venue for these bi – monthly meetings alternated between Northern Ireland and Ireland.

2.1.7 A further consequence was the increase in the size of the Garda Detective Branch in Dundalk Garda Station. Prior to 1985, the Detective Branch had consisted of a Detective Sergeant, namely Owen Corrigan, and, the evidence indicates, four to eight Detective Gardaí. In the post Anglo – Irish Agreement landscape,

this altered dramatically. Dundalk acquired four separate units of Detective Gardaí, each with four to six members and each with its own Sergeant. Above this, there was a Detective Inspector, and above him, the Detective Superintendent with special responsibility for subversive matters and border security referred to above. The developments in cross – border policing also led to the Chief Superintendent of the Louth/Meath Division being moved, for a period, from Drogheda to Dundalk. As of March 1989, the Divisional Officer, Chief Superintendent John Nolan, was based in Dundalk Garda Station.

2.1.8 There were also some changes in the structure of policing within the RUC. These included the appointment of an Assistant Chief Constable responsible for the Border Zone; Assistant Chief Constable Jimmy Crutchley (deceased).

## **2.2 – Specific Events in relation to the Dundalk Area**

2.2.1 A number of other events occurred between 1985 and 1989 which, though dealt with in greater detail later in this Report, warrant a mention here.

2.2.2 Firstly, in Summer 1985, the RUC received intelligence alleging that Detective Sergeant Owen Corrigan was passing information to the Provisional IRA. As I will explore in greater detail elsewhere, there is no documentary evidence to indicate that this information was passed by the RUC to An Garda Síochána at the time. This information was received a matter of months before the Anglo – Irish Agreement was reached.

2.2.3 Secondly, on 27<sup>th</sup> April 1987 Sir Maurice Gibson, a Lord Justice of Appeal in Northern Ireland, and his wife Lady Cecily Gibson were killed in a bomb attack at Killeen, just north of the border on the main Dublin to Belfast road. There was immediate speculation in the media that there had been a security leak within An Garda Síochána in relation to the Gibsons' travel arrangements.

2.2.4 Around the same time, a Monaghan Detective Superintendent, Tom Curran, received intelligence that the Provisional IRA, in an attempt to undermine the Anglo – Irish Agreement, planned to murder some RUC officers travelling to and from meetings with the Gardaí. This information was passed to Garda Headquarters, and, as discussed later in this Report in the context of the evidence of Michael Diffley, was also passed by Garda Headquarters to the RUC.

2.2.5 The Tribunal also heard evidence from Mr Curran, assessed in Chapter 10 of this Report, to the effect that in or around the first half of 1987, Bob Buchanan informed him that the RUC had concerns that Owen Corrigan was associating inappropriately with the Provisional IRA. Mr Curran's evidence to the Tribunal was

that Bob Buchanan asked him to convey this concern to Crime and Security in Garda Headquarters and that he did so. Mr Curran also gave evidence, also assessed in Chapter 10, to the effect that six to nine months before the events of 20<sup>th</sup> March 1989, he received intelligence indicating that Bob Buchanan was being targeted for assassination. Mr Curran told the Tribunal that he submitted a report in this respect. An Garda Síochána informed the Tribunal that it has no record of such a report in its files.

2.2.6 On 23<sup>rd</sup> July 1988, Robert Hanna, his wife Maureen and their son David were killed in a bomb blast just north of the border on the Dublin to Newry road. It was widely believed at the time that the intended target of this terrorist operation was a Northern Ireland High Court Judge, Mr Justice Higgins, who around the same time was being escorted by An Garda Síochána from Dublin to the border. There was, however, also an alternative theory that the Hannas' car had been mistaken for a security forces vehicle. In the immediate aftermath of this incident, there was also media speculation about the possibility of a security leak.

### **2.3 – Cross – Border Travel by Bob Buchanan and Harry Breen**

2.3.1 Bob Buchanan took up the role of Border Superintendent in 'H' Division on 6<sup>th</sup> January 1986. The principles governing the responsibilities of RUC Border Superintendents have been set out in the previous section. Retired Deputy Chief Constable Wallace emphasised to me that part and parcel of the job description of an RUC Border Superintendent was to build up trust through personal contact with An Garda Síochána. In this context, he also expressed the view that it was not unreasonable for Bob Buchanan to have travelled south of the border approximately 10 times per month.

2.3.2 Contemporaneous records show that in the 12 months preceding his death, Superintendent Buchanan frequently travelled south to liaise with An Garda Síochána. He visited the Garda stations in Dundalk, Monaghan town and Carrickmacross most frequently, although he also occasionally visited some of the outlying stations in the Louth/Meath and Cavan/Monaghan divisions.

2.3.3 To take the example of the months immediately prior to his death, in the month of January Bob Buchanan made eight visits south of the border, in February he made seven visits south of the border, and from the beginning of March until the date of his death he made six visits south of the border. Other than the occasions on which he was travelling in someone else's car, Superintendent Buchanan drove his red Vauxhall Cavalier which he had owned since 1986. It had a Northern Irish registration number which does not appear to have been changed at any point. Judge Cory commented that the car was "readily identifiable", though I prefer at this stage of this Report, to state that once it was known to be the car of an RUC officer, it would probably have been easily spotted on subsequent occasions.

2.3.4 Chief Superintendent Breen’s journeys south of the border were much less frequent. According to his diary, he was in Dundalk Garda Station just once in 1989 prior to the day of his death. This was on 2<sup>nd</sup> February 1989, when both he and Superintendent Buchanan attended a meeting with Chief Superintendent Nolan in Dundalk Garda Station. Chief Superintendent Breen’s diary entry for this date indicates that he met Superintendent Buchanan in Newry, and “then to Dundalk”. Bob Buchanan’s diary suggests that he accompanied (“Acc.”) his Divisional Commander to Dundalk on that date.

2.3.5 The fact that Harry Breen was a much less frequent visitor to Dundalk Garda Station is also illustrated by evidence I heard from his deputy, Witness 39, in relation to one visit to Dundalk in 1988. In March 1989, Witness 39 was a uniformed Superintendent and Deputy Divisional Commander of ‘H’ Division. He assumed this role in May 1988. He put into evidence before the Tribunal extracts from his 1989 journal which indicate that in the 10 months that followed, he travelled south of the border on three occasions with Harry Breen: on 6<sup>th</sup> September 1988, he travelled to Dundalk “accompanied by the Divisional Commander”; on 28<sup>th</sup> September 1988, he, “accompanied the Divisional Commander to Monaghan for meeting with Garda”; and on 22<sup>nd</sup> November 1988, he “attended a Garda/RUC meeting in Dundalk accompanied by DC [Divisional Commander] from Newry.” Witness 39 gave evidence that on one of these occasions when he was driving – he thought on 6<sup>th</sup> September 1988 – he and Harry Breen became lost on the way into Dundalk and had difficulty finding Dundalk Garda Station.

2.3.6 Having set out some contextual matters that will be dealt with in greater detail later in this Report, I now propose to turn to the evidence in relation to the events which led to the meeting in Dundalk Garda Station on 20<sup>th</sup> March 1989.

## **2.4 – Dinner in Stormont on 6<sup>th</sup> March 1989**

2.4.1 Harry Breen’s diary records that on the evening of Monday, 6<sup>th</sup> March 1989, he attended a “[f]unction at Stormont accp. by [Witness 27] from Lisburn.” Witness 27 was, at the time in question, a Chief Superintendent who was Deputy to the Assistant Chief Constable for the Border zone (ACC Border Zone). He came from England to give evidence to the Tribunal, having moved there not long after the events of 20<sup>th</sup> March 1989. (He informed me that the threat to him from subversives was so great that he was told by the Security Services that “nobody could protect me” and therefore he had no choice but to leave Northern Ireland).

2.4.2 Witness 27 gave evidence that he has a clear recollection of the function in question, although he believes that it took place on Wednesday, 15<sup>th</sup> March 1989. However, I note from Harry Breen’s diary that he has marked himself as having been on annual leave on 15<sup>th</sup> March 1989. Furthermore, his wife, June Breen, has provided a witness statement to the Tribunal in which she states that while she remembers her husband going for dinner with Witness 27, she thought that this occurred several weeks before his death. I am inclined to accept Harry Breen’s journal, a near – contemporaneous record of events, as the most reliable evidence as to the date upon which the dinner at Stormont took place. I do, however, accept Witness 27’s account of that dinner, as set out below.

2.4.3 Witness 27 described the event at Stormont as a supper with the then Secretary of State for Northern Ireland, Tom King M.P.. He stated that Harry Breen picked him up from his home in Lisburn and brought him to Stormont. Also present at the dinner were two army officers who were operating in South Armagh. They were Commanders of the local regiment or battalion and had not been in service in Northern Ireland terribly long. A personal assistant to the Secretary of State was also present, and took notes during the function. Witness 27 stated that during the course of the supper, one of the military officers described how the army “had observed lots of activity in the region of a border farm complex which they suspected was related to terrorism or illegal activities.” The farm in question was that of Thomas ‘Slab’ Murphy.

2.4.4 A document disclosed by the Northern Ireland Office in voluntary discovery, which was touched upon by retired Detective Superintendent David McConville of the PSNI in his evidence proving certain documents, appears to confirm that the incident referred to by the army officers at the function related to the number of tankers that went into or out of the farm during a certain period of time. It was assumed that these tankers were involved in smuggling fuel and that this was causing a considerable loss to the British Exchequer. In his evidence, Witness 27 stated that the Secretary of State, in response to the comments of the army officer, immediately demanded that a cross – border operation be conducted to deal with the smuggling at the Murphy farm. Witness 27 gave evidence that he advised the Secretary of State that the proposal was ill – advised, but that the Secretary of State “thumped the table and demanded that I go ahead.” Witness 27 stated that Harry Breen was equally unhappy with a police operation being directed by a politician. He said that both Harry Breen and he considered the timing of such an operation to be ill – advised. He explained that “it was a very complex situation on the border,” that there was no actionable intelligence which would have warranted a joint operation of the magnitude contemplated at that particular point in time and that it was very difficult, even at the best of times, to mount a coordinated operation with An Garda Síochána, Customs and the RUC.

2.4.5 In his evidence to the Tribunal, Witness 39, Harry Breen's deputy, recalled Harry Breen mentioning to him what had transpired at the Stormont dinner. He recalled that Harry Breen "wasn't terribly pleased with the report that had been given" to the Secretary of State by the army officer, and felt that the extent of activity referred to by the army colonel "just seemed to have been exaggerated."

2.4.6 The report of the army colonel was subsequently raised by the Secretary of State at a meeting with the Chief Constable of the RUC, Sir John Hermon. I deal with this at section 2.6 below. However, in the interim, a potentially significant incident occurred when Bob Buchanan was travelling across the border on Tuesday, 14<sup>th</sup> March 1989.

## **2.5 Events of Tuesday, 14<sup>th</sup> March 1989**

2.5.1 The Tribunal heard evidence from former RUC Inspector Charles Day. As of March 1989, then Inspector Day was a uniform Inspector based in Bessbrook, Co. Armagh. He had responsibility for operational planning which involved liaising with the British Army in respect of joint British Army/RUC operations and also liaising with Garda officers in respect of operational matters. He frequently travelled south of the border to meet Garda officers, and on some occasions travelled with Superintendent Buchanan. He never travelled south of the border with Chief Superintendent Breen.

2.5.2 On Tuesday, 14<sup>th</sup> March 1989, Inspector Day went to a meeting in Dundalk Garda Station with Superintendent Buchanan. He said he recalls this particular day because it was so close in time to Superintendent Buchanan's death and because he had mentioned to Superintendent Buchanan in the course of the journey that he thought they were being followed. He told the Tribunal that on the way back from Dundalk on the return journey to Newry he noticed a HiAce van travelling behind Superintendent Buchanan's car just before they reached the border with Northern Ireland. Inspector Day stated that HiAce vans would generally have caused some suspicion because they were used by the IRA in the south Armagh area. He stated that Superintendent Buchanan responded by looking in the mirror and keeping an eye on the van, which did continue to travel behind them as they crossed the border into Northern Ireland. Inspector Day said the van followed them "*quite a way up into the North*" but then travelled off on one of the side roads before he and Superintendent Buchanan reached the permanent vehicle check point on the A1.

2.5.3 Inspector Day also indicated that on one previous occasion, several months before this incident, he had noticed some people standing on a border crossing point, looking somewhat suspicious, when he and Superintendent Buchanan were travelling back from Monaghan. This would have been en route from

Monaghan to Armagh and the incident occurred on a minor road just east of Middletown. Inspector Day emphasised that he did not wish to attach too much importance to these incidents. In relation to the incident on 14<sup>th</sup> March 1989 he stated at the time that it did not “*cause undue concern.*” He said that incidents such as these occurred from time to time and one simply took note of them and reported them into the system.

2.5.4 Inspector Day’s evidence is obviously of potential relevance to my terms of reference in so far as it might indicate that Superintendent Buchanan’s car was under surveillance prior to 20<sup>th</sup> March 1989. His evidence is corroborated in two respects.

2.5.5 Firstly, the Tribunal has been provided with a statement of Inspector Day dated 22<sup>nd</sup> March 1989. This statement refers to Inspector Day’s journey from Dundalk with Superintendent Buchanan eight days previously. It differs to his evidence to the Tribunal in some respects. For example, the statement indicates that it was Superintendent Buchanan who was suspicious of the vehicle behind and that the vehicle seemed to be a dark coloured car rather than a Hi – Ace van. Also, in order to avoid the vehicle, that statement indicates that Superintendent Buchanan turned off the main road and travelled on the Edenappa Road to cross the border at border crossing point (BCP) 10. Superintendent Buchanan’s journal entry confirms that he attended a meeting in Dundalk on Tuesday, 14<sup>th</sup> March 1989. His diary also records that on Wednesday, 15<sup>th</sup> March 1989 he travelled to Carrickmacross with Inspector Day.

2.5.7 Secondly, the Tribunal has also been provided with a British Army report dated 6<sup>th</sup> June 1989 which contains a ‘coincidence analysis of vehicles in proximity to Superintendent Buchanan’s vehicle’. This document shows that Superintendent Buchanan’s car was spotted in Keady town at 4.11pm on Wednesday, 15<sup>th</sup> March 1989. Significantly, a car which was known to be used by subversives was recorded in very close proximity to Superintendent Buchanan’s car in Keady on that date. The British Army report of 6<sup>th</sup> June 1989 stated that: “it cannot be ruled out that the sightings of the vehicles are merely coincidental, but it is considered that some of them are significant and can not afford to be overlooked.” The report indicates that there “is evidence to suggest that there was targeting carried out by PIRA” on Superintendent Buchanan’s car.

## **2.6 Direction from the Chief Constable’s Office**

2.6.1 It appears from documents provided to the Tribunal that the matter of oil smuggling by subversives was subsequently raised by the Secretary of State at a Security Policy Meeting (SPM). I understand from the evidence given to the Tribunal by David Cushley, a retired Senior Assistant Chief Constable of the RUC, that the SPM was chaired by the Secretary of State and was attended by both the senior army officer in Northern Ireland, the General Officer Commanding (GOC) and the Chief Constable, Sir John Hermon. On 15<sup>th</sup> March

1989, a direction issued from the Staff Officer to the Chief Constable to the Senior Assistant Chief Constable Operations (SACC Ops) and the Senior Assistant Chief Constable Crime and Special Branch (SACC C & E) respectively. The direction stated as follows:

“1. I refer to the attached copy letter from the GOC’s MA [the Tribunal has not had sight of the enclosed letter from the GOC's MA].

2. This matter was raised recently at the SPM.

3. The Chief Constable wishes a full report on this matter including the Garda view via Divisional Commander ‘H’.

4. The Chief Constable would also like to know if our procedures for dealing with similar smuggling cases are adequate.

5. Please treat as urgent.”

2.6.2 David Cushley was the SACC Ops in March 1989 and Blair Wallace was the SACC C & E. The Tribunal has a note of a second page of this direction. The note was made by Tribunal Counsel when viewing documents in Belfast (the second page was not provided in the documents voluntarily discovered by the NIO and could not be found when requested by the Tribunal). The second page, contained, in effect, the next stage in the processing of the direction. It was signed by Mr Cushley for the attention of the Regional Assistant Chief Constable for Rural East, Witness 18, and was also dated 15<sup>th</sup> March 1989. It simply stated: “Please comply with points 3 and 4 above and further report by 24<sup>th</sup> March 1989.” While Mr Cushley gave evidence that he had no recollection of signing such a direction he was happy to state that if there was such a document with his signature on it he would have no hesitation in standing over it. Mr Cushley regarded it as natural that he would have forwarded the direction to the ACC Rural East, as he was Harry Breen’s superior and the Chief Constable’s direction required specific action from Mr Breen. Mr Cushley said that the direction would have then gone from the ACC Rural East to Mr Breen and Mr Breen would have had to come up with a plan to implement what the Chief Constable required. Mr Cushley told me that this “would have involved liaison with his counterpart south of the border.” He also stated that he was of the view that the liaison with An Garda Síochána would have to take the form of “eyeball communication between the opposite numbers.”

2.6.3 The direction also went in a parallel direction. In this regard, Blair Wallace gave evidence that he was in fact on leave when this direction came down to him in his capacity as SACC C & E. A notation indicates that the direction was forwarded to the Assistant Chief Constable ‘Crime’ (ACC C) “in the absence of Senior ACC (C & E) on leave.” Mr Wallace informed me that because he was absent on leave, he was unaware of this direction until after the event.

2.6.4 It appears to me that the written direction of 15<sup>th</sup> March 1989 precipitated a meeting which took place in Armagh police station on the afternoon of Thursday, 16<sup>th</sup> March 1989. The Tribunal heard somewhat conflicting evidence both as to who attended that meeting and what transpired at it. I now turn to consider the events of 16<sup>th</sup> March 1989.

### **2.7 Meeting in Armagh RUC Station – 16<sup>th</sup> March 1989**

2.7.1 As already noted above, a meeting took place in Armagh RUC station on Thursday, 16<sup>th</sup> March 1989. Before outlining the, at times, conflicting evidence of different witnesses before this Tribunal in relation to the meeting, it is worth noting the diary entries of Chief Superintendent Breen and Superintendent Buchanan for that date. Superintendent Buchanan’s diary records that he commenced duty at 8am and was in his office. He then went on duty to Monaghan for a Garda meeting and subsequently was on duty in Armagh for a meeting with Witness 18 in relation to Slab Murphy. Chief Superintendent Breen’s journal records that on 16<sup>th</sup> March 1989, he was “off in lieu of 3/9/88.”

2.7.2 As indicated by his diary entry, it is not disputed that Superintendent Buchanan attended the meeting in Armagh RUC station on 16<sup>th</sup> March 1989. All witnesses who gave evidence to the Tribunal in relation to this meeting placed Superintendent Buchanan at it. However, there is a dispute as to whether, notwithstanding that his journal records that he was off on that date, Chief Superintendent Breen also attended the meeting.

2.7.3 Witness 18 was the Assistant Chief Constable for the Rural East region. He told the Tribunal that on the morning of Thursday, 16<sup>th</sup> March 1989, he attended a meeting for senior RUC officers with the Chief Constable, Sir John Hermon, in Belfast. This was a general meeting in relation to policing matters across Northern Ireland. After the meeting, Witness 18 told me that the Chief Constable spoke to him about looking into certain smuggling activities in the South Armagh area. He said he was directed to contact Chief Superintendent Breen so as to gather all operational information in relation to the individual concerned, whom the Tribunal knows to be Thomas ‘Slab’ Murphy. Witness 18 stated that the Chief Constable said that operational information should be sought from An Garda Síochána if possible, but that Sir John Hermon had said that there was no necessity for anyone to cross the border to obtain such information.

2.7.4 On foot of this discussion, later that day, around 5pm, Witness 18, together with his staff officer Witness 6, travelled to Armagh RUC station. On arrival, he was greeted by Chief Superintendent Breen's staff officer, Sergeant Alan Mains. He said that Sergeant Mains indicated that the Chief Superintendent Breen was out but he would be back in a few minutes. Superintendent Buchanan came in to the office to meet the Assistant Chief Constable, and was followed a short time later by Chief Superintendent Breen. Witness 18's recollection is that there were four people at this meeting, Chief Superintendent Breen, Superintendent Buchanan, Witness 6 and himself. He indicated that Sergeant Mains came in and out a number of times to bring refreshments. Witness 18 stated that at the meeting he told Chief Superintendent Breen that operational intelligence was required from his local people on the ground and also from the Gardaí across the border. He states that he told Chief Superintendent Breen,

“If you are making contact with the Garda across the border, make sure you use the telephone, the secure telephone.”

He stated that he included both Chief Superintendent Breen and Superintendent Buchanan:

“in the direction that they were not to go across the border for the purpose of this. There was no necessity to do it. It was low level and there was no point in creating a situation.”

Subsequently, under cross – examination, Witness 18 stated that the reason why he gave the order not to cross the border was twofold. First, there was no necessity to go across the border. Secondly, there were ‘rumours’ about Dundalk Garda station which Witness 18 had first heard when he was in a command level position in Newry in the early to mid – 1980s. He emphasised that he had no evidence or could not substantiate the rumours but added that there “was always an element of risk along the border, be it from whatever source it came.”

2.7.5 Witness 6, Witness 18's staff officer, also recalled only four persons attending the meeting in Armagh RUC station on 16<sup>th</sup> March 1989, namely Witness 18, Superintendent Buchanan, Chief Superintendent Breen and himself. He also recalled Sergeant Mains coming into the meeting on a few occasions and Witness 18 talking to Superintendent Buchanan about not going across the border.

2.7.6 Witness 36 was a retired RUC officer who served as the RUC Collator in Bessbrook from 1982 – 1991. He explained that the Collator's role was to collate low – level information coming in, whether it related to ordinary criminals or terrorists. This would include low – level sightings of 'persons of interest'. Other, higher – level intelligence went directly to Special Branch. Witness 36 stated that in his role as Collator he travelled south of the border with Superintendent Buchanan on a few occasions. He says that he recalled attending a meeting in Armagh RUC station on Thursday, 16<sup>th</sup> March 1989. He said that the meeting took place at 2pm rather than later in the afternoon as suggested by Witness 18. Witness 36 told me that he remembers there being about 10 people at the meeting. These included Witness 18, Superintendent Buchanan, Witness 27 (already referred to above: a Chief Superintendent who was deputy to the ACC Border Zone) and some Special Branch and Military officers. He stated that Witness 18 chaired the meeting. His recollection was that Chief Superintendent Breen was not present at the meeting because he was off that day, but that Mr Breen's staff officer Sergeant Alan Mains came in and out of the meeting. Witness 36 said that the subject of the meeting was what could be done about smuggling activities on the border. His evidence was that it was decided that Chief Superintendent Breen and Superintendent Buchanan would have to meet their Garda counterparts to explore what type of joint operation could be devised. He expressly stated that Witness 18 told Superintendent Buchanan to arrange a meeting with his Garda counterparts for the following Monday, to take Chief Superintendent Breen to that meeting and to ring Chief Superintendent Breen and let him know of the plans. Witness 36 said that Superintendent Buchanan left the meeting once or twice to make phone calls but he said he did not know to whom or whether these calls were made. Witness 36 also said that during the course of the meeting Witness 18 left to take a phone call. When he returned, he informed Superintendent Buchanan that he was being transferred. Witness 36 recorded that Superintendent Buchanan seemed shocked and that he did not seem to be expecting this transfer.

2.7.7 In his evidence to the Tribunal, Chief Superintendent Breen's staff officer, then Sergeant Alan Mains, was adamant that Chief Superintendent Breen was not in the office during the week prior to this death. He recalls having to go out to see Chief Superintendent Breen in relation to one matter at his home during the course of that week. He said that when he met Chief Superintendent Breen on the morning of Monday, 20<sup>th</sup> March 1989, there was no suggestion or indication from the Chief Superintendent that he had been to a meeting the previous week. Mr Mains also said that he had no recollection of having been at a meeting in Armagh RUC station on 16<sup>th</sup> March 1989, notwithstanding that a number of witnesses had indicated to the Tribunal that he had come in and out of the meeting.

2.7.8 Witness 27 read into evidence the following entry from his journal in respect of the afternoon of Thursday, 16<sup>th</sup> March 1989:

“Travelled to Armagh via Lisburn and attended meeting with staff from Newry and H division re customs with ACC Rural East.”

2.7.9 Witness 27’s recollection was that the meeting took place from around 3pm until 5pm. Witness 27 stated that Chief Superintendent Breen, Superintendent Buchanan, Witness 18 and himself attended the meeting. He said that Sergeant Mains came in and out occasionally with papers and refreshments when requested. When it was put to Witness 27 that there was other evidence that tended to suggest that Chief Superintendent Breen was not at this meeting, Witness 27 replied that he was “absolutely and utterly” certain that Harry Breen was present at the meeting. Witness 27 was also asked about Witness 18’s evidence that he gave Chief Superintendent Breen and Superintendent Buchanan a direction not to cross the border. In reply, Witness 27 stated as follows:

“Wholly inaccurate, sir. No such order in my presence was given and I have to say no such order could have been given, given the role that I was detailed by headquarters, it couldn’t have been given.

My role [...] and the role of Bob Buchanan essentially and absolutely included dealing with An Garda Síochána, whether that was physically face to face or by telephone or by writing. Telephone discussion of an operation such as this was wholly out of the question. Obviously writing was out of the question because of the urgency, and it was totally necessary to meet face to face. That was our role every day of the week. If necessary cross the border, if necessary meet the Garda Síochána face to face. So, nowhere in my history on the border of many, many, years did I ever see a direction contrary to that philosophy.”

2.7.10 Witness 27’s recollection was that at the end of the meeting on 16<sup>th</sup> March 1989 it was left to Chief Superintendent Harry Breen to make arrangements with the Chief Superintendent in Dundalk for a meeting on the following Monday.

2.7.11 Witness 39, Harry Breen’s deputy, recalled that a file coming down from RUC Headquarters during the course of the week prior to Harry Breen’s death. His recollection was that it contained a:

“letter from the Northern Ireland Office and the Chief Constable’s direction, plus a direction from the ACC’s office regarding setting up a meeting with the guards to discuss [...] what the colonel had said.”

The file was addressed to Harry Breen but, given Harry Breen was absent on leave, it came to him. He recalled attending the meeting in Armagh on 16<sup>th</sup> March 1989. He read into evidence the following diary entry for that date:

“Administration duty in Armagh. Had visit from the ACC, who held a meeting regarding ‘Slab’ Murphy’s operation in South Armagh.”

2.7.12 Witness 39 stated that he was “positive” that Harry Breen did not attend this meeting. He did not recall Witness 18 giving a direction to Bob Buchanan not to travel south to liaise with An Garda Síochána in relation to the matter.

2.7.13 As already noted above, the Tribunal also had the benefit of a signed statement submitted by Mrs June Breen, the wife of the late Chief Superintendent Harry Breen. In her statement, dated 3<sup>rd</sup> May 2007, Mrs Breen said that her husband cut the lawn on 16<sup>th</sup> March 1989. That afternoon she and he travelled to the shopping centre at Sprucefield near Lisburn, which had just opened. They then went on to Belfast. She stated that she and her husband returned to their home in Banbridge on Thursday evening and that she was quite certain her husband did not go to his office in Armagh RUC station on that date.

2.7.14 One final piece of evidence which I think worthy of consideration in the context of determining what transpired at the meeting on Thursday, 16<sup>th</sup> March 1989 is that of retired SACC Ops, David Cushley. Witness 18 had informed the Tribunal that in the hours following the fatal shootings on 20<sup>th</sup> March 1989, he met up with Mr Cushley to travel to Newry. He told Mr Cushley that he did not understand why Chief Superintendent Breen and Superintendent Buchanan had gone over the border when he had specifically told them not to. Witness 18 also gave evidence to the Tribunal that he told Mr Cushley that Mr Breen’s widow would have to be told that Mr Breen had disobeyed an order in travelling south of the border. Mr Cushley informed me that he could not recall such conversations. He stated:

“In so far as the question of directing either from the Chief Constable or the Rural Assistant Chief Constable East that they were not to cross the border to carry out their function, if that had ever been mentioned in my presence, I do believe it would be etched in my memory to this day and to my dying

day, along with several other fatal incidents that I was in close proximity to, or would have been etched in my mind, like, where were you the day that President Kennedy died? It would have been there and maybe would have been still reflecting on my psyche all the days of my life. I find it quite surprising that I have no recall that this happened. If it had happened, I do believe that I would have recalled it.”

2.7.15 I now turn to assess the evidence in relation to 16<sup>th</sup> March 1989. This is not an easy task given the conflicting evidence as to who was present at the meeting and whether or not a direction was given by Witness 18 to Chief Superintendent Breen and Superintendent Buchanan not to travel south of the border for the purposes of liaising with An Garda Síochána. Clearly, not everyone’s evidence to the Tribunal in relation to the events of 16<sup>th</sup> March can be correct. However, this does not necessarily mean that anyone deliberately sought to mislead the Tribunal. It became clear to me over the course of this Tribunal’s work that the events of 20<sup>th</sup> March 1989 were very traumatic for a number of the RUC officers serving with Chief Superintendent Breen and Superintendent Buchanan at that time. I believe that trauma of that nature can, over the years following the traumatic events concerned, have the effect of clouding or altering one’s memory of what transpired.

2.7.16 I do not accept that Chief Superintendent Breen and Superintendent Buchanan were given an order not to travel south of the border for the purposes of liaising with An Garda Síochána about the smuggling activities of ‘Slab’ Murphy. Given that cross – border liaison was the central function of Bob Buchanan’s role as Border Superintendent, and necessitated frequent journeys south of the border, I can conceive of no reason why such a direction would have been given on this one specific occasion in circumstances where there was no evidence that it had ever been given before. Furthermore, I have no reason to believe that had such an order been given, either Bob Buchanan, or Harry Breen, would have disregarded it.

2.7.17 As regards the attendance of Chief Superintendent Breen at the meeting in Armagh RUC station on 16<sup>th</sup> March 1989, the evidence is somewhat more finely balanced. I am, however, inclined to attach weight to Harry Breen’s own contemporaneous record of the day in question. In this regard, I note that he included in his diary details of his duty on St. Patrick’s Day 1989 so it seems clear to me that his diary was up to date as of the evening of Friday, 17<sup>th</sup> March 1989. He would therefore have had an opportunity to note his attendance at a meeting the previous day if he had come in from home especially for that meeting. In preferring the recollection of former Sergeant Mains, Witness 36 and Witness 39 to that of Witnesses 18, 6 and 27 on the question of Chief Superintendent Breen’s attendance, I would also attach due weight to Mrs Breen’s

statement to the Tribunal. While I appreciate that this was not oral evidence tested by cross – examination, Mrs Breen is likely to have replayed those precious final days with her husband many times over the years since his death. I am therefore inclined to accept her account that she and her husband travelled to Sprucefield and Belfast on the day in question.

2.7.18 In terms of the significance of the meeting of 16<sup>th</sup> March 1989 to the overall terms of reference, I am satisfied that at the conclusion of that meeting a plan had been made that Chief Superintendent Breen and Superintendent Buchanan would travel to Dundalk to meet their counterparts early the following week. Those who were at the meeting of 16<sup>th</sup> March would have been privy to this plan. It seems to me on the basis of the contemporaneous records, including diary entries, that at a minimum, the following persons were at the meeting: Witnesses 6, 18, 27, 39 and Bob Buchanan. I am also inclined to accept the evidence of Witness 36 that he was in attendance. It seems likely to me that Sergeant Mains entered the meeting at least at some point.

2.7.19 While there is some suggestion from Witness 36 that Superintendent Buchanan may have exited the meeting to make telephone calls to arrange a meeting to Dundalk, there is no indication whatsoever from any Garda officer serving in Dundalk at the time that this ever occurred. As is discussed further below, the clear evidence from the Garda witnesses is that the meeting was first organised on the morning of Monday, 20<sup>th</sup> March 1989, and I find that the evidence overwhelmingly suggests that this was the case.

## **2.8 – Events of Friday, 17<sup>th</sup> March 1989**

2.8.1 I note that Bob Buchanan’s diary contains no entry for Friday, 17<sup>th</sup> March 1989, which suggests to me that he was off duty on that day, which was of course a public holiday in Northern Ireland.

2.8.2 Harry Breen, on the other hand, was on duty on St. Patrick’s Day, 1989. His diary contains the following entry for that date:

“Duty to Banbridge Stn. Supervision Armagh and Newry. Duty at St Patrick’s Day parade in Newry – acc. by. Met Witness 18 in Newry. Supervision in division.”

2.8.3 Witness 39 told the Tribunal that he recalled briefing Harry Breen on St. Patrick’s Day about the meeting of the previous afternoon. He stated, “he also, at that stage, had the file which had come down from Headquarters.” He thought the briefing had probably occurred first thing in the morning, before the two men headed to Newry to police the St. Patrick’s Day parade. Witness 39’s diary entry for that day states:

“Duty re St. Patrick’s Day parades in the division. Accompanied Divisional Commander to Newry and inspected men on duty.”

2.8.4 Witness 39 had no recollection of meeting Witness 18, ACC Rural East, in Newry. On return to their offices in Armagh, Harry Breen and he shared a drink to mark St. Patrick’s Day. Witness 39 told me that during the course of their discussion, Harry Breen seemed unhappy about having to go down to arrange a meeting with the Gardaí in Dundalk on foot of the file that had come down from Headquarters:

“It was only when we started talking about this that he certainly seemed a bit down. He just was unhappy about – whether it was the whole situation or whether it was having to go to Dundalk, I don’t know, but he certainly was not in great form.”

2.8.5 Witness 39 also told the Tribunal that, more generally, Harry Breen didn’t like going to Dundalk:

“he didn’t go running every week to south of the border. It’s just a personal thing. I just think he didn’t like – he knew there was a risk involved.”

2.8.6 Witness 39 said that he assumed that the meeting in Dundalk would take place the following Monday. He was due to be on leave, but told me that he offered to forego his leave to go with Harry Breen to Dundalk. However, the Chief Superintendent said he would get Superintendent Buchanan to accompany him. Witness 39 stated that Superintendent Buchanan was probably the most appropriate person to accompany Mr Breen, given that he was the “*liaison man*.” He told me that his understanding was that, as of the late afternoon of Friday, 17<sup>th</sup> March, Harry Breen did not have any arrangements made in relation to the meeting in Dundalk.

2.8.7 I found Witness 39 to be a straightforward and credible witness, and I accept his account of what transpired on Friday, 17<sup>th</sup> March 1989. A number of important findings therefore arise.

2.8.8 Firstly, Harry Breen was aware on Friday, 17<sup>th</sup> March 1989 that he would be travelling to Dundalk early the following week and, probably, on the Monday.

2.8.9 Secondly, he intended to travel with Bob Buchanan.

2.8.10 Thirdly, he expressed some unhappiness or wariness about the prospective journey to Dundalk. This chimes to some extent with evidence given by Mr. Breen's Staff Sergeant, Alan Mains, regarding comments made by Mr. Breen on the morning of his departure for Dundalk. I deal with Mr Mains' evidence in chapter 6.

## **2.9 – Events of Saturday, 18<sup>th</sup> March 1989**

2.9.1 The Tribunal heard evidence from retired RUC officer Harmon Nesbitt. He was the Chief Inspector in charge of Operations in Newry in 1989. In this capacity, he sometimes travelled south of the border with Bob Buchanan. He gave evidence that both he and Bob Buchanan were on weekend duty on Saturday, 18<sup>th</sup> March 1989. As often occurred when the two of them were on weekend duty, Bob Buchanan called into him at the RUC station in Newry in the course of the Saturday. Mr Nesbitt told me that they chatted for an hour or an hour and a half. He said that Bob Buchanan told him about an upcoming operation in respect of 'Slab' Murphy's premises and that he was aware from the conversation that Bob Buchanan planned to go down to Dundalk the following week to discuss the operation with the Gardaí. When asked whether Bob Buchanan told him the day on which he intended to travel to Dundalk, Mr Nesbitt replied that "I think he said it was the Monday."

2.9.2 There is no evidence that Bob Buchanan and Harry Breen had spoken during the period from the meeting on Thursday, 16<sup>th</sup> March (at which I have found Harry Breen was not present) to Saturday, 18<sup>th</sup> March when Superintendent Buchanan spoke to Chief Inspector Nesbitt. However, this is certainly possible. Even if they had not spoken, I do not think that there is any inconsistency as between the evidence of Witness 39 as to what was in Harry Breen's mind on 17<sup>th</sup> March and Harmon Nesbitt's evidence as to what was on Bob Buchanan's mind the following day. Harry Breen intended that Bob Buchanan would accompany him to Dundalk. Bob Buchanan, having attended the meeting with the ACC Rural East, where, I am satisfied, a plan was made that that he and his Divisional Commander would travel to Dundalk the following week, intended to follow that plan through.

2.9.3 Another important conclusion can be stated at this point in the narrative of events. It is clear there was a circle of persons north of the border who, from various points during the period Thursday, 16<sup>th</sup> March 1989 to Saturday, 19<sup>th</sup> March 1989 onwards, were aware of Bob Buchanan's and Harry Breen's intended journey to Dundalk the following Monday. Throughout my deliberations, I have borne this fact in mind and have been conscious of the possibility that advance warning of the meeting of Monday, 20<sup>th</sup> March 1989 could have come to the Provisional IRA from persons north of the border. This possibility has been acknowledged by a number of witnesses, including, for example, Harry Breen's then Staff Sergeant, Alan Mains. An NIO note of what transpired at a parliamentary meeting of the Ulster Unionist Party in 2001 (at which the author of the

note was not present) suggested that Lady Sylvia Hermon mooted RUC collusion as the probable cause of the deaths of Harry Breen and Bob Buchanan. Lady Hermon denies having made the comments ascribed and I deal with this in greater detail in chapter 20.

2.9.4 Beyond this one NIO document, however, there has been no evidence before the Tribunal – and none was uncovered during the course of the Tribunal’s private investigation – which has advanced the theory of RUC collusion from the realm of theoretical possibility into a more credible and substantial line of inquiry. There has been no evidence to establish this possibility as a likely explanation of how the Provisional IRA was able to mount the attack.

## **2.10 Theft of Van on Saturday, 18<sup>th</sup> March 1989**

2.10.1 The Tribunal received documents from the NIO that indicated that on the evening of Saturday, 18<sup>th</sup> March 1989, the van that was ultimately used by the Provisional IRA Active Service Unit (ASU) which shot Harry Breen and Bob Buchanan was stolen. The cream Toyota LiteAce van was stolen whilst its owner attended mass at Mullaghbawn Chapel near Forkhill. Retired Detective Inspector David McConville, who put various PSNI documents into evidence, informed the Tribunal, on the basis of the written documentation, that on 22<sup>nd</sup> March 1989, the van was spotted by helicopter at a location in Northern Ireland. However, overnight, before the ground could be secured and a forensic examination of the van could take place, persons unknown set fire to the van and it was completely gutted.

2.10.2 During the course of the Tribunal hearings, I have heard divergent views from witnesses as to whether significance ought to be attached to the timing of the theft of this van. Some witnesses were of the view that the van was probably stolen with the specific intention that it be used in the operation of 20<sup>th</sup> March 1989. In this regard, retired Detective Inspector McConville, indicated that it might be a reasonable conclusion that the van was stolen for a particular operation. Terry Hynes, a retired member of the Garda detective branch in Dundalk also expressed the view that the van “would be stolen specifically for use on that job.”

2.10.3 By contrast, retired Detective Chief Superintendent Peter Maguire gave evidence that he did not think it was of any significance that the van was stolen on the Saturday prior to the murders. He noted that PIRA were stealing similar vans all of the time. Similarly, another experienced member of the detective branch in Dundalk, Séan Gethins, also gave evidence that the theft of the van on the Saturday night was not of any significance. He told me that PIRA “could have 10 vans stashed away.” He said that the IRA stole vans and hid them for operational use when required. Retired Detective Garda Larry Crowe told me that “we found they [the Provisional IRA] always had vehicles lying around waiting for jobs.” Sergeant Vincent Jackson,

who was also serving in Dundalk in 1989, also gave evidence the Provisional IRA maintained a stash of vehicles and that a vehicle could therefore be stolen without there being a particular operation in mind for it at the time of the theft.

2.10.4 Witness 62, an experienced former RUC Special Branch officer, said that he had no firm opinion in relation to the theft of the van as South Armagh PIRA:

“would have nearly always had one or two vehicles stolen and cached away somewhere in a barn or a byre or something ready to be used on some sort of operation.”

He went on to acknowledge that the theft “does seem fairly coincidental” and that the van “may” therefore have been stolen to order.

2.10.5 Retired British Army Brigadiers Mike Smith was provided by the Tribunal with a brief of information in relation to how the ambush was carried out on 20<sup>th</sup> March 1989. He surveyed the site of the ambush and provided evidence as to his view on the operation. His former colleague, retired Brigadier Ian Liles, also gave evidence as to his view; this was based on Brigadier Liles’ service and experience in Northern Ireland. Their evidence is dealt with in greater detail in Chapter 3, but it is convenient to set out their views in relation to the theft of the van here. Retired Brigadier Smith noted that:

“the longer you are in possession of a stolen vehicle the higher the risk of a chance encounter with any sort of police, and so whether the vehicle was stolen in order to have a stock of available vehicles, I suppose one can't exclude that, but my own experience over the years suggests that that is an unlikely pattern of operation because I guess they would assume that that vehicle would be reported stolen and somebody might actively be looking for it and might discover it between Friday and Monday which would be an unnecessary risk.”

2.10.6 Later in his evidence, he said that although it was a reasonable supposition that the van was stolen with the specific operation in mind, he would not, however, go so far as to say that this was “highly likely.”

2.10.7 Retired Brigadier Liles’ shared his colleague’s view that the van was most likely stolen for a specific operation because the longer one retained a stolen vehicle; the more likely it was to be found. However, he also said that it was possible that a vehicle was stolen for one operation but then diverted for use in another.

He also said the IRA would not keep a stolen vehicle for longer than three to four weeks at an absolute maximum, a timeframe which, I observe, does not appear to preclude, and in fact rather supports, the possibility of the maintenance of some temporary stockpiles.

2.10.8 On the whole, I do not think that it would be wise to attach significance to the timing of the theft of the van used in the operation on the Edenappa Road. Having heard and considered the divergent views expressed, I do not think that when the Provisional IRA stole the Toyota LiteAce van from Mullaghbawn Chapel on the evening of Saturday, 18<sup>th</sup> March 1989, it necessarily intended to use it in an operation two days later. It seems to me more likely that the IRA regularly and opportunistically stole vehicles of this nature so to have at their disposal at all times a number of suitable vehicles for use in a paramilitary operation.

## **Chapter 3**

### **Arrangement of the Meeting and Events Prior to the Arrival of Chief Superintendent Breen and Superintendent Buchanan in Dundalk**

#### **3.1 Arrangement of the Meeting**

3.1.1 I have taken the account set out by Judge Cory (at paragraph 2.24 onwards of his Report of October 2003) as the starting – point of my analysis of how the meeting of 20<sup>th</sup> March 1989 was arranged. This account, in turn, appears to be largely based on the findings of Assistant Commissioner O’Dea, who carried out an investigation in Dundalk Garda Station in the immediate aftermath of the murders of the two RUC officers. This investigation was into “the circumstances and arrangements relating to the meeting.”

3.1.2 The first event of the day, however, is not expressly referred to by Judge Cory. At 8.55am and 8.58am, two faxes were sent from the Control Room in Armagh RUC Station to the Garda Stations in Dundalk and Monaghan respectively. The faxes are almost identical. One sets out the proposed agenda for the RUC/Garda Superintendents’ C7 meeting to be held in Newry in April 1989, and the other sets the proposed agenda for the C6 meeting to be held in Armagh in April 1989. Neither fax relates to the meeting to take place in Dundalk later in the day on which they were sent. It appears that these faxes were sent by Superintendent Buchanan, although there is some uncertainty as to the Superintendent’s movements on the morning of 20<sup>th</sup> March 1989. It had, at one stage, been suggested that the Superintendent travelled directly from his home in Moira to Newry RUC Station where he met up with Chief Superintendent Breen to travel south to Dundalk. However, the faxes appear to suggest that he was in Armagh RUC Station on that morning, although, in theory, they could, of course, have been sent in his name by another police officer or administrative employee. However, the statement of a female administrative officer, set out in section 3.1.6 below, tends to reinforce the view that he was in Armagh that morning. He may have carried out other duties elsewhere later in the morning, before meeting Chief Superintendent Breen in Newry.

3.1.3 Judge Cory’s Report indicates that at 9.20am Superintendent Buchanan rang Dundalk Garda Station and asked to speak to either Superintendent Tierney or Chief Superintendent Nolan. The call was taken by the Superintendent’s Assistant District Clerk, George Flynn. In evidence to the Tribunal, Mr Flynn confirmed that he received a phone call from Superintendent Buchanan at 9.20am. He said that Superintendent Buchanan asked to speak to Superintendent Tierney. George Flynn told Bob Buchanan that Superintendent Tierney was not in but undertook to relay the message that Superintendent Buchanan was looking for him. He says he does

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not recall Superintendent Buchanan asking to speak to the Chief Superintendent and he said that Superintendent Buchanan did not mention to him the possibility of his coming to Dundalk later in the day.

3.1.4 George Flynn explained that the Superintendent's Office (or 'District Office') was on the first floor of Dundalk Garda Station at the front, on the right hand corner if one were facing the Station. Superintendent Pat Tierney, the District Officer, had an office immediately behind, and beyond this was Detective Superintendent Connolly's office. George Flynn gave evidence that in 1989 four people were working in the Superintendent's Office. These were Sergeant Vincent Rowan, the District Clerk, Garda Mary Clarke, a civilian named Kathleen McCooey (in fact, Kathleen Freeman) and himself. He told the Tribunal that he did not think that he had discussed the phone call from Superintendent Buchanan with anyone other than Superintendent Tierney. In this regard, he said, "I had no reason. It was a routine call."

3.1.5 Judge Cory's Report goes on to record that Superintendent Tierney returned the call to Armagh RUC Station but Superintendent Buchanan was not available. Then at 10.03am, Superintendent Buchanan called Superintendent Tierney in Dundalk. In his evidence to the Tribunal, Pat Tierney, by reference to his statement to Assistant Commissioner O'Dea made on 21<sup>st</sup> March 1989, confirmed this version of events. He told the Tribunal that he was informed at 9.30am by Garda Flynn that Bob Buchanan wished him to call him at his office in Armagh. He stated that he rang Bob Buchanan's office telephone on his direct line but got no reply. He then rang Armagh RUC Station and spoke with a female and asked to be put through to Bob Buchanan. The line became disengaged. At 10.00am, he phoned the number and again asked to speak to Superintendent Buchanan but, after a brief period, was told that Superintendent Buchanan was not available. He stated that he left his name and requested that Bob Buchanan call him back. After about three minutes, Bob Buchanan called him back on his private line.

3.1.6 I note that Mr Tierney's version of events is largely corroborated by the statement, dated 24<sup>th</sup> April 2007, of a female administrative officer in the Northern Ireland civil service. The Tribunal did not hear evidence from this witness, who is of course outside its jurisdiction. In her statement she indicated that in 1989 she was a typist to Chief Superintendent Harry Breen. She continues:

"On the 29<sup>th</sup> March I was on duty at my office at the main police station in Armagh. Sometime in the morning I received a telephone call from a male and I assumed it was the Garda Síochána. The call was regarding Mr Buchanan and him returning a call to the caller. I would have taken the caller's

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phone number and I would have advised him that I would inform Mr Buchanan to return the call. Mr Buchanan was the H Division Border Superintendent.

[...]

I recall writing out a note and leaving it in Mr Buchanan's office but I don't recall the content."

3.1.7 Judge Cory's Report continues by stating that Superintendent Tierney told Superintendent Buchanan to call Chief Superintendent Nolan directly to arrange the meeting. The Report states that at 10.15am, the Superintendent called and arranged the meeting to take place at Dundalk Garda Station at 2pm. Superintendent Tierney also confirmed this version of events in his evidence to the Tribunal. He said that he suggested Superintendent Buchanan call Chief Superintendent Nolan on his direct line as he believed that the Chief Superintendent was in his office. It is worth noting that Superintendent Tierney understood from this point that Harry Breen and Bob Buchanan would be coming to Dundalk later that day.

3.1.8 Superintendent Tierney also gave evidence that during the course of this conversation with Superintendent Buchanan, Bob Buchanan mentioned the fact that he was to be transferred a short time later from his border duties.

3.1.9 Although Superintendent Tierney was aware that Harry Breen and Bob Buchanan were hoping to pay a visit later that day, he only became aware of the actual appointment that had been made at approximately 1.40pm. He was returning to the station from a patrol duty with Inspector Frank Murray when Inspector Murray mentioned to him that Chief Superintendent Breen and Superintendent Buchanan were coming to Dundalk to visit Chief Superintendent Nolan that afternoon. Superintendent Tierney stated that he was not really surprised that Chief Superintendent Nolan had not informed him of the meeting earlier, but that the Chief Superintendent would have no reason not to tell him. Superintendent Tierney stated that generally only a very small circle of people would know about an intended visit of an RUC officer to Dundalk Garda Station, but also added that there was nothing unusual about the particular meeting of 20<sup>th</sup> March 1989.

3.1.10 It is also worth observing that Superintendent Tierney had only taken up his position in Dundalk on 2<sup>nd</sup> February 1989, but had met Bob Buchanan about 12 times between the period of 2<sup>nd</sup> February 1989 and Superintendent Buchanan's death. He said that he was a little concerned about the frequency with which Bob Buchanan was coming to see him, but did not discuss this concern with the Superintendent.

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3.1.11 It should be noted that the civilian employee, Kathleen Freeman, gave evidence before the Tribunal and was able to establish that she was not in fact working in March 1989. Mrs Freeman was on maternity leave from 21<sup>st</sup> November 1988 to 2<sup>nd</sup> March 1989 and certified sick leave from 3<sup>rd</sup> March 1989 to 9<sup>th</sup> April 1989. She was not therefore in the Superintendent's Office on 20<sup>th</sup> March 1989.

3.1.12 In his evidence to the Tribunal, retired Chief Superintendent John Nolan confirmed that at 10.15am he was in his office in Dundalk Garda Station when he received a telephone call on his direct office line from Superintendent Bob Buchanan. He recalls that Superintendent Buchanan informed him that he was going to be transferred to Newtownards in April 1989. Bob Buchanan indicated that he and Chief Superintendent Breen wanted to meet with Chief Superintendent Nolan, and it was agreed that that meeting would take place at 2pm that day in Dundalk Garda Station. Chief Superintendent Nolan confirmed that the conversation took place on a normal telephone line which was a direct line to his office. He noted that there was a scrambler system on the telephones in Dundalk Garda Station but that this was not compatible with the system in Northern Ireland at the time.

3.1.13 I now turn to deal with one RUC report of the events of 20<sup>th</sup> March 1989, which was, like the *O'Dea Report*, compiled in the immediate aftermath of the killings. This provides a slightly different account as to how the meeting was arranged. This report, prepared by the RUC Detective Chief Superintendent, South Region, and which is replicated in a number of the documents provided by the Northern Ireland Office to the Tribunal, states as follows:

“At approximately 9.30am Chief Superintendent Breen contacted Dundalk Garda Station by telephone to arrange a meeting with Chief Superintendent Nolan. Chief Superintendent Nolan was unavailable at that time and the call was returned by Chief Superintendent Nolan at approximately 10.30am when a meeting was arranged for 2pm later that same day at Dundalk Garda Station. All telephone conversations were conducted on an open line. There are no compatible secure means of communication between the two stations.”

3.1.14 This alternative version was put to John Nolan during the course of his evidence to the Tribunal. He was categorical in his evidence that he did not speak to Chief Superintendent Breen:

“I didn't make any phone call to Chief Superintendent Breen.

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The only call I received was at 10.15am. I didn't follow it up or had no reason to follow it up with a call to Chief Superintendent Breen. We had agreed the time at 10.15, and I'm quite clear on that because on the following day when I made my statement to Assistant Commissioner O'Dea, I would have mentioned that fact and I didn't. So I'm quite surprised at that [report]. I don't know how that came about."

3.1.15 I entirely accept John Nolan's evidence on this point. In this regard, it should also be noted that all of the RUC/NIO documents are, in any event, not consistent on the point. I note that a report compiled within H Division on 20<sup>th</sup> March 1989, records as follows:

"At 09.30 hours today, Superintendent Buchanan phoned Superintendent Dundalk to arrange a meeting. The Superintendent was not in but returned Superintendent Buchanan's call at 10.15 hrs. A message was passed that Chief Superintendent Breen would like to arrange a meeting for 1400 hours with Chief Superintendent Nolan."

Furthermore, two other, identical RUC reports state that:

"In relation to the meeting with Garda on 20/03/89 this was arranged by Superintendent Buchanan on the phone to Superintendent Tierney in Dundalk. There was an exchange of calls between the two of them that morning and the meeting and time finally arranged."

3.1.16 Chief Superintendent Breen's staff officer, then Sergeant Alan Mains, also gave evidence to the Tribunal in relation to the setting up of the meeting. Former Sergeant Mains gave evidence that he met Chief Superintendent Breen on the morning of Monday, 20<sup>th</sup> March 1989. He says that he discussed with Chief Superintendent Breen a number of matters, including a report that had come down from senior RUC officers in relation to the smuggling activities of 'Slab' Murphy. He told the Tribunal that the Chief Superintendent gave him the background to this report, including a description of the dinner that he attended with the Secretary of State at Stormont and to which I have already referred above. Mr Mains told the Tribunal that the Chief Superintendent had been specifically told to speak to the Gardaí and the Army in order to come up with information as to what could be done about the smuggling activities. He said that Chief Superintendent Breen felt that because he was requesting the meeting with the Gardaí, he should go down to meet them in Dundalk

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rather than asking them to come up and see him in Northern Ireland. Mr Mains gave evidence that he remembered going out of his meeting with Chief Superintendent Breen to phone Dundalk Garda Station to see if Chief Superintendent Nolan was available for a meeting. He said:

“From memory, I don’t believe that I actually got an answer. I think he either wasn’t there or was out in the car, or something. But I also recall speaking to a female and just asking, you know, can we check his availability and see what was going on in terms of his diary, and going back into the meeting with Mr Breen to discuss other issues, and it came back to the smuggling again, and to say, look, I have left a message with Dundalk to say, you know can the meeting be facilitated that afternoon.”

3.1.17 Mr Mains also gave evidence to the Tribunal that in the normal course of events, he would have travelled with Chief Superintendent Breen to Dundalk. However, he said that he asked Chief Superintendent Breen if he could be excused from the meeting as he had to play rugby that evening. He said that Mr Breen acceded to this request and suggested that Mr Buchanan, because he was being transferred to Newtonards, might want to avail of the opportunity to travel to Dundalk and say farewell to his Garda colleagues. Mr Mains stated that he then went out and phoned Mr Buchanan at his home to see whether he was available to travel to Dundalk with the Chief Superintendent that afternoon. When it was put to Mr Mains that the evidence from Dundalk Garda Station tended to suggest that it was Superintendent Buchanan and not he, Mr Mains, who had set up the meeting, Mr Mains did not discount the possibility that Bob Buchanan had made phone calls directly to Dundalk:

“Well, that actually does make sense, because, you know, I phoned Mr Buchanan at home, told him the request by the Commander, and Mr Buchanan could have easily turned around and said, “look, I cannot do it today, I am off” or whatever else, but he didn’t. The fact was that he did go down. He agreed to go down. Now did he make his own phone calls? Well, I can’t account for that, you know, it’s quite simple. It’s logical that he did, and that version sits very easily with me.”

3.1.18 No Garda witness has a recollection of receiving a phone call from Mr Mains on 20<sup>th</sup> March 1989. In particular, given Mr Mains’ evidence that he spoke to a female; I note that there were two females who worked in the District Office. As already noted, Kathleen Freeman was not working on 20<sup>th</sup> March 1989 and Mary Clarke, Assistant District Clerk, gave clear evidence that she did not receive a call from Sergeant Mains

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about any meeting being arranged in the station. Also, Garda Josephine Fitzsimmons, who was working in Detective Superintendent Connolly's office in March 1989, also gave evidence to the Tribunal that she did not receive any such phone call on the morning of Monday, 20<sup>th</sup> March 1989. Ms Nora Burns, a civilian employee who worked in the Sergeants' Office on the ground floor of Dundalk Garda Station in March 1989, gave evidence to similar effect. Ms Burns also stated that she never made arrangements for meetings between officers from Dundalk Garda Station and officers from the RUC.

3.1.19 For the sake of completeness, I should add that the Tribunal heard from Garda Sergeant Tom Mulpeter who was working in the Radio Control Room in Dundalk Station from 6am to 2pm on 20<sup>th</sup> March 1989. In the light of Mr Mains' evidence that he spoke to a female in Dundalk Station on that morning, Sergeant Mulpeter was asked whether there was any female in the Radio Control Room that morning. He confirmed that he and Garda PJ Galvin were the only people working in the Radio Control Room that morning.

### **3.2 Who Was to Travel to Dundalk?**

3.2.1 At this juncture, I also wish to deal with some evidence which suggested that, in addition to Mr Mains, a number of other persons might possibly have travelled with Chief Superintendent Breen and Superintendent Buchanan to Dundalk on the day in question. In this regard, the Report prepared by the RUC Detective Chief Superintendent, South Region, which suggested that Chief Superintendent Breen telephoned Dundalk Garda Station at 9.30am, also indicated that:

“at Newry RUC Station both officers spoke to the SDC [Sub – Divisional Commander] [Witness 50]. They invited him to join them on their visit to Dundalk. Witness 50 declined the invitation due to other duty commitments.”

The Tribunal made numerous efforts to contact and meet with the retired Sub – Divisional Commander in question. However, he declined to meet with or assist the Tribunal.

3.2.2 Witness 33, who did give evidence to the Tribunal, was the Deputy Sub – Divisional Commander in Newry in March 1989. He held the rank of Chief Inspector in the RUC at this time. Witness 33 gave evidence which corroborates the report to the effect that Witness 50 was asked if he would like to go to Dundalk for the meeting. He said that he met Bob Buchanan in Newry RUC Station after lunch, probably about 1.30pm on Monday, 20<sup>th</sup> March 1989:

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“He [Bob Buchanan] had actually said to me if I wanted – did I want to go down with him to the Guards, and that particular day I was tied up with duties and was unable to go, and then we came out onto the corridor, and my superintendent was there, and he spoke to him for a few moments, and I think he probably said to him if he would like to go down, as well, but he’d been away on a course, and that was, I think, his first day back [...].”

3.2.3 Witness 33 went on to say that he did not see Harry Breen in Newry that day, but that Bob Buchanan did make clear that Mr Breen was accompanying him to Dundalk. He said that he thought that Bob Buchanan had said that Mr Breen was meeting him in the car park of Newry RUC Station.

3.2.4 Finally, Witness 27, the Deputy to the Assistant Chief Constable, Border Zone, indicated that it was intended that he too would travel to the meeting in Dundalk. As already noted above, Witness 27’s diary appears to confirm that he attended the meeting chaired by Witness 18 which took place in Armagh RUC Station on Thursday, 16<sup>th</sup> March 1989. Witness 27 gave evidence to me as to his diary entry for 20<sup>th</sup> March 1989, which stated as follows:

“Monday, 20 March, on duty at headquarters. Attended routine matters. Travelled to Armagh and spoke with Chief Superintendent Breen re customs matter. Attended Brigade conference. Attended routine duties. Attended matters re the murder of Mr Breen and Mr Buchanan. Spoke with Newry, Armagh and headquarters in respect of same. On Duty. Travelled to Newry. Spoke with Superintendent there regarding the murders. Returned via Banbridge and spoke with Mrs Breen and her son David. Released at 2300 hours.”

3.2.5 Witness 27’s evidence was that he in fact spoke to Harry Breen by telephone. This is not inconsistent with his diary entry as Witness 27’s office was in Drumadd Barracks in Armagh; thus, the reference to him travelling to Armagh would appear to be a reference to his travelling back to his own office from RUC headquarters.

3.2.6 He told the Tribunal that at 9:25am, Harry Breen telephoned him to his office to appraise him of the arrangements for the meeting with An Garda Síochána later that day. He said that he arranged to meet Chief Superintendent Breen at Newry and travel onwards together from there to Dundalk. Two minutes later,

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Witness 27 told the Tribunal; he was informed by the Brigade Major that the Brigade Conference which was scheduled to have taken place on Friday of that week was being forward to that day, Monday 20<sup>th</sup> March 1989. He rang Harry Breen back a few minutes later and told him that he had to attend the Brigade Conference and that he could not reach Newry in time; Harry Breen and Bob Buchanan were to proceed to Dundalk without him. On the basis of his diary entry, I find that Witness did speak to Harry Breen during the course of the morning. However, I am not convinced that Witness 27 is correct as to the time of this conversation. It seems to me that this conversation must have taken place somewhat later than 9.25am. I say this for two reasons: first, Chief Superintendent Breen would not have known the precise arrangements for the meeting in Dundalk at this stage. Secondly, given that Witness 27 had been on duty and attended to routine matters at Headquarters in Belfast, on balance I think it unlikely, unless duty had commenced extremely early which would not be ‘routine’, that he would have been back in Armagh by 9.25am.

3.2.7 Witness 27 said that it was “absolutely inconceivable” that Mr Breen’s staff officer might travel to a meeting in Dundalk, although he said it was quite possible that the Sub – Divisional Commander in Newry had been asked to attend.

3.2.8 I do not think that it is ultimately necessary for me, in order to fulfil my terms of reference, to reach a definitive conclusion as to whether or not it was, at any time, anticipated that other persons might travel with Harry Breen and Bob Buchanan to Dundalk on Monday, 20<sup>th</sup> March 1989. What is clear to me is that from the conclusion of the meeting on the afternoon of Thursday, 16<sup>th</sup> March 1989, it was clearly intended that Harry Breen and Bob Buchanan would liaise with their Garda counterparts early the following week. I am of the view that it was always intended that these two men would form the core of the operation to obtain Garda input in relation to Slab Murphy’s smuggling activities. Whilst I do not exclude the possibility that others may have been, at various points during the course of the morning and afternoon of 20<sup>th</sup> March 1989, invited to join these two men, I believe that this was incidental and was not part of the plan as fixed from the previous Thursday. I note that the records compiled by the RUC in the immediate aftermath of the killings refer only to one person possibly accompanying the two men, mainly the Sub – Divisional Commander from Newry.

### **3.3 Events South of the Border Prior to the Officers’ Arrival in Dundalk**

3.3.1 I now turn to deal with events subsequent to the point in time at which the meeting had been arranged. In this regard, I will first to consider events south of the border, before turning to consider what was happening in Northern Ireland.

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3.3.2 Chief Superintendent John Nolan gave evidence that around 11 am, he met Inspector Frank Murray and informed him that Bob Buchanan and Harry Breen were coming down at 2.00pm. He initially said he could not be sure whether this meeting took place in Inspector Murray's office or in the District Office. However, on recollection, he said that he thinks Inspector Murray was having coffee and that the meeting in fact occurred in the District Office. Inspector Frank Murray is deceased, but the Tribunal had the benefit of the statement he made to Assistant Commissioner O'Dea in March 1989. This stated as follows:

“At 11 am I went to the District Office for a cup of tea. Chief Superintendent Nolan, Superintendent Pat Tierney, Sergeant Rowan, Gardaí Flynn, Dolan, Bean Garda Clarke were there. Chief Superintendent Nolan informed me that Chief Superintendent Harry Breen and Superintendent Buchanan were coming down to see him at 2pm. The others were not aware of what he said to me.”

3.3.3 On the basis of this statement, a total of seven people were present in the District Office when this exchange occurred, including Chief Superintendent Nolan and Inspector Murray. However, I also know from the evidence before me the Garda Jim Dolan was also working in the District Office on Monday, 20<sup>th</sup> March 1989. Mr Dolan gave evidence before me and confirmed that the contents of a statement he made to Assistant Commissioner O'Dea in the aftermath of the murders was correct. In that statement, he said:

“On Monday, 20<sup>th</sup> March 1989, I started duty in the district office at 9:30am. Also there were Sergeant Vincent Rowan, Garda George Flynn, and Ban Garda Mary Clark. Sometime around 2:30pm I saw tea being prepared and I do not recall who took the tea from the office. I assumed that there were visitors in the Chief Superintendent's office, but I did not know who they were. I did not see Chief Superintendent Harry Breen or Superintendent Bob Buchanan on that date and I was not aware that they were in the station at all. I finished my duty at 5:30 and I did not leave the station during my tour of duty.”

3.3.4 Chief Superintendent Nolan gave evidence that he told Inspector Murray of the upcoming meeting with the two RUC officers because he regarded him as “the Garda opposite of Bob Buchanan; in other words, that he was the Border Inspector who liaised with Bob Buchanan on the northern side.” However, when Inspector Murray's 1989 statement was put to Chief Superintendent Nolan he expressed some surprise that “I wouldn't have told Superintendent Tierney if he was there, because he was Inspector Murray's superior officer.” However, Mr Nolan went on to explain that perhaps Superintendent Tierney had been in conversation with

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somebody else. Chief Superintendent Nolan was unequivocal in his evidence that he only told the Inspector Murray about the visit and that other persons present in the District Office at the time were not aware of this information.

3.3.5 At this point in the chronology, I interject to note that in his evidence to the Tribunal, the then District Clerk, Sergeant Vincent Rowan, who was present at the tea – break, said that when he subsequently met Bob Buchanan in Dundalk Station that afternoon, he congratulated him on his impending transfer to Newtownards. In his evidence, Mr Rowan was unable to say from whom he had heard that Bob Buchanan was to be transferred.

3.3.6 It appears from Superintendent Tierney’s evidence that he first became aware of this transfer when he spoke to Bob Buchanan on the morning of Monday, 20<sup>th</sup> of March 1989. Similarly, John Nolan in his evidence said that when he spoke to Bob Buchanan at 10:15am, Bob Buchanan told him that he was being moved to Newtownards. From other evidence I have heard, it is clear that Mr Buchanan had himself only recently learned of his transfer. Witness 36 gave evidence that Mr Buchanan found out about it during the course of the meeting in Armagh RUC Station on the afternoon of 16<sup>th</sup> March 1989. Mr Buchanan was on leave on St. Patrick’s Day. According to Witness 33, Superintendent Buchanan told him that “he had just been promoted” when the two officers met in Newry on Saturday, 18<sup>th</sup> March 1989. In the light of this evidence, I am of the view that news of Bob Buchanan’s transfer was first communicated to Dundalk Station when Bob Buchanan spoke to Pat Tierney some time after 10am.

3.3.7 In this context, I find Vincent Rowan’s evidence interesting. It suggests that at some point between the phone calls to Superintendent Tierney and Chief Superintendent Nolan on the morning, and his meeting Bob Buchanan later that afternoon, Vincent Rowan became aware of the news that Bob Buchanan was to be transferred. This indicates to me that there was some conversation in the Station about Bob Buchanan during the course of the morning or early afternoon. While such conversation need not necessarily have arisen in the context of discussion of the fact that Mr Buchanan was coming down to Dundalk later in the day, I am not convinced that the single piece of information in relation to the officer’s impending transfer would have been imparted in isolation from the context in which it was given. As is discussed further below, a number of persons congratulated Bob Buchanan on his transfer when he was in Dundalk Garda Station that afternoon. Given that he was a frequent visitor to Dundalk Garda Station, I think it quite likely that the news of Superintendent Buchanan's transfer would have been a topic of some conversation in the station that day.

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3.3.8 Chief Superintendent Nolan gave evidence that after tea, he remained in his office for the rest of the morning. At around two o'clock, he telephoned downstairs to the Public Office and informed the Garda who answered the phone that he was expecting two visitors at two o'clock and that they should be taken up to his office by the side door. The side door is a private stairwell accessed through a door on the left hand side of the public foyer of Dundalk Garda Station.

3.3.9 David Sheridan was a uniform officer in Unit A. He confirmed to the Tribunal that he came on duty at 2pm on Monday, 20<sup>th</sup> March 1989, but was in the day room for a few minutes beforehand. He told me that he was the person who received a phone call from Chief Superintendent Nolan saying that he was expecting two visitors and they were to be shown up the back stairs. After the incoming unit was paraded, he passed this information onto Seamus Nolan who was taking up the post of Station Orderly. Mr Sheridan's evidence was confirmed and corroborated by Seamus Nolan, who also gave evidence to the Tribunal.

### **3.4 Events North of the Border Prior to the Officers' Arrival in Dundalk**

3.4.1 Mr Mains gave evidence that Chief Superintendent Breen had something to eat in the canteen of Armagh RUC Station before leaving for Newry to meet up with Superintendent Buchanan. Mr Mains gave evidence that while he was discussing Thomas 'Slab' Murphy with Chief Superintendent Breen, the latter said that:

“he was concerned that members of the Gardaí were on his ['Slab' Murphy's] payroll. He also mentioned Owen Corrigan as a Detective Sergeant that he didn't trust. He stated that he had been investigated for his connection and involvement with the Provisional IRA previously.”

Mr Mains also said that Chief Superintendent Breen did not say anything about from where his information in relation to Owen Corrigan had come. I will return to analyse Mr Mains' evidence in this regard in greater detail in section 6.1 below.

3.4.2 The Tribunal heard evidence from both retired Detective Inspector David McConville and Witness 33 of documentation which demonstrated that the Edenappa Road was 'out of bounds' (sometimes referred to in the Tribunal hearings as OOB) until 11am on Monday, 20<sup>th</sup> March 1989. Retired Detective Inspector McConville explained that there may be a number of reasons why an area would have been out of bounds, for example

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“due to suspicious activity in an area or due to an ongoing operation on behalf of the military or the police.” Retired Detective Inspector McConville put into evidence an action sheet in the police investigation carried out by the RUC CID Branch in relation to the murders. The action sheet stated as follows:

“The area where the shooting occurred was OOB and only came back in bounds at 11am 20.3.89.

Find out why the area was out of bounds and who brought it back in.

Result of Actions: Area had been out of bounds due to an ongoing military operation. The area was brought back in bounds by C/Inspector [Witness 33].”

3.4.3 Retired Detective Inspector McConville told the Tribunal that he did not know anything about the ongoing military operation referred to.

3.4.4 In his evidence to the Tribunal, Witness 33 said that he had no recollection of bringing the area back in bounds but stated that he “had no doubt that that probably was me.” He continued,

“areas were going in and out of bounds on quite a regular basis, particularly around south Armagh, so it wouldn’t have been unusual for an area to be out of bounds and brought back, and that would have been the way it would have been done.”

Similarly, Witness 62, a former RUC Special Branch officer with extensive experience in South Armagh, told me that “throughout the Troubles there were areas came in and out of bounds very, very frequently.” Witness 33 confirmed that stations were notified when an area was out of bounds by the transmission of an MSX (an early telex message). Each station had a map which showed areas which were currently out of bounds and this would be amended accordingly. These maps were kept in every Control Room and Witness 33 confirmed that there were such Control Rooms in Armagh and Newry Stations. He said that he could not say whether Bob Buchanan or Harry Breen had been into the Control Room in Newry RUC Station before travelling south to Dundalk.

3.4.5 Witness 33 said that he could not recall a specific reason why the Edenappa Road had been out of bounds until 11am on 20<sup>th</sup> March 1989. In this regard, I note the content of a further action sheet, put into evidence by retired Detective Inspector McConville, states as follows:

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“Was military operation in vicinity scene 1 for some specific reason? When did it commence and was there any useful intelligence gleaned from it?”

24.05.89 16:21 This was a military op. for protection of railway line. SB had minimal involvement, so military should be contacted for further details. 3BDE [3 Brigade] performed protection of line 5/3/89 to 13/3/89 – no useful info obtained. Local Battalion RRF performed same 13/3/89 20/3/89 – no useful intelligence.”

3.4.6 Therefore, it appears from this document that the area was out of bounds because of a British Army operation to perform surveillance on and protection of the main Belfast to Dublin railway line which passes near the Edenappa Road, in particular in the vicinity of Kilnasaggart Bridge. It is noteworthy, and indeed tragic, that there was a British Army presence in the area from 13<sup>th</sup> March 1989 to 20<sup>th</sup> March 1989 and that this seems to have been withdrawn at 11am on the morning of 20<sup>th</sup> March 1989, just hours before Chief Superintendent Breen and Superintendent Buchanan were ambushed.

3.4.7 Mr McConville also put into evidence the log sheet for 9 Platoon, Y Company, 1 Royal Regiment Fusiliers, dated 20<sup>th</sup> March 1989. In particular, retired Detective Inspector McConville gave evidence in relation to serial entry ‘08’ in the log sheet. This records that at 11:35am the following was recorded:

“Approximately 20m south west of the Kilnasaggart Bridge on the road there’s x4 pax [which Mr McConville explained is a reference to four persons] setting up what appears to be the backend of a portable traffic light. They arrived in what appeared to be a blue Cavalier hatchback and a blue Volvo estate registration unknown. At approximately 1200 hours they left the area and were seen heading north up the [ineligible] road.”

3.4.8 Serial entry ‘10’ of the log sheet records refers back to serial entry ‘08’, and states that “the vehicles are not legitimate and are to be treated suspiciously.”

3.4.9 As already noted above, Witness 33 recalls meeting Bob Buchanan in Newry RUC Station around 1:30pm. The RUC report prepared by the Detective Chief Superintendent, South Region CID, states that Chief Superintendent Breen and Superintendent Buchanan left Newry Station en route to Dundalk at 1.40pm. However, in contrast, retired Detective Inspector McConville also put into evidence before the Tribunal a very brief report which states that “Supt Buchanan and Chief Superintendnet Breen left Newry Station at

12.40pm this date in Superintendent Buchanan's car to attend a liaison meeting in Dundalk."

3.4.10 On the basis of Witness 33's evidence, and the distance between Newry and Dundalk, I am inclined to think the reference to 12.40pm in this individual report is mistaken and the officers in fact left Newry at 1.40pm as suggested in the more substantial report.

3.4.11 I should note in passing that there was some suggestion by a former member of Dundalk Detective Branch, Terry Hynes, that he had understood that Bob Buchanan and Harry Breen had called at Hackballcross Garda Station en route to Dundalk on the day of their murders. However there is no evidence to corroborate this suggestion and I do not believe this to have been the case.

### **3.5 Increase in Radio Signal Activity on 20<sup>th</sup> March 1989**

3.5.1 Witness 27 informed me that in the aftermath of the murders, he was told by Detective Chief Superintendent Frank Murray, the head of RUC Special Branch in South Region, that from lunchtime onwards – he later stated from midday onwards – there was a noticeable increase in radio single activity which was known to emanate from terrorists. Detective Chief Superintendent Frank Murray predeceased the establishment of the Tribunal. Witness 27 said that he honestly believed Detective Chief Superintendent Murray and had no reason to say otherwise. When asked whether this information suggested anything to him about how the operation of 20<sup>th</sup> March 1989 was planned, Witness 27 replied that there were:

"obviously people on the ground, terrorists, actively involved in organising something or communicating with each other. That could have been about anything, it could have been about smuggling, it is just a fact that they were operational on the ground. It could have been planning an ambush, I don't know."

3.5.2 While I initially considered it possible, in theory, to make a link between the increase in radio signal activity and the events recorded in the RRF log at 11:35am, I was not convinced that the events recorded in the log were sufficient to account for the nature and timing of radio signal traffic referred to. The log sheet records four people setting up some form of traffic lights on the road near Kilnasaggart Bridge. They dismantled the apparatus and had departed by 12:00 hours, at which time, approximately, the radio signals intelligence was first received. Moreover, the emphasis of Witness 27's evidence was that the increase in radio signal activity commenced at midday and continued onwards during the rest of the afternoon. This was

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suggestive to me of a much more major operation, and I tended towards the view that the radio signals activity was, in all likelihood, connected to the operation to ambush Chief Superintendent Breen and Superintendent Buchanan.

3.5.3 My initial view in this regard was significantly reinforced by subsequent evidence given to the Tribunal by retired Brigadier Ian Liles, to whom I have already referred above. Retired Brigadier Liles initially gave evidence, with retired Brigadier Mike Smith, in relation to their objective analysis and assessment of the paramilitary operation carried out on the Edenappa Road on 20<sup>th</sup> March 1989. However, Mr Liles was subsequently recalled to give further evidence in relation to intelligence material which he had viewed upon his arrival in South Armagh a couple of months after 20<sup>th</sup> March 1989. This evidence was initially given in private session but was subsequently read into the record of the Tribunal at a public sitting, with only three minor redactions having been made in the interest of British national security.

3.5.4 When he arrived in about May 1989, then Major Liles took up the position of a Staff Officer Grade 2 (SO G2) to 3 Infantry Brigade in Northern Ireland. He was based at Drumadd Barracks. Three Infantry Brigade was one of the three Brigades serving in Northern Ireland at the time. It was called the 'Border Brigade' and was responsible for most of the border from Newry around to just south of Derry. Mr Liles explained to me that 'Grade 2' was in fact a moniker for an intelligence officer grade. In this role, he was the Army liaison officer with the RUC Special Branch Task Coordinating Group (TCG), South Region, which was based in the RUC Station in Mahon Road, Portadown.

3.5.5 Mr Liles said that when he arrived in South Armagh, follow – up enquiries and the collation of intelligence in relation to the murders of Chief Superintendent Breen and Superintendent Buchanan was still very much on – going. He confirmed that he had the opportunity to review some of the intelligence analysis in respect of the events of 20<sup>th</sup> March of that year. He summarised that intelligence analysis in the following terms:

“In short, after considerable analysis, it was quite clear that this was an IRA operation that had started between 11:30 and 12:00 hours that morning. It involved up to 70 personnel, not all of them would have known what was happening, there is no doubt about that, and this would have included what were referred to as dickers, lookouts, people checking for helicopters, checking roads for army and police patrols.”

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3.5.6 He confirmed that the basis for the conclusion that the operation commenced between 11:30 and midday was:

“that was when the intelligence traffic started. [...] That was the time that there were communications that would have been related to IRA activity started that day.”

Retired Brigadier Liles explained that the first part of the operation would have been to scout the ground to ensure that there were no troops about. Weaponry, vehicles and radios would then have to be assembled. The witness was asked to explain in more detail the nature of the intelligence traffic activity recorded as having commenced between 11:30 and 12 noon. He replied:

“It was unusual activity in that it was during the hours of daylight and certainly the morning. That early in the morning was extremely unusual. The apparent number of people on the ground was also very unusual. And at this stage I ought to say that, so there is no confusion, that this is not listening to straightforward conversations. They were very clever at how they used their communications and it took a great deal of understanding and analysis to really reach a conclusion on what was going on. I don't want anyone to leave here with the impression that there were people sat there listening verbatim to everything that was said by the IRA or that, indeed, they had normal conversations as though you and I were talking on a phone. It wasn't like that at all.”

3.5.7 I intend to explore Mr Liles' evidence and analysis of the radio signals traffic in greater detail at a later point in the chronology. However, I mention it here for the purposes of corroborating the information supplied by the late Chief Superintendent Frank Murray, namely that IRA activity was afoot from approximately 11.30am to 12.00 noon on 20<sup>th</sup> March 1989. The Tribunal requested the Northern Ireland Office to procure, from the relevant agency, records of signals traffic from 20<sup>th</sup> March 1989. However, the Tribunal was informed by the NIO that there are no such records. The absence of records notwithstanding, however, I am more than satisfied, on the basis of Witness 27's evidence as to what the late Chief Superintendent Murray told him, and, in particular, on the basis of retired Brigadier Liles' evidence, to conclude that significant signals traffic relating to the IRA operation to ambush the two RUC officers, commenced at approximately 11.30am to 12.00 noon on 20<sup>th</sup> March 1989.

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3.5.8 This conclusion has the potential to be significant in the overall context of trying to establish when the IRA knew that the intended targets of this operation would present themselves south of the border that day.

## **Chapter 4**

### **Arrival of RUC Officers in Dundalk and the Meeting with Chief Superintendent Nolan**

#### **4.1 – Arrival of the RUC officers in Dundalk Garda Station**

4.1.1 As already noted in Chapter 3, Garda Seamus Nolan assumed the role of Station Orderly shortly after 2.00pm on 20<sup>th</sup> March 1989. At this stage, Garda David Sheridan had passed on to him a message that Chief Superintendent Nolan was expecting two visitors and that they were to be brought up to his office by the side stairs.

4.1.2 Seamus Nolan explained in his evidence to the Tribunal that at the back of the public foyer (in which the public are dealt through a hatch on the right, beyond which is the Public Office), there are double doors leading to the main stairs of the Garda station. His recollection was that in 1989 the double doors had a keypad, and only those who were able to enter the code could get through the doors into the station proper. Mr Nolan recalled that he was dealing with a member of the public at the hatch when he first noticed the two RUC officers standing on the bottom of the main stairs. He went around to them and asked them if they were here to see the Chief Superintendent; they confirmed that they were, he then passed them on the stairs and lead them up the stairs to Chief Superintendent Nolan's office. From recollection, Mr Nolan told me, Chief Superintendent Nolan's office door was shut.

4.1.3 Seamus Nolan confirmed that his recollection of events when he gave evidence to the Tribunal was in accordance with the statement he had prepared at the request of Superintendent Tierney on 21<sup>st</sup> March 1989. It should be noted that this statement appears to have been prepared as part of a Garda investigation designed to assist the murder investigation being conducted by the RUC, as opposed to the internal investigation being carried out by Assistant Commissioner O'Dea. In the statement, Seamus Nolan recorded as follows:

“I commenced duty as Station Orderly dealing with the public and records. I kept a lookout for the two men aforementioned. At one stage I remember looking at the clock and noticing the time at 2:15pm. At this stage the men had not arrived. A short time later, what seemed to be five to 10 minutes, two men walked past me at the public counter as I was dealing with a member of the public. One was stocky, thin hair. The other taller, thinner with hair going grey, both aged 50 to 60 years. I followed the men

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who were at this stage half way up the stairs I stopped them and asked them where they were going. The shorter of the two men stated that they had an appointment with the Chief Superintendent and that they were expected. I showed the two to the Chief Superintendent's office."

4.1.4 Mr Nolan confirmed to me that his recollection was that the two officers arrived to Dundalk Garda Station at about 2.20pm to 2.25pm.

4.1.5 Seamus Nolan also signed a statement dated 22<sup>nd</sup> March 1989 for Assistant Commissioner O'Dea. In this statement, he placed the arrival of the officers at five minutes after he had checked the clock (as opposed to the "five to 10 minutes" referred to above); this would place their arrival at 2.20pm. There is another, more significant difference as between the statement made to Assistant Commissioner O'Dea and that prepared for Superintendent Tierney. In the former, Seamus Nolan stated that he only came up part of the stairs with the two officers and

"gave them directions to Chief Superintendent Nolan's office. They indicated they were familiar with the route. I did not see them enter the Chief's office."

Mr Nolan informed me that he could not explain this difference and confirmed that the initial report he made on the matter to Superintendent Tierney "is more in line with my recollection of what happened." He continued:

"When I say I didn't see them enter the Chief's office, I would find that not really credible because I walked as far as the door with them, I knocked on the door, the Chief said – answered, I told him there were two people there to meet him and he said he was expecting them and in they walked and I turned and went back downstairs, and that is more [...] what I recall."

4.1.6 In his evidence, retired Chief Superintendent Nolan confirmed that a Garda, whose name he could not recall, showed two police officers into his office. He told me that he met with a recruit Garda, Val Smith, at 2.00pm, and that this meeting lasted about 10 minutes. He said there was then a gap between Val Smith's departure and the arrival of the two RUC officers. He suggests that this gap was five or 10 minutes. On his evidence, this places the arrival of the two officers at between 2.15pm and 2:20pm approximately. Bearing in mind the evidence of Seamus Nolan, it seems to me that it was no earlier than 2.20pm. Interestingly – and this is a matter to which I will return when discussing the *O'Dea Report* below – John Nolan's statement to

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Assistant Commissioner Assistant Commissioner O’Dea included the following line, which was subsequently crossed out:

“Garda Seamus Nolan, Dundalk, came to my office and said that there were two gentlemen to see me and he showed them in.”

4.1.7 When asked why this was crossed out, Mr Nolan offered the explanation that there must have been some uncertainty on his part as to whether or not it was Seamus Nolan who brought to the two RUC officers into his office.

4.1.8 As noted above, I am of the view that the two RUC officers arrived in the Station no earlier than 2.20pm. In this regard, I place weight of the evidence of Seamus Nolan, consistent through two 1989 statements and his evidence to the Tribunal, that he had checked the clock at 2.15pm, and they did not arrive for a further five, or five to 10, minutes after that. This would also appear to be consistent with the statement given by Superintendent Tierney to Ned O’Dea. Superintendent Tierney indicated that he left Dundalk Station for lunch at approximately 1:45pm and returned at approximately 2:10pm. He says that he looked at the cars parked up on the forecourt of the Station and did not note any northern registered cars at that time. Had Superintendent Buchanan’s car been there, he would have recognised it. He stated he returned to his office and asked Sergeant Rowan if there was anyone with the Chief Superintendent and was informed that there was a Garda recruit in the chief’s office. This would have been about 2.10pm. At 2:25pm, he states that he asked Sergeant Rowan again to phone the Chief’s office. He was informed by Sergeant Rowan that there were two people with the Chief Superintendent at that time.

4.1.9 The evidence actually establishes, therefore, that the officers arrived at Dundalk Garda Station slightly later than indicated in the Cory report, where it is suggested that they arrived at about 2.00pm or 2:10pm. The RUC report compiled by the Detective Chief Superintendent from South Region placed the arrival of the officers at the Station at approximately 2.10pm, and this is perhaps one of the documents on which Judge Cory was relying.

4.1.10 Then Sergeant Vincent Rowan, in his evidence to the Tribunal, confirmed that Superintendent Tierney had asked him to ring the Chief Superintendent. Upon ringing the Chief Superintendent, Vincent Rowan was asked by John Nolan to bring in refreshments for three people. Retired Inspector Rowan told me that he prepared the refreshments downstairs in the basement and brought them up to Chief Superintendent’s office.

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He confirmed that when he went into the office, he saw and recognised the two RUC officers. As already noted in Chapter 3, he said that he congratulated, or made some remark to, Superintendent Buchanan about his impending transfer, as “somebody had told me he was being transferred or moved from Armagh.”

4.1.11 I pause at this point in the chronology to note that on the evidence that I have heard, I conclude that once Harry Breen and Bob Buchanan had arrived in Dundalk Station, their presence there was widely known. In this regard, it is clearly established that John Nolan, Pat Tierney and Frank Murray knew that they were coming. Seamus Nolan brought them up to the Chief Superintendent’s office. Although I note that in his statement to Assistant Commissioner O’Dea, he said that he did not know the men, I think it unlikely that he, at the very least, would have not realised that they were RUC officers. Vincent Rowan knew the officers and recognised them when he brought tea into Chief Superintendent Nolan’s office. David Sheridan, who had earlier passed the message to Seamus Nolan that the Chief Superintendent was expecting two visitors, stated that he saw the officers and recognised one of them and knew him to be an RUC officer.

4.1.12 Garda Josephine Fitzsimons, who worked for Detective Superintendent Connolly in his office, gave evidence that “some time around 20 past two” Superintendent Buchanan put his head into the office inquiring for Detective Superintendent Connolly. Garda Fitzsimons knew and recognised Bob Buchanan. The Detective Superintendent was not there, and, she stated, Superintendent Buchanan “left immediately.” I note that there is no reference to this in the evidence of Seamus Nolan, but I do not see any inconsistency in this regard. Superintendent Buchanan would have been passing the office on his way into Chief Superintendent Nolan, and could easily have popped his head around the door without delaying Seamus Nolan and Harry Breen, and, possibly, without them even realising that he had done so.

4.1.13 Val Smith, the Garda recruit who met Chief Superintendent Nolan at 2.00pm, recalled meeting the two officers at the door of Chief Superintendent Nolan's office as he was leaving, although this detail was contrary to Mr Smith’s statement to Assistant Commissioner O’Dea which simply stated that the Chief Superintendent had asked them to leave the door open as he was expecting two men from the north. Mr Smith stated that while he knew the visitors were from the north, he did not know that they were RUC officers. Garda George Flynn confirmed that he recognised Bob Buchanan's red car parked outside the Station and was also made aware of the meeting by Sergeant Rowan, when the latter returned to the District Office having brought in the refreshments.

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4.1.14 Ann McMorrow gave evidence that she saw the two men at the bottom of the stairs, and possibly at the top of the stairs as they made their way up, and recognised and said hello to Bob Buchanan. At the time of the deaths of the two officers, Ms McMorrow made two statements. In a statement prepared for Superintendent Tierney, she said that she saw the two men at the bottom stairs when she was in the corridor outside the communications room at approximately 2.25pm. A second statement taken by Assistant Commissioner O’Dea was entirely consistent in this respect and also states that at 2.25pm, as she was coming along the corridor near the radio room, Ms McMorrow saw Bob Buchanan and another man who she did not know at the bottom of the stairs. The timing in these statements reinforces my view that the two officers arrived in the Station no earlier than 2.20pm, and quite possibly a few minutes after that time.

4.1.15 Vincent Jackson said that he met the two officers coming into Dundalk Garda Station. Although he stated that he did not know them at the time, he did however form the view that they were RUC officers:

"It was probably a presumption on my part at the time, they were very well – dressed and they looked – at the time, they cut a certain dash when you saw them about the Station."

4.1.16 As Vincent Jackson was coming off duty at the time, he originally estimated that this encounter occurred at 2.00pm or 2.05pm. However, when asked whether it could possibly have been 10 or 15 minutes later, he acknowledged that it could have been and said he was “always slow to get out of work.”

4.1.17 Former Detective Garda Tom Molloy, who was in the Detective unit at the back of the first floor of the Garda Station, told me that he saw two members of the RUC on the first floor landing at 2:25pm. Again, this timing is consistent with the view I have taken in respect of the matter. He said he knew they were RUC officers from their accent and dress. Then Detective Garda Larry Crowe told me that he saw the two officers on the top of the stairs sometime after lunch. His recollection was that Vincent Rowan was with them, and he could not be sure whether they were arriving and leaving at this point in time. Mary Clarke, the Assistant District Clerk, was aware of the presence of the two RUC officers from Vincent Rowan; when he returned from bringing in the tea, she had asked him who it was for.

4.1.18 In my view, this evidence indicates that the manner in which Harry Breen and Bob Buchanan arrived into Dundalk Garda Station was such as to ensure that many of the Garda officers and civilian workers were aware of their presence. Given that Bob Buchanan was a familiar figure, I consider it likely that he at least would have been widely recognised. In any event, however, I am satisfied that anyone who saw them in the

Station was most likely able to conclude that that they were RUC officers.

## **4.2 – Events Which Occurred while the Officers Were in Dundalk Garda Station**

4.2.1 I now wish to deal with a number of events which occurred during the period that Harry Breen and Bob Buchanan were in John Nolan's office.

4.2.2 First, then uniform Sergeant Leo Colton gave evidence to the Tribunal that at about 2:25pm, when he was standing on the front steps of the Garda Station, he observed a grey coloured car enter the forecourt in front of the Station from the Ardee Road. This car drove slowly past the front of the Station and he noticed the driver looking at various vehicles parked in the forecourt. He gave evidence that he got the impression that the driver was looking for a car. Leo Colton said that the car was grey Vauxhall Cavalier or a similar type vehicle and had a registration number commencing “EIB32.” He was unable to get the remainder of the registration number. He gave evidence that he had intended checking on this vehicle immediately, but was distracted when the Station Orderly asked for assistance in another matter. Having dealt with that other matter, he forgot about the suspicious car until after he learned of the deaths of the RUC officers. Mr Colton stated that while it looked like the driver of the car was checking up on other cars, this was not really a matter of considerable concern. He told me that the driver could have been looking for a Garda car, a private car or checking on the number of Branch cars that were around. He explained that the car particularly caught his attention because of the way the driver was looking from side to side.

4.2.3 That Sergeant Colton reporting seeing this car in the immediate aftermath of the murders is well documented in the records provided to the Tribunal. In particular, retired Detective Inspector McConville gave evidence in relation to a number of RUC documents which followed up on the reported sighting of the car. It is clear that the information in relation to the sighting had been passed by An Garda Síochána to the RUC.

4.2.4 Sergeant Colton, at the time, gave a description of the driver of the car as being:

“about 30 to 35 year, well built, with black curly hair and round face. He was wearing an open neck shirt, black or dark blue v – neck jumper and black leather jacket.”

As part of the follow – up to this report, Sergeant Colton assisted in the preparation of a photo fit of driver of the car. An RUC action sheet confirms that extensive searches were done to track down grey Vauxhall's with

registration numbers commencing the letters 'EIB'. However, as was confirmed by Sergeant Colton in his evidence to the Tribunal, the car which he alleges he saw was never traced.

4.2.5 Gerard O'Connor, who in March 1989 was a Detective Garda in Dundalk Garda Station, gave evidence that as part of the investigation led by Superintendent Tom Connolly after the murders, he was tasked with enquiring into a report that a red Ford Capri had been seen acting suspiciously in the vicinity of the Station on the morning of the ambush. He informed the Tribunal that an employee of the gas board, who was on point duty at the junction of Stapleton Place and Ardee Road as new pipes were being laid, noticed a red Ford Capri with a Northern Irish registration number in the vicinity of the Station at 11:30am, at 1:30pm and at 2:30pm on March 20<sup>th</sup>. The witness informed him that the Ford Capri had extensive damage. Mr O'Connor gave evidence to the Tribunal that, together with his colleague Detective Garda Duffy, he subsequently observed a damaged red Ford Capri being driven by a person who was suspected to be a member of the Provisional IRA. He arranged for the car in question to be brought to Dundalk Garda Station where the witness, the employee of the gas board, viewed the car so as to ascertain whether it was the same vehicle that he had seen on 20<sup>th</sup> March 1989. Mr O'Connor's evidence was that, "my understanding and recollection, that he discounted the fact that it was the same car." It appears from the evidence before me that once the car being driven by the suspected IRA member was discounted as not having been the car spotted on 20<sup>th</sup> March 1989, this ended the line of enquiry relating to the red Ford Capri.

4.2.6 Detective Garda Patrick O'Connor gave evidence that he was tasked with following up on a report that a resident of The Crescent had seen a woman standing in the vicinity of the Garda Station for some time at around 11am. The woman was reported to have been writing or drawing in a notebook in her hand. Mr O'Connor did not specifically recall interviewing the resident or taking a statement, though he did recall visiting all of the houses on the Crescent to see whether it was possible that any of them had been used for surveillance (I will return to this aspect of his evidence later in this Report). However, the contents of the statement taken from the resident of The Crescent was put into evidence before me and establishes that the lady with the notebook "kept facing towards the Friary [and away from the Station] at all time. She didn't appear to be taking any interest in the Garda Station." Accordingly, no further action appears to have been required in respect of this reported sighting.

4.2.7 A further line of enquiry pursued after the murders was the investigation of various members of the public who had called to the public office of Dundalk Garda Station. In this respect one of the persons who attended the Garda Station on that day appeared to me to have been of potential interest. I heard evidence in

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relation to Mr Josie Enright, now deceased, who was in the station looking at stolen bicycles at 2:15pm to 2:20pm. In this respect, Garda David Sheridan gave evidence at the Tribunal relating to a statement he made to Detective Garda Tom Molloy. In the statement, he said that at approximately 2:15pm, Detective Garda Molloy had asked him to bring a gentleman to the Garda Station bicycle shed to show him bicycles that had been recovered as he had reported his stolen. In the statement, Garda Sheridan named the gentleman concerned as Josie Enright and gave evidence that Detective Garda Molloy had informed him that Mr Enright was a listed member of the IRA on a suspended sentence. Garda Sheridan had no recollection of the incident or of making the statement to Detective Garda Molloy.

4.2.8 Detective Garda Molloy also gave evidence and said that he had no recollection of the incident or of taking the statement from Garda Sheridan. However, Garda Chief Superintendent Jim Sheridan, who in March 1989 was a Detective Garda in Dundalk, gave evidence that in his view the sighting of Josie Enright was not significant. He said that Mr Enright worked in a brewery not far from the station and would be regularly seen on the Ardee Road over the years. Chief Superintendent Sheridan said that while Mr Enright would have had an association with the IRA in earlier years, perhaps in the early 1970s, he did not regard his presence at Dundalk Station on 20<sup>th</sup> March 1989 as significant.

4.2.9 In a similar vein, Garda Colm Murray told the Tribunal that he would have classed Mr Enright as a ‘sympathiser’ and would not consider him to have been in any way an active member of a subversive organisation. He classified him as a ‘hanger on’ rather than an active and involved member of the Provisional IRA.

4.2.10 In the light of this evidence, I consider it unlikely that Josie Enright was in a position to pass information to the IRA as to the presence of Harry Breen and Bob Buchanan at Dundalk Station. First, there is no evidence that he saw or knew the two officers. Secondly, there is no evidence that he was a part of the IRA’s intelligence – gathering network such that they depended on him to provide the crucial information on this occasion.

4.2.11 The Tribunal heard general evidence from retired Chief Superintendent Michael Staunton, who was the Border Inspector in Dundalk in 1989, that there was at one point in time intelligence that a telephone kiosk across from Dundalk Station, on the terrace of houses known as The Crescent, might have been used by members of the IRA to carry out surveillance. Retired Detective Sergeant Owen Corrigan also informed the Tribunal that An Garda Síochána had evidence that the IRA had been, over the years, watching the Garda

Station. He stated that there was a two – storey house laid out in flats which was occupied by the Provisional IRA for different periods and that the telephone kiosk on The Crescent had also been used to monitor comings and goings at the station.

4.2.12 Turning specifically to 20<sup>th</sup> March 1989, former Detective Garda Tom Fox told the Tribunal that there was information indicating that a phone call had been made from the telephone kiosk around the time that the two RUC men were in the station. He said that there was some concentration on this as a line of enquiry, but that he did not think that any information was ultimately gleaned. Similarly, former Detective Garda Edmund Sheridan, gave evidence that Detective Superintendent Tom Connolly assigned to him the task of investigating two phone calls made from the kiosk outside the Garda Station. He said that he had carried out investigations which demonstrated that the first call was a call to Louth County Council and the second call was made to a business in Belfast by a representative of that particular company.

4.2.13 Furthermore, retired Detective Inspector McConville of the PSNI put into evidence two action sheets from RUC records. These refer to two reverse – charges calls having been made from a kiosk near Dundalk Station on 20th March 1989. Enquiries revealed that the first call was made to the Ulster Timber Company in Belfast, by an employee, at 1:30pm. The employee was interviewed by the RUC and he said he saw nothing unusual while he was making the telephone call. The second call was made to a primary school in Newry at 2.22pm. The RUC records confirm that there were no known IRA suspects employed at the primary school in question and, in these circumstances, the investigating officers made no further approach to the school.

4.2.14 On foot of all of this evidence, I can conclude that there is no evidence to suggest that a phone call was made to a member of the Provisional IRA from a kiosk or kiosks in the vicinity of the Dundalk Garda Station to alert him or her to the presence of the two RUC officers in the Station.

### **4.3 – The Placement of an IRA Active Service Unit (ASU) on the Edenappa Road**

4.3.1 Further evidence of potential significance related to the placement of an IRA Active Service Unit (ASU) at a vacant house on the Edenappa Road at approximately 2:30pm on 20<sup>th</sup> March 1989. This information was contained in the primary RUC Report on the murders, which was compiled by the Detective Chief Superintendent of South Region and has already been referred to above. The information was also replicated in a number of the other documents provided by the NIO. Retired Detective Inspector McConville put this report before the Tribunal when he gave evidence. The relevant portion is as follows:

“At approximately 2:30pm a white van travelling from Dundalk arrived at Jordan's vacant house on the Edenappa Road. Five men got out of the van and went into Jordan's house. The van then left returning in the direction of Dundalk. At approximately 3:30pm the white van returned and picked up the five men from Jordan's house and then parked on the right hand of the road near Jordan's house. After five minutes two men in full combat clothing and carrying rifles got out of the van and took up positions on either side of the road. At approximately 3:40pm one of these gunmen stood up and stopped three vehicles travelling towards the south.”

4.3.2 The balance of this Report, relating to the ambush itself, will be set out in Chapter 5.

4.3.3 The Tribunal understood from the PSNI, during its private investigation phase, that the information as to the arrival of men at Jordan's house at 2:30pm was originally provided by an unknown source to a Detective Sergeant of RUC Special Branch. The Tribunal wrote to the former Detective Sergeant concerned and asked for his co-operation. However, no reply was received. Retired Detective Inspector McConville did, however, put the report from this Detective Sergeant into evidence during the Tribunal's public hearings.

4.3.4 It appears that identical information was received south of the border. In this respect, the Tribunal received a document with the title “Fax message information from Gardaí Dundalk.” The information is in similar terms, noting the arrival of the men at Jordan's house at 2.30pm, and appears to have been faxed to the incident room in Bessbrook by Detective Superintendent Tom Connolly. From papers provided by An Garda Síochána to the Tribunal, it appears that this information was received confidentially by Detective Sergeant John Harney (deceased) and Detective Garda Larry Crowe.

4.3.5 In summary, the information appears to have been received confidentially by detectives in both An Garda Síochána and the RUC. In one sense, the fact that the information was received by both police services tends to reinforce its value; on the other hand, it must be borne in mind that both pieces of information may have emanated from the one source.

4.3.6 What is clear, however, is that neither in the documentation submitted to the Tribunal by the Northern Ireland Office or An Garda Síochána, nor in the evidence tendered in the course of public hearings, has there been any material tending to contradict or cast doubt over the account of events at 2.30pm on Edenappa Road on 20<sup>th</sup> March 1989. One job sheet from Tom Connolly's investigation which was put into evidence was of

potential relevance to this issue: Detective Garda Patrick O'Connor was assigned the task of interviewing a lady who lived about one mile south of the ambush site who reported that she had seen a white van travelling slowly north on the Edenappa Road at about 3pm. The van was described as smallish and had the registration letters BI at the end of a number. Former Detective Garda O'Connor had no recollection of interviewing the lady and could not recall identifying the vehicle. In these circumstances, and in the absence of any follow – up documentation, it seems unlikely that this sighting was considered significant. The white van could have been unrelated to the ambush. Equally, even if the van was related to the ambush, the lady could have been mistaken and she may have seen the van en route to drop off the ASU at 2:30pm, or returning at 3:30pm, as indicated in the information set out above.

4.3.7 In conclusion, I therefore accept that an active service unit was dropped off on the Edenappa Road at 2:30pm, probably only 10 minutes, at most, after Bob Buchanan and Harry Breen had arrived at Dundalk Garda Station. This is a potentially significant incident in the terms of the timeline of events leading up to the ambush. I will return to consider the significance of this information later in this report.

#### **4.4 – The Phone Call to Witness 62**

4.4.1 Finally, it is worth referring to the evidence of Witness 62, who on 20<sup>th</sup> March 1989 was an RUC Special Branch Detective Inspector on duty in Gough Barracks, County Armagh. His unit was the Task and Coordinating Group (TCG), which tasked and coordinated covert operations. He told the Tribunal that in the course of the afternoon on that date, his unit received a phone call from the office of the Regional Head of Special Branch enquiring as to whether the TCG had any operations or covert activity ongoing in South Armagh at the time. He could not remember whether the phone call came from the Regional Head of Special Branch himself – the late Detective Chief Superintendent Frank Murray to whom I have already referred – or from someone calling on his behalf. The Regional Head's office was also in Gough Barracks, but in another building. On foot of the call, Witness 62's unit also checked with the intelligence officer of 3 Brigade (SO G2; I note that this would appear to be Brigadier Liles' predecessor) to establish whether the Army had any operations in the South Armagh area. He told me that the Army confirmed that they had no such operations.

4.4.2 While Witness 62 had indicated in his written statement to the Tribunal that the phone call was received around 3.00pm, in his evidence he was keen to point out that he did not have a clear recollection of the time. He expressed the view that, upon reflection, the call might have come “a wee bit earlier” but also said that it could have been received before or after 3:00pm.

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4.4.3 This evidence is potentially significant given the evidence of Witness 27 to the effect that Detective Chief Superintendent Frank Murray had informed him, some time after 20<sup>th</sup> March 1989, that an increase in radio signals traffic from had been recorded from noon that day. Witness 62's evidence tends to suggest that Detective Chief Superintendent Frank Murray was, at some point in the afternoon, trying to establish what may have been causing the increased radio signal traffic. I accept that this is somewhat speculative, but it does not appear to be an unreasonable supposition. For his part, Witness 62 seemed willing, with the benefit of hindsight, to make this link. He acknowledged that Witness 27's evidence to the Tribunal would appear to be consistent with the query made of his unit on the afternoon of 20<sup>th</sup> March. However, he emphasised that at the time, he was not aware of the reason for the call, and said that for "a long, long time afterwards, after this incident" he had no idea that radio signals traffic had occurred. He described his aspect of the British security forces' surveillance as "very sensitive, very secret."

## Chapter 5

### The Ambush

#### 5.1 – The Departure of RUC Officers from Dundalk

5.1.1 Retired Chief Superintendent John Nolan told the Tribunal that towards the end of his meeting with Harry Breen and Bob Buchanan, the latter left to speak briefly with Superintendent Tierney. He was absent for about five minutes and, on his return, both RUC officers departed the Station together. The account of Bob Buchanan briefly leaving the meeting is confirmed by a number of other pieces of evidence.

5.1.2 First a statement provided by Inspector Frank Murray to Assistant Commissioner O’Dea dated 22<sup>nd</sup> March 1989 was read into the record in circumstances where Inspector Murray is deceased. This statement recalls that:

“I then visited the radio room, and, when I came out, I saw Bob Buchanan come from the direction of the Chief Superintendent’s office. This would be about 3.10pm. He greeted me and we shook hands and he told me he was being transferred as Deputy Divisional Commander to Newtownards in April. [...] He asked if Pat, meaning Superintendent Tierney, was inside, and I told them he was. He then went in to see him and I returned to my office. I did not see him after that. I did not see Chief Superintendent Harry Breen at all on that date. I did not see Bob Buchanan make any telephone call while in my presence. He did not say what route he came on, what route he would take on his way back.”

5.1.3 Secondly, in his evidence to the Tribunal, Pat Tierney confirmed that “sometime around about three o’clock” Bob Buchanan came into his office. He told me that Superintendent Buchanan “was a very happy man that he was going on transfer.” Mr Tierney said that Detective Superintendent Connolly also came into the office and the three men “just had a few minutes together.” He said that Superintendent Buchanan did not wish to delay his Chief Superintendent, so it was a very brief meeting.

5.1.4 Thirdly, Tom Connolly told me that he was not in work on the morning of 20<sup>th</sup> March 1989 and was in fact playing golf at a Louth/Meath Garda golf outing at Drogheda, possibly Bettystown. When he finished, he went directly to Dundalk Garda Station and arrived at around 2:30pm or 3:00pm. He said that about 3:10pm, he went into Superintendent Tierney’s office and Superintendent Buchanan was there. He said that he had a brief conversation with Bob Buchanan in Superintendent Tierney’s office and that he did not see Chief

Superintendent Breen on that day.

5.1.5 Chief Superintendent John Nolan confirmed to the Tribunal that he thought Chief Superintendent Breen and Superintendent Buchanan left his office at approximately 3:15pm, having been there for about fifty – five minutes. He confirmed that there was no discussion of the route that the two gentlemen would take back to Northern Ireland.

5.1.6 The main RUC Report prepared in the aftermath of the ambush – by the Detective Chief Superintendent South Region – states that the meeting in Dundalk Station ended at approximately 3:15pm and Chief Superintendent Breen and Superintendent Buchanan left the Station to return north.

5.1.7 On the basis of the evidence, I am satisfied that Bob Buchanan was in Pat Tierney’s office at about 3.10pm and remained there for approximately five minutes. On this basis, Superintendent Buchanan would have returned to Chief Superintendents Nolan’s office to collect his Divisional Commander at 3:15pm and both men would have left the office within a few minutes thereafter. I conclude that the two officers left Dundalk Station at approximately 3:20pm.

## **5.2 – The Ambush on the Edenappa Road**

5.2.1 Retired Detective Inspector David McConville of the PSNI gave evidence of the log sheet for 1 Royal Regiment Fusiliers dated 20<sup>th</sup> March 1989. This log sheet records that information in relation to the deaths of the two RUC officers reached the Regiment at 15:58. The log indicates that at 15:58, the Regiment received a Report of “a red car at Edenappa Road, believes that bodies in car.” At 16:10, it is recorded that the RUC in Forkhill received a phone call stating that there were two bodies in a car at border checkpoint 10, near McGeough’s Garage. In his Report, Assistant Commissioner O’Dea stated that two officers were shot between 3:30pm and 3:50pm.

5.2.2 The main RUC Report prepared in the aftermath of the ambush – by the Detective Chief Superintendent South Region – contains the following account of events on Edenappa Road. It is clear from the documents produced by the NIO to the Tribunal, that this extract was based on interviews witnesses to the shootings:

“At approximately 3.30pm the white van returned and picked up the five men from [Jordan’s] house and then parked on the right hand of the road near another house. After approximately five minutes two men in full combat clothing and carrying rifles got out of the van and took up positions on either side of

the road. At approximately 3.40pm one of these gunmen stood up and stopped three vehicles travelling towards the South. The occupants were taken out their vehicles and made lie on the road. Almost immediately a red Vauxhall Cavalier drove up and was stopped by the gunman on the road. The white van at this stage was parked about 20 yards down the road towards the border and then drove along side the Vauxhall Cavalier. At this stage the red Cavalier started to reverse back and stalled in the process. The car was restarted and again the driver attempted to reverse back. Four masked gunmen jumped out of the van and commenced to open fire on the car. The car reversed back and crashed into the hedge. One witness told the Garda that the passenger got out of the car and waved a white handkerchief. A gunman ran down to him. Another witness describes hearing a loud burst of shots, then a pause, then two single shots. Two of the gunmen searched the car and took a briefcase or folder. They also took what appeared to be two small notebooks. All of the gunmen then got into the white van and the driver who never left the van drove north turning left towards the Kilnasaggart Bridge and over the border.”

5.2.3 The PSNI documentation also includes a separate Report which set out information the RUC received from An Garda Síochána. This records that:

“It is stated that a van was parked at the Lisadoo Arms, Newry Road, Dundalk on 20/3/89 when the RUC officers passed towards Newry the van overtook them and drove to Edenappa. It is stated that each group had vehicles scouting in their areas.”

5.2.4 Maurita Halpin was an eyewitness to the ambush and was the driver of one of the cars stopped by the men setting up the illegal vehicle checkpoint. In March 1989 she was a teacher who had been visiting a young boy in his house on the Edenappa Road. She gave evidence to that Tribunal that at approximately 3:35pm to 3:40pm, she came out of his house and got into her car. She travelled a short distance south and was stopped by a man in combat style clothing. The man carried a long rifle and ordered her out of the car. She was ordered to lie face down on the road. She told the Tribunal that the second car came behind her and was stopped alongside her car. She said that the men in combats had walkie – talkies and were obviously communicating with someone:

“There was a lot of crackling and just general, as if they were communicating through some sort of mechanical devices.”

5.2.5 Ms Halpin said that a third car, coming from the Dundalk direction, was stopped directly in front of her.

Shortly afterwards, “a van came up in the space that was left on the other side.” The van was travelling south to north, stopped in the space and effectively blocked the road. She said the van was white or creamy in colour. The doors opened and more people in combat dress got out. Ms Halpin records seeing that “some moments, I presume, or maybe seconds” later, a red car appeared: “it seemed like they were driving up the road just behind [the van].” She continued:

“when they [the people in the red car] came in and they obviously realised they were in a trap, they went to reverse, they tried to reverse the car, and there is a wall of moss on it just there, and they must have realised they couldn’t, they wouldn’t make it, and the passenger, he got out and he came around the front of the car and he put his hands up and they shot him and he fell to the ground.

[...]

And then the other man, I think – the driver – I’m not sure whether he opened the door to get out, or whether they went down and opened the door, but they shot him behind the wheel, to my knowledge. He was – I think he was just maybe getting out of the car.”

5.2.6 She said that at this point the men in combat gear ran towards the car and she took the opportunity to get into her car, reverse it and drive back to the school where she taught in Jonesborough.

5.2.7 The Tribunal also heard evidence from Finbarr King, who worked in McGeough’s at the time of the shootings. He was employed in the livestock aspect of McGeough’s business. He and his colleague Packie O’Hanlon had travelled to the old customs post at Carrickagh to attend to a livestock truck on which the brakes had seized. On their return, travelling from north to south, their car was stopped by a man in combat style clothing. He told Mr King and Mr O’Hanlon to get out of the car and lie down on the grass verge. A second car came along, he thinks occupied by a man and a woman, and they were also taken out of their car. A third car came along with a woman, presumably he means Ms Halpin, and she was also taken out of her car.

5.2.8 Mr King told me that he saw a car coming up from south towards the roadblock. Approximately 50 or 60 feet from the roadblock, the car was overtaken and cut off by a van. Mr King’s recollection was the van was a dark colour and “definitely not white.” The van cut in front of the car and the driver’s and passenger’s doors opened and two people got out. The side door of the van slid back and “at least another three got out of the back of the van.” He continued, “the car then tried to perform a reversing movement and a whole lot of them opened up on it. They opened fire.” He went on to say that the car rolled back into the ditch and after

that he put his head down. Sometime after the shooting, he told me that the men “all got into the van, and, as they were exiting the area, they let out a big roar like “hurray”, or whatever, and that was it.” He said the whole episode lasted about five minutes from when he was first stopped. He didn't hear any walkie – talkies. After the van left, he and Mr O'Hanlon got back into their car and departed. It was at this point he saw one of the RUC officers lying on the ground, out of the car.

5.2.9 The Tribunal was not able to secure evidence from the occupants of the third car that was stopped at the Provisional IRA roadblock.

5.2.10 One must also consider the evidence of Mr Frank Larrigan who was, at the time, the manager of McGeoughs Filling Station. McGeoughs was a complex located just south of the border on the Edenappa Road, a few hundred yards south of the ambush site. It comprised a filling station and shop on one side of the road, and a scrapyard on the other. Mr Larrigan recalled that he was in the shop part of the premises on the afternoon of 20<sup>th</sup> March 1989. He told the Tribunal that as he was dealing with a customer, he looked out and saw one of the young men employed at the Filling Station sitting at a diesel pump. He said he went to the door of the shop and told the young man to get up and carry on working. He returned to the shop and continued to attend to the customer. When he looked out again, the young employee was still sitting down at the diesel pump and he noticed that there was a white van facing out onto the road. He thought it was either a HiAce or LiteAce van. He said he heard some commotion, and when he looked out again the van was gone and the young man was back tending to his duties. Subsequently, there was a further commotion at McGeoughs when a customer came in looking for water for a woman who had driven past a shooting incident further up the road.

5.2.11 The Tribunal sought to contact the young petrol pump attendant, but was unable to do so. The Tribunal heard evidence from a number of other witnesses who were in or around the McGeough's complex, either in the garage complex which was on the eastern side of the road or the scrapyard on the western side of the road, but I do not consider that it is necessary to summarise any aspect of their evidence for the purposes of this Report.

5.2.12 Notwithstanding Mr King's description of a dark van at the scene, the evidence appears to establish that at the time of the shooting itself, there was only one van on the scene at the Edenappa Road, and this is the vehicle in which the ASU made its departure. It is not fully clear from the evidence where this van came from when it arrived at the scene shortly before the illegal roadblock was set up. Furthermore, the fact that

there was only one van at the scene is not to say that other vehicles were not used elsewhere in the operation, in particular, to monitor the progress and direction of Bob Buchanan's car from Dundalk.

5.2.13 As is explored in greater in Chapter 7 when discussing the objective view of retired Brigadier Smith, Ms Halpin's reference to walkie – talkies suggests that other Provisional IRA personnel were able to communicate with the ASU in place on the Edenappa Road, and to inform it that the target vehicle was heading towards that location. In this respect, I note the evidence to the Tribunal of former Garda Assistant Commissioner Joe Egan, who told me that CB radio use was rampant at the time of the murders and that it was a well – tried and trusted system of communication. I also note the evidence of Witness 62, a retired RUC Special Branch officer, who told the Tribunal that he had received information after the murders indicating that there was someone at the Y junction where the Edenappa Road separated from the main road Dundalk to Newry Road. His information was that the person at the junction told the Provisional IRA ASU which road the officers had taken. His understanding, from the information he received, was that the ASU was in a position which would have allowed it to intercept the car on either the Edenappa Road or the main road. I shall return to this point in section 6.4 relating to intelligence received after the shootings.

### **5.3 – The Immediate Aftermath of the Murders**

5.3.1 Witness 33 gave the Tribunal the best evidence in terms of the immediate aftermath of the murders. He told me that he received a telephone call from Forkhill RUC Station on the afternoon of the day in question. He was informed that a civilian had reported that a red car had been involved in a shooting incident on the Edenappa Road near brought Jonesborough. He stated:

“I immediately thought of my colleagues who had gone across the border to the meeting, so I immediately rang Dundalk Garda Station and spoke to the Superintendent there and enquired if they have left, and they had gone at that stage.”

5.3.2 He said that the Superintendent in question was Superintendent Pat Tierney. This evidence was confirmed to the Tribunal by Superintendent Tierney, who told me that he had received such a call from Witness 33. Having conveyed to Witness 33 confirmation that the two RUC officers had left Dundalk Station, Pat Tierney said he contacted Inspector Frank Murray and the two men proceeded together to border crossing 10. When they got to the border, they could see a red car at an angle on the road 300 to 400 yards to the north. “We assumed the worst,” he told me.

5.3.3 Having learned from Pat Tierney that the two RUC officers had left Dundalk, Witness 33 briefed his Sub – Divisional Commander, Witness 50 and made his way to Bessbrook Mill to get a flight to the scene of the incident. He told the Tribunal that he spoke to Pat Tierney at 3.55pm and probably arrived at the scene between 4.30pm and 4.45 pm. He was the only police officer on the scene at that stage and was accompanied by British Army personnel. When he arrived there were already British Army people on the ground securing the scene. At some risk to himself, given the possibility of a ‘booby – trap’ device, Witness 33 walked down to Bob Buchanan's car to identify the bodies of his two colleagues. He described the scene to the Tribunal in the following terms:

“Superintendent Buchanan was still in the vehicle, and, and from recollection, the seatbelt was still on at that stage. Mr Breen was out, his body was lying on the road. I think, from recollection, it was face down, facing towards the south, and he looked to have been probably shot in the legs and the back of the head.”

5.3.4 Witness 33 told me that he thought that a pen and possibly Chief Superintendent Breen's glasses were lying on the road. He also recalled that there was a white handkerchief on the road.

5.3.5 The principal RUC Report on the murders (prepared by the Detective Chief Superintendent South Region) described the scene in the following terms:

“The scene of the attack is approximately 400 yards into the north of Ireland and approximately 3/4 of a mile from Jonesborough. Examination of the scene revealed that Mr Buchanan and Mr Breen saw something that caused them concern and they attempted to reverse away. Mr Buchanan's car was in reverse gear and it had crashed at an angle into a hedge on the opposite side of the road as if he had been attempting to turn his car. Intensive gunfire had been directed at the driver's side of the vehicle, striking it at least 24 times. Mr Buchanan was shot in the head and chest. He was found seated in the driver's seat of his car with his seat belt on. Mr Breen's body was found lying on the road beside the passenger's door. He was facing south. He had been shot in the head. There was evidence of powder burns on the side of his head. His glasses were about nine inches in front of his head. There was a white handkerchief by his side. Examination of his body would indicate that it had been thoroughly searched as the lining of a number of pockets had been pulled out. Mr Breen's personal diary, wallet containing his bank cards and warrant card and his telecom pager are missing.”

5.3.6 Alan Mains, Mr Breen's Staff Officer, told the Tribunal that in the afternoon, he was contacted by the Chief Inspector in Newry asking him to contact Mr Breen urgently. He then asked the Control Room in Armagh RUC Station to page Mr Breen, but to no avail. He then got a second phone call from the Chief Inspector in Newry who said that there were two bodies on the border. Mr Mains told the Tribunal that he subsequently travelled to Newry where he met Senior Assistant Chief Constable David Cushley. Witness 33 confirmed to the Tribunal that he probably had a brief conversation with Mr Mains to inform him that the Divisional Commander may have been involved in a serious incident.

5.3.7 Witness 41, then a uniform Chief Inspector in Banbridge RUC Station, gave evidence that around 5:00pm on the day he received a telephone call from Witness 19 requesting him to break the news to Mrs June Breen of her husband's death. He told me he got a female RUC officer from Banbridge to accompany him and recalls that when Mrs Breen came out of her house he could hear the theme music of the television programme 'Neighbours' playing from within. In her own written statement to the Tribunal, Mrs Breen said that she was informed of her husband's death at about 5:40pm on 20<sup>th</sup> March 1989.

5.3.8 I heard evidence that, south of the border, when news of the shootings reached Dundalk Garda Station, there was a concern about the whereabouts and well – being of Chief Superintendent John Nolan. Former Detective Garda Errol Boyle gave evidence that he was in a car on patrol when he received a radio message to come back to the Station. This was about 4:30pm in the afternoon. He recalls that there was some concern because Chief Superintendent Nolan had left the Garda Station around the same time as the two RUC officers and could now not be contacted. Similar evidence was given by retired Detective Garda Larry Crowe, who recalled Vincent Rowan telling him that the Chief Superintendent could not be located. Former Garda Matthew O'Reilly told me that he was given the task of going down the town in Dundalk to locate the Chief Superintendent. Whilst he was carrying out this task, he got a call from the Garda Station to say that Chief Superintendent Nolan had been safely located.

5.3.9 A snow shower descended in South Armagh in the early evening of 20<sup>th</sup> March 1989 making it impossible to retrieve and remove the bodies of the two officers. The bodies were ultimately not removed until the following afternoon after the scene had been thoroughly checked for 'booby trap' devices.

## Chapter 6

### The Immediate Aftermath to the Events of 20<sup>th</sup> March 1989

#### 6.1 – The Evidence of Alan Mains in Relation to the Meeting with Sir John Hermon on 21<sup>st</sup> March 1989

6.1.1 Witness 33 told the Tribunal that he recalls meeting the Chief Constable of the RUC, Sir John Hermon, and Senior Assistant Chief Constable Cushley in Newry on 21<sup>st</sup> March 1989. He said that he accompanied the Chief Constable from Newry to the scene of the ambush, travelling first from Newry to Bessbrook Mill and then onwards by helicopter to the scene.

6.1.2 Mr Mains also gave evidence that he met the Chief Constable in Newry on Tuesday, 21<sup>st</sup> March 1989. As there is some controversy in relation to Mr Mains' evidence in this respect, it is worth summarising it in some detail. Mr Mains told the Tribunal that he was asked to go to Newry to brief the Chief Constable. He understood that the Chief Constable had to make a press statement that afternoon, and wanted to speak to Mr Mains about the latter's conversation with Harry Breen of the previous morning. Mr Mains' account of the conversation with Harry Breen is set out at section 3.4.1 above. In essence, Mr Mains stated that Harry Breen was uneasy about travelling to Dundalk, expressed concern that members of the Gardaí were on Slab Murphy's payroll, and specifically mentioned Owen Corrigan as a Detective Garda whom he did not trust.

6.1.3 Mr Mains told the Tribunal that he attended a meeting in Newry RUC station at around 11.00am. He said that Sir John Hermon, Witness 18 (ACC Rural East) and the Sub – Divisional Commander of Newry, Witness 50, were present. Mr Mains told the Tribunal that the Chief Constable asked him why Harry Breen and Bob Buchanan were down in Dundalk. He stated:

“I clearly remember and recall looking to my left at Witness 18, who had his head in his hands and, to me, looked to be completely and utterly under pressure. I remember saying to the Chief that that's the reason they were down there, that man sent them. [...] I then told him that Mr Breen had mentioned Owen Corrigan as a person that he was uneasy with and went on to say why he felt that way. The Chief Constable was very dismissive of me making that remark and said that that was rubbish, or he disagreed, and he quickly said that that man had been investigated and he had been cleared. At that point, I became quite, I don't know what the right word to use here in terms of frustrated, annoyed, anxious, that clearly this was a contradiction of what Mr Breen had told me the previous day. I

remember making my point in a raised voice to the Chief Constable about the fact that it was his Commander, who was in charge of ‘H Division’, the previous day had told me, and it’s his words not my words. It was sensed by the Sub – Divisional Commander at that point that the two of us were you know, you know – I don’t think you’d talk to a Chief Constable like that ordinarily but I did.”

6.1.4 In his evidence to the Tribunal, Witness 18 said that it was possible that he was at a meeting in Newry on 21<sup>st</sup> March 1989. He told the Tribunal he remembered attending a meeting in Newry where Chief Superintendent Nolan from Dundalk was present. He said that Senior Assistant Chief Constable Cushley chaired that meeting. Witness 18 said that the Chief Constable may have been at that meeting, but he did not remember Mr Mains being present:

“It was a meeting at that level, a sergeant would not be present at the meeting.”

6.1.5 When the information provided by Mr Mains to the Tribunal (in the course of the private investigation) as to his conversation with the Chief Constable about Owen Corrigan was put to Witness 18 – Witness 18 said that he did not recall such a conversation. He emphasised that it was highly unlikely that a Sergeant would have attended a meeting with the Chief Constable.

6.1.6 Witness 6, Witness 18’s Staff Officer, confirmed that Sergeant Mains was in Newry on the evening of the 20<sup>th</sup> March 1989. He said that:

“I know that Sergeant Mains had expressed that Mr Breen was concerned about going across, or something like that, or words to that effect, that he wasn’t content going across, but whether that was in [Witness] 18’s presence or he said it to me, I am just being totally honest with you and saying I don’t know when he said it. I knew he said it then, and he wasn’t going to go, or something, and he went at the last – minute, something to that effect, you know.”

6.1.7 Witness 6 went on to tell the Tribunal that he did not hear Sergeant Mains expressing concern on the day of the murders about a named or unnamed Garda officer.

6.1.8 Senior Assistant Chief Constable David Cushley could not recall whether or not he went to Newry RUC station on the evening of the killings, but did recall travelling to ‘H’ Division to visit Mrs Buchanan in her house. He said that he had no recollection of chairing a meeting in Newry on the 21<sup>st</sup> March 1989. When

asked whether he recalled Sergeant Mains identifying, in the immediate aftermath of the murders, a named officer in Dundalk about whom Chief Superintendent Breen was allegedly concerned, Mr Cushley said that he had no recollection of this.

6.1.9 Retired Chief Superintendent Nolan confirmed that he went to Newry RUC Station on Tuesday, 21<sup>st</sup> March 1989 and met the Chief Constable of the RUC. He said he outlined to the RUC officers present the nature of the meeting with Harry Breen and Bob Buchanan of the previous day, how it was set up and the content of the discussion. He said that he informed the RUC that an incident room was being set up in Dundalk, headed by a Detective Superintendent (Tom Connolly), and that the whole of the resources of the Garda force would be available to the RUC to assist them in the investigation of the murders.

6.1.10 Mr Mains made a number of written statements in the days following the killing of his superior officer. The first of these is a witness statement made on 22<sup>nd</sup> March 1989. This statement sets out the discussion Mr Mains had with Mr Breen on the morning of the 20<sup>th</sup> March 1989. The operative portion states as follows:

“He then went on to give me his appointments for that day. He informed me that he had to attend a meeting in Dundalk that afternoon with the Border Superintendent, Superintendent Buchanan, along with Chief Superintendent Nolan, Garda. The reason for the meeting was in connection with cross – border smuggling in relation to ‘Slab’ (Murphy), Crossmaglen. Mr Breen highlighted the fact that he was uneasy about travelling down to Dundalk, but stated that he had to have a report submitted to Headquarters the following day at lunchtime. He then asked me to contact [Witness M], Customs and Excise, to arrange a meeting first thing on Tuesday, March 21<sup>st</sup> 1989. This I did. Mr Breen also stated to me that he felt that ‘Slab’ Murphy had contacts within the Garda and to this end he felt he could not trust certain Garda Síochána members. To use his own words, he felt that certain members of the Garda were on Murphy’s payroll.”

6.1.11 The Tribunal also had before it a number of statements of Mr Mains in the form of draft depositions under the Coroners Act (Northern Ireland), 1959. The first of these is undated and does not contain the reference to Mr Breen feeling that Slab Murphy had contacts within the Garda. The line, “Mr Breen highlighted the fact that he was uneasy with travelling down to Dundalk” is included in this draft deposition, but a line has been drawn through it by hand. There is then a further draft deposition, also undated, in which the reference to Mr Breen’s being uneasy has been removed. In this second draft deposition, there is therefore no reference to any concern expressed by Mr Breen.

6.1.12 Mr Mains was asked in the first instance to explain why he did not refer expressly to Owen Corrigan in his witness statement of 22<sup>nd</sup> March 1989. He replied that this statement was made in the context of a murder investigation focused on the factual sequence of events. He stated:

“I would have been advised, and I would probably, in hindsight, agree with that now in terms of the action that was decided at that time, not to mention Mr Corrigan for his own, you know, safety. This would have gone before an inquest and it would have become public.”

6.1.13 Mr Mains handed into me, written on a piece of paper, the name of the CID officer who advised him in this regard and that person is now deceased. In relation to the difference between the two draft depositions for the coroner, Mr Mains confirmed to me that he did not carry out the redactions and was not therefore the person who drew a line through “Mr Breen highlighted the fact that he was uneasy travelling down to Dundalk.” He told me he was not present when either deposition was drafted.

6.1.14 As is discussed further in Chapter 8, Mr Mains provided a subsequent written statement to the RUC, at the request of An Garda Síochána, on 15<sup>th</sup> September 2000. This was in the context of the Camon Investigation. This 2000 statement provided as follows:

“Further to my statement on the 22.3.89 concerning the murders of Chief Superintendent Harry Breen and Superintendent Buchanan, I have nothing further to add with the exception of the Garda officer referred to in my previous statement is Owen Corrigan, then D/Sergeant Special Branch, Dundalk.”

6.1.15 Mr Mains explained that he was happy to name Mr Corrigan in a statement in 2000 because of the fact that that statement was for the purposes of a Garda internal investigation, and that he had been specifically asked, in that context, to provide the name of the Garda officer.

6.1.16 Mr Mains gave evidence over the course of two days and was robustly cross – examined by both counsel for the Garda Commissioner and counsel for Mr Owen Corrigan. It is fair to say that one of the central points of their cross – examination is that Mr Mains’ original statement of 22<sup>nd</sup> March 1989 appears inconsistent with his evidence about:

- (i) Chief Superintendent Breen asking Mr Mains him to accompany him to Dundalk;
- (ii) his being asked to phone Bob Buchanan to see if Superintendent Buchanan was available to go to Dundalk; and
- (iii) his making a telephone call to the Dundalk Garda Station on Chief Superintendent Breen's behalf to arrange the meeting.

It was, in essence, suggested that Mr Mains' written statement of 22<sup>nd</sup> March 1989 does not support his evidence in relation to these three aspects and therefore affects his overall credibility as a witness.

6.1.17 It is the case that the following part of Mr Mains's statement does not sit easily with his evidence in relation to his role in setting up the meeting in Dundalk:

“He [Chief Superintendent Breen] informed me that he had to attend a meeting in Dundalk that afternoon with the Border Superintendent, Superintendent Buchanan, along with Chief Superintendent Nolan, Garda.”

6.1.18 I have already found as a fact that Superintendent Buchanan was, from the afternoon of 16<sup>th</sup> March 1989, always intended to be part of the RUC contingent that was to travel to Dundalk to discuss 'Slab' Murphy's smuggling activities. I therefore do not think that Mr Mains' recollection that Superintendent Buchanan was attending the meeting simply because he (Mains) could not is correct.

6.1.19 However, it does not necessarily follow that this error contaminates all of Mr Mains' evidence. As I have already noted in respect of the conflicting recollections of the meeting of Thursday 16<sup>th</sup> March 1989, I am inclined to make some allowance for the possibility that the trauma and grief caused by the ambush has had the capacity to alter recollections of events.

6.1.20 In relation to the central aspect of Mr Mains' evidence about what Mr Breen told him on the morning before his death, the following is indisputable: Mr Mains, just two days after the incident, provided a written statement saying that on the morning of his death Harry Breen expressed unease about going to Dundalk and expressed the view that certain members of An Garda Síochána were on 'Slab' Murphy's payroll. I can

conceive of no reason why Mr Mains made this statement on 22<sup>nd</sup> March 1989 other than because it was true.

6.1.21 Counsel for Mr Corrigan noted that the statement of 22<sup>nd</sup> March 1989 referred to “certain Garda Síochána members.” It was put to Mr Mains that the statement refers to ‘members’ plural rather than a single, named individual. Mr Mains’ explanation was that, “he [Harry Breen] made that statement and qualified it by stating Owen Corrigan.” In this regard, I note that the reference to ‘certain’, as opposed, for example, to ‘some’ members, does tend to suggest that Mr Breen, at least, may have had specific members in mind; but this is not conclusive.

6.1.22 It was put to Mr Mains that anything that was left out of his statement of 22<sup>nd</sup> March 1989 “never happened.” He replied that he took no pleasure in “sitting and naming another police officer, albeit through Mr Breen, and not for one minute am I sitting here 21 years later getting any pleasure.”

6.1.23 Having listened to and observed Mr Mains, and having carefully examined the different statements prepared in 1989, I accept fully his evidence as to the reservations expressed to him by Harry Breen on the morning of 20<sup>th</sup> March 1989. In accepting his evidence that Mr Breen named Owen Corrigan on that date and his explanation as to why this was not included in the 22<sup>nd</sup> March 1989 statement, I note that there is material before me suggestive of attempts by Mr Mains’ superior officers in the RUC to sanitise his account of events. In particular, the Tribunal has seen in evidence a draft statement with the salient line about Chief Superintendent Breen’s uneasiness in travelling to Dundalk having been crossed out by someone other than Mr Mains. I am of the view that Mr Mains was encouraged not to refer to Mr Breen’s uneasiness and specific concerns about Mr Corrigan in the interest of a greater expediency, namely not to do anything which could destabilise the relationship between the RUC and An Garda Síochána.

6.1.24 I would add that it appears from all of the evidence before me that neither the statement which Mr Mains did provide in 1989 – which refers to Harry Breen’s concerns about unnamed members of An Garda Síochána – nor the further specific information in relation to Owen Corrigan which I find as a fact Mr Mains did share with the senior officers, was communicated to An Garda Síochána. I find this extremely surprising. In the immediate aftermath of the killings of two of the most senior RUC officers to be murdered in the Troubles, the RUC was informed that one of them, only hours before his death, had expressed concerns about a Garda officer being in the pay of ‘Slab’ Murphy. It seems incomprehensible to me why the RUC did not immediately raise that matter with An Garda Síochána. The likeliest explanation that one can find on the evidence is Mr Mains’ account of what Sir John Hermon said to him in Newry on 21<sup>st</sup> March 1989, namely

that Owen Corrigan had already been investigated and had been cleared. Yet both the Police Service of Northern Ireland and An Garda Síochána have indicated to the Tribunal that there is no documentation to support the suggestion that such an investigation in relation to Detective Sergeant Corrigan was carried out. I am therefore compelled to the view that the information ought to have been, but was not, shared with the Gardaí, and no reasonable explanation for this failure can be discerned.

## **6.2 – Autopsies and Forensic Examinations**

6.2.1 The Tribunal received other documentary evidence from the Coroner’s file in addition to the draft depositions of Mr Mains. These included the autopsy reports in respect of Harry Breen and Bob Buchanan. In relation Mr Breen, the Pathologist’s opinion as to the cause of death was as follows:

“Death was as a result of shotgun wounds, some at least apparently caused by bullets from a high velocity weapon. The most severe injuries were those involving the head, with gross lacerations, extensive skull fractures and the evisceration of the brain. High up on the back of the head there was a small circular entrance wound, whilst the gross injury forward and to the left of it probably represented a major exit wound of high velocity type. The brain damage so caused must have been responsible for immediate death. Powder peppering around the entrance wound indicated that the shot has been discharged at close range. It could have been fired as he lay on the road and may well have been the last wound inflicted.

[...] Thus, it would appear that prior to the fatal head wound, the deceased had been hit by fragments by both the left and right sides. None of these had caused any mortal injury, and, if it had it not been for the head wound he should have survived.”

6.2.2 In relation to Bob Buchanan, the Pathologist expressed the following opinion as to the cause of his death:

“Death was a result of gunshot wounds, the most serious of which involved the head and upper chest. The severity of the wounds indicated that some or all had been caused by bullets and/or bullet fragments fired from a high velocity weapon or weapons.

[...]

Most of the bullets striking the deceased would appear to have come from obliquely in front and to the right of the deceased and to have passed through the car. At least one further bullet may have been fired from the right of the car, possibly from close range. There is the possibility of another bullet

hitting the head from the left side.”

6.2.3 The deposition of the Forensic Scientist and Scene of Crime Examiner confirmed the following:

“Bullet damage to the car indicated it had been fired at from, basically, three directions, these being the front, the near side and the off side front quarter. Eleven bullets had struck the front window screen with all but one having struck the driver’s side. These shots had been directed at the car from the front. Other shots fired from the front hit the roof, the bonnet and grill areas. Six or seven bullets fired from the front offside quarter struck the driver's side of the vehicle. Two bullets fired from the near side struck the front passenger’s door. The lower front quarter of this door showed an area of fragmentation damage, this damage was probably caused by the bullet which fragmented on the roadway between the ICP and the car’s original position. This is evidence to show that at least 28 or 29 bullets had struck the car. Other bullets may have entered and exited through the shattered windows. The car was removed from the scene. A spent cartridge was recovered on the roadway where the car had been sitting.”

6.2.4 One further document to which I consider it worth referring at this point is the 3 Infantry Brigade ‘Serious Incident Report’ dated 12<sup>th</sup> April 1989, which was put into evidence by retired Detective Inspector McConville. Enclosed with this Report were an Army ‘WISREP’ Report dated 23<sup>rd</sup> March 1989 and a 1 Royal Regiment of Fusiliers ‘Serious Incident Report’ dated 25<sup>th</sup> March 1989.

6.2.5 The first of these enclosed documents, the Army WISREP of 23<sup>rd</sup> March 1989, indicates that preliminary reports suggested that four weapons had been used in the assault – three assault rifles and one Ruger mini rifle. Two of the armalite assault rifles had a history of previous usage in subversive attacks. One of the rifles had been used in the helicopter attack at Silverbridge on 23<sup>rd</sup> June 1988, and the other rifle had last been used in a murder at Cullaville on 1<sup>st</sup> September 1987. Of note, the Investigating Officer’s comment on the attack was as follows:

“This was a professional ambush sprung from a well – chosen site. The contact point was from amongst buildings and at the end of an avenue of trees. This would have afforded the terrorists some cover from view from the surrounding countryside.”

6.2.6 In the second enclosure, under the heading ‘Commanding Officer’s comments,’ the Lieutenant Colonel of 1 Royal Regiment of Fusiliers stated as follows:

“This incident was a classic example of the exploitation of patterns created by soft targets. Meetings with the Garda at Dundalk were frequent by necessity and it was inevitable that patterns would be made.

The operation was well planned and ruthlessly executed by PIRA, using a major surveillance operation in Eire.

The tactful handling of incidents such as this is important. All troops and police involved in the clearance are to be congratulated on their handling of the situation.

Atrocities of this nature attract considerable media attention. The handling of the media by troops and police on the ground, and RUC P Info [press information] was exemplary.”

6.2.7 I note, in particular, the British Army comments, expressed clearly in both documents, as to the well – planned, well – executed and professional nature of the ambush.

6.2.8 The murder investigation conducted by RUC CID sought to identify the members of the Provisional IRA who had carried out the attack on Harry Breen and Bob Buchanan, something which goes beyond the terms of reference of this Tribunal. In its private investigation phase, the Tribunal was given access to RUC documenting this aspect of the murder enquiry. This was essential, lest, for example, a person suspected of involvement in the shootings was a known associate of a member of the Dundalk Garda Síochána. Ultimately, however, only such documents as I considered relevant to the Tribunal’s terms of reference were requested to be included in the documentation supplied to the Tribunal by the Northern Ireland Office.

### **6.3 – The Claim of Responsibility by the Provisional IRA**

6.3.1 The Provisional IRA contacted Downtown Radio to claim responsibility for the ambush. Retired Detective Inspector McConville of the RUC put the transcript of the following news bulletin, broadcast on Downtown Radio’s 11.00pm news bulletin on Wednesday, 22<sup>nd</sup> March 1989 into evidence:

“In their statement the IRA says that after shooting the police officers dead they searched the vehicle in which the two RUC men were travelling from their security talks with the Gardaí in Dundalk and they found the confidential documents. They say the documents relate to cross – border collaboration with the security forces but they don't give any further specific details. The IRA say that the two top officers were shot dead after their car came to one of a number of checkpoints which the IRA claims they were operating on Monday. They also say that the policemen acted suspiciously and attempted to drive off.

Then, according to the IRA statement, the IRA volunteers feared their own lives could be in danger and took what they call preventative action to prevent the RUC men's escape.”

#### **6.4 – The Investigation Conducted by the Dundalk Detective Branch in Relation to the Ambush**

6.4.1 Former Detective Superintendent Tom Connolly gave evidence to the Tribunal in relation to the investigation carried out at his direction south of the border in the immediate aftermath of the killings. He told the Tribunal that he gave assignments to Detective Gardaí to follow – up on a number of matters. The assignments included interviewing Gardaí working from 2:00pm to 10:00pm on the day in question, and taking statements from those working from 2:00pm to 4:00pm. This replicated, to some extent, the work being carried out by Assistant Commissioner O'Dea referred to in further detail in Chapter 9, but Mr Connolly told me his was a totally separate investigation which was not completed until long after the Assistant Commissioner *O'Dea Report*. Therefore, the results of his investigation were not fed in to the *O'Dea Report*.

6.4.2 The Tribunal heard evidence from a number of witnesses involved in this investigation and a number of completed job sheets arising from the investigation were put into evidence. As referred to in Chapter 4, the job sheets related to such matters as:

- (i) The investigation of phone calls made from the phone box in front of the Garda station; the investigation of the reported sighting of a red Ford Capri and that of the silver/grey car spotted by Sergeant Colton;
- (ii) the investigation of members of the public who called on business to the Garda Station during the period when the RUC officers arrived, including Josie Enright, to whom I have already referred;
- (iii) the investigation of the reported sighting of a lady with a notebook in the vicinity of the Garda station; and
- (iv) and the carrying out of house – to – house enquiries both along the Edenappa Road and at The Crescent, the terrace of houses facing the Garda Station.

In relation to the house – to house – enquiries, the Gardaí interviewed, for example, persons working in or around the McGeough complex on the day of the ambush, some of whom ultimately gave evidence before

this Tribunal.

6.4.3 Mr Connolly gave evidence that he assigned the task of carrying out enquiries in relation to the occupancy of The Crescent, to Detective Sergeant Séan Gethins. Mr Gethins told me that he and Detective Garda Paddy O'Connor interviewed all the people in the houses in The Crescent. He stated that nothing unusual was noticed and that it was obvious that nothing untoward was found in any of the premises as no further action was taken. He could not recall whether all the premises on The Crescent were occupied at the time but noted that “if there was any of them are unoccupied, [...] we’d have enquired who owned the premises.” He did, however, say if the building was unoccupied for a prolonged period of time this would not necessarily come to the attention of An Garda Síochána.

6.4.4 Retired Detective Garda O’Connor, who carried out this assignment with Detective Sergeant Gethins, also gave evidence before me:

“I did visit all the houses, I think every one of them, [...] at The Crescent facing the Garda station to check them out to see if there was any possibility that they might have been used for surveillance or anything like that.”

6.4.5 He told me that he and Detective Sergeant Gethins, “didn’t find anything that led to any suspicion in relation to any of the houses.” He stated that there was one unoccupied house at the Stapleton Place end of The Crescent, facing the Old Louth Hospital. This had been unoccupied for some time, and Mr O’Connor told me that he and Detective Sergeant Gethins had difficulty making contact with the owner of the house. However, he stated, “that was the only empty house there and we eventually found the owner and we were satisfied that there had been no unauthorised entry or anything in that house.”

6.4.6 Former Detective Garda Terry Hynes also confirmed to me in evidence that in the course of the investigation led by Detective Superintendent Connolly nothing was found in relation to possible surveillance from The Crescent; however, he also noted the possibility that people had been watching the station from elsewhere could not be excluded.

6.4.7 As part of the investigation carried on by Dundalk Detective Branch, information or intelligence about how the IRA operation had been carried out was also sought. While there is a chapter later in this Report that deals globally with intelligence pertaining to the Tribunal’s terms of reference, I do think it useful at this point

to refer to a number of pieces of intelligence obtained by the Gardaí during the course of the Detective Branch investigation.

6.4.8 One of these pieces of information has already been referred to, namely the confidential information received as to the arrival of an Active Service Unit on the Edenappa Road at 2.30pm. This information was received by Detective Sergeant Harney and Detective Garda Crowe.

6.4.9 A currently serving officer of Garda Crime & Security, Detective Superintendent Brian Brunton, put into evidence before the Tribunal certain précis of intelligence received by An Garda Síochána (I reiterate that the Tribunal had access to the original intelligence underlying these précis). A number of the précis relate to two pieces of intelligence received in April 1989 and it is therefore worth outlining them at this point in the narrative.

6.4.10 Two précis essentially contain the same piece of intelligence, which is as follows:

“Internal report dated April 1989, prepared by Garda Superintendent and based on information received from a reliable source. It reported that over 20 persons were involved in the PIRA operation that culminated in the murders of Chief Superintendent Breen and Superintendent Buchanan and that PIRA had four roads covered for over one week prior to the attack. The four roads were – Omeath/Newry Road north of the Border Crossing Point 1; Main Road Dundalk/Newry north of Border Crossing Point 5; north of Border Crossing Point 28 at Ballybinaby; Edenappa/Jonesboro (scene).”

6.4.11 Four other précis also contain essentially the same piece of intelligence, as follows:

“Information (1989) and assessed as probably true and emanating from a previously reliable source indicated that on the day of the shooting the IRA had men in position on the main Dublin – Belfast road, the main Omeath – Newry road and the Carrickastickan road in addition to the road on which the ambush occurred. The largest concentration was on the Carrickastickan road, that is the main Dundalk – Forkhill road. It stated that over 20 IRA men were involved in the operation that was in place for a week before Chief Superintendent Breen and Superintendent Buchanan were murdered. The report went on so as to provide details as to the identity of the planners and participants in the operation.”

6.4.12 I am pleased to note that the intelligence of this nature was passed by An Garda Síochána to the RUC

at the time. In this regard, I refer to a NIO document which contains the content of a fax sent by Detective Superintendent Connolly to the RUC in Newry. These faxes include a number of important additional pieces of information as follows:

(i) As referred to in paragraph 5.2.3, information that a van was parked at the Lisadoo Arms, Newry Road, Dundalk and that when the RUC officers passed heading towards Newry the van overtook them and drove to Edenappa. It was stated each group of PIRA members had vehicles scouting in their areas.

(ii) The intention of the operation was to abduct the officers for interrogation. The object of the abduction and interrogation was to establish from where the information came to alert the RUC to the intended raid on the RUC station at Loughgall. The main objective was to kidnap the two men, interview them and kill them.

(iii) It is believed that one of the gunmen panicked and shot when he thought the RUC men were getting away. It was the intention to block the road behind the RUC officers' car, but things went wrong when the officers reversed and attempted to make an escape.

(iv) It is stated that the IRA could have shot the officers on previous occasions but were anxious to establish from what source they received the information relating to Loughgall.

6.4.13 These elements were also reflected in the evidence of retired Detective Sergeant Séan Gethins. Mr Gethins was not at work on 20<sup>th</sup> March 1989 but confirmed to me that he was subsequently a member of Tom Connolly's investigation team. He was asked about the information there was on the ground in relation to how the ambush had been set up. He stated as follows:

“These two poor unfortunate gentlemen had been visiting Dundalk Garda Station plus other Garda stations frequently along the border, driving in their own car, leaving their cars parked outside Garda stations, and that the IRA would have been monitoring who was coming and going to the Garda stations and their special interest was in Chief Superintendent Harry Breen.”

6.4.14 When asked to explain the view that the special interest that was in Chief Superintendent Breen, Mr Gethins stated as follows:

“In the early 70s, late 70s, there was a big ambush in Loughgall, [this in fact occurred in 1987] where I think there was 10 prominent IRA men from Monaghan ambushed and killed by the SAS. Now, the IRA in south Armagh and all around the border were very anxious to find out who gave that information about the operation that took place, because it was an ambush where the SAS were lying in wait for an active service unit who were attacking a police station and it was obvious that they were acting on a tip – off, and after the murders, I am fairly sure that Chief Superintendent Breen was on television speaking about it. So they would have been of the impression that he would know of the informant.”

6.4.15 I can confirm that the Tribunal has in fact seen news footage from the time of the Loughgall incident in which Chief Superintendent Breen is present on camera showing the press the weaponry recovered from the deceased members of the Provisional IRA.

6.4.16 At a later point in his evidence, Mr Gethins again reiterated that he was strongly of the opinion that Harry Breen was the target:

“They wanted Harry Breen.”

6.4.17 He emphasised that the intention was to interrogate Harry Breen and then to kill him. He believed that this was supported by the nature of the attack, particularly when compared with earlier attacks on the Hanna family and Lord Justice and Lady Gibson, both of which were carried out by bombs hidden on the roadside:

“They could have planted a bomb on the road and detonate it under his car, but they wanted to interrogate him. But interrogation, they were going to kill the two of them anyways.”

6.4.18 When asked what he thought went wrong with the planned operation to kidnap and interrogate Harry Breen, Mr Gethins replied “panic”:

“Just because they were IRA men didn't say they weren't, some fellas just pull the trigger and started shooting and, they all shot them then.”

6.4.19 Mr Gethins also confirmed that from enquiries that the Garda made as part of Tom Connolly's investigation, the Provisional IRA “were on every road. They weren't just on the Edenappa road.” He stated

that the IRA were on “the main road, the Edenappa road and apparently from that there was a large concentration on the road leading into Jonesboro.” He emphasised that the IRA did not just appear or arrive on a road, but rather, mounted operations which could last for weeks. This involved lying out in fields from first thing in the morning until darkness fell at night and IRA members might even stay all night in the fields watching roads. He explained that, then, when their target was there, they came out onto the road.

6.4.20 The intelligence I have referred to above, received by the Garda in April 1989, referred to in excess of 20 persons being involved in the operation. However, Mr Gethins estimated that there could have been 60 to 100 persons involved in this particular operation. This is consistent with the view of retired Brigadier Liles, discussed in Chapter 3, that 70 men were involved in the operation.

6.4.21 Mr Gethins was asked if he believed that the IRA would have required visual identification of Harry Breen and confirmed that this was so. He stated that “anybody who knew him” could have provided the visual identification necessary in order to commence the operation.

6.4.22 Of course, many witnesses were invited to express a view on how the operation of 20<sup>th</sup> March 1989 was carried out: what was the minimum amount of time required to mount the operation; who was the target; what were the different phases of the operation and what was the trigger for the commencement of each? Various, and quite divergent, opinions were expressed on these issues such that it was difficult to draw any conclusions on the basis of the opinions of different witnesses alone. To give but one example, views as to how long it would have taken to mount the operation of 20<sup>th</sup> March 1989 on the day ranged from 20 minutes to up to eight hours. In these circumstances, I do not intend to list out the opinion of every witness on these issues. I record Detective Sergeant Gethins’ evidence here because it appears to have been very much based upon what he was hearing on the ground, as part of Tom Connolly’s team in the immediate aftermath of the murders.

6.4.23 However, I did hear the opinions of a number of impressive witnesses who had considerable experience of the South Armagh Brigade of the Provisional IRA. In this respect, I think in particular of the two former senior officers of the British Army who were requested by the Tribunal to examine the circumstances of the ambush and give their view as to the manner in which it was carried out. I shall now turn to summarise their evidence, as well as parts of the evidence of a number of other witnesses whose analysis I thought to be particularly incisive or well – informed.

## **Chapter 7**

# **Opinion Evidence as to the Execution of the Ambush by the Provisional IRA**

### **7.1 – The Evidence of Retired Brigadier Mike Smith**

7.1.1 Retired Brigadier Mike Smith served in Northern Ireland on operational tours in 1971, 1972, 1973, 1981, 1986, 1990 to 1992 and 1995 to 1997. His service in the 1980s was in South Armagh, and his service in the 1990s was in the border areas in Counties Tyrone and Fermanagh. He was not serving in Northern Ireland at the time of the deaths of Chief Superintendent Breen and Superintendent Buchanan. Retired Brigadier Smith was provided by the Tribunal with a brief of information in relation to events on the Edenappa Road on 20<sup>th</sup> March 1989 (this brief was by no means exhaustive and further information came to light subsequent to Mr Smith's providing a written report to the Tribunal). He surveyed the site of the ambush and provided evidence as to his view on the operation.

7.1.2 Retired Brigadier Smith told me the South Armagh Brigade of the Provisional IRA was “considered to be amongst the most capable and experienced of the terrorist groupings.” He said they were capable of mounting large – scale and ambitious terrorist operations, but also added that by 1989,

“they were very much risk averse, and therefore I think short notice operations would always be balanced against the risk involved and therefore would tend to be predicated on an considerable period in which they might have planned, prepared for, gathered information about a target or a likely target.”

He stressed to me the importance of the IRA gathering information so as to ensure “the correct identification of a target.” He said that the IRA gathered information at multiple levels and told the Tribunal that across the duration of the IRA campaign he believed there were “frequent examples that have come to note of where individuals, whether they were members of the security force or not, had established some sort of pattern which became predictable and allowed them, therefore, to be targeted.”

7.1.3 He explained to the Tribunal that he viewed Chief Superintendent Harry Breen and Superintendent Buchanan as a ‘soft target’ on the day of the ambush, in that the IRA would not have expected there to be an immediate counter – attack or reaction from the two officers:

“And so this individual, or individuals, were seen to be relatively isolated and unsupported and ‘soft’ to the extent that they were not, as a military or police patrol might be from either of the police forces, in a position to mount an immediate response to the situation.”

7.1.4 Retired Brigadier Smith told me that while the Provisional IRA gathered information and intelligence over a period, they would not mount an operation until a specific opportunity presented itself such that they were satisfied they had a good chance of succeeding in their objective:

“So at some stage there comes a trigger point that here is an opportunity that’s ready to be exploited or could be exploited or perhaps the situation itself demands, within the organisation, some form of action. And so I think these things build, or my imagination would be that they would build to a situation in which an attack is therefore planned and aimed to be initiated on the grounds that they have sufficient certainty that they can execute it with some good degree of success.”

7.1.5 I note particularly the witness’s view that the Provisional IRA would have had to have ‘sufficient certainty’ of success before mounting an operation.

7.1.6 Brigadier Smith noted that the Tribunal had informed him that Bob Buchanan had been using the same car since December 1986. In this regard, he commented as follows:

“So three years as a regular visitor, one would anticipate that there would be multiple locations in which it might have been sighted. So therefore the colour, registration, etc, might be known, and it may well have been observed leaving a number of Garda Síochána stations so there would be seen to be business there, and at the other end of the journey presumably leaving a number of RUC/PSNI stations where he would be known to have had business at that end.”

7.1.7 In contrast to his view (as set out above) as to the opportunity the Provisional IRA may have had to gather intelligence and information on Bob Buchanan, Mr Smith made the following interesting observation in relation to Harry Breen:

“For the Chief Superintendent that pattern seems to be far less strong, and therefore at what moment PIRA decided to launch an attack, whether the Chief Superintendent was simply unlucky in terms of

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being in that vehicle that day or there was an additional factor, of which I am unaware, that initiated the attack, I'm able to be much less conclusive there because there doesn't seem to be that collateral information.”

7.1.8 The witness added that he had “no particular information to understand why he [Harry Breen] would have been expected to have been in that vehicle on that day.”

7.1.9 Mr Smith then considered the timings on the day in question, from the meeting having been arranged at 10.30am (as noted in Chapter 3, I find that the meeting was in fact arranged at 10.15am), through the departure of the officers from Newry about 1.30pm (as also noted in Chapter 3, the evidence seems to suggest that this occurred at 1.40pm), their arrival at Dundalk Garda Station between 2.00pm and 2.10pm (although again, as noted in Chapter 3, I consider the evidence to establish their arrival to be a little later), and their departure just after 3.15pm to the ambush taking place at approximately 3.50pm. In relation to this sequence of events, Mr Smith noted:

“My overall impression was how compressed the timings were. I mean if it depended on the sighting of the vehicle departing Newry to the time of the actual attack itself, it's a little over two hours which obviously, in order to trigger the decision to mount an attack, to mobilise the forces required, to get them into position and then to actually conduct an attack of this nature, it's a very ambitious timeframe.”

7.1.10 Adding into the mix information that an IRA Active Service Unit arrived at the ambush scene at approximately 2.30pm, Mr Smith commented that “that further compresses the timescale.” He added that this information means that the terrorists arrived at the ambush scene approximately one hour before the officers left the Garda Station in Dundalk and therefore the decision to mount the illegal vehicle checkpoint “cannot have been dependent on those two officers being seen to leave the police station.”

7.1.11 The witness was asked to comment on the possibility that the trigger for the operation was the arrival of the officers at Dundalk Garda Station. He replied:

“Again, the more compressed the timeframe the more difficult the task. And my own experience as a soldier would suggest if you expect a soldier or a police team to respond at very short notice, you would be expecting to maintain them at a very high state of readiness in order to deploy, and that

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again would be very expensive in terms of resources or would require information that would suggest you're about to use them for a particular reason.”

7.1.12 Retired Brigadier Smith emphasised that the earlier the trigger for the operation, the more easily the operation could be mounted.

7.1.13 The witness told me that the evidence of cars being stopped on the Edenappa Road only minutes before Bob Buchanan's car arrived was indicative of the fact that at that point in time, the ASU knew the target was approaching. In this regard, Mr Smith noted that once Bob Buchanan's car had turned on to the Edenappa Road itself, he was in effect committed to approaching the IRA vehicle checkpoint as there was very little scope to turn off the road before that point:

“In practice, once they committed to the Edenappa Road, short of stopping and making three – point turn, they were pretty much certain to go into the VCP.”

Taking the journey back one step, he commented that once the car crossed the key bridge over the Castletown River in Dundalk town, this tended to confirm to anyone observing them that the officers were returning north and tended to narrow the route opportunities available to them.

7.1.14 The Brigadier did note that from the record of Bob Buchanan's crossings of the border, it could not be said that he continuously used the same route, but rather that he was:

“in the habit of varying his route north and south because he was known sometimes to arrive unannounced at Garda stations.”

I pause to say that I think this is a fair observation in that on some occasions Bob Buchanan did travel to one Garda Station and then onwards to another, presumably then returning home a different route. For example, he sometimes went to Monaghan, then across to Dundalk and back from Dundalk into Northern Ireland.

7.1.15 The witness considered that the quantity of ammunition fired suggested “quite carefully directed bursts of fire.” He felt that the pattern of fire did not suggest panic, and was somewhat sceptical of the notion that the purpose of the operation was to kidnap and interrogate the two officers, saying that if the intent was to capture rather than to kill, the IRA had the opportunity to take at least one of the individuals alive. This was a

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reference to the fact that Harry Breen was still alive after the initial burst of firing and was only killed by the fatal final shot fired at close range. The witness also felt that if the intention had been to capture, this could have been more easily achieved by the van, rather than overtaking Bob Buchanan's car, remaining behind it so as to block any possible route of escape. He emphasised that this was simply his opinion, and not based on any evidence in relation to the incident. The view is, I note, contrary to intelligence received in the immediate aftermath of the killings which clearly suggested there had been a desire on the part of the IRA to capture and interrogate.

7.1.16 Mr Smith was informed of Ms. Halpin's evidence to the effect that the members of the ASU were using walkie – talkies/CB radios. He said that this tended to suggest that there were persons at key points along the route out of Dundalk who had given the ASU on the Edenappa Road advance warning, by radio communication, and that the red car was en route towards it. He also expressed the view that insofar as the officers were followed, it was more likely that they were followed from a point after they had crossed the Castletown River Bridge rather than from, for example, the Garda station. He noted that if the IRA had covered a number of roads, there may have been other vans and personnel involved in the operation in addition to those on the Edenappa Road.

7.1.17 He also confirmed the British Army view, expressed at the time, that the position of the ambush was extremely well – chosen:

“It was just across the border in Northern Ireland; once the car had elected to travel on the Edenappa Road, there were very few opportunities to turn off before the illegal vehicle checkpoint; and the position was such that it would not have been visible from any security force location or easily visible from the air because of tree coverage.”

## **7.2 – The Evidence of Retired Brigadier Ian Liles**

7.2.1 Retired Brigadier Ian Liles also served in Northern Ireland for periods in the 1970s, 1980s, 1990s, and 2000s. He was not in Northern Ireland in March 1989, but, as noted in Chapter 3, arrived in South Armagh just a couple of months after the ambush on the Edenappa Road. He then served for two years, at the rank of Major, as Staff Officer Grade 2 (SO G2 – intelligence grade) to 3 Infantry Brigade in Northern Ireland.

7.2.2 He confirmed that he shared the view that the South Armagh Provisional IRA brigade:

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“were extremely professional and extremely risk averse. Operations would be cancelled if there was any doubt on the part of the terrorists that their escape was not as 100% guaranteed as possible.”

He said that in the two years he worked in South Armagh, he could think of no occasion where the IRA had mounted an ‘ad hoc’ operation.

7.2.3 Retired Brigadier Liles stated that, in his opinion, it would have been impossible to have started the operation and have it in place in less than three hours. Ideally, the IRA would have required five to eight hours to mount such an operation. In this respect, he referred to the number of “moving parts”:

“weapons from hides, cars being moved, personnel to be assembled, dickers to put en route, to do that is a complicated and time – consuming affair, just the time and motion piece of it.”

He noted that the South Armagh Provisional IRA did not tend to keep weapons in their own houses. The weapons were collected from hides which were admittedly fairly close to the locations where they might be used. The weapons were generally collected by someone other than the person for whose use it was intended.

7.2.4 Given the timelines, Mr Liles did not consider that the operation could have been mounted on foot of information, whether by way of IRA surveillance or a tip – off from within the Station, that the two RUC officers had arrived at Dundalk Garda Station.

7.2.5 He also agreed with the evidence of Mr Smith that the operation as carried out on the Edenappa Road was “certainly a kill operation,” and that it had “every single hallmark of a straight forward murder” rather than an attempt to kidnap the officers. He also agreed that the amount of ammunition discharged suggested “well – controlled fire” and not panic.

7.2.6 The witness also gave evidence that he was inclined to say that the issue of the Edenappa Road being out of bounds was “almost irrelevant”:

“the Edenappa road was in and out of bounds for a whole host of suspicious activity being reported by people. Gunshots heard. Edenappa Road, Concession Road, all of those roads that link down onto the border were regularly put out of bounds, and it could be anything from suspicious activity, a member of the public phoning in.”

7.2.7 He said he would personally not have used the Edenappa Road because, first, it was not particularly covered by the observation towers and, secondly, the IRA had history of operations in that area.

7.2.8 The evidence of RUC Inspector Charles Day to the effect that Bob Buchanan may have been followed on 14<sup>th</sup> March 1989 was put to Mr Liles. He stated that it could indicate a previous attempt at an operation targeting Bob Buchanan, “but, taken on its own, it could just be a jumpy officer or somebody who was looking to be followed.”

### **7.3 – Ian Liles’ Analysis When Evidence in relation to Radio Signals Traffic is Factored In**

7.3.1 Retired Brigadier Liles subsequently factored into his assessment his knowledge that radio signal traffic had increased from between 11.30am and noon on Monday, 20<sup>th</sup> March 1989. He explained that “a concerted period daytime activity would have been very unusual.” Such radio activity was generally heard at night and, in particular, was associated with night – time smuggling. The radio signals traffic continued until the conclusion of the operation.

7.3.2 Mr Liles confirmed that if the radio activity was being noted at 11:30am, preparation for the operation would obviously have been underway sometime earlier. He felt that the latest that the preparation would have begun was 9 or 10 o'clock that morning. There was, however, was an exception to this:

“The only exception to that and how they might have been able to do it from a start at 11:30, 12:00 is if the policemen had been targeted; they were pretty sure they were going to come within a week and they had started an operation and were waiting for trigger, then perhaps you could have a start of 11 o'clock. So a lot of preparation had been done. But it couldn't have been done from a cold start.”

7.3.3 At a later stage, he emphasised that his evidence was that the operation had started at 11:30am given that this was when the first signs of its being mounted could be discerned from radio signal traffic. This evidence was based on after – the – fact analysis of the radio signals’ intelligence. His opinion, as opposed to the evidence, was that the operation had probably started about 10.00am that morning.

7.3.4 He did recall that a similar amount of radio intelligence had been recorded sometime before that day:

“I recall, and this has been told, not seen, that there may have been something similar some weeks

previously, but not necessarily the same operation."

At a separate point in his evidence, he stated that he was not aware of any indication that this prior activity related to a dry – run or rehearsal of the ambush of 20<sup>th</sup> March 1989. The possible previous operation was not, he thought, connected to Chief Superintendent Breen and Superintendent Buchanan. He also told the Tribunal that had the operation to ambush the two officers been a speculative operation run over a number of days on the basis of a general pattern of travel on the part of the target, he would have expected to see similar patterns of intelligence traffic previously, but had no recollection that such patterns were recorded.

7.3.5 He said that on the basis of the collated intelligence, a theory had been formulated that there were three active service units available to the IRA on 20<sup>th</sup> March 1989. He said that a single IRA ASU could have covered two roads but "this would have been pretty tight."

7.3.6 Mr Liles explained that whilst a "dirty analysis" – which I took from his evidence to mean a raw analysis of the initial intelligence without cross – reference to any other information – was done on the intelligence traffic straight away, this did not mean that it was done "in real time." These events under discussion occurred before the age of computers and what was recorded was recorded by hand in logs, and communicated to other interested parties by telephone call. This meant that the delay between something happening and the information being received to enable 'dirty' analysis to take place could be anything from half an hour to two or three hours. So the information was not received instantaneously. Furthermore, he highlighted in his evidence that the analysis of the radio signals' traffic was not all carried out on the same day: it is easy, he said, with hindsight, to link the traffic with the subsequent ambush, but the traffic may not have immediately been of such intensity at 11.30am or 12 noon as to indicate that a really big operation was under way.

7.3.7 At a later stage in his evidence, he said that the earliest reports of the increased intelligence activity could had been received was probably about 12:30pm. He again emphasised that it was not "real – time reporting": "had it been, the superintendents would probably still be alive."

7.3.8 He explained that when such intelligence was received, the Army would check to see if there was anything specific of note taking place that day. For example, one would look at what troops or RUC officers were on the ground to see if they were being targeted. One would also check whether there had been any notifications of VIP movements, or whether there was helicopter activity which may be the subject of

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targeting by the Provisional IRA. This evidence does appear to me to dovetail with the evidence of Witness 62, set out at section 4.4 of this Report, in relation to a phone call he received from the office of the Regional Head of RUC Special Branch, the late Detective Chief Superintendent Frank Murray, on the afternoon of 20<sup>th</sup> March 1989. Mr Liles confirmed to me that Frank Murray was his main liaison within with the RUC, and that Detective Chief Superintendent Murray had access to the same intelligence and analysis in relation to signals traffic as he had.

7.3.9 He emphasised, however, that the intelligence in relation to radio signals traffic related to a wide, as opposed to a specific, area:

“there was nothing at that stage saying it was going to happen on the Edenappa Road and that I can categorically state. It covered an area from Newry to Bessbrook to Cullyhanna to Slieve Gullian and down onto BCP 1, so that would have meant that the whole of south Armagh being put out of bounds. I mean, you are talking to me, as, you know, all of this activity was centered on the Edenappa Road, why didn't we put it out of bounds? That is not the case, I don't think I ever said that.”

7.3.10 His summary of the effect of the information as to radio signals' traffic on the overall analysis of the Provisional IRA operation on 20<sup>th</sup> March 1989 was as follows:

“I think that was the main thing that came out of the study, that this was not, this was not the two policemen driving into the police station and the IRA suddenly mounting an operation to hit them on the way back. The operation started that morning between 11:30am and 12.”

#### **7.4 – Other Opinion Evidence in Relation to the Execution of the Ambush**

7.4.1 As noted at the conclusion of the chapter 6, divergent opinions were expressed on how the ambush was set up and I do not consider it necessary or useful to summarise the opinion of every witness in this Report. However, the comments of a number of witnesses did make an impression upon me, and these are set out below. These are comments in the way of general, objective assessment of the operation, as opposed to information based on specific intelligence known to that witness.

7.4.2 Witness 62, an RUC Special Branch officer with extensive experience in South Armagh, told me that,

“without a shadow of a doubt in my mind [the operation] was pre – planned. And with a large element

of pre – planning.”

This was not, he said, a spur of the moment operation.” Although he had indicated in his written statement to the Tribunal that he considered that the operation could have been mounted within a half an hour, he stated in oral evidence that, on reflection, the IRA would have needed considerably more time than this, as much as two hours.

7.4.3 He emphasised that one of the reasons the South Armagh Brigade of the IRA survived in tact for so long was because “they were ultra – cautious.” He elaborated by explaining that if they had seen one vehicle out of place, they would simply have called an operation off. In this regard, he also stated that the IRA would not have put 20 – 25 people out on the ground in South Armagh on 20<sup>th</sup> March 1989:

“unless they were certain of the high value of the target that they were about to intercept.”

They would not mount an operation on pure speculation because:

“every time they came together, especially with weapons, they ran the risk of being intercepted by – in that area particularly – the army.”

7.4.4 Witness 62 told the Tribunal, from his experience of dealing with the IRA, that there was:

“a strong possibility that they had actually run the operation on several other occasions and it just didn't work for them.”

He agreed it was a "fair assumption" that the operation had been set up in advance, just simply waiting for the trigger to carry it out, and, also, that the weapons may have been moved from the permanent weapon hide to a more convenient temporary in anticipation of the operation. He initially told the Tribunal said that the first trigger for the carrying out of the operation would be information that the RUC officers were due to arrive or had arrived at Dundalk Garda Station, and the final trigger would be radio communication from an observer at the Y – junction of the Edneppa and main Dundalk – Newry Roads to inform the ASU of the route the car was taking into Northern Ireland. When he was asked to comment on the fact that an ASU was in place on the Edneppa within 10 minutes of the arrival of the officers at the Station, however, he discounted this as a possible initial trigger:

“they must have known [that the men were coming to Dundalk] because they couldn’t have mounted that in 10 minutes or thereabouts.”

7.4.5 At a later point in his evidence, he elaborated:

There is no way in 10 minutes that they could assemble – get armed up, get the vehicles and go on the ground. I mean that would be an impossibility.”

7.4.6 Retired Assistant Commissioner of An Garda Síochána, Dermot Jennings, who spent a considerable portion of his career in the Garda Crime and Security Section, also highlighted that a large element of planning would have gone into an operation of the scale of that mounted by the Provisional IRA on 20<sup>th</sup> March 1989. He placed particular emphasis on the planning required to ensure that the IRA personnel could get to the ambush site without being intercepted en route, and, crucially, could make their escape after the operation without being caught by the British security forces or the Gardaí.

7.4.7 Retired Assistant Commissioner Joe Egan felt that, given the particular characteristics of the Provisional IRA in South Armagh – a highly sophisticated organisation in place and people living near one another – the operation could have been mounted in 20 or 30 minutes. He felt that it was relatively easy for the IRA in an area such as South Armagh to retrieve their weapons quickly and, as already noted in Chapter 5, noted that the use of CB radio communication was rampant by 1989 and was “a well – tried and trusted system of communication.”

7.4.8 Retired Detective Chief Superintendent Peter Maguire, who for 25 of his 30 years of service in An Garda Síochána focused on the threat from subversives, described the South Armagh Unit as “the most efficient unit of the Provisional IRA in the State or Northern Ireland.” He also described it as the most “security conscious” unit. His understanding was that in 1989, the South Armagh Unit had about six operational officers and 30 to 50 operational volunteers. He told me that the IRA organisation he knew in South Armagh:

“would have the capacity to mount a sophisticated operation at very short notice.”

He elaborated and offered the view that such an operation could have been mounted within an hour. When it was put to him that some witnesses had suggested that the IRA may have mounted the operation the subject matter of this Tribunal’s inquiries for one week, he gave evidence that it was “much, much shorter than that.”

7.4.9 Detective Chief Superintendent Peter Kirwan is the serving head of the Security and Intelligence Section within Crime and Security in Garda Headquarters. A significant portion of his evidence to the Tribunal related to the *Camon Investigation*, in which he had a role, as a Detective Inspector, in assisting Chief Superintendent Seán Camon, and to intelligence matters. These aspects of his evidence are dealt with in Chapters 14 and 21 respectively.

7.4.10 However, he also made some observations in relation to the timeframe of 20<sup>th</sup> March 1989. In particular, on the basis that a van dropped off members of the IRA Active Service Unit on the Edenappa Road at 2.30pm, he considered that the timeframe was “too tight” for the IRA to have got its information only upon the arrival of the RUC officers at Dundalk Garda Station. Later in his evidence, he added that it was “virtually impossible for that operation to be mounted in that timeframe.” He proceeded to say that: “if we take it as read that the knowledge [that Breen and Buchanan were coming to Dundalk] within the Guards was [...] tightly restricted to senior officers at the time,” the timeframe “significantly diminishes and possibly excludes the possibility” that the information leading to the ambush could have come from a Garda source.

## **7.5 – An Overview**

7.5.1 I do not propose to analyse in detail, at this stage, the opinions set out in this Chapter, or to reach definitive conclusions in relation to the execution of the ambush. Rather, the views summarised here will be borne in mind and considered alongside all other evidence in assessing the version of events provided to the Tribunal by former personnel of the Provisional IRA and in addressing the central question of collusion in the analysis section of this report. I do, however, think it appropriate to indicate here that on the basis of the opinion evidence set out above, one firm conclusion can be drawn: namely, that 10 minutes would not have been sufficient time to organise and put in place an Active Service Unit on the Edenappa Road. On this basis, the arrival of the RUC officers in Dundalk at 2:20pm or shortly thereafter cannot have been the initial trigger for the mounting of the Provisional IRA operation which led to the deaths of Chief Superintendent Breen and Superintendent Buchanan.

## Chapter 8

# Media Coverage, Political Reaction and the Government's Decision to Commission an Investigation

### 8.1 – Introduction

8.1.1 I now return to the chronological analysis of events and, in particular, to the media reaction to the murders of the two RUC officers, the reaction from the heads of the two police services and political leaders, and the decision of the Irish Government to request the Garda Commissioner to carry out an investigation and report to the Government.

### 8.2 – Media Coverage of the Events of 20<sup>th</sup> March 1989

8.2.1 Evidence was put before the Tribunal of a number of broadcast and print media reports dating from the days immediately after the ambush. It is not intended to recite the contents of the reports in full, but rather to identify a number of the most relevant extracts.

8.2.2 Some of the reports raised the possibility that the RUC officers' travel arrangements or movements had been leaked to the Provisional IRA. This is perhaps best epitomised by the front page headline in the *Irish Press* published on 21<sup>st</sup> March 1989, which stated, "Mole fear in double killing." The article, written by Fergal Keane, stated that:

"A hunt is under way to establish if a 'mole' set up the two RUC officers shot dead by the IRA on the border yesterday. Chief Superintendent Harry Breen and Superintendent Bob Buchanan were murdered as they crossed the border from Co. Louth after talks in Dundalk with Garda Anti – Terrorist officers.

[...]

The murders are bound to renew speculation that a mole may have given the IRA exact information about when the two RUC officers would be crossing the border and what route they would be taking back to their base in Armagh.

Last night the attack was seen as the third in a series of border attacks on top northern officials by the IRA. Two earlier attacks in 1986 and last year of northern judges has raised speculation that an IRA mole is operating either in the Gardaí or at Dublin Airport.

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In July last year, Robert and Maureen Hanna and their six year old son, David, were killed near Killeen when an IRA bomb blew up their car in mistake for that belonging to northern High Court Judge Ian Higgins. The Hannas had just returned from the US on the same flight as Mr Justice Higgins into Dublin airport and it is thought that the IRA had been tipped off about his arrival.

In April 1987, Mr Justice Maurice Gibson and his wife, Lady Cecily, were killed when a bomb destroyed their Ford Fiesta car at Killeen. The Gibsons had just returned from holiday in Britain and had driven from the ferry in Dublin.

Both the Gibsons and Mr Justice Higgins had been provided with a Garda escort to the border. Mr Justice Higgins missed death as he had been delayed for an hour at Dublin airport and the Hannas’ car was blown up in mistake for his.

Senior Gardaí reacted with shock to the killings last night. One senior officer described the murders as ‘a disaster’ for security co – operation.

An investigation has already begun in Dundalk as to how the two officers were ambushed but the killings were certain to raise suspicion about how the IRA is getting its information about people crossing the border. Gardaí have in the past ruled out allegations of a mole on the southern side, but the latest killings are certain to fuel speculation and recriminations in Britain and the north.”

8.2.3 An article on page 2 of the same newspaper included the following paragraph, however, that:

“There is no suggestion from RUC sources that they believe details of the officers’ travelling plans were leaked to the IRA by security forces in the Republic or the North, but one source last night said that the meeting had been arranged ‘at the last minute’.”

8.2.4 The front page headline of *The Irish Times* of 21<sup>st</sup> March 1989 was

*“Government To Order Inquiry As IRA Kills Top Level RUC Men.”*

The article that followed included the following paragraph:

“The Government is today expected to order the Garda authorities to mount a top level investigation into how the IRA may have acquired information about the movements of the

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two officers. The inquiry is expected to focus on the possibility of IRA penetration of security forces communications links.”

8.2.5 At a later point in this article, the journalist, Fergus Pyle, then Northern Editor, stated:

“The IRA in south Armagh, in a statement, said that the victims had been identified as ‘crime forces personnel’ before they were killed. In spite of an RUC denial, the circumstances of the killing are likely to trigger Unionist demands for a major investigation into the possibility of an IRA mole, either in the Garda or among civil servants in the north, who knew about the two officers’ movements.

[...]

As speculation grew that the IRA must have inside information to plan the attack on the two men, the RUC in Belfast issued a categorical denial that this was the case.

A spokesman said: ‘Even the Gardaí didn’t know what way they would be going. There were no bombs, so it wasn’t prepared beforehand. The IRA must have been using their radios, and they set the attack up after seeing the men driving to Dundalk police station’.”

8.2.6 In a separate article in the same newspaper on the same date, *The Irish Times* Security Correspondent, Séan Flynn, reported, under the heading ‘*Gardaí To Focus On Breached Security*’ that:

“The Government is expected to request the Garda authorities to begin a top level investigation later today into how the IRA acquired information about the movements of the two senior RUC officers murdered yesterday evening.”

8.2.7 At a later point in the article, it was reported that:

“Two years ago, there was a spate of allegations by Unionist politicians about the existence of a Garda mole. These followed the murder of Lord Justice Gibson and Lady Gibson on the border as they travelled to Belfast from the car ferry in Dublin. It subsequently emerged, however, that Lord Justice Gibson had ignored RUC advice and made his travel arrangements in his own name.

Further concerns about internal security were raised when a Garda document on the travel arrangements of the British ambassador, Sir Nicholas Fen, was apparently leaked to the Provisionals in 1987. The Government set up a top level investigation to trace the source of the leak and Garda sources at one stage indicated that the arrest of an officer was imminent. In the event, however, nobody was charged.”

8.2.8 Turning to the *Irish Independent*, its front page headline on Tuesday, 21<sup>st</sup> March 1989, was: “*Ambush – RUC Chiefs Die In Hail Of Bullets.*”

The ensuing article included the following paragraph:

“As the Provisional IRA last night claimed responsibility for the murders, a major investigation into a possible security leak was launched on both sides of the border. The probe by the Gardaí and the RUC will try to discover how the Provo apparently knew the two officers were on their way back from a meeting with the Gardaí in the south.”

8.2.9 In a separate article in the *Irish Independent* on the same date, Barry White, in an analysis piece, entitled “*Death Of The Border Sparks ‘Leaks’ Alert*” reported as follows:

“The death of two RUC men on the border, apparently returning from a security meeting with senior Garda officers in Dundalk, could have wider repercussions than any murders in recent months.

It raises questions about the confidentiality of such meetings which take place on a regular basis and must provoke a storm of protest by Unionist politicians. They and their constituents identify totally with the RUC, and if there is any question of information having been leaked from Garda sources, however inadvertently, about the movements of the police men, there will be an enormous political fall out.

[...]

An immediate investigation will take place and will be expected to pinpoint the source of the information available to the IRA, if they carried out the killings.

Until the facts are known, relations between the British and Irish Governments must again be strained at a time when the IRA were causing alerts in Britain, and sectarian murder has again become a feature of northern life. The last thing that the Anglo Irish – process needed was a security lapse of this nature.”

8.2.10 I pause to note that, as indicated in these articles, similar media speculation had occurred in the wake of the bombing at Killeen which led to the deaths of Lord Justice and Lady Gibson. Mr Gerry Collins, then Minister of Justice, confirmed to me in his evidence that he could recall this press coverage, but stated that it was not present in “the more responsible media.” Evidence was also put before the Tribunal of Parliamentary Questions which were tendered to Mr Collins, as Minister for Justice, in April 1987. The Parliamentary Questions were in the following terms:

“To ask the Minister of Justice if his attention has been drawn to the serious allegation that a breach of security within the ranks of the Garda Síochána led to the murder of Lord Justice Gibson and his wife, and it is now in a position to refute these allegations and if he will make a statement on the matter.”

8.2.11 Equally, evidence was put before the Tribunal that similar issues were raised by the media just over one year after the death of the Gibsons, in the aftermath of the deaths of the Hanna family at Killeen on 23<sup>rd</sup> July 1988. There were two headlines of note published in the *Newsletter* newspaper in Northern Ireland two days later, on 25<sup>th</sup> July 1988. The first was a banner headline entitled “*Judge was target Provo Murder Bid. Hunt On For IRA Mole.*” A second headline was entitled “*Provos’ Garda Mole In VIP Tip – Offs.*”

8.2.12 Returning to March 1989, both police services and both Governments moved quickly to address – and indeed quell – the media speculation of mole. The Tribunal viewed footage of a press conference given by the Chief Constable of the RUC on 21<sup>st</sup> March 1989. In the footage, Sir John Hermon repeated on a number of occasions that the RUC was in possession of information which firmly established that the ambush was carried out without any assistance from a ‘mole’. When repeatedly pressed by a journalist to elaborate upon the information which allowed him state this, Sir John Hermon declined to do so.

8.2.13 The press conference was reported in *The Irish Times* of the following day, Wednesday, 22<sup>nd</sup> March, 1989. The article quotes Sir John Hermon as having stated:

“I can say now, categorically, that the evidence which we have firmly confirms that there was no mole, and we ask that it should be discounted very firmly and very clearly.”

8.2.14 I have to say that nowhere in the RUC papers furnished to this Tribunal by the Northern Ireland Office is there any document which contains information of the nature described by Sir John Hermon, namely information which allows one firmly to discount the possibility of a mole. Frankly, I can only conclude that such information did not exist; had it existed, no doubt it would have been produced to Judge Cory and this Tribunal would not have been established.

8.2.15 I can only assume that this statement was made for the purposes of avoiding any disagreement with An Garda Síochána, and to give the impression of two police services united in solidarity against the IRA. In this regard, I note the following contents of an article, also published in *The Irish Times* of Wednesday, 22<sup>nd</sup> March 1989, by Denis Coughlan, Political Correspondent, entitled “*The Government Orders Inquiry*”:

“The Government has ordered an immediate investigation of the circumstances surrounding the deaths of the two RUC officers as an indication of its concern that co – operation between the two forces should continue at the highest possible level.

There was some annoyance in Government circles over the suggestion that the deaths might be in any way due to a breach of security in the Republic. Arising from a discussion in Cabinet, the Garda Commissioner, Mr Eugene Crowley, has been ordered to conduct an investigation and to report urgently to the Minister for Justice, Mr Collins.”

8.2.16 I note that retired Chief Superintendent John Nolan of Dundalk told the Tribunal that when he met Sir John Hermon and a number of other senior RUC officers in Newry on the day after the ambush, “nobody touched on the question of a leak.” He said that everyone shared the view that the two RUC officers had been followed. Mr Nolan did, however, accept that the Chief Constable could not have possibly known at this stage whether or not information had been leaked from Dundalk Garda Station and that any view expressed by the Chief Constable on that date could be regarded as speculative.

8.2.17 Other press reports of 22<sup>nd</sup> March 1989 demonstrate that the Irish Minister for Justice, the Commissioner of An Garda Síochána and the Secretary of State for Northern Ireland had all been equally quick to deny the possibility of a mole.

8.2.18 A report dated 22<sup>nd</sup> March 1989 was headed “*Collins Dismisses Speculation On Mole*”. This report stated as follows:

“Speculation that an IRA mole operating in the Garda had been involved in the shooting dead of the two senior RUC officers was rejected as being totally untrue by the Minister of Justice, Mr Collins, yesterday. A lot of emphasis had been laid on the theory that an IRA informant had provided intelligence from the Garda. The Minister had said that he totally rejected this. “It is certainly not the first time that such a rumour has been used. I was very happy this morning to hear the RUC say that they have every faith in the Gardaí” Mr Collins added.”

8.2.19 Again, I feel compelled to question how Mr Collins was in a position to reach such a definitive view of the matter by 21<sup>st</sup> March 1989, just one day after the ambush. I will return to this issue below at paragraph 8.3.4 onwards when I summarise the evidence given by Mr Collins to the Tribunal.

8.2.20 A third report dated that the 22<sup>nd</sup> March 1989 was entitled “*No IRA Mole In Garda – Chief.*” This report stated:

“The Garda Commissioner said last night that he absolutely rejected allegations of an IRA mole in the Gardaí. Speaking at the Association of Garda Sergeants and Inspectors’ annual conference in Donegal, Commissioner Eugene Crowley said he hoped the investigation into Monday’s shooting of the two RUC senior officers will secure the means of allowing security meetings between the two forces to continue. He joined the RUC Chief Constable, Sir John Hermon, in rejecting allegations that an IRA mole in the Garda had provided information which led to the murder of Chief Superintendent Breen and Superintendent Buchanan near Jonesboro on Monday.”

8.2.21 The views that I have expressed in respect of the comments of Sir John Hermon and then Minister for Justice, Gerry Collins, apply with equal force to the comments of Eugene Crowley. It is difficult to understand how Mr Crowley could have rejected the allegations in circumstances where on that very day, the man he had appointed to investigate the circumstances and arrangements relating to the meeting, Assistant Commissioner Ned O’Dea, had only arrived in Dundalk to commence his investigation. In his evidence to this Tribunal, discussed in greater detail below, former Assistant

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Commissioner O’Dea himself made this point. When it was put to him that this report suggested that the Garda Commissioner had in effect announced the results of his investigation in advance, Mr O’Dea replied:

“He couldn’t have done that because he wouldn’t have been speaking to me. I didn’t speak to him from the time I got my instructions to the time it was over.”

8.2.22 When it was put to him that the Commissioner must have had confidence that Mr O’Dea was going to bring back a report which conclude there was no leak, Mr O’Dea reiterated that, “he couldn’t know that in advance.”

8.2.23 An article in the *Irish Press* on Wednesday, 22<sup>nd</sup> March, 1989, appears to suggest that the Secretary of State for Northern Ireland, the Right Hon. Tom King M.P., what might be regarded as a more open – minded approach:

“Meanwhile, in the House of Commons, Mr King gave a categorical assurance that he did not know how the two men were murdered and what had occurred precisely and said the MPs would have to wait for these answers until a full investigation was completed by the RUC and the Gardaí.

He was grateful for the immediate and forthright assurance given by the Taoiseach that every possible co – operation would be forthcoming to ensure that those responsible were apprehended and brought to justice.”

8.2.24 However, an *Irish Independent* article of the same date indicates that Mr King also denied the possibility of a mole and instead focussed on the theory that the RUC officers had been followed by IRA ‘spotters’:

“He told MPs that he was greatly assured by Mr Haughey’s decision to personally assign Garda Commissioner Eugene Crowley – a friend of Sir John Hermon – to supervise the investigation.

That investigation is likely to centre on known IRA sympathisers and suspected activists living and based in Dundalk. It is now clear that the ambush was arranged with the help of IRA ‘spotters’ who trailed the two officers”.

8.2.25 Finally, the contents of an article in the *Irish Independent* of Monday, 27<sup>th</sup> March 1989 are noteworthy. The article records the visit of Sinn Fein leader, Gerry Adams, to Crossmaglen the previous day. Mr Adams had been attending an Easter parade in the small Armagh village. The article recorded that at the parade, a hooded IRA man made a statement in relation to the killings of Chief Superintendent Breen and Superintendent Buchanan:

“A hooded IRA man in battledress read a statement after the Sinn Fein President spoke. A statement referred to the murders of the two RUC officers, Chief Superintendent Breen and Superintendent Buchanan, who were shot dead in their car as they returned from meeting Garda officers in Dundalk.

The IRA man alleged that one of the police officers was responsible for the murders of eight IRA men at Loughgall two years ago and for an RUC baton charge on mourners at the funeral of IRA man, Brendan Burns, at Crossmaglen last year.”

8.2.26 The focus on Loughgall in this statement seems to me to echo to some extent the evidence I heard from retired Detective Sergeant Seán Gethins, which is set out in section 6.4 of this Report.

8.2.27 In summary, the media reports establish two important points. Firstly, the possibility of a mole was unquestionably a live issue in the days following 20<sup>th</sup> March 1989. Secondly, this possibility was hastily denied by the relevant Government Ministers and police service chiefs on both sides of the border. Their denials appear to me to have issued before their respective investigations had properly begun, never mind concluded. In the words of retired Deputy Chief Constable Blair Wallace, any statement ruling out collusion within 24 hours of the murders was “premature.” He went on to note that the denial may well have been made “against a background of the two forces wanting to be seen to be closely working together.” To put the matter another way, it seems to me that the political expediency of safeguarding progress made in cross – border security co – operation since the 1985 Anglo – Irish Agreement was deemed to outweigh the desirability of awaiting the outcome of investigations so as properly to ascertain the truth of the matter. I will return to this point at the conclusion of Chapter 9 in relation to the *O’Dea Report*.

### **8.3 – The Government’s Decision to Commission an Investigation**

8.3.1 As was reported in some of the newspaper articles already referred to, at a Cabinet meeting on Tuesday, 21<sup>st</sup> March 1989, the Government of Ireland directed the Garda Commissioner to carry out an investigation into all of the circumstances and arrangements relating to visit of the RUC officers to Dundalk Garda Station. The Government released the following statement after the conclusion of its Cabinet meeting:

“The Government at today's meeting considered the killings of the two senior RUC officers on their return from a meeting with the Garda officers in Dundalk and reiterated the commitment already given that every possible co – operation would be provided to the northern authorities in relation to the investigation of this outrage. To this end, the Commissioner has been asked to conduct an immediate and thorough investigation of all the circumstances and arrangements relating to the attendance of the deceased officers in Dundalk and to report urgently to the Minister for Justice on the matter.”

8.3.2 Pursuant to the provisions of the Constitution on Cabinet confidentiality, the Tribunal applied to the High Court for access to the Cabinet papers underlying the Government’s decision. The Tribunal’s application in this regard was not opposed by the Department of An Taoiseach and the High Court ordered that the documents be provided to the Tribunal.

8.3.3 On foot of the High Court’s Order, the Tribunal was provided with a manuscript document recording in shorthand a minute of the discussion which took place at Cabinet in relation to the murders of Chief Superintendent Breen and Superintendent Buchanan. This appears to note that the Minister for Justice informed his colleagues that, “car parked in front of station. Would have been seen,” and that the Taoiseach then asked that the Commissioner carry out a full investigation.

8.3.4 The Tribunal also had the benefit of oral evidence from the then Minister for Justice, Mr Gerry Collins. Mr Collins commenced his second period of service as Minister for Justice in March 1987 and continued in this post until July 1989. He was therefore Minister for Justice at the time of the Gibson killings, the Hanna killings, and the killings that are the subject matter of this Tribunal.

8.3.5 In his evidence, Mr Collins explained that the ambush on the Edenappa road was a very

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significant event because of the potential political ramifications, in particular in terms of the relationship between the Irish and British Governments:

“This was an exceptionally, a very, very serious outrage, if you like. It was an effort to break down the lines of communications between the Gardaí and the police in Northern Ireland. It was something that should never have happened, but it happened, and it was very, very serious. And obviously it could have an impact on the relationship between the British and Irish Governments. And the winners of the day, obviously, would be the Sinn Fein, IRA people.”

8.3.6 Mr Collins noted that the two victims:

“were a very serious rank, key players in the exchange of information system that was in operation which both sides were benefiting from.”

He stated that it was the view at that time that murders of this nature were happening far too often. When asked what was in his mind and the minds of his Cabinet colleagues when deciding to direct an investigation, he replied,

“to get the full and exact picture and then do whatever was necessary to do emerging from that.”

8.3.7 He noted that the Commissioner of An Garda Síochána appointed:

“probably one of the most able men in the force, Ned O’Dea, to conduct the investigation.”

At a later point in his evidence, he described then Assistant Commissioner O’Dea as:

“the best officer in the force to deal with the organisation, a man of the most highest intelligence, highest integrity of police work.”

8.3.8 When asked whether he felt at the time that there was a possibility of a problem in terms of the leaking of information, or whether he and his Cabinet colleagues had discussed such a possibility, Mr Collins said:

“To my knowledge and to the very best of my recollection, I don't think that ever arose during our discussions at Government level or, indeed, within the Department of Justice.”

8.3.9 When asked whether there may have been reluctance on the part of both police services to contemplate the possibility of a mole, Mr Collins was emphatic in saying that this was not the case. He emphasised that if there was a mole this would have to have been dealt with. He also gave evidence that at no time after the Gibson or Hanna killings did the RUC raise with the Department of Justice the possibility of the existence a mole within An Garda Síochána. Mr Collins expressed the view that:

“If there was a belief held at senior level in the Northern Ireland police force that that was so, the matter would have been raised and pursued tenaciously, believe me.”

#### **8.4 – The Anglo – Irish Inter – Governmental Conference of 5<sup>th</sup> April 1989**

8.4.1 The Tribunal also heard evidence which tends to demonstrate that the commonality of approach of the two Governments in denying the possibility of a mole was not a mere public façade. The Department of Justice furnished the Tribunal with the minutes of a meeting of the Anglo – Irish Inter – Governmental Conference which took place in Belfast on 5<sup>th</sup> April 1989, just over two weeks after the deaths of the two RUC officers. The minutes include a reference to then Secretary of State for Northern Ireland, Tom King, stating as follows:

“I think the killings brought out very clearly the determination of the IRA to smash this kind of co – operation. Another aspect is the sectarian element involved in the story that was put out afterwards about a Garda mole. I think this was dealt with very strongly by the Chief Constable immediately after the thing was first publicised.”

8.4.2 The Tánaiste and Minister for Foreign Affairs, Brian Lenihan T.D., confirmed that this was the case and expressed view that it was important that this had been done. Mr King then continued:

“I made it clear myself that there was absolutely no justification for such a story, but I think it is very typical of the forces that [sic] work in all of these matters. Their first inclination is to seek these sort of things and try and work them into the headlines.”

8.4.3 The Minister for Justice, Mr Gerry Collins, then intervened in the discussion to note that:

“we can all get into a certain pattern of action and complacency can set in.”

He continued,

“I have asked the Commissioner to see whether there was scope whereby the IRA could have monitored movements, and have pressed on him the need to avoid any pattern of activity.”

8.4.4 It seems to be the case that in this final quote, Mr Collins is referring to his perception of part of the terms of reference of the investigation to be carried out by Assistant Commissioner O’Dea. At the date of this Intergovernmental Conference, Mr O’Dea had not yet reported. I now turn to consider, in greater detail, the scope of Mr O’Dea’s brief, the conduct of his investigation and the contents of his Report.

## Chapter 9

### *The O'Dea Report*

#### **9.1 – Overview of the Report**

9.1.1 The Garda Commissioner was asked by the Government to conduct an “immediate and thorough investigation of all the circumstances and arrangements relating to the attendance of the deceased officers” at the meeting in Dundalk on 20<sup>th</sup> March 1989. The *O'Dea Report* takes its title from the terms of the Government’s request and is simply entitled,

“circumstances and arrangements in relation to a meeting at Dundalk Garda Station between Chief Superintendent John Nolan of An Garda Síochána and Chief Superintendent Harry Breen and Superintendent Bob Buchanan of the Royal Ulster Constabulary (both deceased) on Monday, 20<sup>th</sup> March, 1989.”

The Report is dated as having been received on 13<sup>th</sup> April 1989.

9.1.2 The Report is divided into eight sections, and there are 28 statements in the appendices. In the third and fourth sections, Assistant Commissioner O'Dea set out details of how the meeting was arranged (section 3), and the circumstances surrounding the arrival and departure of the two officers from the Garda Station (section 4). In section 5, he identifies Gardaí and clerical staff on duty at Dundalk Garda Station between 2pm and 4pm on the day in question. Section 7 contains a ‘Summary’ and the final paragraph of that summary states as follows:

“I am satisfied from the investigations that I have carried out that no member of An Garda Síochána leaked or passed on any information concerning the visit of the two RUC officers to Dundalk on the 20<sup>th</sup> March, 1989 to any person outside the Force.”

9.1.3 In section 8, entitled ‘Conclusions’, Assistant Commissioner O'Dea makes a number of recommendations. In particular, he states that consideration is to be given to the following matters in the future:

“(a) using different routes and vehicles when crossing the Border so that a pattern is not seen to

develop.

(b) Using principal routes for Border Crossings rather than secondary routes

(c) Utilising the secure telephone system to arrange informal meetings.”

9.1.4 In respect of the third of these matters, I note that in section 2 of his Report, the Assistant Commissioner noted that there is a Secure Telephone Communication System operating between An Garda Síochána and the RUC. It was known as the ‘Goliath 500’ system, which he described as being similar to a “Radio Telephone with a ‘Scrambler’ Device fitted.” He noted that the ‘Goliath 500’ system is located in the Communications Room in Dundalk and can be used to contact Armagh RUC Station. However, the Report also notes that the scrambler devices fitted on Superintendent Tierney’s and Chief Superintendent Nolan’s direct lines were not compatible with the RUC telephones. He notes that the ‘Goliath 500’ system was available to Superintendent Buchanan on 20<sup>th</sup> March 1989 if he chose to use it.

9.1.5 However, this would clearly have required Superintendent Buchanan to make all his phone calls to the Communications Room in Dundalk Station and ask that, in the first instance, Superintendent Tierney and, subsequently, Chief Superintendent Nolan, be called down from their offices to that room to take phone calls from him. It would, I think, have been unreasonable and unrealistic to have expected Superintendent Buchanan to avail of this cumbersome method for making an appointment.

9.1.6 In his Conclusion section, Assistant Commissioner O’Dea also stated that,

“the manner in which the two RUC officers gained admittance to the interior of Dundalk Station on 20<sup>th</sup> March, 1989 exposed a serious flaw in security measures at the station”

and noted that this had been brought to the attention of Chief Superintendent Nolan. This is clearly a reference to the fact that the two officers were first noticed by members of the Gardaí in the inner hallway, having already passed through the double doors from the public foyer, notwithstanding that these doors could only be unlocked by entering the correct code on a keypad.

## **9.2 – The Scope of Assistant Commissioner O’Dea’s brief**

9.2.1 Ned O’Dea informed the Tribunal that he commenced work as a Chief Superintendent in Crime and Security on 5<sup>th</sup> May 1988, and was appointed Assistant Commissioner in charge of Crime and Security on 13th January 1989. He confirmed that he travelled from Dublin to Dundalk Garda Station on 21<sup>st</sup> March 1989, shortly after being appointed by the Commissioner to carry out the investigation. The first person he interviewed was Chief Superintendent John Nolan. He was also in Dundalk on 22<sup>nd</sup> March 1989 and took the majority of statements on this day. On 23<sup>rd</sup> March 1989, he thinks that he attended the funerals of the deceased RUC officers in Northern Ireland.

9.2.2 I wish to state at this point that an issue of some controversy and contention in respect of the *O’Dea Report* was the question of whether part of the task Assistant Commissioner O’Dea had been given was to inquire into the possibility of there having been a leak of information from the Garda station. As already noted above, the final paragraph of section 7 of the Report concluded that there had been no leak. Moreover, it seems entirely logical to me that one of the main reasons why one would wish fully to investigate “the circumstances and arrangements” relating to the meeting, is to ascertain what scope existed for a member of An Garda Síochána to leak information relating to the two officers’ movements. Indeed, this seems to be one of the main preoccupations of the Report and a particular focus of the statements in the appendices thereto. There is frequent reference in the statements to Garda officers not being aware that RUC officers were expected, and those who did meet with the RUC officers make clear that there was no discussion with the RUC officers of their intended route home.

9.2.3 Notwithstanding these points, a number of witnesses before the Tribunal sought to suggest that the brief of inquiring into the circumstances and arrangements relating to the meeting had nothing to do with the question as to whether a Garda may have leaked information to the Provisional IRA. Indeed, one had the impression, at times, that this was being trotted out as a quasi – official Garda line. Among its proponents were former Minister Gerry Collins, retired Commissioner Pat Byrne, retired Assistant Commissioner Pat O’Toole, Chief Superintendent Peter Kirwan, retired Assistant Commissioner Kevin Carty and, ultimately to a lesser extent, Ned O’Dea himself. Frankly, I was not impressed by such evidence and considered that it simply defied common sense.

9.2.4 In his evidence to the Tribunal, retired Assistant Commissioner Mr O’Dea himself was initially unequivocal on this question. He said,

“No, my instructions, it wasn’t about a leak. My instructions were as regards the meeting. There was no mention of anything else as regards leaks or moles.”

However, he did acknowledge that his task was to investigate:

“the circumstances surrounding this meeting, who arranged it, who attended it, who knew about it”

and accepted that one could interpret the requirement to consider “who knew” about the meeting as being for the purposes of establishing whether or not there was, or could have been, a leak.

9.2.5 In his evidence to the Tribunal, Pat Byrne, who was Commissioner at the time of the preparation of the *Canon Report* some 11 years later, stated that his understanding was that Assistant Commissioner O’Dea went to Dundalk to “carry out a fact – finding mission” and not for the purpose of investigating whether or not there was a leak:

“To my knowledge he wasn’t sent there to carry out an investigation into collusion.”

9.2.6 When asked for his understanding of the brief to investigate the “circumstances and arrangements” relating to the meeting, Mr Byrne stated:

“I would expect that the first thing you’d want to know when was this meeting set up? Who knew? What time did they cross the border? When did the meeting end? You’d want to know that straight away.”

9.2.7 When asked, however, why one would want to know these things, he merely replied,

“Because if you are asked a question wouldn’t you want to know who arranged the meeting? When was it arranged? What was the background to the meeting?”

Frankly, I did not understand this witness’ reluctance to state the obvious, namely that part of the purpose of the O’Dea investigation was to deal with the speculation regarding the possibility of a leak.

9.2.8 Retired Assistant Commissioner O’Toole was the Chief Superintendent in Crime and Security in March 1989 and therefore, as I understand it, was reporting directly to Assistant Commissioner O’Dea at that time. Mr O’Toole provided a written statement to the Tribunal in advance of giving evidence. In that he stated,

“if I remember correctly, part of the reason for the investigation by Mr O’Dea was the collusion allegation.”

On the morning of his oral evidence, however, Mr O’Toole indicated that he wished to retract this aspect of his statement. He emphasised that it had always been qualified by the phrase, “if I remember correctly” and that it had transpired that he had not done so. He said that after reading newspaper coverage of the evidence to the Tribunal of former Minister for Justice, Gerry Collins, he contacted Garda Headquarters and, in addition, spoke to Mr O’Dea to clarify the terms of reference of the O’Dea investigation. Mr O’Toole was perfectly entitled to retract an aspect of the statement, but I think he was ill – advised to do so. His initial memory had served him perfectly well.

9.2.9 Retired Chief Superintendent John Nolan was more frank in acknowledging the scope of Assistant Commissioner O’Dea’s investigation. He acknowledged that part of the purpose of the O’Dea investigation,

“was to establish, I suppose, if there was a leak of information in relation to the holding of a meeting.”

He did qualify this by stating that he did not have any discussion with Assistant Commissioner O’Dea as to what his task was.

9.2.9 John Nolan also stated that the possibility of a leak did not cross his mind immediately after the murders. In this regard, he commented that he was convinced then – and remains convinced – that the

killing of the two officers was a well – executed Provisional IRA ambush carried out on the basis of surveillance, and without collusion from any member of An Garda Síochána.

9.2.10 Mr Nolan was asked in his evidence to the Tribunal why it was necessary that Assistant Commissioner O’Dea carry out the investigation into the circumstances and arrangements of the meeting rather than, for example, a local investigator like Detective Superintendent Connolly from Dundalk. It seems to me that his answer to this question goes to the kernel of the issue concerning the purpose of the O’Dea Investigation:

“You see everybody within the station would have been, for the purpose of an investigation, be suspect, and would require to be interviewed. So, rather than being interviewed by a subordinate, the obvious source was someone senior to the most senior officer in the station.”

9.2.11 Mr Nolan subsequently qualified that ‘suspect’ was perhaps the wrong word to use. Rather, he stated, he should have said “*a source required to be interviewed.*” However, he went on to say that it is an established procedure:

“that those who were, or could have been involved in any way would not investigate themselves” and that is why an external investigator was required in this case.

9.2.12 Retired Assistant Commissioner Kevin Carty was, in March 1989, a Detective Inspector in the Special Detective Unit (SDU) in Harcourt Square. He explained that the SDU was considered to be an operational unit and he assumed that it was believed that someone from an operational section, as opposed to someone from Crime and Security, should accompany the Assistant Commissioner for Crime and Security to Dundalk to assist him with his investigation. He confirmed that he accompanied Mr O’Dea to Dundalk on the afternoon of Tuesday, 21 March 1989.

9.2.13 Mr Carty told the Tribunal that his understanding of Assistant Commissioner O’Dea’s task was to conduct “a fact – finding mission rather than an investigation.” He said that he “definitely had no discussion with Mr O’Dea about a mole in Dundalk Station.” Mr Carty was asked why external officers were being sent to Dundalk to conduct an investigation. It was put to him that John Nolan had explained that this was because “any one of us could be suspect.” However, he replied that he did not understand the terminology. He stated that at no stage when he was assisting Assistant Commissioner

O’Dea was anybody “a suspect for anything.” He emphasised that there was a difference between a suggestion that there had been a failing in terms of neglect of duty and a suggestion that someone was a ‘suspect’. He was emphatic in his evidence that he and Assistant Commissioner O’Dea were not investigating a leak in Dundalk Garda Station:

“I didn't find any evidence of a leak or it wasn't the purpose of investigation to investigate a leak.”

9.2.14 By contrast, retired Chief Superintendent Michael Staunton, who in March 1989 was a Border Inspector in Dundalk (though he was not on duty on 20<sup>th</sup> March) acknowledged that the question of whether there had been a leak had to be considered:

“It was a possibility that became very clear at the beginning. And the investigation, my recollection of it was brought about to eliminate suggestion of that possibility and not because there was firm evidence to say it happened.”

9.2.15 It is worth also noting that retired Detective Garda Terry Hynes gave evidence that he was approached by Assistant Commissioner O’Dea who:

“informed me that he was making enquiries about information leaking out of Dundalk Station regarding to the murder of these two police officers.”

He told me that he was interviewed by Assistant Commissioner O’Dea and made a statement. In the course of the interview, Assistant Commissioner O’Dea:

“asked me had I any suspicions regarding any members in Dundalk giving information to paramilitary organisations, and I said no.”

9.2.16 Retired Assistant Commissioner O’Dea stated that he cannot remember speaking to Terry Hynes at any time in Dundalk. He stated that had he interviewed and taken a statement from Detective Garda Hynes, this statement would have been included in the appendices to the Report, and I note that there is no such statement. In these circumstances, while I have noted Mr Hynes’ evidence on this issue, in the absence of documentary information I do not attach too much weight to it.

9.2.17 However, this does not affect the obvious and logical conclusion to which I have already come, namely that consideration of the possibility of a mole was a key component of the O’Dea investigation, and, in my view, quite rightly so. In this regard, I think it useful to note the observation of retired Assistant Commissioner Joe Egan who told the Tribunal that in the aftermath of the murders, rumours as to the possibility of a mole were:

“broadcast fairly liberally and it was the talk among a lot of people on the ground.”

He emphasised that in the context of subversive activity and the investigation of subversive crime, one should not “ignore any indicator that comes from any source.” I think he is correct, and am of the view that the possibility of a leak required to be taken seriously.

9.2.18 Having concluded, without any doubt, that a key component of the O’Dea Investigation was to deal with the possibility of a leak within the Gardaí in Dundalk, I now turn to consider the nature and extent of the enquiries carried out by the Assistant Commissioner.

### **9.3 – The Nature and Extent of Inquiries Carried out by Assistant Commissioner O’Dea**

9.3.1 In his evidence to the Tribunal, retired Assistant Commissioner O’Dea indicated that he decided who to interview for the purposes of his investigation on the basis of a list of names provided to him by Chief Superintendent Nolan. He interviewed those listed by Chief Superintendent Nolan as being people who knew about the meeting in advance, as well as all of those who were on duty between 2pm and 4pm. These included uniform members, detective members, members working office hours in a clerical position, and non – Garda clerical staff. He did not (with the unexplained exception of Detective Garda James Green and Detective Bernard Joseph Flanagan) interview members of An Garda Síochána who had been on the earlier shift and who had terminated their duty at 2pm.

9.3.2 The retired Assistant Commissioner was asked whether he had reviewed the Station records, namely the station diaries, occurrence books and on – off registers. However, he stated that he did not look at these and that he had therefore relied solely on the list given to him by Chief Superintendent Nolan. Mr O’Dea confirmed that he did not seek access to any of the telephone records of the station. When asked why he did not do so, he stated that from his own service,

“I know that all telephone calls would not be listed or a record kept.”

However, he went on to acknowledge that one have asked the telephone company for records.

9.3.3 Assistant Commissioner O’Dea was assisted in the conduct of interviews by then Detective Inspector Kevin Carty.

9.3.4 Among those interviewed for the purposes of the investigation were two of the three former Garda officers with representation before this Tribunal. In this regard, it is appropriate to set out in full the statements provided by then Detective Sergeant Corrigan and then Sergeant Colton.

9.3.5 Detective Sergeant Corrigan's statement, made to Detective Inspector Carty on 23<sup>rd</sup> March 1989, stated as follows:

“I am a Detective Sergeant of the Garda Síochána attached to Dundalk Garda Station. On Monday 20<sup>th</sup> March, 1989, I took up duty at Dundalk Garda Station at 8am. I terminated duty at 4pm on that date. During my tour of duty I attended to duties in the detective branch office and some outdoor duty. I availed of a meal break from 12:45pm to 1:30pm. In the course of the day I did not see any members of the RUC in Dundalk Station. I was not aware of any meeting that was arranged between Chief Superintendent John Nolan and members of the RUC at Dundalk Station on that day. This statement is correct.”

9.3.6 Sergeant Colton's statement was taken on 22<sup>nd</sup> March 1989 by Assistant Commissioner O’Dea and signed by Sergeant Colton on 23<sup>rd</sup> March 1989. It stated as follows:

“I am sergeant of the Garda Síochána stationed in Dundalk. Unit A. On Monday, 20<sup>th</sup> March 1989 I started duty at 2pm. Accompanied by Sergeant Brady I detailed the Gardaí for duty. I detailed Garda Seamus Nolan for duty of station orderly. Garda David Sheridan and B/Garda Ann McMorrow for duty in the radio room. Garda John McKeon and Garda Val Smith for town mobile duty. Garda Mathew O’Reilly and Garda Joe Daly for town mobile patrol. I was on supervision. At about 2:20 or 2:25pm, I was standing on the front step of the Garda station and I observed a grey Cavalier car enter the forecourt of the station by the Ardee road entrance and drive slowly by the front of the station and exit on the Carrickmacross road entrance. I noticed that the driver looked side to side as if he was checking on the parked vehicles. I took

the number of this car to be EIB32??. When I went into the station I was called on by the station orderly to assist him with a problem and when I had sorted out this after about 10 or 15 minutes the checking of the car went out of my mind. Come evening time I could not recall the last two numbers of the Reg. I was not aware that Chief Superintendent Nolan had a meeting with RUC members nor did I see them enter or leave the station on that date. This statement has been read over to me by Assistant Commissioner O’Dea and it is correct.”

9.3.7 No statement was taken from Sergeant Finbarr Hickey, the third former member of the Gardaí with representation before the Tribunal. I shall return to the question of Finbarr Hickey's presence in Dundalk Garda Station in chapter 17.

9.3.8 At this point, I should note that although the Tribunal had the benefit of the on/off book of Dundalk Station for the relevant period, including 20<sup>th</sup> March 1989, all other station records relating to that date could not be traced by An Garda Síochána. This includes the occurrence book and the station diary for 20<sup>th</sup> March 1989. Counsel for the Garda Commissioner explained that station diaries are missing for a considerably longer period of time: dairies are missing from 10<sup>th</sup> June 1987 to 24<sup>th</sup> November 1988 and from 10<sup>th</sup> March 1989 to 25<sup>th</sup> May 1991.

9.3.9 I now propose to make some observations in relation to four aspects of the Investigation and Report of Assistant Commissioner O’Dea, as well a fifth, more general comment in relation to the context in which the Assistant Commissioner was asked to perform his task.

#### **9.4 – Curiosities or Discrepancies in Statements Provided to Assistant Commissioner O’Dea**

9.4.1 The first aspect relates to a number of what might be described as curiosities or discrepancies in relation to the statements made to the Assistant Commissioner, particularly when compared with evidence given by witnesses before this Tribunal.

9.4.2 As already noted in the context of outlining the events of 20<sup>th</sup> March 1989, Seamus Nolan was the station orderly from 2pm and had been advised that Chief Superintendent Nolan was expecting two visitors. He told me in evidence that he spotted two gentlemen dressed in suits on the stairs in the inner hall and he went past them and led them to Chief Superintendent Nolan's office. He said he knocked on the door, the Chief beckoned him to come in and he entered, showing the two gentlemen

in.

9.4.3 Garda Nolan provided two statements in the immediate aftermath of the murders. He provided a statement at the request of Superintendent Tierney in which he stated:

“I followed the men who were at this stage halfway up the stairs. I stopped them and asked them where they were going. The shorter of the two men stated that they had an appointment with Chief Superintendent and that they were expected. I showed the two to the Chief Superintendent’s Office.”

9.4.4 This statement seems to me to be entirely consistent with the evidence given by Mr Seamus Nolan to the Tribunal. However, in his statement provided in the context of Assistant Commissioner O’Dea’s investigation, taken on 22<sup>nd</sup> March 1989 by the Assistant Commissioner, Garda Nolan stated as follows:

“At this stage I had turned to follow them and asked them where they were going. They informed me they had an appointment with Chief Superintendent Nolan. I did not know them and they did not identify themselves but they said they were expected. I came up part of the stairs and gave them directions and to Chief Superintendent Nolan’s office. They indicated that they were familiar with the route. I did not see them enter the Chief’s office.”

9.4.5 In his evidence, Seamus Nolan said that he could not explain the reference to the fact that he did not bring two RUC officers into Chief Superintendent Nolan’s office. He said that the initial Report he made, at the request of Superintendent Tierney, “is more in line with my recollection of what happened.” He further said that:

“when I say I didn't see them enter the Chief Superintendent’s office, I would find that not really credible because I walked as far as the door with them, I knocked on the door, the Chief answered, I told him there were two people there to meet him and he said he was expecting them and in they walked and I turned and went back downstairs, and that is more in recollection of what I recall.”

9.4.6 This discrepancy could very easily be attributed to a simple error in the transmission of

information from Seamus Nolan to Assistant Commissioner O’Dea. However, the picture becomes a little more complicated when one considers the evidence of Chief Superintendent Nolan.

9.4.7 John Nolan told me that he recalled that someone, presumably a Garda, accompanied the two RUC officers into his office on the afternoon of 20<sup>th</sup> March 1989:

“I know that somebody opened the door and said my visitors had arrived. I think simultaneously they came in. I couldn’t be sure who that person was but I have learnt since that it was Garda Seamus Nolan.”

9.4.8 In Chief Superintendent Nolan’s statement in the appendices to the *O’Dea Report*, taken by Assistant Commissioner O’Dea on 21<sup>st</sup> March 1989, he simply states as follows:

“At 2pm, R [recruit]/Garda Val Smith came into my office. I had actually forgotten that he had an appointment to meet me. I agreed to meet him and he remained with me until about 2.10pm. Between 2.15pm and 2.20pm Chief Superintendent Harry Breen and Superintendent Bob Buchanan came into my office.”

9.4.9 However, the Tribunal also had the benefit of the manuscript original of Chief Superintendent Nolan’s statement in which the following additional sentence was included, but crossed out:

“Garda Seamus Nolan, Dundalk, came to my office and said that there were two gentlemen to see me and he showed them in.”

9.4.10 When asked could he explain why this sentence, which appeared on the evidence before the Tribunal to be correct, had been crossed out, Mr Nolan replied that it must be:

“because there was some uncertainty on my part whether it was Seamus Nolan or not.”

He stated that Assistant Commissioner O’Dea had crossed the sentence out in his presence, but that he (John Nolan) had not initialled it. He explained that:

“it must be because I had some doubt and he said, ‘Well, better to leave it out’.”

When it was put to him that he could have simply inserted a sentence that stated a guard showed two officers into his office, he replied “I didn't say that.”

9.4.11 Retired Chief Superintendent Nolan was asked whether an attempt was being made to create the impression that only a very small handful of people knew about the visit of the two officers to the station and he replied that that was absolutely not the case.

9.4.12 When this issue was put to retired Assistant Commissioner O’Dea, he accepted that he may have suggested leaving out the sentence if there was doubt as to the identity of the Garda in question. It was put to Mr O’Dea that it would have been important to work out who the Garda was, because this was somebody who had seen the two officers in the station, he replied that he could not recall a whole lot about the matter now and that this was the first time he had seen these statements in a very, very long time.

9.4.13 Counsel for the Garda Commissioner noted, very fairly, in his questions to Mr O’Dea that Seamus Nolan's statement contained in the appendices to the *O’Dea Report* acknowledges that he accompanied the two officers part of the way up the stairs. In these circumstances, the omission of the relevant sentence in Chief Superintendent Nolan's statement did not reduce or alter the number of people recorded as having seen the officers in the station. The deletion of the sentence could not, therefore, have served the purpose suggested.

9.4.14 A further curiosity arises in relation to the evidence to the Tribunal of the then recruit Garda Val Smith. Val Smith gave evidence that within a few minutes of 2.00pm, he arrived in Chief Superintendent Nolan’s office for a review. The meeting lasted approximately 10 minutes and he stated that he “met two gentlemen at the door when I was walking out.” In his statement provided to Assistant Commissioner O’Dea on 22<sup>nd</sup> March 1989, then recruit Garda Smith said something slightly different:

“Immediately after 2pm, I went to Chief superintendent Nolan’s office in connection to recruit training. At about eight or nine minutes past two I left the Chief Superintendent's office and returned to the public office. At approximately 2.15pm, I joined up with Garda John McKeon and we left the station on a mobile patrol. I returned to the station at about 6.15pm. As I was

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leaving the Chief Superintendent's office he asked me to leave the door open as he was expecting two men from the north. He did not mention any names and I was not aware of any meeting with RUC officers in Dundalk Station on that date. I did not know either of the deceased RUC members or what transport they had or what route they travelled.”

9.4.15 In this case also, the Tribunal had the benefit of the original manuscript statement of Val Smith. However, Mr Smith stated that he did not recognise the signature as his: “That signature does not resemble my signature.”

9.4.16 The manuscript statement was not signed by any witness. Mr Smith was asked to explain why his statement to Assistant Commissioner O’Dea does not refer to meeting the two officers, but rather only to the fact that he was asked to leave the door open as he left. He replied,

“I definitely would have met them at the door. Why it is not included in the statement...”.

Mr Smith was asked whether he recalled telling Assistant Commissioner O’Dea that he met the two officers at the door and he replied “I would have told him that, yes.” He could not explain why Assistant Commissioner O’Dea did not include this in his Report.

9.4.17 Mr O’Dea acknowledged in his evidence that if the evidence of then recruit Garda Val Smith to the Tribunal is accepted, Val Smith was a further member of An Garda Síochána who saw the two RUC officers on arrival at the station and this should have been reflected in his Report. Subsequently, it was put to Mr O’Dea by Counsel for the Commissioner that Val Smith had told Mr O’Dea that he met the men at the door. Mr O’Dea replied, “Yes, if it's in the statement, yes”, but of course the point is that it is not in the statement and ought to have been.

9.4.18 I am not satisfied that the discrepancies between the version of events given by witnesses in evidence to me and that included in the statements in the appendices to the *O’Dea Report* have been adequately explained. Moreover, I find the crossing out of the relevant sentence in John Nolan's statement relating to Seamus Nolan to be somewhat curious and the fact that Val Smith does not recognise the signature on his statement to Assistant Commissioner O’Dea as his own to be even more curious.

9.4.19 However, I do not attribute any deliberate intention to mislead to the Assistant Commissioner. I say this were two reasons. Firstly, as pointed out by the Counsel for the Garda Commissioner in relation to the evidence of Seamus Nolan, even with the omission of the relevant sentence, it was still perfectly clear from the contents of the *O’Dea Report* that Seamus Nolan had seen the two RUC officers on arrival at Dundalk. Secondly, Val Smith may be mistaken in his evidence to the Tribunal. This is a possibility given that Seamus Nolan, whether in his evidence to this Tribunal or in his statement to Assistant Commissioner O’Dea, did not make reference to having met Val Smith or any Garda exiting John Nolan’s office as he was bringing the two RUC officers in.

### **9.5 – The Extent of Interviews Conducted**

9.5.1 The second aspect of the *O’Dea Report* which warrants discussion is the decision only to interview Garda officers on duty between 2pm and 4pm, in addition to those known to have been involved in the setting up of the meeting. This appears to me to have been a serious omission. Assistant Commissioner O’Dea concludes in his Report that the only persons in the Garda station who knew about the meeting prior to the arrival of the two officers were Chief Superintendent Nolan, Inspector Murray and Superintendent Tierney. However, this is clearly based on their statements to him that they told no one else of the meeting.

9.5.2 I am of the view that he could only definitively have reached this conclusion by speaking with every person who was in the station that morning. This is particularly so in circumstances where, as already noted earlier in this Report, there seems to have been some discussion among other Garda officers in the station that morning of the fact that Bob Buchanan was to be transferred. This is information which Superintendent Tierney and Chief Superintendent Nolan had only learned for the first time when they spoke to Bob Buchanan at just after 10am and 10.15am respectively. When it was put to Mr O’Dea that in order properly to reach the conclusion that he had made, he would have had to have interviewed everyone on duty, he replied:

“You could be interviewing for years, you might get the same answers. This was done in three days, this Report. You’re going through it now for the past years and months picking out little pieces. I cannot put those any further. It is a long time ago and I told you what age I was.”

9.5.3 He added there was no particular rush to complete the Report; rather three days was how long it took Detective Inspector Carty and him to do the necessary work: “It was a busy time. We had a lot of things to do.”

9.5.4 I am mindful of the fact that the Assistant Commissioner's duties must have been considerable at the relevant time. I do also think that one must be careful when reviewing matters some 20 years later with the benefit of hindsight. Nevertheless, I do not think that this adequately explains the failure to interview all of the people in the station that morning. Furthermore, Assistant Commissioner O’Dea would have had, had he chosen to avail of it, access to all the station records for that morning, a facility which is unfortunately not now available to the Tribunal since the station diary and occurrence book have been lost. In this regard, I also note, as observed by Detective Superintendent Connolly, that it is possible that a member could have been in the Garda station but not on duty for some reason or other.

## **9.6 – Failure to Seek Station Phone Records**

9.6.1 The third aspect of the *O’Dea Report* on which I feel compelled to comment is the failure of the Assistant Commissioner to seek phone records. In this regard, I am inclined to agree with the evidence given to me by retired Detective Garda Jim Boyle who was the Scenes of Crime Examiner in Dundalk for a considerable portion of his career. His view of the operation of 20<sup>th</sup> March 1989 was that:

“the timing was such they lay in wait, they were obviously lying in wait for them and it would have pointed towards that they were – they got some word, they had a tip – off or otherwise they were watching the cars outside Dundalk Garda Station and when they left they forwarded on information to more of their colleagues who were lying in wait for them out at the border.”

9.6.2 When asked what he would consider to have been the priority tasks in any investigation after the ambush, he told me:

“I think would be very important, to start off with phone calls, in and around that immediate time, that were made from either Dundalk Station or the surrounding, the box outside. And that would be my – I would have checked every phone in Dundalk Station.”

9.6.3 I fully agree that the phone records of every single phone in Dundalk Garda Station should have been retrieved and checked in the context of any thorough investigation considering the possibility that there had been a security leak (which, I have already found, was a fundamental component of the

O’Dea Investigation). As outlined elsewhere in this Report, the phone records of the phone box outside the station were thoroughly investigated. This could and should equally have been done in respect of the phones inside the station. The fact that it was not, in my view, constitutes a serious failing in the *O’Dea Report*.

### **9.7 – The Statement of Detective Sergeant Owen Corrigan**

9.7.1 The fourth aspect of the Report concerns the statement provided to Assistant Commissioner O’Dea by then Detective Sergeant Owen Corrigan. It is fair to say that is among the shortest and least detailed of the statements in the appendices to the *O’Dea Report*. It is important to note that the statement was taken by Detective Inspector Carty rather than Assistant Commissioner O’Dea himself. In his evidence to me, Assistant Commissioner O’Dea characterised the statement as “short and to the point.” He said that he was happy however that Detective Inspector Carty had asked the necessary questions because “Carty was an experienced investigator.”

9.7.2 Mr Carty stated that he was given no particular instructions from Assistant Commissioner O’Dea in relation to the interview with Owen Corrigan. He confirmed that it was at the time – and still is – his view that he obtained sufficient information from Detective Sergeant Corrigan in the statement of 23<sup>rd</sup> March 1989. He told me that he considered any elaboration or any further detail of the precise duties being undertaken by Mr Corrigan as being “superfluous”:

“I don’t think it would have added anything to his statement by listing the number of files that he actually tended to, or how many times he went to the toilet. I mean, this was a witness statement, nothing more than that. It wasn’t a criminal investigation. If I was, or Mr O’Dea had been conducting a criminal investigation, yes, we would have a lot more detail in the statements. But I think you are losing sight of the fact that this is a witness statement merely to ascertain the purpose – to satisfy the purpose of my understanding why we were there, to find out who knew they were in the station, who knew what or saw what on that particular day. And this statement, to my mind, satisfies those questions.”

9.7.3 Ultimately, Mr Carty was merely there to assist the investigator, Assistant Commissioner O’Dea, and I am of the view that Assistant Commissioner O’Dea should have sought a more detailed account from Detective Sergeant Corrigan of his whereabouts and the duties he had performed on the day in question.

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9.7.4 I express this view in the particular context of the fact that just over one month prior to Assistant Commissioner O’Dea’s coming to Dundalk to carry out his investigation, Chief Superintendent Nolan had written to him expressing concerns about Owen Corrigan’s continuing to serve on the border. This is a matter which will be dealt with in greater detail in section 11.3 and in Chapter 19 relating to Mr Corrigan. However, in the context of the current discussion of the *O’Dea Report*, suffice it to note that by Report dated 16<sup>th</sup> February 1989 addressed to Assistant Commissioner O’Dea, Chief Superintendent Nolan outlined concerns in relation to an allegation of smuggling against Owen Corrigan, two unauthorised uses of official cars, the alteration of official records, and failure to report damage to cars. Included in Chief Superintendent Nolan's report was a report of Detective Superintendent Connolly dated 21<sup>st</sup> January 1989 relating to the unofficial use of a Garda car and the alteration of the log book in respect of that car so as to falsely reduce the number of miles travelled by Detective Sergeant Corrigan on the night that he had taken it. Superintendent Connolly’s report noted that:

“I am satisfied that D/Sergeant Owen Corrigan was not on duty as he is not recorded in the car log book, and judging by the mileage recorded he could well have been many miles from Dundalk. In the view of the fact that there was no response to many radio calls over a nearly five hour period, it was very likely that he was many miles away.”

9.7.5 The Report also referred to a report from a Customs official to the effect that on another night, Customs had spotted a car which they suspected was scouting for Customs officers. They took the registration of the car and it transpired to be that of Owen Corrigan.

9.7.6 Retired Assistant Commissioner O’Dea was asked whether, when he carried out his investigation in Dundalk in March 1989, he was aware of a disciplinary problem in respect of Detective Sergeant Corrigan. He replied:

“I don’t think I was aware at that particular time, but I remember that he was due for transfer to SDU in Dublin Castle. Now, if that ever took effect or not, I am not a hundred percent sure.”

9.7.7 Kevin Carty said that he had no discussion with Assistant Commissioner O’Dea in relation to disciplinary proceedings being initiated against Owen Corrigan either before they travelled to Dundalk or while they were there.

9.7.8 Given that John Nolan’s report in relation to Owen Corrigan was sent to Assistant Commissioner O’Dea on 18<sup>th</sup> February 1989, I am inclined, on balance, to believe that the Assistant Commissioner would have been aware of the issue when he travelled to Dundalk. He does recall that Owen Corrigan was to be transferred and I think it unlikely, particularly given that Crime and Security had a role in the transfer of Detectives, that he would have been aware of the transfer without being aware of the circumstances underlying it. Given the timing, it is not only likely that the Assistant Commissioner was aware of the issues raised in John Nolan’s and Tom Connolly’s reports when he went to Dundalk; they probably would have been fresh in his mind.

9.7.9 Detective Inspector Carty was not working in Crime and Security at the relevant time and therefore would have had no independent knowledge of the issues raised in relation to Detective Sergeant Corrigan by Chief Superintendent Nolan and Superintendent Buchanan. The extent of his knowledge would have been dependant on what the Assistant Commissioner shared with him.

9.7.10 Given the views I have expressed above, when he went to Dundalk in March 1989, I consider it likely, on balance, that Assistant Commissioner O’Dea was on notice of the fact that there were serious question marks over Detective Sergeant Corrigan’s extracurricular activities on the border. In the circumstances, the Assistant Commissioner ought to have been vigilant to secure from Owen Corrigan the fullest possible account of his activities on 20<sup>th</sup> March 1989. The failure to do so is, in my opinion, a weakness in the *O’Dea Report*.

## **9.8 – The Context in Which the Assistant Commissioner was Required to Perform his Investigation**

9.8.1 The fifth and final aspect upon which I wish to comment relates to the statements made to the media by the respective heads of the RUC and Garda Síochána on 21<sup>st</sup> March 1989. These statements have already been set out above. As also noted above, Mr O’Dea very fairly and frankly stated in his evidence to me that when he dismissed the possibility of a security leak, Garda Commissioner Eugene Crowley could not have known at that stage what conclusions the Assistant Commissioner would draw because the Assistant Commissioner had just arrived in Dundalk and “didn’t speak to him [the Commissioner] from the time I got my instructions until it was over.”

9.8.2 This suggests to me, notwithstanding the evidence of Gerry Collins, that for reasons of political and policing expediency, both police services were reluctant to give sufficient credence to and therefore properly to investigate the suggestion of a mole. In many ways, I think retired Chief Superintendent Michael Staunton may have aptly summed up the situation when he told me that the O’Dea Investigation

“was brought about because – to eliminate the suggestion of that possibility not because there was firm evidence to say it happened.”

9.8.3 In circumstances where the Irish and British Governments, An Garda Síochána and the RUC had expressed the firm view that there had been no leak before Assistant Commissioner O’Dea had properly started, never mind completed, his investigation, I believe that only one outcome from the Assistant Commissioner’s investigation was being contemplated. That undoubtedly placed him in a difficult position.

## **9.9 – A Summary of the Findings in Relation to the *O’Dea Report***

9.9.1 I conclude that the investigation was flawed in three crucial respects:

- (i) The failure to speak to all persons who had been in Dundalk Station on the morning of 20<sup>th</sup> March 1989;
- (ii) the failure to seek, secure and review telephone records from Dundalk Station that day; and
- (iii) The failure to secure from Detective Sergeant Corrigan a more detailed account of his activities on the day. This conclusion is drawn in the particular context of reports relating to Mr Corrigan having been sent to the Assistant Commissioner just one month prior to his investigation.

9.9.2 However, it must also be acknowledged that the Irish and British Governments and, in particular, the heads of both police services, had made Assistant Commissioner O’Dea’s task very difficult for him by effectively announcing in advance, and therefore almost preordaining, the conclusion he would reach. While this may not have been intentional, it likely brought to bear on the Assistant Commissioner a subtle form of pressure which, whether consciously or subconsciously,

may have affected the degree of open – mindedness with which he approached his task. Responsibility for this aspect of my criticism lies primarily not with Assistant Commissioner O’Dea himself, but with those to whom he answered. Moreover, it lies not only on the southern side of the border, but must equally be shared north of the border. This is the case not only because of premature denials of collusion in Northern Ireland, but also because of the failure of the RUC to share with An Garda Síochána information as to what Harry Breen had said to Alan Mains on the morning of the ambush.

9.9.3 I acknowledge that it is very easy to judge with hindsight the actions of those who sought to downplay the possibility of a leak. The Ireland of 1989 was a very different place to that of today and a value had to be placed on safeguarding the advances that had been made in cross – border policing and security co – operation in the few years preceding the killings of the two RUC officers.

9.9.4 Yet a value must also always be placed on the preservation of all lines of inquiry in the interests of uncovering truth and securing justice. If anything, that applies with greater force in the context of a suggestion or allegation of collusion: if there is a member of a police service colluding with subversives, a thorough investigation which leads to his or her exposure will prevent a further risk to life; if there is no collusion, a thorough investigation will expose this too, and prevent the festering of groundless suspicion.

9.9.5 In my estimation, by their actions in seeking to shut down consideration of the possibility of a mole, both police services failed to give adequate weight to the latter of these latter two values.

9.9.6 Two further observations must be made.

9.9.7 First, the Commissioner of An Garda Síochána, Eugene Crowley, produced a summary of Assistant Commissioner *O’Dea’s Report*. This was sent to then Minister for Justice, Gerry Collins, on 18<sup>th</sup> April 1989. The Commissioner, like Assistant Commissioner O’Dea, concluded that he was “satisfied there was no leakage of information by the Gardaí on the proposed visit of the two officers.” He also stated in his Report that, “there is a consensus in both forces that the RUC officers were targeted when leaving Armagh or en route and followed to Dundalk.”

9.9.8 In relation to this statement, I would simply observe that I have seen no evidence in the

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documentation supplied to this Tribunal by either An Garda Síochána or the Northern Ireland Office which reveals to me any solid basis for the existence of the ‘consensus’ referred to. In this regard, it is also worth noting that it is not suggested by the former volunteers of the Provisional IRA who have assisted the Tribunal, that the RUC officers were targeted when leaving Armagh or en route and followed to Dundalk.

9.9.9 Secondly, as a result of the O’Dea Investigation not having been as open – minded and thorough as it could possibly be, the best opportunity to get to the truth of the events of 20<sup>th</sup> March 1989 was probably lost. This Tribunal simply does not have at its disposal the same range of evidence that would have been available in March 1989.

## **Chapter 10**

### **The Evidence of Retired Chief Superintendent Tom Curran**

#### **10.1 – Introduction**

10.1.1 As noted in the Chapter 1, the Tribunal cast the net of potential witnesses much more widely than any of the previous investigations into suggestions of collusion in the deaths of Chief Superintendent Breen and Superintendent Buchanan. As a result, the Tribunal uncovered what I consider to be very significant information from a retired Garda officer who had never served in Dundalk Garda Station, or any part of the Louth/Meath Garda Division, Tom Curran. The information in fact relates to events before March 1989. However, I include it at this stage in the Report in circumstances where there was no evidence before me to suggest that this information was known to Assistant Commissioner O’Dea when he carried out his investigation (nor, for that matter, was there any evidence to suggest that it was known to Chief Superintendent Camon when he carried out his Investigation in 2000 – 2001).

10.1.2 Tom Curran joined An Garda Síochána in 1958. After serving in a number of stations in Ulster and Connacht, in 1973 he was promoted to the rank of Inspector and transferred to Monaghan Garda Station, Co. Monaghan. He remained there for the rest of his career. He was promoted to the rank of Superintendent in 1981, and became the Chief Superintendent in Monaghan in 1990. He retired in 1994. He gave evidence that for a significant period of time he was the primary liaison between the Monaghan Gardaí and the RUC. This was particularly the case in the period from 1981 – 1989, when he was the Superintendent in charge of border security in Monaghan. Mr Curran gave evidence that he had both formal and informal meetings with RUC officers. When these meetings took place in the Cavan/Monaghan Division, they generally occurred in either Monaghan or Carrickmacross Garda Stations. When the meetings took place in Northern Ireland, they generally occurred in Newry, Armagh, Dungannon or Enniskillen.

10.1.3 It was clear from the evidence I heard that Tom Curran was well regarded by those with whom he liaised in the RUC. Brian Lally, Harry Breen’s predecessor as Divisional Commander of ‘H’ Division, described him as “one of those quality police officers who wanted to carry out his duty to the best to protect life and property.” Witness 33, who in March 1989 was the Deputy Sub –

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Divisional Commander in Newry, told me that Mr Curran was “a very decent, honourable person” and “a very honourable police officer.”

10.1.4 As noted in Chapter 2, Tom Curran and Bob Buchanan both served on a Working Party, established under Article 9 of the Anglo – Irish Agreement, tasked with making recommendations on cross – border policing. The Working Party was chaired by Deputy Garda Commissioner, John Paul McMahon, and then Assistant Chief Constable, Blair Wallace. It met seven times.

**10.2 – The Evidence of Retired Chief Superintendent Curran in Relation to an Approach from Bob Buchanan**

10.2.1 Mr Curran gave evidence that he knew Bob Buchanan well. At the time of Bob Buchanan’s death, he had known him for “probably four or five years.” Mr Curran gave evidence that probably during the first half of 1987, Bob Buchanan called to him in Monaghan and conveyed to him the following information:

“He told me that he had – the RUC had information that Detective Sergeant Owen Corrigan in Dundalk was associating, unnecessarily associating with the IRA, and the RUC were concerned about it.”

10.2.2 Mr Curran went on to say that he gathered that the association with the IRA to which Mr Buchanan was referring “went far beyond” the normal association for the purposes of carrying out his duties as a detective branch officer: “I got the impression that he was assisting the IRA.” Mr Curran said that he questioned Superintendent Buchanan a little bit about the information and “very soon got the impression that he was only the messenger.” He continued,

“[h]e [Bob Buchanan] said he had no details of the actual information, but he was asked to ask me to convey that to the Assistant Commissioner in charge of Crime and Security, which I promised I would.”

10.2.3 Mr Curran stated that he did not know who had requested Superintendent Buchanan to speak to him, but he had presumed that it was RUC Special Branch. When questioned why he had not asked Superintendent Buchanan who had asked him to convey the message, Mr Curran replied that he was probably taken aback and did not ask Mr Buchanan any more questions about the matter. Mr Curran

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was clear in his evidence that Bob Buchanan informed him that he had a “specific direction” to make this request of him.

10.2.4 Mr Curran gave evidence that shortly afterwards he called to the Assistant Commissioner in charge of Crime and Security, then Eugene Crowley, on an occasion when he was in Dublin for court. He said that he just knocked on the Assistant Commissioner’s door and went in. He conveyed to the Assistant Commissioner what Bob Buchanan had told him and described the Assistant Commissioner’s response in the following terms:

“He was reading a file when I went in, and I told him the purpose of my visit, and I told him about the information that was passed to me by Bob Buchanan and all the bits, hearsay that I had heard about Owen Corrigan. When I finished – he kept looking at the file, but when I was finished to me he said, “how are things in Monaghan town?” So we discussed activities in Monaghan, but he never mentioned anything in relation to the conversation that I went there to tell him. In a very short time I got the opinion that he didn’t want to hear it, so I left.”

10.2.5 Mr Curran stated that Eugene Crowley in no way acknowledged what he had been told nor did he ask any questions about it. He also said that Assistant Commissioner Crowley “didn’t display any surprise.”

10.2.6 As regards the other information in relation to Owen Corrigan which Mr Curran provided to Eugene Crowley – “hearsay that I had heard about Owen Corrigan” – Mr Curran confirmed that this is information that had been provided to him by Brian Moroney who came to serve in Monaghan Garda Station having previously served in Dundalk Garda Station. Mr Curran made clear that the information that he received from Mr Moroney did not suggest that Owen Corrigan was colluding with the IRA. Brian Moroney himself later gave evidence to the Tribunal and confirmed that he trusted Owen Corrigan “on the job” but had “reservations regards maybe some of his bills and things like that.”

10.2.7 Eugene Crowley died very shortly after the Tribunal’s first meeting with retired Chief Superintendent Curran during its private investigative stage. In these circumstances, the Tribunal’s legal team never had an opportunity to put to retired Commissioner Crowley the evidence that Mr Curran would provide to the Tribunal. The Tribunal had, however, prior to meeting Mr Curran,

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interviewed the former Commissioner, and a transcript of this interview was read into the record of the Tribunal.

10.2.8 Mr Crowley had become Assistant Commissioner in charge of Crime and Security on 5<sup>th</sup> March 1987. He was promoted to Deputy Commissioner on 23<sup>rd</sup> January 1988 and became Commissioner of An Garda Síochána on 12<sup>th</sup> December 1988. I note in passing that the dates of his service as Assistant Commissioner – 5<sup>th</sup> March 1987 to 23<sup>rd</sup> January 1988 – are consistent with the possibility of Tom Curran having visited him in Garda HQ in the latter months of the first half of 1987. (Retired Commissioner Pat Byrne stated in evidence that Mr Crowley did not come into the Crime and Security Branch as Assistant Commissioner immediately on his promotion to that rank; rather he entered Crime and Security in July 1987. This was the only evidence to this effect. Even if this is correct, I do not think July 1987 to be so outside the probable timescale identified by retired Chief Superintendent Curran as to be significant).

10.2.9 When Mr Crowley was interviewed by the Tribunal he was asked whether prior to the publication of *Bandit Country* and the article by Kevin Myers, he had ever been asked about or was aware of any enquiries into Owen Corrigan. He replied to the Tribunal’s counsel as follows:

“No, I didn’t know anything about Corrigan until I think I might have been in hospital at the time and somebody told me this is Corrigan. I didn’t know about that. I didn’t know about that before that.”

10.2.10 He also stated that he was never told in early 1989 that Chief Superintendent John Nolan and Superintendent Tom Connolly were seeking to have Detective Sergeant Corrigan transferred from Dundalk, and that he had no recollection of disciplinary proceedings being initiated against Detective Sergeant Corrigan: “nobody obviously told me about it because I had no knowledge whatever.”

10.2.11 While Mr Crowley did not give evidence before me, I have taken account of this statement recorded in the transcript of his interview with the Tribunal’s legal team. I note that the transcript of his interview appears to establish that Mr Crowley knew Owen Corrigan. Terry Hynes of Dundalk Garda Station gave evidence that Eugene Crowley was a Superintendent in Dundalk Garda Station in the 1970s for a period of six years. Mr Corrigan in his own evidence to the Tribunal acknowledged that he had a good working relationship with Eugene Crowley.

10.2.12 There is no evidence as to what steps, if any, were taken by the then Assistant Commissioner Eugene Crowley on foot of the conversation with Tom Curran. In the absence of any written documentation to confirm that Superintendent Curran had relayed this information to the Assistant Commissioner, Counsel for Owen Corrigan put it to Mr Curran that the incident never took place. Mr Curran replied “that is completely incorrect.” I set out my conclusions in relation to this aspect of the evidence given by Tom Curran in section 10.6 below. Before doing so, I wish to deal with two other aspects of Tom Curran’s evidence to the Tribunal.

### **10.3 – The Evidence of Retired Chief Superintendent Tom Curran in Relation to Information Received of General IRA Threats to RUC Officers**

10.3.1 Mr Curran also gave evidence in relation to two pieces of information he received indicating that there was a threat to RUC officers. One piece of information related to the targeting of RUC officers by the IRA in general and the second concerned a specific threat to Bob Buchanan.

10.3.2 In relation to the general information, Mr Curran submitted a report to his superior officer, the Chief Superintendent in Monaghan, in or around 30<sup>th</sup> April 1987. The report stated as follows:

“Recent information indicates that the PIRA are aware that the RUC are crossing the border to meet with Gardaí, which is part of the Anglo – Irish Agreement. The above organisation is determined to collapse the Anglo – Irish Agreement this year if at all possible, and part of their plan is to murder a number of RUC officers travelling to or returning from those meetings. In the light of this information, I respectfully suggest the following security arrangements be put into operation immediately:

1. That meetings be doubled up; for example that Armagh, Tyrone and Fermanagh meetings with Monaghan and Dundalk be held on the same date and the same venue.
2. That the venue for such meetings be varied as much as possible.
3. That all RUC officers attending these meetings be escorted by detective branch to and from the border.
4. That routes to and from the border be varied as much as possible.”

10.3.3 These recommendations appear to have prompted Assistant Commissioner Fanning to write to the Chief Superintendents in Monaghan, Drogheda, Letterkenny and Sligo in following terms:

“Re PIRA Activity: Confidential information indicates that PIRA are aware that members of the RUC are crossing the border to attend meetings with the Gardaí on the terms of the Anglo Irish Agreement. The above organisation, in its opposition to the Anglo Irish Agreement, has planned to murder a number of RUC officers travelling to or returning from these meetings. Accordingly, it will be necessary in future to arrange armed escorts for RUC personnel attending meetings at local venues in the border divisions. Divisional officers should so arrange.”

10.3.4 I make the following observations in relation to this document. Firstly, it indicates an awareness on the part of the IRA of the fact that RUC officers were crossing the border and an intention to attack such officers to disrupt cross – border police co-operation. This is something which I have borne in mind in the context of my overall consideration of how the ambush of 20<sup>th</sup> March 1989 was mounted. Secondly, it is noteworthy that of the four recommendations made by Mr Curran, only one appears to have been taken up by his superior officers at Garda HQ. Thirdly, in the light of what subsequently transpired, it appears that the recommendation that was taken up – armed escorts for RUC personnel attending meetings at local venues in the Garda border divisions – was not implemented to any significant degree. I have not reached any definitive conclusion as to where responsibility lies for the failure to implement this recommendation, though suspect that there may have been a degree of complacency on the part of both police forces.

10.3.5 It certainly appears to be the case that Bob Buchanan did not wish to avail of armed escorts while travelling south of the border. It also seems to be the case that no Garda officer insisted upon his doing so. In this regard, I accept Mr Curran’s evidence that he had discussions with Bob Buchanan about his security, asked him whether he was happy about coming to Monaghan without an escort and indicated that if Bob Buchanan wanted an escort, he would give him one. He stated that, “[Bob Buchanan] said he was alright and that was it.” It is also worth noting that a report submitted by Superintendent Curran’s superior officer, Chief Superintendent Bernard King, after the deaths of Breen and Buchanan broadly corroborates Mr Curran’s evidence that he spoke to Bob Buchanan about his security. Chief Superintendent King noted as follows:

“It is true to say that the late RUC Superintendent Bob Buchanan travelled alone, unarmed and unescorted into the Republic. It’s also true to say he would drop in unannounced to Garda

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stations. He was a collator of intelligence for the RUC and he saw his roll as making contact with anyone who could assist in this regard. In Monaghan he did not talk to the rank and file Gardaí. In fact, few sergeants or Gardaí in Monaghan would know either of the deceased officers by name or rank in the RUC.

In recent months I am aware that the late Superintendent Bob Buchanan called to Clontibert station in Monaghan district and identified himself to Sergeant Sullivan, the sergeant in charge there. When he informed the Sergeant of the purpose of his visit the Sergeant directed him to contact the Superintendent at Monaghan, as that was the only channel of communication which he would use. The Sergeant was concerned about the Superintendent's safety and his car being observed by subversives outside the station. This was the only call to Clontibert station.

On at least one occasion I discussed the matter of Superintendent Buchanan's visits to Monaghan with Superintendent Curran who was then Border Superintendent. We were concerned about his unannounced calls at the station, the parking of his private car in the station and the difficulty a station orderly had in having an RUC officer in the public office area when members of the public from Monaghan would call. At that time Superintendent Buchanan was advised not to visit Monaghan unless he had previously telephoned Superintendent Curran and met him by appointment. He complied with this request and reduced the frequency of his calls."

In his evidence, Tom Curran stated that there was nothing in this report that he disagreed with and that it reflected his general concerns.

**10.4 – The Evidence of Retired Chief Superintendent Tom Curran in Relation to Information Received of Specific Threats to Superintendent Buchanan**

10.4.1 Mr Curran gave evidence that between six months and one year (elsewhere in his evidence he stated "the best part of nine months or more maybe") before Superintendent Buchanan was killed, a man, who he believed to be a member of the Provisional IRA, told him that Superintendent Bob Buchanan was going to be shot. This man said to him: "[t]here's a fella crossing the border there to see you, and he's going to be shot; he's on the list to be shot."

10.4.2 Mr Curran told me that while one can never be sure of the validity of such stories from informants, he treated it as a serious matter, and wrote directly to Crime and Security providing this

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information. He addressed his report to the Assistant Commissioner, Crime and Security, Garda HQ. In reply to a question from me as to whether Eugene Crowley was still Assistant Commissioner at that stage, he replied that he thought he was. However, on reflection and given the timeline suggested by Mr Curran, I am the view that this may not have been the case: Mr Crowley took up the position of Deputy Commissioner on 3<sup>rd</sup> May 1988, some 10 and a half months before Superintendent Buchanan was killed. Mr Curran gave evidence that he did not retain a copy of his report among his own papers. He also said that he did not send a copy to his own Chief Superintendent and explained was because he had seen copies of intelligence reports in his Chief Superintendent's office and felt that "they there were carelessly handled."

10.4.3 An Garda Síochána has informed the Tribunal that there is no record of such a report having been received at Garda Headquarters. When it was put to Mr Curran, he acknowledged that he was surprised that this was the case, but added: "[y]ou know the way it is in government offices, sometimes these things get lost."

10.4.4 Mr Curran indicated in his evidence that he was not prepared to give the name of his informant to the Tribunal. He stated that he did not know where the informant was now, but felt that if he revealed the informant's identity to anyone there was a possibility that the informant would be shot. Mr Curran did, however, state that he now regretted not having gone back to Crime and Security after Chief Superintendent Bob Buchanan was killed to provide them with the identity of his informant at that stage. This could, he thought, have been of some assistance to Crime and Security in the investigation of the murders.

10.4.5 Mr Curran was questioned why he did not go directly to Superintendent Buchanan to inform him that his life was under threat. He stated that he felt that it was best to leave the matter to be dealt with at a higher level. He noted that the RUC people could be sensitive about their security and did not want to give Bob Buchanan the impression that he did not want to see him or was trying to discourage him from coming over the border to cooperate with An Garda Síochána. It was put to him by counsel on for Mr Owen Corrigan that he had been grossly negligent in failing to inform Superintendent Buchanan directly of the information that he had received. Chief Superintendent Curran did not accept this.

### **10.5 – The Evidence of Michael Diffley and Others**

10.5.1 The Tribunal also heard evidence from Michael Diffley, who joined An Garda Síochána’s Intelligence Unit in July 1975. He was a Detective Superintendent in Crime and Security at the time Eugene Crowley was the Assistant Commissioner. On 3<sup>rd</sup> May 1988 when Eugene Crowley was promoted to the post of Deputy Commissioner, Detective Superintendent Diffley left the Intelligence Unit to continue working with Mr Crowley. When Eugene Crowley was subsequently appointed Commissioner, Detective Superintendent Diffley became his private secretary. He was obviously very familiar with former Commissioner Crowley on a personal and professional level.

10.5.2 When in the Intelligence Unit, Michael Diffley was the person who opened a lot of the intelligence reports addressed to the Assistant Commissioner, at Crime and Security. He confirmed that he had received Tom Curran’s April 1987 report as to the general threat to RUC officers. He noted in evidence that he had written on the report confirming that it had been brought to the attention of RUC officers, and counsel for the PSNI did not question or contradict him in this regard. This tends to confirm my sense, expressed at paragraph 10.3.4 above, that there may have been a degree of complacency on the RUC side, but again I emphasise that I have not reached a firm view on this.

10.5.3 Mr Diffley had no recollection of receiving Tom Curran’s report about a specific threat to the life of Superintendent Buchanan. However, this is not altogether surprising and tends to suggest that Mr Diffley had departed the Intelligence Unit before the report was submitted. Tom Curran thought he had submitted the report between six months and one year before the murders; Michael Diffley departed the Intelligence Unit some 10 and a half months before the murders.

10.5.4 Mr Diffley expressed surprise at Mr Curran’s evidence as to his conversation with Assistant Commissioner Crowley regarding information given by Superintendent Buchanan. He stated,

“that is not the way I am aware the RUC would communicate intelligence. Intelligence had to be from headquarters to headquarters.”

In response to questions posed on behalf of the Garda Commissioner, he suggested that the passing of information through Superintendent Buchanan and Superintendent Curran would be a breach of

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agreements and protocols between the respective intelligence agencies. Similarly, retired Commissioner Noel Conroy said that he was “utterly shocked” at the idea that such information would be communicated at local, rather than headquarters, level. However, I note that this was also Tom Curran’s view: he confirmed that he was taken aback when Bob Buchanan spoke to him, “because I thought myself that if there was any issue to be discussed like that, it would be at a higher level than us.”

10.5.5 As former Commissioner Joe Ainsworth said to me in evidence, however, while he was also surprised at the channel of communication, “strange things happen in big forces.” Moreover, I am inclined to accept the evidence of retired Chief Superintendent Michael Staunton that if the RUC had a concern about a member of An Garda Síochána, they could express that concern in one of two ways:

“If it was done officially in writing it would be communicated, I would imagine, from RUC headquarters to Garda Headquarters, if it was done in a formal way. The other way, possibly, is that some RUC person might mention to a guard that they know reasonably well that they were unhappy with somebody or that they had concerns, that sort of way, and that way, I suppose, the guard who received that sort of information would commit it to writing, I would imagine, straight way, and would – and on a confidential cover up the line, as we say.”

10.5.6 The latter scenario is consistent with Bob Buchanan approaching Tom Curran, a Superintendent who he had known for four or five years and with whom he appears to have established a good working relationship and trust. In this respect, retired Deputy Chief Constable of the RUC, Blair Wallace, whilst acknowledging that the report of his Working Party recommended that “high grade intelligence of a major nature should pass between concerned departments in Garda and RUC HQ”, stated that this normal channel did not exclude the use of another channel “if it was thought to be more expedient.” He stated:

“the saving grace of it was that Mr Buchanan's relationship was obviously known with Mr Curran and it was felt that, possibly, that by going through Mr Buchanan to Mr Curran and through Mr Curran, then, to the Assistant Commissioner, and that it may be a better way of getting a positive result.”

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10.5.7 He also noted that the personal relationship between Tom Curran and Bob Buchanan was a consideration:

“[...] the two officers had built up, obviously, a good working relationship within the Working Group and then Buchanan was the Border Superintendent who would have had almost daily contact with his opposite number, who was Mr Curran, and I have no doubt that a bond of fellowship, two police officers both endeavouring to do their very best to make a bad situation better, would have [made them] confident that they could disclose confidence to each other in relation to what was a very sensitive matter.”

10.5.8 Michael Diffley also gave evidence that Tom Curran’s description of his encounter with Eugene Crowley “was not the Eugene Crowley I knew.” He continued:

“That Eugene Crowley was at pains to ask so many questions, he was infamous, you could say it, for the number of questions he would ask in any situation till he got a thorough picture of what was going on. But that is all I can say about it.”

This resonates with evidence given by retired Chief Superintendent Owen Giblin, who was the divisional head of Louth/Meath Division until his retirement in July 1988. He told me that Assistant Commissioner Crowley’s reported lack of response to the information Tom Curran was imparting to him “wasn’t his form, unless he had his mind made up that this [...] is rubbish.” Similarly, retired Commissioner Noel Conroy gave evidence that the incident as described was “not the Mr Crowley that I knew.” He described Mr Crowley as a “difficult task master insofar as he wanted to know every detail of what is happening.” Mr Conroy did, however, also emphasise that he was not suggesting for one moment that Tom Curran was lying to the Tribunal.

10.5.9 Mr Diffley stated that he had no memory of Mr Crowley mentioning a visit by Tom Curran to him, but also acknowledged that because of the way the offices were laid out, Tom Curran could have come in and met the Assistant Commissioner without Superintendent Diffley ever having seen him. He confirmed that Eugene Crowley had never communicated anything to him in relation to Owen Corrigan.

## **10.6 – Conclusions in Relation to the Evidence of Tom Curran**

10.6.1 Tom Curran struck me as a most sincere and honest witness. The absence of written records notwithstanding, I fully accept his evidence in relation to the information he received from Bob Buchanan and the receipt and transmission of intelligence information about a threat to Superintendent Buchanan's life.

10.6.2 In relation to the first of these matters, Tom Curran never worked in Dundalk or in the Louth/Meath division and does not really know Owen Corrigan. There is no evidence whatsoever to suggest that he bears any ill will to Mr Corrigan or that he has any reason to fabricate an account of Superintendent Buchanan expressing concern about Mr Corrigan.

10.6.3 In relation to the information about the threat to Superintendent Buchanan's life, Mr Curran's evidence was clear and cogent. There was no ambiguity or uncertainty in his account such as to make me think he may have been mistaken and I can conceive of no reason why he would make this up. On the contrary, in giving this evidence, Tom Curran has exposed himself to the accusation, which was put to him in the course of his evidence, that he was negligent in not warning Superintendent Buchanan of the threat. It is a man of integrity and courage who places himself in that position. I wish to add that Mr Curran did not seek the Tribunal out, but when the Tribunal sought him, he unhesitatingly provided testimony which I found to be compelling and truthful.

10.6.4 While I have not had the benefit of hearing Eugene Crowley's response to the evidence of Tom Curran, I have no reason to doubt, and also accept, Tom Curran's evidence as to his meeting with the then Assistant Commissioner. It is and will remain a mystery why Eugene Crowley reacted as he did when Tom Curran relayed the information received from Chief Superintendent Bob Buchanan. Retired Assistant Commissioner Ned O'Dea suggested to the Tribunal that Eugene Crowley may not have heard Tom Curran, but, in his evidence, Mr Curran put paid to any such suggestion. Even leaving aside the fact that I find Mr Curran to be a very credible and honest witness, I would find the explanation suggested by Mr O'Dea to be highly unconvincing; on the basis of the evidence given in relation to Eugene Crowley's inquisitive approach, as well on the basis of common sense, I feel that if Eugene Crowley had not heard something, he would have asked Tom Curran to repeat himself. Another possibility, suggested by retired Chief Superintendent Owen Giblin, was that the Assistant

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Commissioner thought that what he was hearing was “rubbish”; but again, one wonders why, if this were the case, he did not speak up and say so.

10.6.5 The Tribunal cannot know what Assistant Commissioner Crowley was thinking nor can I know for certain what steps, if any, he took on foot of the information he received. What can be said, however, is that there are no documentary records to indicate that any action was taken by An Garda Síochána to enquire into the suggestion that Detective Sergeant Corrigan was inappropriately associating with the Provisional IRA. Given that I have found as a fact that an Assistant Commissioner of An Garda Síochána was informed in 1987 that the RUC had such concerns about Mr Corrigan, the absence of evidence demonstrating that this information was in any way acted upon is, in my view, indicative of a very serious omission on the part of An Garda Síochána.

10.6.6 Equally, if not more, serious is the absence of any records to indicate that An Garda Síochána took any steps on foot of the submission, in 1988, by Tom Curran of a report indicating that the Provisional IRA were targeting Superintendent Buchanan. The absence of Superintendent Curran’s report from files in Garda Headquarters is a matter of serious concern. Furthermore, I have seen no evidence of any note or document in the records of An Garda Síochána or the Police Service of Northern Ireland to indicate that Tom Curran’s information was transferred by An Garda Síochána to the RUC for appropriate action to be taken. Had this been done, the life of Superintendent Buchanan, and consequently that of Chief Superintendent Breen, may have been saved.

10.6.6 The information that Tom Curran received an indication from an informant in 1988 to the effect that Bob Buchanan was ‘on a list to be shot’ is, of course, also very significant in terms of my assessment of how the Provisional IRA mounted the operation of 20<sup>th</sup> March 1989. In particular, bearing in mind the evidence of former RUC Inspector Day referred to in Chapter 2, it is suggestive of surveillance having been carried on Superintendent Buchanan. This is a factor to be borne in mind when I come to assess the version of events provided by the former personnel of the Provisional IRA later in this Report.

10.6.7 It is easy, with hindsight, to query whether Mr Curran ought to have spoken to Chief Superintendent Buchanan directly about the threat to his life, but I accept that his frank and at times rueful evidence to the effect that he felt that it was best to leave it to higher authorities to assess the intelligence and determine the appropriate action to be taken. Mr Curran was proactive in April 1987

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in making recommendations to reduce the risk to the lives of RUC officers travelling south but, notwithstanding his personal efforts in this regard, his recommendations were not implemented. As already noted, I also accept his evidence that he personally offered Superintendent Buchanan escorts, but that Superintendent Buchanan declined the offer.

10.6.8 Finally, I wish to make an observation in relation to the treatment of Tom Curran's evidence by the Garda Commissioner. While it was never put to Mr Curran on behalf of the Garda Commissioner that the meeting with Eugene Crowley did not take place, or that he did not submit an intelligence report about the threat to the life of Superintendent Buchanan, this was, I feel, hinted at in questions put to other witnesses on the Garda Commissioner's behalf. To take one example, a series of witnesses were invited to offer their views as to whether they would expect the RUC to communicate concerns about a Garda member in the manner that had been suggested. Witnesses questioned in this manner included retired Commissioner Lawrence Wren and retired Assistant Commissioner Dermot Jennings. I have already dealt with this line of argument in discussing the evidence of Michael Diffley above. To take another example, counsel for the Commissioner appeared to me to be seeking subtly to undermine Mr Curran's evidence by suggesting to former Chief Superintendent King of Monaghan that if Bob Buchanan had expressed a concern to Mr Curran, one might assume that Mr Curran would have shared that with his Chief Superintendent.

10.6.9 The Commissioner is, of course, entitled to cross – examine witnesses as he sees fit. He also, understandably, may be anxious to test any evidence capable of being interpreted as reflecting badly on a deceased former Commissioner. These considerations notwithstanding, however, the treatment of retired Chief Superintendent Curran's evidence caused me concern. The Garda Commissioner's legal team was anxious to point out to me that it was instructed to provide legal advice to, and protect the interest of, any current serving or current member of the force who sought it (at another point, Counsel for the Commissioner submitted to me that the Commissioner's legal representation before the Tribunal "embraces current or past members, whether men of low rank or high rank"). I do not know whether Mr Curran sought the benefit of such advice or protection, but I do know that he did not receive it.

10.6.10 Without it ever having been put to Mr Curran on behalf of the Garda Commissioner that he was lying or mistaken, questions were asked of both him and other witnesses which, in my view, were clearly designed to cast doubt over his evidence. I can only assume that instructions to adopt

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such an approach were given on the basis that the Garda Commissioner did not like what Mr Curran had to say.

10.6.11 Tom Curran retired as a senior officer of An Garda Síochána and he struck me as an officer of the utmost integrity. I would have thought he is as deserving of the support of the Garda Commissioner as any other former officer. However, it seems to me that because he was giving evidence of which An Garda Síochána did not approve, such support was not forthcoming. I regret to say that this suggests to me that there prevails in An Garda Síochána today a prioritisation of the protection of the good name of the force over the protection of those who seek to tell the truth. Loyalty is prized above honesty. My life experience tells me that such a culture is not unique to An Garda Síochána; all large organisations struggle with this issue. However, given that I have already concluded that political expediency and the prioritisation of the good name of the force contributed to suggestions of collusion in these killings not being properly investigated when they first arose, the fact that such a culture and attitude is still prevalent now, more than 20 years on, in the context of the work of this Tribunal, is disheartening and depressing.

# Chapter 11

## Significant Events During the Period 1989 – 1993

### 11.1 – Overview

11.1.1 Speculation as to the possibility of Garda collusion in the deaths of Harry Breen and Bob Buchanan largely dissipated in 1989, and lay dormant until the publication by Toby Harnden of his book *Bandit Country* in 1999. During this period, however, a number of events occurred which ultimately proved to be of potential relevance to the issues to be determined by this Tribunal. This chapter, and chapter 12 which follows, concern such events. These matters are not necessarily connected to one another, but simply form part of the relevant, and potentially significant, sequence of events between 1989 and late 1999. There is, unavoidably, a degree of overlap between the events recounted in these two chapters and the contents of later chapters focusing on individual former members of An Garda Síochána.

11.1.2 In this chapter, I propose to refer to events from 1989 until the beginning of 1993. These are:

(i) The disciplinary proceedings in respect of Owen Corrigan, one set of which were initiated prior to the *O’Dea Report* and already referred to in that context, but the other set of which trundled on until Mr Corrigan’s retirement in February 1992 (the details of the disciplinary proceedings, and my view of them, will be addressed in detail in chapter 19 in relation to retired Detective Sergeant Corrigan);

(ii) evidence heard by the Tribunal in respect of the suggestion that in late January 1990, the search of a well known subversive’s home by Dundalk Detective Branch was compromised (this is divided into a number of sections for ease of reference);

(iii) three pieces of intelligence received by An Garda Síochána within a few years subsequent to the murders and touching directly upon the allegation of collusion (I consider it appropriate to deal with these intelligence reports at this stage of my Report, in their proper chronological context, rather than in the subsequent chapter addressing intelligence material more generally); and

(iv) the disciplinary proceedings in respect of Leo Colton, which were initiated in May 1991 (again, the details of the disciplinary proceedings, and my view of them, will be addressed in detail in a later chapter).

Chapter 12 will address the 1993 prosecution of Owen Corrigan for obtaining money by false pretences arising from an alleged insurance fraud; the abduction and assault of Mr Corrigan in December 1995; and the 1998 investigation of Finbarr Hickey and Leo Colton in respect of the completion of false passport application forms which facilitated three members of the Provisional IRA in obtaining false passports.

11.1.3 Before addressing these four incidents, however, I propose to summarise some evidence about a general sense of unease in or about Dundalk Garda Station. This evidence is not specific to the timeframe being addressed in this and the next chapter – indeed some of it relates to a period before the ambush of 20<sup>th</sup> March 1989 – but I think it appropriate to deal with it here following on from my analysis of the evidence of Tom Curran about the unease expressed to him by Bob Buchanan in 1987.

## **11.2 – Evidence of Unease in or About Dundalk Garda Station**

11.2.1. Retired Detective Superintendent Tom Connolly, who was a Detective Superintendent in Dundalk Garda Station from November 1988 to January 1990, gave evidence before the Tribunal on three occasions. On the first occasion, he primarily gave evidence in relation to the events of 20<sup>th</sup> March 1989 and the investigation directed by him in the days and weeks that followed. In the context of this evidence, Detective Superintendent Connolly told me that there was “great unease” in Dundalk Garda Station. He said he was aware of this from before he went to Dundalk, and when he arrived in Dundalk, he was told by a number of sources that there was unease about a certain individual.

11.2.2 Subsequently, Mr Connolly elaborated on his evidence in this regard. He told me that before going to Dundalk, he had heard it mentioned that a named individual was:

“possibly involved or suspected of being involved in some sort of smuggling and/or involved in some way with the IRA.”

He thought it likely that he had heard this while serving as a Detective Inspector in the ‘Murder Squad’ in the Investigation section of Garda HQ (though not necessarily in the premises of Garda HQ). He also told me that he had heard unease about the same person expressed in Dundalk Garda Station after he had arrived, and again by an RUC officer whose identity he could not remember while he was serving in that station. He told me that the name referred to in all these allegations was that of Owen Corrigan.

11.2.3 It was put to Mr Connolly by Counsel for the Garda Commissioner that when he heard these rumours in Garda HQ surely he, or other persons with him at the time, would have taken some action in respect of what was a “shattering and stunning suggestion.” Mr Connolly replied that it was “fairly well known” that Owen Corrigan was “being talked about as possibly or maybe or suspected of being at some type of smuggling or in cahoots with the IRA in some way.” When asked why he had not taken action immediately when he arrived in Dundalk he replied that:

“As far as I was concerned the Chief Superintendent in Dundalk knew it when I went there, the Superintendent, the District Officer knew it before I went to Dundalk, the Detective Inspector knew it before I went to Dundalk and they passed the information on to me.”

11.2.4 Mr Connolly was accused by Counsel for Owen Corrigan of putting Mr Corrigan’s name into evidence deliberately and maliciously, but he stated that he was simply relaying to the Tribunal what he had been told on a number of occasions. I think it worth adding that Mr Connolly consistently expressed to the Tribunal his opinion that the IRA did not need assistance from within the station to carry out the ambush, and was perfectly capable of mounting the operation on the basis of its own surveillance of Bob Buchanan.

11.2.5 I think that Tom Connolly’s evidence is significant because it echoes a recurring strand of evidence throughout the course of the Tribunal’s hearings to the effect that there was a sense that there was something not right in Dundalk Garda Station. I have already found as a fact that Bob Buchanan expressed such unease to Tom Curran in 1987, and that Harry Breen expressed similar unease to Alan Mains on 20<sup>th</sup> March 1989. A number of retired RUC officers from all ranks also expressed unease, although it is equally worth stating that other RUC officers said that they never

heard of or personally felt such concerns about Dundalk Garda Station and had an excellent working relationship with the officers there. Retired Detective Garda Larry Crowe from Dundalk told me that it was mentioned to him by a colleague in Dublin that “we were in the pockets of the IRA around the border.”

11.2.6 Blair Wallace, a retired Deputy Chief Constable, gave evidence that when he was the Detective Chief Superintendent in charge of the RUC Special Branch in Belfast from the late 1970s to 1984, he received intelligence on at least three occasions about subversive activities in north Louth. The source communicated this intelligence with the specific caveat that the intelligence “wouldn’t be worth acting upon if it was going to be given to Dundalk.” Mr Wallace explained that he discussed the problem with Brian Fitzsimons, then Head of Intelligence at RUC Headquarters, and Mr Fitzsimons arranged with his contacts in An Garda Síochána that such intelligence be actioned by the Task Force based in Dublin rather than the local Gardaí. No Garda witness had any recollection of the Task Force being employed with a specific instruction not to involve Dundalk Gardaí. However, retired Garda Detective Inspector Sean O’Connell, who was a member of the Task Force over a period of time, said that the general opinion of Dundalk Garda Station within An Garda Síochána was that there “was something dodgy going on there.” Turning from evidence of general unease to unease about a specific individual, Mr O’Connell also said that the name of Owen Corrigan “kept cropping up over the years” and that “dodgy was the word most often used about him.” Sergeant Donal Smyth, who served in Dundalk from 1987 to 1990, said that when he first went Dundalk he was told to be careful of Owen Corrigan. He described this as “just rumours” and could not recall who said it to him.

11.2.7 In a similar vein, Witness 24, an RUC Special Branch officer who in March 1989 was the Detective Chief Superintendent and RUC Head of Intelligence (Brian Fitzsimons’ successor in this post) said that he met Owen Corrigan for the first time in 1981 and heard rumours and innuendo about him – “but nothing more than that” – in the subsequent years. He told the Tribunal that he had a “gut feeling that An Garda Síochána powers in Dublin did not trust him [Owen Corrigan].” Witness 64, who went to Newry in 1988 as a Detective Inspector in the Special Branch, recalled that prior to his arrival in Newry he was briefed that there was a Detective Sergeant called Owen Corrigan in Dundalk and he was “not a man that I should trust and I should try to have no dealings with him.”

11.2.8 What was striking about Tom Connolly's evidence was that he was a senior Garda Detective openly and frankly admitting that such rumours were widely circulating in An Garda Síochána at the same time. The only other senior member of An Garda Síochána to acknowledge the existence of these rumours was, in fact, Laurence Wren, who was the Garda Commissioner from 1983 to 1987. He said:

”There were rumours at the amount of property he [Owen Corrigan] had acquired, I don't know three or four or something, houses that he had and you would begin to wonder how he was so lucky to be able to acquire all this property. Certainly he wouldn't do it on a sergeant's pay, or indeed any member's pay in the force.”

11.2.9 It is worth noting that former Chief Superintendent John Nolan, who arrived as Chief Superintendent in Dundalk in May 1988, told me that he was not aware of any serious cloud over Dundalk before his arrival.

11.2.10 Tom Connolly struck me as a very credible witness, and I believe that this evidence in relation to the unease at Dundalk was truthful. His evidence resonated with that of Alan Mains, Blair Wallace, Witness 64, Witness 24, Sean O'Connell, Tom Curran and Laurence Wren. I am satisfied that there was a general concern or unease about Dundalk Garda Station, and a concern or unease about Owen Corrigan in particular, and that both were widely known within Garda Headquarters (particularly in those areas dealing with the Detective Branch) and within Dundalk Garda Station.

11.2.11 Unfortunately, this finding means that I am drawn to the conclusion that a number of the Garda witnesses before this Tribunal, including former and current senior Gardaí, were not fully forthcoming in their evidence to me. I want to emphasise that this is a general finding rather than a finding against any specific individuals. I accept that any individual witness may not recall, or for some reason may never have encountered the unease to which I have referred; the evidence of any one individual witness may therefore be truthful. What I find it difficult to accept, what I cannot accept, is that *so many* of the Garda witnesses from whom I have heard do not recall or never encountered such unease. Regrettably, this suggests that there is an ingrained culture of prioritising loyalty to the good name of the force over the legal, moral and ethical obligation owed to give truthful evidence to the Tribunal.

11.2.12 I believe that Tom Connolly, like Tom Curran, is a decent, retired Garda officer who came to this Tribunal and told the truth. I also believe that, just as occurred in respect of Tom Curran, the full force of the Garda Commissioner's legal protection was not extended to Mr Connolly as a result. In respect, I feel that the questions posed on behalf of the Garda Commissioner of Tom Connolly and at least one other witness were designed to undermine his evidence by seeking to establish that he had not told anyone of the unease he encountered. His answer to that, in short, was that he did not need to tell anyone, because everyone already knew.

### **11.3 Disciplinary Proceedings Against Owen Corrigan**

11.3.1 As noted earlier in the Report, on 21<sup>st</sup> January 1989, Detective Superintendent Connolly wrote a report relating to an allegation of smuggling against Owen Corrigan, two unauthorised uses of official cars, the alteration of official records, and the failure to report damage to cars. This report was sent by Chief Superintendent John Nolan to Assistant Commissioner O'Dea on 24<sup>th</sup> February 1989, with a recommendation that Owen Corrigan be transferred away from the border area. A decision was subsequently taken by Headquarters to transfer him to the Special Detective Unit in Harcourt Square in Dublin. This transfer was scheduled to take place on 5<sup>th</sup> May 1989, and was communicated to Detective Sergeant Corrigan on 21<sup>st</sup> April 1989. Detective Sergeant Corrigan appealed against the transfer and his appeal was refused by the Garda Commissioner. Detective Sergeant Corrigan then referred the matter to the Review Board. The Board members considered the matter on 20<sup>th</sup> October 1989 and determined that they would not recommend that the appeal be allowed. However, in view of particular family circumstances, the Review Board suggested consideration be given to providing Detective Sergeant Corrigan with a post at a station closer to his home than Dublin. In this regard, Drogheda Garda Station was suggested. By a report dated 3<sup>rd</sup> November 1989, Chief Superintendent John Nolan gave his views on this suggestion. He stated:

“His transfer to Drogheda at this stage of his service would not be welcome by senior officers there because of his conduct generally and his other interests in that area. “

11.3.2 In his evidence to me, John Nolan stated that he would not have gone along with the transfer of Owen Corrigan to Drogheda:

“I think that wouldn’t have achieved anything because Drogheda was just down the road and in the same division.”

11.3.3 In his report, Chief Superintendent Nolan expressed the view that if he had to choose between sending Owen Corrigan to Drogheda or retaining him in Dundalk, he would prefer to retain him in Dundalk. In his evidence, Pat Tierney indicated that he was also asked by Headquarters for his views in respect of the possibility that Owen Corrigan be transferred to Drogheda rather than Harcourt Square. He told me in his evidence that he responded that “I had no confidence whatsoever in Detective Sergeant Corrigan.” Ultimately, the decision to transfer Owen Corrigan to Dublin was confirmed. The transfer was due to take effect on 5<sup>th</sup> December 1989, but Detective Sergeant Corrigan went on sick leave on 4<sup>th</sup> December 1989.

11.3.4 In parallel to the issue of the transfer, a sworn inquiry was constituted under the Garda Disciplinary Regulations in respect of some of the matters outlined in Detective Superintendent Connolly’s report of 21<sup>st</sup> January 1989. The disciplinary proceedings were heard and Detective Sergeant Corrigan was found to have committed four breaches of the Garda Regulations. These related to the failure to enter the correct mileage into the log book of the official Garda car.

11.3.5 On 17<sup>th</sup> July 1989, a man named John McAnulty was abducted from the Rosewood Club, Dromad, and murdered across the border. Detective Sergeant Corrigan was the only Detective Sergeant on duty from 10.00pm to 6.00am that night. He reported on duty and was not seen or heard from by any of his supervisors after that. He was not involved in the immediate investigation of the crime. On 22<sup>nd</sup> August, 1989, at 10.50pm, a fire bomb was thrown into a house in Dundalk. Again, Detective Sergeant Corrigan was the only Detective Sergeant on duty from 10.00pm on 22<sup>nd</sup> August to 6.00am on 23<sup>rd</sup> August, 1989. He reported on duty at 10.00pm and was not subsequently seen or heard from during the night. He did not report off duty at 6.00am and did not take an official car or personal radio when going on duty.

11.3.6 These incidents prompted Chief Superintendent John Nolan to recommend that a second set of disciplinary proceedings be initiated against Detective Sergeant Corrigan. Updating Crime and Security about these developments, in a letter, Chief Superintendent Nolan stated:

“Since the incidents referred to, Sergeant Corrigan has literally opted out of all involvement in ordinary police duties. He is not on speaking terms with most of his superiors and he communicates only with a few close colleagues while ignoring all others.”

11.3.7 On foot of the Chief Superintendent’s recommendation, on 23<sup>rd</sup> January 1990 new disciplinary proceedings were issued against Owen Corrigan. Two breaches are alleged. These are:

- (i) That Sergeant Corrigan did not have in his possession a personal radio in outdoor duties as the supervising Sergeant on certain dates; and
- (ii) that he did not contact the Garda Station in Dundalk and was not available when required by Superintendent Pat Tierney to investigate a serious crime.

The disciplinary inquiry in respect of these charges was due to sit on 8<sup>th</sup> May 1990 but ultimately did not sit because Owen Corrigan went on sick leave on 4<sup>th</sup> December 1989 and remained on sick leave until his retirement on 4<sup>th</sup> February 1992.

#### **11.4 – Compromise of the Search of a Subversive’s Home – Introduction**

11.4.1 The Tribunal heard evidence in relation to an incident which occurred in late January 1990 (some 10 months after the murders) which is potentially relevant to the question of whether or not there was someone in Dundalk Garda Station leaking information to the IRA. Like the evidence of Tom Curran, the evidence in relation to the January 1990 incident was ‘new’ in the sense that it was not referred to in the *Camon Report* or in the *Cory Report*. The evidence suggests that a search of the home of a leading member of Provisional IRA by Gardaí in Dundalk was compromised hours before it was scheduled to take place.

11.4.2 Upon the application of Counsel for the Garda Commissioner, I initially ruled that the evidence of three witnesses in relation to this matter be heard in private session. In announcing my ruling in that regard, I did however give a commitment that I would refer to the evidence heard in my Report. Furthermore, two subsequent witnesses whose evidence was relevant to this issue gave evidence in public session and the evidence of the earlier witnesses was put to them.

On this basis, I am satisfied that this issue has been fully aired in public without objection, and that I ought therefore deal with the matter in this Report. I am also satisfied that my doing so will not give rise to any threat to life or security.

11.4.3 On the afternoon of 26<sup>th</sup> January 1990, then Detective Superintendent Pat Byrne, based in Crime and Security, Garda Headquarters (“HQ”) sent a fax to Detective Superintendent Myles Hawkshaw of Dundalk Garda Station requesting that the home of Michael McKeivitt, a leading member of the Provisional IRA, be searched urgently. It appears that the Gardaí had information that Mr McKeivitt was in possession of false or forged passports to be used by members of the IRA. Detective Superintendent Hawkshaw duly executed a search warrant and the search was carried out early on the morning of Saturday, 27<sup>th</sup> January 1990. The search was unfruitful in that no false or forged passports were recovered. These facts are not in dispute and are established by reference to contemporaneous documentary records.

### **11.5 – The Evidence of Dan Prenty**

11.5.1 Retired Detective Inspector Dan Prenty, a long – serving member of the Detective Branch in Dundalk Garda Station, gave evidence that he could not recall where he was on Friday, 26<sup>th</sup> January 1990. He told the Tribunal that when he came in to work on the morning of Saturday, 27<sup>th</sup> January 1990, the search of Mr McKeivitt’s house was either ongoing or had already taken place. He was told about it either by Detective Superintendent Hawkshaw or another member of the Gardaí in the Station. Mr Prenty gave evidence that a few days later, Superintendent Hawkshaw and himself were called to Garda HQ at The Phoenix Park, Dublin. His recollection was that Superintendent Hawkshaw and he travelled together from Dundalk. On arrival, Detective Inspector Prenty stated that he was “fairly certain” that Superintendent Pat Byrne and Mick Leahy met him. He said that sometime after their arrival, the two Dundalk officers were taken into a room and asked to listen to a tape on a small cassette machine. A recording was played for him, which he understood to be a recording of an intercepted telephone conversation. One of the interlocutors on the recording was identified to him as Michael McKeivitt. The other person said to Mr McKeivitt something along the lines of:

“You will be having visitors in the morning. Make sure that they don’t get that little booklet or that they don’t get what they’re looking for.”

11.5.2 Former Detective Inspector Prenty emphasised that he wasn't precisely sure of the exact words, but that it was clear from the recording that Michael McKeivitt got a message "sufficient to tell him that the Guards were coming to his home." Detective Inspector Prenty stated that he did not recognise the voice of the person who gave the warning. When it was put to Detective Inspector Prenty that none of the other three officers allegedly present had any recollection of this tape being played, he replied that he had "a clear recollection in my head" of the incident, and that "nothing will change my mind on that. I am one hundred and one percent sure of that."

11.5.3 An Garda Síochána's file on Mr McKeivitt contains the transcripts of a number of intercepted telephone conversations. An Garda Síochána informed the Tribunal, and the Tribunal has satisfied itself by verifying the original file, that there are no transcripts on the file of intercepted phone conversations occurring on either the late afternoon or evening of 26<sup>th</sup> January 1990 or on the early morning of 27<sup>th</sup> January 1990. In fact, there is a gap on the file in that there are no transcripts of intercepted phone conversations between 23<sup>rd</sup> January 1990 and 29<sup>th</sup> January 1990. To put this gap in context, there is a record of one intercepted conversation on 20<sup>th</sup> January, one intercepted conversation on 22<sup>nd</sup> January, one intercepted conversation on 23<sup>rd</sup> January, two intercepted conversations on 29<sup>th</sup> January, one intercepted conversation on 30<sup>th</sup> January and one intercepted conversation on 31<sup>st</sup> January.

11.5.4 However, this must be qualified by reference to the evidence of Mick Leahy, who was the Detective Sergeant in charge of telephone interceptions in January 1990. He had four Detective Garda working under him reviewing and transcribing intercepted phone conversations in the State. He gave evidence that the recordings were collected by the Garda Síochána at the General Post Office in Dublin, listened to at HQ and only transcribed if relevant. After having been transcribed, the physical tape was only retained if there was an unknown voice which An Garda Síochána hoped to identify. It is clear from former Detective Sergeant Leahy's evidence, and from the Tribunal's own perusal of Mr McKeivitt's file, that the transcripts that do exist on Mr McKeivitt's file are not intended to be an exhaustive collection of all phone conversations intercepted. Rather, they purport to form a collection of all the conversations deemed relevant from the perspective of Crime and Security Branch. I observe that this does leave open the possibility that important conversations were not transcribed.

11.5.5 Former Detective Sergeant Leahy gave evidence that he certainly had no recollection of the incident described by Dan Prenty. He emphasised the he was not saying that the incident did not happen; it was simply the case that he had no recollection of it.

## **11.6 – The Evidence of Myles Hawkshaw**

11.6.1 Detective Superintendent Myles Hawkshaw served in Dundalk Garda Station from 1969 to 1975. In 1975, he was promoted to the rank of Detective Inspector and posted to Dublin Castle, and subsequently served in Harcourt Square. He returned to Dundalk in 1988 or 1989 and remained there until August 1991. Former Detective Superintendent Hawkshaw had originally provided a written statement to the Tribunal, dated 23<sup>rd</sup> August 2010, in which he stated that he had no recollection to the incident referred to by Detective Inspector Prenty. However, one week before he gave evidence in the private sitting before me, Detective Superintendent Hawkshaw retrieved his journal for the relevant period. This refreshed his memory somewhat, and it is fair to say that his oral testimony was somewhat more nuanced than the contents of his August 2010 written statement.

11.6.2 Myles Hawkshaw said that, prompted by the sight of his journal, from his own memory he recalls a search of Michael McKeivitt’s house around the relevant time. He has no recollection of signing the warrant for this search, but was able to confirm from his journal entry that he did so. Superintendent Hawkshaw’s diary entry for 26<sup>th</sup> January 1990 reads as follows:

“Received urgent fax from D/Super P Byrne, Headquarters, for search of Mr McKeivitt’s home for a passport, etc...I issued a warrant to Detective Sergeant Harney and Detective Prenty in Dublin. Discussed matters on his return. Spoke to Super B Quinn.”

11.6.3 The remainder of the entry for this date relates to an unrelated search elsewhere. Superintendent Hawkshaw cannot recall the discussion with Dan Prenty referred to in this entry. Mr Hawkshaw’s diary shows the following entry on 27<sup>th</sup> January 1990:

“9am office Dundalk. Discussed SDU matters. McKeivitt’s with D/I Prenty. Report on search and interview of McKeivitt re importation of arms from D/Sergeant Harney.”

11.6.4 The remainder of this entry relates to an art robbery. Myles Hawkshaw's journal records that he was off duty on Sunday, 28<sup>th</sup> January 1990. The final line of Mr Hawkshaw's diary for Monday, 29<sup>th</sup> January 1990 states that he "called to Crime and Security where I spoke to Detective Superintendent Pat Byrne re subversive matters relating to Dundalk area." Mr Hawkshaw clarified in evidence that he often called to The Phoenix Park either at the beginning or end of his working day since he lived in Malahide while working in Dundalk.

11.6.5 Mr Hawkshaw's diary entry for Thursday, 1<sup>st</sup> February 1990 is an important one. It states as follows:

"Went to headquarters where I kept appointment with D/Super Byrne. Met D/I Prenty there and spent the day examining all secret and security files relative to Dundalk area and Louth/Meath."

11.6.6 Mr Hawkshaw stated that he recalls meeting Detective Inspector Prenty at Headquarters but does not recall the purpose of that visit. While there is a minor discrepancy in that Detective Inspector Prenty's recollection was that he and Mr Hawkshaw travelled together to The Phoenix Park and Mr Hawkshaw's journal suggests that they met at The Phoenix Park, I do not think that this is significant given that these events occurred more than 20 years ago. Mr Hawkshaw indicated that having listened to Detective Inspector Prenty's evidence, 1<sup>st</sup> February 1990 was "definitely the date" of the incident to which Detective Inspector Prenty was referring. However, he had no recollection of seeing or listening to a tape. Indeed, it is important to state that he had no recollection of ever listening to a recording of a telephone intercept. However, Mr Hawkshaw did acknowledge that the reference to 'secret and security files' in his diary included the written transcripts of telephone intercepts as well as some other files.

11.6.7 Mr Hawkshaw also gave evidence as to who might have been aware of the imminent search. He stated that he had received the direction from Superintendent Byrne by fax. He had no fax machine in his office, so the fax was likely to have come into the Communication Office, the Chief Superintendent's office, or the Superintendent's office. In those circumstances, he accepted that the fax could probably have been seen by other people in the station. He had no recollection of whether or not he went to the Detective office to brief Sergeant Harney on the search to be carried out the following day, but accepted that it was possible that he had briefed him in the

Detective office in front of other detectives. He was also of the view that Detective Sergeant Harney would have briefed the officers he intended to use in the search immediately. It seems to be me that this evidence clearly leaves open the possibility that members of the Detective Branch and, by sight of the relevant faxes, members of the Uniform Branch, would have been aware that Mr McKeivitt's house was going to be searched.

## **11.7 – The Evidence of Pat Byrne**

11.7.1 The Tribunal also heard evidence from the then Detective Superintendent Pat Byrne, who gave the direction for the search to be carried out and who, according to Detective Inspector Prenty, was present when Myles Hawkshaw and he listened to the tape in Garda Headquarters. Mr Byrne had served as a Detective Inspector in the Security Branch from 1985 – 8, and had returned as a Detective Superintendent in 1990. He was subsequently promoted on a number of occasions, and served from 1996 to 2003 as the Commissioner of An Garda Síochána.

11.7.2 Mr Byrne gave evidence that he has no recollection of the incident described by Mr Prenty. Indeed, in response to direct questions from me, the former Commissioner went further, stating that the incident described by Dan Prenty “didn’t happen” and that, “a tape with that recording on it didn’t exist.” When I asked him how he could be so categorical, Pat Byrne explained that had he been aware of a search being compromised in the fashion alleged, this would have been of primary importance. Given that the information had emanated from Security Branch, the first thing he would have done was ‘lock down’ Garda headquarters because,

“It would have been so vital, because to suggest that this suspect, this particular suspect, and I emphasise particular suspect was tipped off, would have serious, serious repercussions across the whole security.”

11.7.3 When asked to explain the gap in transcripts between 23<sup>rd</sup> and 29<sup>th</sup> January 1990, Mr Byrne stated that perhaps the subject was away during this period. Mr Byrne also expressed scepticism about Mr Prenty's version of events on the basis that,

“it would be extraordinary, as a matter of fact, knowing this person that he would allow anybody to ring him up on the phone and tip him off like that. He was no fool.”

## **11.8 – Evidence of Michael McKeivitt**

11.8.1 The Tribunal contacted Michael McKeivitt with a view to interviewing him as part of its private investigation. He refused to meet with the Tribunal. In these circumstances, I directed that he be served with a summons to appear before me at a public hearing of the Tribunal. He was brought from Portlaoise Prison, where he is serving a sentence for two terrorist offences, to a public sitting of the Tribunal which took place in the Criminal Courts of Justice, Parkgate Street, Dublin 8.

11.8.2 He gave evidence that whilst he remembered a number of searches over the years, he had no recollection of the specific search in January 1990. However, he stated that he had a clear recollection, as had another member of his family with whom he had spoken in the days prior to his evidence, that at no point was he informed by An Garda Síochána that the house was being searched for forged or false passports. He also said, however, that he might not have been told or might not have been aware of the purpose of any given search. In relation to the central issue of concern, Mr McKeivitt said that he had never received a tip – off in advance of any search carried out in his house.

## **11.9 – Analysis of Evidence in Relation to a Search of Mr McKeivitt’s House**

11.9.1 I am faced, in relation to this matter, with a clear conflict of evidence. While Mr Hawkshaw and Mr Leahy do not recall listening to the tape, neither of them excludes the possibility that this may have occurred. Mr Prenty is very clear and certain in his evidence that it did occur. Former Commissioner Byrne is equally adamant in his evidence that it did not, as is Mr Michael McKeivitt. In weighing up the evidence, I am not inclined to accord too much weight to Mr McKeivitt’s denial. My instinct is that if he had received advance warning of the search, he would do everything he could in his evidence before this Tribunal to protect his source.

11.9.2 As between the conflicting evidence of former Detective Inspector Prenty and that of former Commissioner Byrne, it is not readily apparent that one account is to be preferred to the other. There is substance in Mr Byrne’s evidence that had such a tape existed, it would have led to action and would have stuck in the people’s memories. This point notwithstanding, however, having carefully listened to and considered the evidence of both Mr Byrne and Mr Prenty, as well

as all of the other oral and documentary evidence, I am inclined to accept, on a narrow balance of probabilities, Mr Prenty's evidence as to the existence of the tape. In this regard, I think it is significant and have attached due weight to the fact that while Myles Hawkshaw initially intended simply to give evidence that he had no recollection of the incident, his journal, to which he had access just one week before the relevant sitting of the Tribunal, corroborated to a large extent what Dan Prenty had said. Mr Prenty could not have known that Mr Hawkshaw's journal would be produced in evidence. The journal shows that on Thursday, 1<sup>st</sup> February 1990, less than one week after the unsuccessful search, Myles Hawkshaw and Dan Prenty spent a day in The Phoenix Park with then Detective Superintendent Byrne examining 'secret and security' files. Mr Hawkshaw has confirmed that this term could include written transcripts. Although he has no recollection of ever listening to an actual recording, it seems to me that that would not be inconsistent with what is described in his journal.

11.9.3 I should add that one matter in respect of which I heard evidence in private session, but which I cannot disclose in a public document, tends, in my view, to reinforce the possibility that the conversation described by Mr Prenty as having been recorded on the tape did take place.

11.9.4 I also wish to add that in assessing Dan Prenty's evidence generally, I have been mindful of the fact that Detective Sergeant Owen Corrigan and he clearly did not get on. Detective Sergeant Corrigan's Counsel has accused Mr Prenty, in respect of other evidence he has given to the Tribunal, of malice towards Owen Corrigan. While I do not accept the accusation of malice, it is clear that there was no love lost between the two officers. While I have had regard to this dimension in assessing Mr Prenty's evidence in relation to the search incident, I do not consider it is relevant. Mr Prenty did not suggest that he recognised the voice as that of Owen Corrigan. Furthermore, when this incident occurred, Mr Corrigan had left work on sick leave. He left on 4<sup>th</sup> December 1989, almost two months prior to this incident. As I stated when considering whether to hear Mr Prenty's evidence in private or public, Mr Corrigan had a crucial interest in the evidence because insofar as the evidence indicates that there may have been someone leaking information from Dundalk Garda Station, the timing tends to suggest that it was unlikely to have been Mr Corrigan, as he was absent from the station and the force at the relevant date.

### **11.10 – Consequences of the Finding in Relation to the McKevitt Search**

11.10.1 I now turn to consider the consequences of my acceptance of Dan Prenty's evidence as to the existence of a tape indicating that Michael McKevitt had been tipped off about an imminent Garda search of his home. This does suggest that the security of a Garda search of the house of a leading member of the IRA was compromised in January 1990. This could have occurred in a number of ways.

11.10.2 Firstly, as is recognised by former Commissioner Byrne, it may have been compromised directly by someone in Garda Headquarters from where the request to conduct the search originated.

11.10.3 Secondly, it could have been deliberately compromised by a member of An Garda Síochána in Dundalk. In this regard, I have already observed that by virtue of the manner in which the direction to carry out the search came into Dundalk Station, the information was not necessarily confined to members of the Detective Branch.

11.10.4 Thirdly the search could have been inadvertently compromised by what might be characterised as 'loose talk' by either officers from Dundalk Garda Station or Garda Headquarters.

11.10.5 It is not possible for me to determine, at this remove in time, which of these three scenarios occurred. I might observe that I have seen no other indication that there was a leak in Headquarters, but then again, I cannot definitively rule this possibility out. As regards the possibility of an inadvertent leak, it is of course possible that an officer mentioned to someone in passing on the night of Friday, 26<sup>th</sup> January 1990 that he was doing a search of Michael McKevitt's house the following morning, but this would not explain the specificity of the intercepted warning. Moreover, having regard to the very tight timeframe between receipt of the fax on Friday, 26<sup>th</sup> January 1990 and the conduct of the search early the following morning, one could say there was unlikely to have been enough time for such a scenario to have played out, but again one cannot be definitive in this regard.

11.10.6 The most that can be said is that I have accepted that a search of Michael McKeivitt's house by Dundalk Gardaí was compromised in January 1990, and that one of the possible means by which this occurred was by a deliberate and conscious act on the part of a member of the Gardaí in Dundalk. I reach this conclusion not only having regard to the facts that I have held to be established in this section of my Report, but also having regard to all of the more general evidence relating to the question of whether or not there was a mole in Dundalk Garda Station.

### **11.11 – Three Pieces of Intelligence Received by An Garda Síochána within a Few Years Subsequent to the Murders**

11.11.1 Three significant pieces of intelligence were received by An Garda Síochána within the period of a few years (in the interests of protecting the identity of the source, I do not wish to be specific as to precisely when they were received) after the deaths of Chief Superintendent Breen and Superintendent Buchanan. These were provided to the Tribunal in précis form and were put into evidence in public hearings by Detective Superintendent Brian Brunton of An Garda Síochána. The first of these précis dates from 1990 and provides as follows;

“Garda information indicated by way of double hearsay that there was a contact in the Gardaí who had passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station.”

11.11.2 This appears to be the same intelligence report as that referred to at paragraph 2.122 of Judge Cory's Report. He stated:

“The second report was received by the Gardaí. It indicates, by way of double hearsay, that there was a contact in the Gardaí who had passed on information that had “facilitated” the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station. This Report was received many years after the shooting. What is of greater concern is that it was based on double hearsay.”

11.11.3 I wish to make two observations in respect of Judge Cory's comments. Firstly, for reasons that are unclear, Judge Cory mistakenly believed that this report was received many years after the shooting whereas it was in fact received in 1990. Secondly, Judge Cory makes the observation that this information indicates, “by way of double hearsay” that there was a contact in

the Gardaí who passed information that led to the deaths of the Gibsons and Breen and Buchanan. Double hearsay was explained in the course of the Tribunal’s hearings by Counsel for the Garda Commissioner as “the person who’s speaking to the handler has been told by somebody else that he has been told by somebody else a piece of information.” Retired Assistant Commissioner Dermot Jennings, who was a Detective Superintendent in the Security and Intelligence Section of An Garda Síochána from 1995 to 1998 and the Chief Superintendent in charge of that Section from 1998 to 2001, confirmed that the phrase “double hearsay” puts the information at “three removes”, but also said that it was not his recollection that the first of the three précis, that set out above, was “double hearsay.” Having inspected the un – redacted intelligence relating to this précis (I should emphasize that this does not reveal to me the identity of the actual *source*), I can say that not all of the information contained therein comprises double hearsay. An aspect comprises single hearsay. I propose to say no more than this given the sensitivity of this intelligence.

11.11.4 The second précis of relevance states as follows:

“Garda information received sometime proximate to the murders of Buchanan and Breen suggested that a named PIRA had a Garda contact who gave only short notice of the visit of Buchanan and Breen to Dundalk Garda Station. The report suggested that PIRA knew the officers would have to take one of four routes on their way home and that PIRA sent out four units to cover each of these roads.”

11.11.5 The third précis of interest states as follows:

“Information which is based on double hearsay and received subsequent to the killings indicated that there was a contact that passed on information that facilitated the murder of the Gibson family.”

11.11.6 I can confirm that this information is double hearsay, as indicated in the précis.

11.11.7 Mr Jennings confirmed in his evidence – and I can also confirm it to be the case – that these three pieces of intelligence were submitted by the same Garda handler, and emanated from the same source. He told me that he was satisfied “without doubt” that this was high – grade

intelligence. He also provided me with some useful guidance in relation to how intelligence of this nature ought to be approached:

“Without a doubt something like this has the potential to be very, very high – grade intelligence but [...] intelligence of this nature, you must analyse it very, very thoroughly, and even so much so that you would actually separate even the source and the intelligence, and there are a number of questions, then, that you would ask yourself, and a number of things you would do. [...] First of all, can you in any way qualify the intelligence? Is it possible to establish if the source would have access or was he on – the – job, shall we say? Is there any other intelligence that would corroborate it? And the other thing is, [.] is there anything whatsoever that backs it up or contradicts it? Now, as well as that, I would be tasking, shall we say, the source handler or whoever got this information, could he go back and talk to the source, even – and I know there is danger in that sometimes – but go back to see if you can find out anything more about it, or, where is this coming from, or identify it.”

11.11.8 Mr Jennings also noted that in circumstances where the alleged Garda informant was not named in these précis of intelligence, the starting point for any further action would be the identity of the subversive who, it was indicated, was getting information from that Garda informant. Mr Jennings recalled that then Detective Superintendent Pat Byrne, as a result of these three strands of intelligence, mounted a surveillance program on the subversive named in them.

11.11.9 Retired Assistant Commissioner Pat O’Toole, who was the Chief Superintendent in charge of the Intelligence and Security Section from early 1989 until mid 1991 (and the Assistant Commissioner in charge of Crime and Security Branch from mid 1996 until his retirement in early 2003) had no recollection of reading these specific three pieces of intelligence though he did have a recollection of discussing all of the information in relation to the Breen and Buchanan murders in their totality in the context of the Camon Investigation. In relation to these three pieces, he noted that it was “single source reporting with no collateral whatsoever.” He noted that there was no – one named as being the Garda informant and no Garda station identified in the intelligence. He confirmed that an “intensity of operations” were mounted against the named subversive and his associates, but “nothing came to light” as a result of those operations.

11.11.10 Then Assistant Commissioner Ned O’Dea recalled seeing some of these three pieces of intelligence prior to his retirement as Assistant Commissioner, Crime and Security. His recollection was that Detective Superintendent Byrne mounted a surveillance programme on the subversive named in the intelligence documents, which programme included technical support. However, he said nothing came from it. He described the source from these intelligence as “reasonably reliable” at one point in his evidence, and, at a later point, as a “good source.” He said the information did not cause him to ask himself whether something may have been missed when he carried out his investigation in Dundalk Garda Station in the immediate aftermath of the deaths of Harry Breen and Bob Buchanan.

11.11.11 It was pointed out by retired Commissioner Pat Byrne in the course of his evidence that notwithstanding that two of these three pieces of intelligence suggest collusion in the murders of the Gibsons, Judge Cory did not consider that there was evidence to warrant a public inquiry in that case.

11.11.12 However, I believe that I am in a somewhat better position to assess this intelligence than Judge Cory was in 2003. As I have already noted, it appears that Judge Cory was, for unknown reasons, mistaken as to the date on which the first report referred to above was received. Secondly, although An Garda Síochána have informed me that all three documents were given to Judge Cory, in his Report on the Breen and Buchanan killings he refers only to one of the three, even though two of the three expressly relate to the those killings. Thirdly, as already noted, although Judge Cory records that the information in the first précis referred to above is based on double hearsay, that does not apply to all aspects of the underlying information. Fourthly, unlike Judge Cory, and perhaps most significantly, I have heard evidence from the Garda officer who received and submitted these pieces of intelligence and who was the handler of their source.

11.11.13 I heard the Garda handler’s in private session in order to ensure the protection of the identity of the source. I do not wish to repeat the content of that evidence, other than to say that I was most impressed by the witness and was struck by the confidence that he had in the reliability of his source and in the capacity of his source to have access to information of the sort included in this intelligence. Of course, that confidence can only extend to a belief in the truth of what his source tells him. The handler cannot know, nor indeed can his source be sure, that what another person has told the source is true.

11.11.14 I should add that in assessing the value of this intelligence, I have not only had the benefit of hearing from the Garda handler, but also, through access to the intelligence underlying the précis, know the identity of the subversive, who, it is alleged, received information from a Garda informant.

11.11.15 Having carefully considered the evidence in this matter, I have come to the view that considerably more weight can be attached to this intelligence material than that which Judge Cory was prepared to attach to it. In this regard, I note that although the intelligence is single source reporting, there is a consistent thread of information contained in three separate reports over a period of time. Secondly, the intelligence was received within a few years of the murders but not in the immediate wake of the murders. I think that this in an interesting time frame, because it arises during a period when the speculation as to the existence of the mole in Dundalk had dissipated. Therefore, it does not seem likely that this information was received by the source in the context of the discussion of media speculation and newspaper coverage. Rather, it appears to have arisen at a time when there was no general discussion about the possibility of collusion in the murders of Chief Superintendent Breen and Superintendent Buchanan. Thirdly, I am entirely satisfied that the source of this information was very reliable. Fourthly, I am also satisfied from the evidence that the source was in a position to have access to persons who were sufficiently well – placed to have been potentially within the circle of knowledge of the existence of a mole in Dundalk Garda Station.

11.11.16 Of course, I am conscious of the limitations of this intelligence by virtue of the fact that it is, for the most part, double hearsay, and there has not been an opportunity to test the source, or the people who gave him or her the information, under cross – examination. I have borne these limitations in mind. Yet, even taking account of such limitations, I am of the view that some weight can be given to this intelligence. In determining precisely how much weight is to be attached to it, I have had regard to the guidance given by retired Assistant Commissioner Jennings and outlined above, to the effect that one must view the intelligence not in isolation but in the context of all the other information available. I will therefore return to the question of precisely how much weight is to be attached to these three pieces of intelligence in the context of my overall analysis of the subject matter of this Tribunal later in this Report.

### **11.12 Disciplinary Proceedings Against Leo Colton**

11.12.1 A fourth incident which occurred during the period in the years immediately subsequent to the ambush on the Edenappa Road ultimately resulted in disciplinary proceedings being initiated against Sergeant Leo Colton. On 15<sup>th</sup> June 1990, Sergeant Colton provided the following letter in support of a trade plate certificate by one Brian Ruddy. The letter stated:

“To whom it concerns: This is to confirm that Brian Ruddy, Newtownbalregan, Dundalk, is a garage owner and dealer in cars, heavy and light commercial vehicles. Mr Ruddy would require a trade plate to carry on his business at Newtownbalregan, Dundalk.”

11.12.2 I will explore retired Sergeant Colton’s evidence in relation to this matter in greater detail in chapter 19, but for present purposes, suffice it to say that this led to an investigation and ultimately disciplinary proceedings. In his report on foot of the matter, Chief Superintendent Burns wrote that:

“When the contents of the certificate [provided by Sgt Colton] came to the attention of the District Officer, he took steps to prevent the issue of a trade plate to Mr Ruddy because he was aware that Ruddy was not a bona fide garage owner.”

11.12.3 The report of Chief Superintendent Burns went on to state that Mr Ruddy,

“associates with leading members of the PIRA in the Dundalk area and is deeply involved in the illegal cattle hormone and growth promotion trade, and he had a conviction on the 1<sup>st</sup> March, 1989, and was fined almost £1,000.00.”

11.12.4 A sworn inquiry was established pursuant to the Disciplinary Regulations. It was scheduled to take place on 21<sup>st</sup> May 1991, but Sergeant Colton retired on 12<sup>th</sup> May 1991 and the inquiry never took place. After his retirement, Sergeant Colton took up employment with a Mr Jim McCann, a businessman who owns amusement arcades in Dundalk. As will be discussed further in chapter 18, the Tribunal heard suggestions from senior Gardaí that Mr McCann was involved with the Provisional IRA.

## Chapter 12

### Significant Events in the Period from 1993 until 2000

#### 12.1 – Introduction

12.1.1. As explained in the Introduction to the previous chapter, in this chapter I propose to consider a number of events in the period from early 1993 – 1999. Again, although these events are not necessarily related, they form part of the relevant, and potentially significant, sequence of events which occurred between the O’Dea Investigation which concluded in April 1989 and the publication of Toby Harnden’s book *Bandit Country* in late 1999, which, in part, precipitated the commencement of the Camon Investigation some months later.

12.1.2 In this chapter, I propose to deal with:

(i) the prosecution of Owen Corrigan for obtaining money by false pretences arising from an alleged insurance fraud (the prosecution was listed for hearing in January 1993; however, the underlying events in fact go back to 1988);

(ii) the abduction and assault of Mr Corrigan in December 1995; and

(iii) the 1998 investigation of Finbarr Hickey and Leo Colton in respect of the completion of false passport application forms which facilitated three members of the Provisional IRA in obtaining false passports (this incident will simply be summarised in this chapter; the detailed evidence in relation to it will be dealt with in Chapters 17 and 18 dealing with Mr Hickey and Mr Colton respectively).

12.1.3 As will be seen in Chapter 14, all three of these incidents were considered to some extent by Detective Chief Superintendent Seán Camon in his 2000 – 2001 Investigation. In relation to the first incident, the prosecution of Owen Corrigan for obtaining money by false pretences, Detective Chief Superintendent Camon had the benefit of the report of the investigating Garda officer. However, the Tribunal was able to take the matter one step further and heard evidence from the civilian whose complaint gave rise to the prosecution.

## **12.2 – The Prosecution of Owen Corrigan for Obtaining Money by False Pretences: The Evidence of Mr Patrick Gallagher**

12.2.1 In May 1988, Patrick Gallagher was living in Northern Ireland and working for Patrick Fearon, a haulage contractor based in Newry. He gave evidence that on 14<sup>th</sup> May 1988, he was driving his articulated lorry from North Wall in Dublin to his employer’s base in Newry. When passing through Dunleer in Co. Louth, he saw a car parked with a trailer. There was a motorbike secured on the trailer. The rear of the trailer was sticking out slightly. When he was trying to get past the car, he clipped the tail light on the trailer. Mr Gallagher’s evidence was that he had been moving past the trailer at about two miles per hour. He stated that he stopped his lorry, got out and examined the damage. He was satisfied that only the tail light of the trailer was damaged. He gave evidence that the car was a Renault, he thought a Renault 18. He thought the car was a “mustardy” colour. Mr Gallagher stated that there was a young man seated in the passenger seat of the car. A second man came along, a person whom he now knows to be Owen Corrigan. Mr Gallagher gave evidence that Owen Corrigan,

“said it was, you know it was only a tail light there and that, and there was nothing to worry about it and he took down the details in the window, you know the insurance.”

12.2.2 Mr Gallagher confirmed to me that he immediately admitted responsibility to Owen Corrigan. He stated that he went straight back to his employer and told him what had happened. A few weeks later, Mr Gallagher’s employer received a civil claim for £1,500.00 in respect of damage to a Fiat Uno. The letter accompanying this claim stated that Owen Corrigan was a member of An Garda Síochána. Mr Gallagher indicated to me that this was the first time that he became aware that Owen Corrigan was a Garda officer.

12.2.3 According to Mr Gallagher, Mr Fearon accepted his version of events and informed the insurance company, Norwich Union, that the details of the claim were incorrect. Mr Gallagher gave evidence that the insurance officials were of the view that as Owen Corrigan was a Detective Sergeant in An Garda Síochána, his version of events was likely to be accepted by a Court in preference to that of Mr Gallagher. On this basis, the insurance company settled the claim. Mr Fearon, however, pursued the matter by hiring a private detective. This private

detective (a Belfast – based detective named Bert Dallas) reported to Mr Fearon that the registration number given with the claim related not to a Fiat Uno, but rather to a HiAce van.

12.2.4 Mr Gallagher told the Tribunal that he made a complaint to the Gardaí and that he was subsequently interviewed on two or three occasions by then Detective Superintendent Jim McHugh. He emphasised that there was a significant period between the incident itself in May 1988 and the investigation by Mr McHugh. The Director of Public Prosecution decided to prosecute Owen Corrigan and a court date was fixed for the hearing of the prosecution in the District Court in Dundalk. Mr Gallagher, whose evidence was obviously crucial to the prosecution, confirmed to me that he did not turn up on the day of the trial. As a result, the prosecution was not proceeded with.

12.2.5 When asked why he did not show up, Mr Gallagher stated, “I was warned off.” He gave evidence that this ‘warning’ commenced approximately a couple of months before the court date and comprised a number of elements. First, Francie Tiernan, who was known to him, telephoned and stated that Owen Corrigan did not want him going to court. Mr Gallagher said,

“I think there would have been something to do with money not to go, but I wouldn’t hear of it.”

12.2.6 Secondly, Mr Gallagher also stated that he had one telephone conversation with Owen Corrigan who did not want him going to court. Thirdly, Mr Gallagher gave evidence that his wife had received phone calls prior to the court date, suggesting that he should let things lie. It is fair to say that his recollection of these phone calls was somewhat more hazy than the other elements which, he said, persuaded him not to give evidence. Fourthly, a few days before the court case, when Mr Gallagher was driving his lorry not far from his home, he was stopped by a number of people on the road. He said that he thought there were three or four people and they just said to him, “you wouldn’t be going to court. You wouldn’t be appearing at court.” He stated that he did not know who the people were, but given where he was living (in Meigh, not far from Jonesborough), he took the warning very seriously. He confirmed that it was as a result of being stopped and told not to go that he decided not to turn up for the prosecution:

“It wasn’t for my safety because it was more to do with – we spoke about it at home and that, and it was more to do with the children, you know. You know, we were worried you know, that things – do you know, that maybe children would be, you know, used as pawns and that you know, so it was better just to let it go, you know.”

12.2.7 Mr Gallagher told me that he subsequently regretted failing to show up for the prosecution, but, he stated, “you were in a very difficult area, very difficult time, you know.”

### **12.3 – The Cross – Examination of Mr Gallagher**

12.3.1 In his cross – examination of Mr Gallagher, Counsel for Owen Corrigan put to Mr Gallagher a number of inconsistencies between his original statement to the Tribunal of November 2010 and his oral evidence. These included:

That he had indicated in his evidence to the Tribunal that the incident had occurred around midday or at one o’clock on the day in question, whereas in his statement he had stated that it had occurred at three o’clock;

that in his 2010 statement, he had described the Renault 18 as a silver colour rather than “mustardy”;

that in his statement, he had said the Renault was unoccupied, whereas in his evidence he stated that there a young man in the passenger seat; and

that in his statement, Mr Gallagher had said that two people approached him in the aftermath of the incident, whereas in his oral evidence he had referred only to Owen Corrigan, though he did later in his oral evidence say that he had also spoken to Mr Corrigan’s son.

12.3.2 I was satisfied that these inconsistencies were minor, particularly in the context of the time period that has elapsed since the events of May 1988, and were not of such a nature as to affect the overall credibility of the witness. In his response to these points, Mr Gallagher emphasised that the events had occurred to a long time ago, but reiterated that he was telling the truth on the central question as to the nature of the damage that had occurred:

“You keep saying about the statement, the statement, the statement. I am only here to tell you I did not cause multiple damage to Mr Corrigan’s car. He made a fraudulent claim against me. He discredited me from getting work with other employers that I wanted to go to work [for] because of this claim.”

12.3.3 Mr Corrigan’s Counsel also pointed out to Mr Gallagher that in his November 2010 statement to the Tribunal he had indicated that he was flagged down by two people on the road, but that in his oral evidence he had referred to approximately three or four. In relation to this specific inconsistency, Mr Gallagher, not unreasonably in my view, responded, “if somebody is telling you not to go to court, you don’t start counting people. You listen.”

12.3.4 Mr Corrigan’s Counsel also put the contents of the original accident report form completed on Mr Gallagher’s behalf shortly after the accident to Mr Gallagher.. Mr Gallagher gave evidence that the form was not completed in his writing but in that of Seamus Burns, Mr Fearon’s transport manager. When asked to complete the “make and number of vehicle” Mr Gallagher had collided with, Mr Burns had simply written “6658IR.” It was suggested to Mr Gallagher that ‘Renault’ had not been written in because he did not know the make of the car. He replied “I knew the make of the vehicle. I said it the minute I went home into the office that it was a Renault car.” The remainder of the 1988 accident report appears to me to be consistent with Mr Gallagher’s evidence to the Tribunal:

“Proceeding through Dunleer to Dundalk. A row of cars parked on the left hand side. No oncoming traffic. Car and trailer parked but trailer sitting well out into the road. Our lorry pulled across white line to pass trailer but caught the trailer. Maximum damage one tail light lens. Driver offered to get Gardaí. Mr Corrigan refused. Offered to fix tail light. Mr Corrigan rejected offer. Mr Corrigan gave impression that there would be no further actions. Yes, the car trailer was sitting too far out in the road.”

12.3.5 Mr Gallagher was asked by Mr Corrigan’s Counsel whether he was suggesting that Francie Tiernan was sent by Owen Corrigan to warn him off going to court. He replied, “who else would have sent him?” When it was put to him that Mr Corrigan denied having any role in this and that he was merely assuming Owen Corrigan had sent Francie Tiernan to speak to him, Mr Gallagher

replied, “Owen Corrigan did send him.” When he was accused by Mr Corrigan’s Counsel of telling lies, Mr Gallagher robustly denied this.

12.3.6 I should note in passing that the Tribunal also heard evidence, to be dealt with later in this chapter in the sections dealing with Mr Corrigan’s abduction in December 1995, which confirms that there was some form of relationship between Owen Corrigan and Francie Tiernan. As explored further below, in a 1997 report into the abduction, An Garda Síochána recorded that Mr Tiernan had, down through the years, “been involved in Provisional IRA activities.” The report noted that Mr Tiernan was known to be involved in large – scale smuggling and was suspected of being involved in fraud in Northern Ireland, Ireland, and England. Mr Tiernan was convicted in England of a fraud involving £1,300,000 and sentenced to two years’ imprisonment. A bench warrant was also issued by Dún Laoghaire District Court in respect of Mr Tiernan, arising from a stolen cheque fraud.

#### **12.4 – Mr Gallagher’s 1991 Statement to An Garda Síochána**

12.4.1 The Tribunal has also had the benefit of sight of the statement made by Mr Gallagher to then Detective Superintendent Jim McHugh on 3<sup>rd</sup> July 1991. For the sake of completeness, it is worth setting this out in full:

“As I reached Dunleer Co. Louth it would have been between 2.00pm and 3.30pm. As I was driving through the village of Dunleer, Co. Louth and close to the Garda station, I saw a silver – coloured Renault 18 stationary on the left hand side of the roadway and facing towards Dundalk. It had on tow a small wooden trailer and there was a motor cycle on board the trailer. There was not any person in the car. The rear of the trailer wasn’t parallel to the kerb and the rear was projecting a little out onto the street. This is a straight stretch of road. As I passed the Renault 18 motor car and trailer, the left front of the bumper of my motor lorry struck the right rear of the trailer. I was aware of the impact and I immediately stopped my lorry and got out and examined the damage caused to the trailer. The tail light unit on the right rear of the trailer was broken resulting from the impact. This piece had been fixed through the timber and attached to the trailer. There was no other damage whatsoever caused to it. The motor cycle which was standing in an upright position on the trailer was not disturbed from its position. It had been tied in position by means of a rope or strap. There was no damage caused to it or the motor car.

Due to the fact that the rear of the trailer had been protruding onto the road way I had to stop as I approached it as there was traffic coming towards me. It was as I moved off that the impact occurred. I would have been travelling at about five miles per hour when the impact took place. I was there only a few minutes when a man of about fifty years of age and a young fella of about 19 years arrived. This man said the Renault car was his. I apologised for the accident. He wrote down my name and address on a piece of paper and also particulars of my lorry. He also took down particulars from the insurance disk which was displayed on the window of my lorry. I gave him the name and address of my employers, Fearon Haulage, and also the fact that they were the owners of the lorry. I asked him if he wanted to get the Gardaí. He said there was no need. I admitted responsibility for the accident and said that the company would pay for the damage. He said that was ok. He didn't give me his name or address nor did I ask for them. I didn't make a note of the particulars of the registration number of the Renault 18 motor car and/or the motor cycle. I am quite satisfied that the motor car had Republic of Ireland registration plates. The young man who accompanied the older man referred to him as 'dad' or 'daddy'. This man accompanied by the young man then drove off. When I got back to Fearon's yard in Newry, I met my boss Mr Patrick Fearon and the transport manager Seamus Burns and I made them aware of the accident and outlined to them what and how it had occurred.

I never heard anything more about the accident until late August or early September 1988 when an ordinary civil process was delivered to my employer's southern Ireland office at Ravensdale, Dundalk, Co. Louth. This civil process related to the accident and Detective Sergeant Corrigan, Ardee Road, Dundalk was shown as the plaintiff. That was the first time that I was aware that the driver of the Renault 18 was a member of An Garda Síochána. The Document directed that there was to be a court hearing at the District Court at Dunleer on 08/09/1988 at 10am.

I rang Dundalk Garda Station that very night and I asked for Detective Sergeant Corrigan. I said to him that I knew and that he knew that the car which he was driving and which I had damaged in the accident was not a Fiat Uno as described in Documentation received by me but that it was a Renault 18. He declined to discuss the matter with me and he hung up. I rang him back immediately but he didn't come to the phone. I explained the whole thing to my employer Mr Patrick Fearon and I understand that he took the matter up with the insurance company which was the Norwich Union.

Insofar as I am aware, the District Court hearing at Dunleer District Court did not take place. I understand that the matter was settled by the Norwich Union insurance company through Detective Sergeant's solicitor."

12.4.2 I note that this is consistent in almost all details with Mr Gallagher's oral evidence to me.

## **12.5 – The Evidence of Retired Assistant Commissioner Jim McHugh**

12.5.1 The Tribunal also heard evidence from Jim McHugh, the investigating Garda. Mr McHugh joined An Garda Síochána in 1962 and retired in 2001. He retired at the rank of Assistant Commissioner in charge of the Dublin Metropolitan region. In 1991, he was a Detective Superintendent attached to the Investigation Unit in Garda Headquarters. His understanding was that Mr Gallagher's complaint had come to the attention of a member of the Gardaí in Dundalk and that the Chief Superintendent in charge of the Louth/Meath Division had passed the information on to Garda Headquarters. He was given a direction to carry out an investigation. By the time this investigation commenced, Mr Corrigan was already on sick leave.

12.5.2 Mr McHugh confirmed in his evidence to the Tribunal that he interviewed a considerable number of witnesses and potential witnesses. He stated that his first port of call was to Mr Patrick Fearon. Mr Fearon did not make a statement, but Mr McHugh found him to be a very co – operative and honourable person. He said that Mr Fearon declined to make a statement because he was operating a business in the area and did not want to be coming into conflict with members of the local Garda Síochána. Mr McHugh confirmed to the Tribunal that his enquiries revealed that the registration number provided by Mr Corrigan on the original claim did not belong to a Fiat Uno, but rather to a HiAce van which belonged to a person in Galway. Detective Superintendent McHugh did establish that there was a black Fiat Uno with a registration 6656 IR, rather than the stated registration of 6658 IR. Mr Corrigan now maintains that 6656 IR was the correct registration. The Fiat Uno of this number was in the possession of a Ms Gowran. Mr McHugh had the car examined by an expert in Garda Headquarters and confirmed there was damage consistent with Mr Corrigan's account. However, Mr McHugh informed me that he was unable to establish any evidence to indicate that Mr Corrigan was ever in possession of this Fiat Uno. Mr McHugh said that Mr Corrigan had told him, at the time of the Garda investigation, that he had got the Fiat Uno from a Mr George Elliott, who had a business in Dundalk and was also the co – owner of the 'Galway Wheel' business in Galway. However, according to Mr McHugh,

Mr Elliott had indicated in the course of the Garda investigation that he had never been in possession of the Fiat Uno.

12.5.3 Mr McHugh indicated to the Tribunal that the only evidence to support Mr Corrigan's account that he had been driving a Fiat Uno in Dunleer was that of Mr Finbarr Dillon. Mr Dillon was the garage man to whom Mr Corrigan said he took the car for an assessment. The invoices that formed the basis of Mr Corrigan's claim were on the headed paper of Mr Dillon. However, according to Mr McHugh, Mr Dillon said he had never filled out the invoices. Rather, Mr Dillon had told Mr McHugh that Owen Corrigan had brought him the car; Mr Dillon had inspected it and written out an estimate for repairs in his own hand. Mr Corrigan had taken away the handwritten estimate together with blank invoice paper and indicated that he would have someone in his family type up the estimate.

12.5.4 I should note at this point that on 28<sup>th</sup> May 1986, Finbarr Dillon pleaded guilty in the Special Criminal Court to the possession of firearms. In his evidence to the Tribunal, Owen Corrigan confirmed that he had, in effect, spoken as a character witness for Mr Dillon prior to his being sentenced for that offence. He told the Special Criminal Court that he did not believe that Finbarr Dillon was a member of a subversive organisation or that he was even sympathetic to such organisation. It appears that on the basis of Mr Corrigan's testimony, Mr Dillon was given a five – year suspended sentence by the Special Criminal Court for the possession of the relevant firearms. Mr Corrigan explained that he was not involved in the prosecution of Mr Dillon's trial, but happened to be in the Special Criminal Court on another matter and was specifically requested by Mr Justice Hamilton to give his opinion in relation to Mr Dillon:

"So, on the date in question, Mr Judge Hamilton, whom I dealt with throughout the duration, which [was] 13 or 14 years, and Judge Hamilton says, if he had a doubt in a case, he'd send for me, even if I wasn't dealing with the case, before he sentenced anyone, if he thought somebody deserved a break [...]."

12.5.5 Mr Corrigan said that he initially refused to give evidence in relation to another Garda officer's case, but that Mr Dillon's legal team returned to him later in the day and said,

"Look it, Owen, we have spoken to Judge Hamilton and he said that 'if Owen Corrigan

will give an outline of the case, I'll accept that fully'."

Mr Corrigan said he acceded to the request and gave the evidence as described above.

12.5.6 I simply observe that the procedure as described by Mr Corrigan seems somewhat irregular, but in the absence of further evidence on the matter, I have come to no definitive view as to the credibility of this account.

12.5.7 Returning to the evidence before me of Retired Assistant Commissioner McHugh, he told me that as part of his investigation, he tried to interview Owen Corrigan's son but was in effect prevented by Mr Corrigan from doing so. Ultimately, he arranged, through Mr Corrigan, to meet Mr Corrigan and his son in the son's public house in Drogheda on 31<sup>st</sup> December 1991. Mr Corrigan and his son were present but, as Mr McHugh had anticipated, Mr Corrigan's son did not make a statement. He said that he was too busy and that when he had time he would prepare his own statement. Former Assistant Commissioner McHugh confirmed to me that Mr Corrigan's son never did so.

12.5.8 Ultimately, then Detective Superintendent McHugh reported the results of his investigation to the Director of Public Prosecutions and it is important to note that that report was inconclusive. He stated that the question at issue in his investigation "is still not conclusively resolved." In the final section of his report he stated as follows:

"Whilst I have a strong suspicion as to the correctness of the claim made by Detective Sergeant Corrigan against the Norwich Union insurance company, I feel that the weight of the evidence tends to support his version of events. On the basis of the evidence contained herein it is unlikely that a prosecution, if taken against Detective Sergeant Corrigan would succeed and I have some doubts as to whether or not a prima facie case has been established against Detective Corrigan."

12.5.9 Mr McHugh confirmed in his evidence to me that this assessment was made in the context of possible criminal proceedings and, in particular, on the likely success of a prosecution on the criminal standard of proof.

12.5.10 Mr McHugh also gave evidence that in the course of his investigation, Owen Corrigan told him that Mr Gallagher was a member of the IRA. He stated that he carried out enquiries in this regard and concluded that Mr Gallagher had “an exemplary character in so far as I am concerned” and had no links with subversives.

12.5.11 Mr McHugh confirmed that the Director of Public Prosecution had decided to prosecute and noted that in advance of the hearing date of 29<sup>th</sup> January 1993, he maintained contact with Mr Gallagher. He explained to me that he did this on the basis that although he found Mr Gallagher to be “reliable and forthcoming”, he was conscious of the area and environment that Mr Gallagher lived. He stated:

“It’s not that he ever expressed any concern to me at that point but, as I say, I was conscious of where he came from and who we were dealing with. And I knew also that in his absence there was no case in terms of the prosecution succeeding.”

12.5.12 On the eve of the trial, Detective Superintendent McHugh received a call from Patrick Gallagher’s wife. She informed him that her husband had broken down in the Balinasloe area and would not be in court the following day. On the morning of the trial he managed to make contact with Mr Gallagher’s employer, Mr Fearon, who expressed great surprise that Mr Gallagher had not attended court. Mr Fearon was able to establish that Mr Gallagher had made the delivery in Balinasloe without any difficulty. However, Mr Gallagher did not appear and the prosecution could not proceed.

12.5.13 Then Detective Superintendent McHugh subsequently made contact with Mr Gallagher himself, and the two men met in Dublin on 3<sup>rd</sup> March 1993. At that meeting, Mr Gallagher said to the Detective Superintendent that he had been approached by a former neighbour and asked not to attend court and that his wife had received a number of anonymous telephone calls enquiring as to where her husband was. Mr Gallagher did not, in March 1993, refer to his having been stopped on the road days before the trial. Mr McHugh was asked by Counsel for Mr Corrigan whether he could explain why Mr Gallagher had not mentioned this to him. Mr McHugh replied that he could not get inside Mr Gallagher’s mind. Mr McHugh confirmed that he had asked Mr Gallagher the specific question whether Mr Corrigan had been involved in the approaches that were made to him; Mr Gallagher had said that it was not Mr Corrigan who had approached him.

## **12.6 – The Evidence of Retired Detective Sergeant Owen Corrigan**

12.6.1 Mr Corrigan also gave evidence in relation to this matter. He confirmed that he did not own the Fiat Uno with which, he says, Mr Gallagher collided. He explained that he had taken it from a garage in County Offaly to show it to a potential buyer. Mr Corrigan identified the relevant garage owner as a Mrs Roberts. A statement which Jim McHugh had taken from Mrs Roberts, indicating, “I never lent or otherwise have the Fiat Uno motorcar in question to Mr Corrigan”, was put to the witness. Mr Corrigan replied: “Well, that’s not my recollection of it. Of course she gave it to me.”

12.6.2 As noted, above, retired Assistant Commissioner McHugh told me that Mr Corrigan said he got the car from a Mr Elliott rather than from a Mrs Roberts. When this was put to Mr Corrigan, he replied:

“Well my understanding at the time I was dealing with Mr Elliott in Galway and I thought that the car was one of the ones Mr Elliott had; he had a garage in Galway.”

12.6.3 When it was put to him that this seemed to contradict his earlier evidence in relation to Mrs Roberts, he replied:

“Yeah, well, as I said, I was dealing with Mr Elliott and I had occasion to take cars to show them, and Mrs Roberts, on the same situation. Like, it was commonplace for anyone that was dealing in cars, to take them from a garage if they had a customer for it to sell it.”

12.6.4 I would note in passing that these comments related to mid – 1988, when Mr Corrigan was still a full – time Detective Sergeant in Dundalk and prior to his commencing sick leave in December 1989.

12.6.5 When asked to simply clarify to me, for once and for all, whether he got the car from Mrs Roberts or Mr Elliott, Mr Corrigan replied that he got the car from Mrs Roberts. He could not

explain her clear statement to Detective Superintendent McHugh that she had never lent or otherwise given the Fiat Uno in question to him.

12.6.6 Mr Corrigan accepted that he had told Detective Superintendent McHugh that Mr Gallagher was a member of the IRA and accepted that this was incorrect. He was asked why, therefore, he had told the Detective Superintendent this. He replied:

“Oh, well I don’t know why I did it. [...]

That was my belief at the time and that’s all I’m telling.”

12.6.7 In relation to the role of Finbarr Dillon, Mr Corrigan explained that Mr Dillon examined the car, told him what it would cost to repair it and, because Mr Dillon had no secretarial services, gave Detective Sergeant Corrigan blank headed notepaper on which he could write in the estimate. Mr Corrigan confirmed that Mr Dillon did not write the estimate down himself and when I asked him why Mr Dillon did not do so, he told me that he did not know why. Three estimates were supplied in total, two on Mr Dillon’s headed notepaper and one from the Galway Wheel Company (Mr Elliott’s company), dated 26<sup>th</sup> July 1988, and alleging £300 worth of damage to a Suzuki motorbike. In this latter invoice, it is stated that the motorbike is the property of Owen Corrigan, but Mr Corrigan confirmed to me in this evidence that this was not correct.

12.6.8 Mr Corrigan was asked as to whether it was possible that Mr Dillon was returning a favour to Mr Corrigan, who had spoken in his favour in the Special Criminal Court some two years earlier. The following exchange between Mr Corrigan and Counsel for the Tribunal ensued:

“A. [...] I was asked to outlined the facts of Mr Dillon as a person, and I merely gave the facts. I wasn’t involved in the case at all. I didn’t know anything about the particulars of the fine or what he was charged with. [...]

I considered him an upright citizen then and now.

Q: An upright citizen in possession of a rifle and two revolvers, isn’t that right?

A: Yeah, well people in Dundalk at the time were forced – I can’t explain to you any more. “

12.6.9 Mr Corrigan went on to explain that Mr Dillon had the authorisation to collect cars involved in car accidents in the Louth/Meath Garda Division. At a later point, he emphasised that Mr Dillon was “never a member of the IRA, was never even a sympathiser, but found himself in a compromising situation.”

12.6.10 Detective Superintendent Brian Brunton gave evidence of an intelligence report received by An Garda Síochána in June 1991. The précis of this intelligence provided as follows:

“June 1991 report on a serving Garda member and aspects of the report were stressed as sensitive. The report stated that the named Garda member imported cars from Northern Ireland and Britain. It was alleged that the same Garda member had been making use of a body repair shop in Dundalk, which was owned by a person with a conviction relative to an arms dump found in his yard and he received a five – year suspended sentence. Alleged that the same Garda was the only witness at his trial and gave a character reference on his behalf. Report mentioned a traffic accident between the same Garda member and a Northern Ireland resident. The report alleged that the Garda did not hold a driving licence since 1977.”

12.6.11 In subsequent evidence, Detective Chief Superintendent Kirwan confirmed that the Garda member referred to in this report is Owen Corrigan and the owner of the body repair shop is Finbarr Dillon. In his evidence, Detective Chief Superintendent Peter Kirwan emphasised that this piece of intelligence

“was contra – balanced by information emanating from Mr Corrigan, indicating that the relationship was properly motivated and that some intelligence dividend accrued from that relationship.”

Detective Chief Superintendent Kirwan said that the counter – balancing intelligence predated the above intelligence report by a number of years. He also said this report was so sensitive as to make it inadvisable to put it in evidence at a hearing of the Tribunal, even in précis form. I propose to say no more other than this, other than to acknowledge that the Tribunal had sight of the counter – balancing report. In any event, I would note that the above précis largely sets out

what has been established in evidence before the Tribunal, and that while an improper relationship can be inferred from its terms, this is not explicitly stated.

12.6.12 Mr Corrigan disputed Patrick Gallagher’s account of the evidence. When asked whether he accepted that Mr Gallagher had been intimidated into not giving evidence against Mr Corrigan, he replied:

“No, I wouldn’t accept anything Mr Gallagher would say. He turned around and told lies after running me off the road. Surely you are not taking his word for it?”

## **12.7 – Intelligence Information Received by An Garda Síochána in Late 1992**

12.7.1 A further element must now be added to the mix of evidence in relation to this incident. In late 1992, An Garda Síochána received intelligence information which is of relevance to this matter. A précis of this intelligence was supplied to the Tribunal for use in public hearings. The précis was furnished to Mr McHugh and he was asked whether he had taken account of it in making his report to the Director of Public Prosecution in relation to the possibility of a second trial. He said that he had no recollection whatsoever of having been shown the intelligence back in 1993.

12.7.2 Mr Corrigan’s Counsel objected to the précis of intelligence being read into the public record of the Tribunal on the grounds that it was unduly prejudicial to Mr Corrigan. I acceded to the request on that occasion as I felt the relevant evidence could be extracted from former Assistant Commissioner McHugh without the précis being read out in full, and I had not formed any view of the matter at that stage.

12.7.3 Subsequently, however, Detective Superintendent Brian Brunton of Crime and Security read the intelligence précis into evidence, without objection, at a public sitting of the Tribunal. Given that the document is already in the public domain and mindful of my statutory obligation to conduct a public tribunal of inquiry, I propose to set the full précis out here. I should add that I am in no doubt that it is relevant and that the public interest in my reporting fully on all the matters that were before me in relation to this incident outweighs any prejudice to Mr Corrigan. The document states as follows:

“Garda Information (1992) suggested that PIRA members had conveyed a threat to a witness regarding an upcoming trial in which D/Sergeant Owen Corrigan was a defendant. The information further suggested that as a result of the threat, the said witness was in fear and unlikely to appear in court.”

12.7.4 I think it is very telling that this intelligence information was received by An Garda Síochána in late 1992, well in advance of the trial. In his evidence, retired Commissioner Byrne confirmed that the intelligence was graded as “reliable” by the Garda officer who submitted it.

12.7.5 On the basis of Mr McHugh’s evidence, I accept that he did not receive a copy of this intelligence from the Crime and Security Branch. This is, to say the least, surprising. While I accept that Crime and Security may not have been aware of the investigation that then Detective Superintendent McHugh had conducted, the intelligence put Crime and Security on notice of an upcoming criminal trial against Owen Corrigan and simple enquiries would have enabled that Branch to identify the prosecuting member of An Garda Síochána. Had these steps been taken, then Detective Superintendent McHugh may have been in a better position to appreciate the risk of Mr Gallagher not attending Court and assure him of his safety. In this regard I do note the former Assistant Commissioner's evidence that had he known of the intelligence, it would have made “[n]ot a whit of difference insofar as my reaction to it would have been”, but on reviewing this evidence, I am not entirely clear as to what he meant by this comment.

## **12.8 – Assessment of the Evidence**

12.8.1 I found Patrick Gallagher to be a forthright and honest witness. When the minor inconsistencies between his 2010 statement to the Tribunal and his oral testimony were put to him, he was adamant in stating that he was telling the truth in relation to the central issue of the extent of the damage to Mr Corrigan’s car. This central aspect of his evidence was consistent throughout, from the accident report of 1988, his statement to Jim McHugh of 1991, his statement to the Tribunal of November 2010, and his oral evidence to this Tribunal. His consistent, and insistent, reiteration of this central part of his evidence had, to my mind, the ring of truth about it. That evidence seemed to me to be underpinned by the conviction of a man who believed that a wrong had been perpetrated against him. I found him to be a most impressive and convincing witness and I fully accept his evidence.

12.8.2 By contrast, Owen Corrigan’s evidence in relation to this matter was unclear, evasive and self – serving. I found his evidence to be lacking in credibility.

12.8.3 Due weight must also be given to the contents of the intelligence document referred to above. I am conscious in assessing this aspect that the source of the intelligence information is unknown; I must therefore be careful about attaching too much weight to it. However, the source was assessed as reliable. Accordingly, I have had regard to the contents of the intelligence document in reaching my conclusions. I can say that this intelligence has served to reinforce my existing view on the evidence, but I would add that I would have tended to reach that view with or without it. In particular, the intelligence confirms my view that the unknown men who stopped Patrick Gallagher near his home and told him he would not be going to Court were in all likelihood connected with subversive elements in the area where he lived.

12.8.4 I am of the view, on a strong balance of probabilities, that Owen Corrigan did perpetrate an insurance fraud against Mr Fearon’s insurers. I am also of the view, on a strong balance of probabilities, that Patrick Gallagher was intimidated with a view to preventing him from giving evidence against Mr Corrigan in the criminal prosecution. I accept that he was contacted in this regard by Mr Francis Tiernan, a person believed to have links with the IRA and known to have a connection with Owen Corrigan. Mr Gallagher was intimidated by unknown persons. However, having regard to the tactic of intimidation being a known part of the modus operandi of the IRA, to the area in which Mr Gallagher lived, and to the “reliable” intelligence received in late 1992 and referred to above, I believe he was intimidated by members of the Provisional IRA. The evidence does not establish whether this was done at the direction or with the consent, whether tacit or express, of Mr Corrigan. However, what can be said is that Mr Corrigan benefited from an intervention by Provisional IRA members which ensured that he was not convicted of an offence.

## **12.9 – The Abduction of Owen Corrigan in December 1995: Initial Interviews**

12.9.1 On 13<sup>th</sup> December 1995, Owen Corrigan went to meet Francis Tiernan (and, some evidence indicates, a third gentleman, Tommy O’Brien) at the Boyne Valley Hotel, Drogheda. It is beyond dispute that sometime between 9 pm and 10 pm that evening, he was abducted from outside the hotel and taken away in a van. An Garda Síochána received information two nights later, at 12.15 am on Friday 15<sup>th</sup> December 1995, that Owen Corrigan had been returned back to his family in Dundalk and showed signs of having been badly beaten up and required medical

treatment. He was subsequently admitted as a patient at the Louth County Hospital in Dundalk and was detained there for a number of days. During his detention at the Louth County Hospital, then Detective Sergeant Seán Gethins and Detective Sergeant Jim Sheridan were sent to interview Mr Corrigan. Mr Corrigan refused to sign a statement, but the Tribunal did have the benefit of two memorandums of interview prepared by the Detective Sergeants. It is worth setting these out in full. The first memo, entitled “Memo of Interview with Owen Corrigan” is undated. It provides:

“Got a phone call around 8.30 pm. from Francis Tiernan to meet at the Boyne Valley Hotel. Corrigan went to the Boyne Valley Hotel and met Tiernan and another man. Got into the car. A car and a van pulled up in front of them in the car park. A number of masked men got out and bundled Corrigan and Tiernan into a white Ford Transit van. Corrigan was blindfolded, was kicked and punched in back of the van. Driving for about an hour possibly to South Armagh. Taken to an old two – storey house lived in by an old man. The house was near a church (he could hear church bells ring). Close to a main road (he could hear traffic passing). His hands were tied behind his back. He was taken up a narrow stairs in the house. Tiernan was taken downstairs. He was continually kicked and beaten throughout the night and hit on top of the head with a rubber mallet. Asked about who were the touts for the Branch in Dundalk. Asked about Seán Gethins, Terry Hynes, Larry Crowe and Tom Fox [members of Dundalk Detective Branch]. Asked about Tom Oliver’s case and other cases in South Armagh over the years. Accused him of setting up Dominic McGlinchey in Drogheda and asked about the bomb found in Donaghmoynne on 10<sup>th</sup> November 1995. Told him they wanted him to gather information on the Branch in Dundalk. Then he asked for drink, he was given urine. They said they were being harassed by the Branch in Dundalk and would take them on. He estimates that approximately 20 people took part in his interrogation. The interrogation teams were made up of four men who alternated approximately every two hours. They were reading from notes when asking about specific incidents. When they were being released they were told to wait an hour and a car would come and sound its horn. Tiernan’s wife received a phone call to come and collect them. She contacted Thomas Tiernan (brother of Francis Tiernan) and they collected Corrigan and Tiernan 300 yards south of Drumbilla Customs Post on the Dundalk/Newtownhamilton Road. Thomas Tiernan drove

Owen Corrigan to his home in Dundalk and then took Francis Tiernan home. We are calling to Owen Corrigan tomorrow to see if he wishes to make a full written statement. He's intimated he may not wish to make one. Corrigan has severe injuries to his head and body. He states he was treated far worse than Tiernan. Francis Tiernan is presently in Daisy Hill Hospital in Newry. Thomas Tiernan will make himself available for interview to the Gardaí on request."

12.9.2 The second memo of interview is dated Saturday, 16<sup>th</sup> December 1995. It is recorded as a series of bullet points:

- “1. His abductors had armalite rifles and a handgun. He thinks the handgun was a .38. They pointed under his ear and spun the cylinder at his ear.
2. Got phone call from Tiernan around 8.30 pm. to meet him at Boyne Valley. Corrigan said he wanted to see match and Tiernan told him it wouldn't take long.
3. Corrigan drove immediately to Boyne Valley in his red Renault van. He parked the van at the side of the hotel.
4. He walked in the front door of the hotel and went to the bar. He had a pint and went to the toilet.
5. He walked out of the hotel through the front door and walked over to Tiernan's car.
6. He got into the back of the car. Tiernan and another man he did not know were in the front of the car.
7. He was only in the car for a matter of seconds when a car pulled in front of it and a van alongside (he thinks they were in the car park waiting for him to come out).
8. A number of men got out, smashed the side window of the car and tried to pull him out of the car. He resisted but was eventually forced into the back of the white Ford Transit van.
9. He was blindfolded with a cloth material and had his hands and feet tied with some material (maybe plastic ties).
10. He could see a church through a blindfold through the window of the house and heard one chime.
11. Continually asked him about cases he was involved in.

12. Asked him if the Provos were being blamed for spate of robberies in Dundalk three years ago
13. Asked him who he thought were holding him. He told them the PIRA because it was the military – type operation of a subversive organisation (they beat him several times for referring to them as subversives).
14. Asked him about cash deliveries to post offices. Who drove post office vans.
15. He states he had no business deals with Tiernan.
16. He stated he was not involved in a drinks deal with Tiernan.
17. He had met Tiernan several times down the years but had only met him once before at the Boyne Valley Hotel.
18. When they were releasing him they put him in the boot of the car.
19. They drove him out from the house he was held in a different way than they drove in. It seems to be a very narrow, rough driveway.
20. The car got stuck at one point and they had to push it out.”

12.9.3 Then Detective Sergeant Jim Sheridan, currently a Chief Superintendent serving in Sligo, told me that it was immediately obvious when he saw Mr Corrigan in hospital that he had suffered a severe beating:

“he didn’t appear to have very many lacerations or that type of thing, but his face was black or certainly discoloured. It was badly swollen. He showed me his back and his entire back was black.”

12.9.4 He said that it was obvious that Owen Corrigan had been beaten over a period of time and he classified it as a pretty severe beating. He said that Owen Corrigan told him and Detective Sergeant Gethins that he would not make a written statement. When asked whether Owen Corrigan had provided any explanation for that, Chief Superintendent Sheridan replied, “not that I can recall at the time he didn’t.” Detective Sergeant Gethins also told me that it was clear that Mr Corrigan had been badly beaten. He noted:

“I never seen anybody that got such a beating in all my life and if he had been helping the IRA, they had a good way of repaying him because they nearly killed him and he has never recovered from it.”

12.9.5 Retired Detective Sergeant Gethins gave evidence that Owen Corrigan told him that the men who had beaten him up had put a blue boiler suit on him and “that he was going to be killed.” Mr Gethins accepted that this wasn’t recorded in the memos of Interview. He also confirmed that Owen Corrigan made no mention of the use of guns in the abduction/interrogation when he was first interviewed. He only referred to the use of guns when interviewed on the second day. Mr Gethins explained that he asked Owen Corrigan the question about business deals with Francis Tiernan because of Mr Corrigan owning a pub: “it was suspected that Francis Tiernan was involved in smuggling.” Mr Gethins added that he would have put the same question to “90 per cent of publicans in Dundalk, if they were beaten like that.”

### **12.10 – The Evidence of Owen Corrigan in Relation to the Abduction**

12.10.1 Owen Corrigan told the Tribunal that his abduction occurred as a result of his history of anti – subversive activities. He told me in his oral evidence that he got a call from Francis Tiernan, who said that he was in Drogheda and wanted to see Owen Corrigan for a few minutes. In his evidence, Mr Corrigan initially told me that as soon as he pulled up outside the Boyne Valley Hotel, Mr Tiernan gave a hoot of the horn and he (Mr Corrigan) walked over and sat inside Mr Tiernan’s car. However, subsequently, he confirmed that he had gone in and had a drink at the bar of the hotel first. In any event, he stated that he sat into the back seat of the car and suddenly found himself being pulled out of the car by a number of men and thrown into the back of a van. He said he was taken to a house where he was questioned about the following matters:

“Various persons who were arrested, members of the IRA, what incidents they were involved in and who – what information, a list of the people that were giving information to certain named members of the Detective Branch in Dundalk, and they went through – obviously I was blindfolded and beaten all the time, and they went through all – every incident of note that happened for the previous years, going back years.”

12.10.2 Mr Corrigan confirmed to me that he believed that he had been set up by Francis Tiernan. He said that Francis Tiernan had been involved in a number of different scams over the years but was not a supporter of the IRA. He stated that Mr Tiernan belonged to a nationalist family. When asked why he believed Mr Tiernan would set him up, he replied: “because obviously he came under some pressure himself.” He stated that he met Francis Tiernan on a view occasions after the abduction and exchanged pleasantries with him, but did not ask Mr Tiernan him why he had set him up: “I wouldn’t think that would be a very sensible conversation because I wouldn’t be told the truth anyway, you know.” He said that when the two men were being brought by van to the house for the interrogation, he, Mr Corrigan, was the whole focus of attention and Mr Tiernan was not beaten up. When asked why, if Mr Tiernan had assisted the IRA in luring Mr Corrigan to the Boyne Valley Hotel, he had also been beaten up rather than simply being released. He replied,

“I mean these people operating on the border, they have their own various ways. I can only speculate that his injuries were relatively minor to what I suffered.”

It is generally accepted that Mr Tiernan was not as badly injured as Mr Corrigan, though he did also require hospitalisation in the Daisy Hill Hospital in Newry. He said that contrary to what is recorded in the Memos of Interview, Francis Tiernan was not in Thomas Tiernan’s car with Owen Corrigan when Thomas Tiernan returned Mr Corrigan home after his interrogation.

12.10.3 Mr Corrigan told me that there was a perception among the IRA that he was still a member of the force and working undercover for the Gardai in Dublin. He stated that this was “an impression I gleaned from their demeanour, you know, because they were asking me up – to – date questions.”

12.10.4 When asked to explain why he did not make a statement after being beaten up, Mr Corrigan replied as follows:

“Well, I had a wife and three young children to consider. I was out of the force and I no longer had the protection of the State and I considered that I put my life on the line for, with very little reward, for long enough and I decided I wasn’t going to prolong their agony along with my own. And then I was very conscious of the people that I was dealing with, who were a relatively short distance in Northern Ireland, they could come and attack me at any time of the night that they wished...”

12.10.5 When asked why he did not tell the Gardaí who interviewed him of his concern about his personal safety, or did not ask them for some reassurance in that regard, he replied, “what assurance could they give me?.” He confirmed that Seán Gethins was a friend of his, but that he did not tell him why he did not want to make a statement: “I have no explanation for saying whether I did or whether I didn’t. I didn’t tell him and that was it.”

12.10.6 In his evidence to the Tribunal, retired Detective Sergeant Gethins said that Mr Corrigan,

“didn’t want to talk to anybody about what happened to him and that the only reason he spoke to myself and Jim Sheridan, the only reason he spoke, is because I was there, [...]”

## **12.11 – The Garda Investigation into the Abduction**

12.11.1 The Tribunal also heard evidence from Fergus Doggett, who was a Superintendent in Drogheda Station from April 1996 and became involved in the investigation of the abduction which had occurred some months earlier. At the conclusion of his report, then Superintendent Doggett stated that:

“Corrigan was visited in the hospital and interviewed on [two] occasions but declined to make a written statement of complaint. Tiernan was also interviewed but refused to make a statement of complaint. Tommy O’Brien was interviewed but declined to make a statement. Due to the lack of co – operation by the parties involved it has not been possible to progress the investigation. No witnesses to the incident were located. A large number of questions remain unanswered in this investigation. These are due to the lack of co-operation by the parties concerned. It is difficult to understand why O’Brien was not treated in the same manner as Tiernan and Corrigan and did not notify the Gardaí or Tiernan’s or Corrigan’s family. One can only speculate [as to] the reasons for this action,

which [were], to say the least, not normal. The reason as to why the incident took place in the first place can be speculative. I would have to say that the interview which Corrigan gave, the contents thereof, I believe that which he would like to put forward but are not factual.”

12.11.2 In his oral evidence, Fergus Doggett elaborated on this as follows:

“I think he could have, having regard to the incident he was involved in, that he probably could have been a lot more forthcoming as to what exactly did happen on that particular time in Boyne Valley.”

12.11.3 The Superintendent Doggett’s report was based on a more detailed report by Detective Sergeant Patrick O’Donnell who is now deceased.

12.11.4 The explanation which Mr Corrigan had given, in his evidence to the Tribunal, as to why he did not make a statement at the time was put to Mr Doggett. He was asked as to whether he had any sympathy for the explanation offered. He replied:

“Sympathy – I’d have an understanding but maybe he should have said that at the particular time, not so many years later.”

12.11.5 The Tribunal also heard evidence from retired Assistant Commissioner Al McHugh. He made two reports on the abduction, one in respect of the investigation directed by Superintendent Doggett, and the other in relation to a prospective application for compensation made by Mr Corrigan, which is discussed further below. In his initial report to the Assistant Commissioner Crime and Security, dated 3<sup>rd</sup> October 1996, then Chief Superintendent McHugh, Divisional Officer of the Louth Meath Division based in Drogheda, stated as follows:

“As stated in paragraph 2.6 of Superintendent Doggett’s report, the reasons why this incident took place as put forward by Mr Corrigan would be those he wishes to be believed rather than the actual reasons. As things stand at present, the matter cannot be put any further. Should any new developments arise in the investigation, they will be reported.”

## **12.12 – The Evidence of Retired Chief Superintendent Michael Finnegan**

12.12.1 Subsequently, Mr Corrigan’s solicitor wrote to An Garda Síochána seeking a claim form for Garda compensation. I understand that retired members are entitled to compensation if injured as a result of their previous service, but they require the leave of the Garda Commissioner to make such an application.

12.12.2 On foot of the request for such a form, Detective Superintendent Michael Finnegan, then serving in Dundalk, was asked to investigate the matter. He completed a report for Chief Superintendent Al McHugh. In his report he stated:

“Intelligence received since the abduction indicates that Corrigan and Tiernan were abducted by the Provisional IRA because they owed the organisation money. Both men offered to dispose of a load of spirits which was in the possession of the organisation, but, having done so, failed to deliver the money, which is mentioned as being £35,000.00. This is based on intelligence received, but no hard evidence has been gleaned to substantiate this due to the fact that neither Corrigan nor Tiernan cooperated with the investigation concerning their abduction and the other party involved is the Provisional IRA.”

12.12.3 At a later point in the report, Chief Superintendent Finnegan stated:

“We are, therefore, forced to rely on intelligence received in this matter. This indicates that both men owed PIRA money and would not give it to them. It is alleged it concerned a lorry – load of spirits which both men disposed of for the organisation and this theory would be consistent with the character and activities of these men.”

12.12.4 When this part was put to Mr Corrigan, he responded: “Outrageous. Outrageous. Speculation.” The report continued:

“There is no evidence whatsoever to support the view and it is not accepted the abductions and subsequent beatings had anything to do whatsoever with Owen Corrigan’s previous service in An Garda Síochána.”

12.12.5 In his evidence, retired Chief Superintendent Finnegan noted that Owen Corrigan had only mentioned the presence of weapons during the course of his second interview in hospital. When asked how he interpreted this, he replied:

“I believe, I believed at the time that it was – that Owen Corrigan had decided to make a claim for compensation and that the – it was basically preparing the ground for a claim for compensation.”

12.12.6 It is worth noting in this regard, however, that Mr Corrigan did not seek a claim form, through his solicitor, for a considerable period after his release from hospital.

12.12.7 Mr Finnegan confirmed that there was a relationship between Francis Tiernan and Owen Corrigan and that, “he was an associate of Francis Tiernan or would have met Francis Tiernan long before he retired from the Garda Síochána.” He also told me that Francis Tiernan was a large farmer who “has been, certainly, associating with members of the Provisional IRA, but he was also involved in smuggling quite extensively.”

12.12.8 I should say at this point that Mr Tiernan was put on notice by the Tribunal of evidence to be given in relation to him. The Tribunal also sought, but regrettably, was unable to secure his attendance and thereby procure his evidence in relation to this matter.

12.12.9 It is important to note that, in his evidence, retired Chief Superintendent Finnegan confirmed that the reference to “intelligence” contained in this report is a reference to what he described as “very soft intelligence.” He described this as “intelligence, something that certainly was never or could not or was never firmed up on or couldn’t be confirmed.” He also accepted that there was an element of speculation, gossip and rumour. The essence of what he was telling the Tribunal was that the word on the street was that Mr Corrigan and Mr Tiernan had been abducted and beaten up because they owed the IRA money. He explained that:

“Some of it would be based on rumour, and obviously this is ‘intelligence’, would be things that were told to members in Dundalk by associates of or members connected with the Provisional IRA.”

12.12.10 He told me that the information was received from other members of An Garda Síochána in Dundalk at a conference in the station. Though he accepted his report was based on ‘soft intelligence’, retired Chief Superintendent Finnegan confirmed to me that he continues to stand over the contents of his report.

12.12.11 The witness also noted that elsewhere in his report he had written that there were:

“dozens of member who served in the same time – in Detective Branch in Dundalk, who subsequently retired and lived in Dundalk, and none of them ever was abducted, beaten, or anything like that, or interfered with in any way by the Provisional IRA.”

Mr Corrigan himself, in his evidence before me, acknowledged that he was not aware of any other retired member having been kidnapped after retiring from duty.

12.12.12 Detective Superintendent Finnegan’s report went to Chief Superintendent Al McHugh. He confirmed in his evidence to me that he was happy to endorse Detective Superintendent Finnegan’s report and to rely on the professionalism and integrity of his subordinate officer in this regard.

12.12.13 Finally, I should also note that in his evidence to the Tribunal, Harry Breen’s former Staff Sergeant Alan Mains, informed me that he was a Detective Superintendent in RUC CID at the time of Mr Corrigan’s abduction. He was contacted by colleagues in An Garda Síochána who were trying to establish whether the IRA was holding Mr Corrigan north or south of the border. He told the Tribunal that the members of An Garda Síochána seeking the RUC’s assistance in this regard expressed the view that Mr Corrigan had been abducted because of a private, commercial dispute with the Provisional IRA.

### **12.13 – Intelligence in Relation to the Abduction**

12.13.1 As will be explored in further detail in Chapter 14, Detective Chief Superintendent Peter Kirwan told the Tribunal that at the time of the Camon Investigation in 2000/1,

there was no report – or intelligence or information supporting [Detective Superintendent Michael Finnegan’s conclusion], at Crime and Security.”

In fact, he told me that there was one independent strand of reporting, not from Mr Corrigan, which reflected Mr Corrigan’s version of events: This was put into evidence by Detective Superintendent Brunton and provides as follows:

“Garda information received many years after 1989 assessed as reliable. Following the alleged abduction of retired Detective Sergeant Owen Corrigan by IRA, he was asked about the identities of people supplying information on IRA activities in Louth/Meath.”

12.13.2 I note that the fact that Owen Corrigan may have been asked about the identity of persons supplying information on IRA activities, does not necessarily mean that this was the primary or sole purpose of his abduction and interrogation, or necessarily preclude the possibility that a commercial transaction between Mr Corrigan and his abductors had gone wrong.

12.13.3 The PSNI received four strands of intelligence in relation to the abduction. Theses were put into evidence by retired Detective Superintendent David McConville of the PSNI. These four précis stated:

#### **“1. Intelligence dated March 1996**

##### **Detail**

Intelligence indicates that a PIRA abducted Eoghan Corrigan and Frank Tiernan on the 13th December 1995 from a hotel in Drogheda. It is believed the two men mounted a scam on a business. PIRA subsequently interrogated the two men for two days before being released on the 14th December 1995.

## **2. Intelligence dated 1996**

### **Detail**

Intelligence indicates that South Armagh PIRA were involved in the abduction and interrogation of Eoghan Corrigan and Francis Tiernan from the Boyne Valley Hotel in Drogheda on the 13 12 1995. Corrigan and Tiernan are believed to have been involved in a major property scam which PIRA wanted to investigate.

## **3. Intelligence dated 1996**

### **Detail**

Intelligence indicates that PIRA were responsible for the kidnapping of Owen Corrigan and Francis Tiernan in Drogheda on the 13 12 1995. A number of leading PIRA members were involved. The two hostages were released on the 14 12 1995.

## **4. Intelligence dated 1996**

### **Detail**

Intelligence indicates that following his abduction by South Armagh PIRA, Frank Tiernan was told his life was under threat. PIRA/Sinn Fein held an inquiry into the abduction resulting in Tiernan being cleared.

Further inquiries held into the abduction by PIRA/PSS found that a number of their senior member acted without authority from senior command. These members became the subject of PIRA/Sinn Fein disciplinary investigation.”

12.13.4 I note that in his evidence, retired Detective Superintendent McConville did not comment further in relation to these précis of intelligence, nor did he give any evidence in relation to their grading.

## **12.14 – Assessment of Evidence in Relation to the Abduction of Owen Corrigan**

12.14.1 Having carefully considered all of the evidence I heard in relation to this matter, I cannot accept Mr Corrigan’s account of his abduction or of the reasons for his abduction. In this regard, I have borne in mind:

- (i) the fact that no other retired Detective Branch Officer was ever abducted and interrogated in this fashion,

(ii) the fact that the incident occurred six years after Owen Corrigan left the Detective Branch; and

(iii) the association between Mr Corrigan and Francis Tiernan.

12.14.2 In respect of number (iii) above, I have had regard, in particular, to the fact that Mr Corrigan's evidence to the effect that Mr Tiernan was complicit in his abduction does not sit comfortably with the version of events he originally provided in Louth County Hospital, where he described Mr Tiernan and himself being bundled together into the van at the Boyne Valley Hotel and collected, together, by Mr Tiernan's brother at the conclusion of their ordeal. Furthermore, I find it difficult to understand how, if Mr Corrigan believed he had been set up by Mr Tiernan, he could subsequently "exchange pleasantries with" Mr Tiernan without asking him about his role in Mr Corrigan's abduction and assault.

12.14.3 While I have considered the intelligence received from An Garda Síochána and the PSNI, this intelligence has not been a determinative factor in my conclusions on the reason for the abduction. However, all of the intelligence does seem to reinforce the view, which is widely held, including by Mr Corrigan himself, that the abduction was carried out by members of the Provisional IRA.

12.14.4 In summary, there is absolutely no doubt but that Mr Corrigan was abducted in December 1995 and severely beaten up; moreover, the evidence clearly points to this having been carried out by members of the Provisional IRA. While I am conscious that the report of Detective Superintendent Finnegan must be treated with some caution given that it is based on "soft intelligence", it nevertheless seems to me that the circumstances of this incident tend to point towards the conclusion at which Detective Superintendent Finnegan arrived, and which he continues to stand over. I am of the view that Owen Corrigan and Francis Tiernan were abducted because of a business transaction with the Provisional IRA which turned sour. The significance of this finding is that it demonstrates that after his retirement from An Garda Síochána, Owen Corrigan had a business association of some form with a subversive organisation. The evidence does not permit me to reach any conclusion as to the precise nature of that business association.

### **12.15 – The Conviction of Finbarr Hickey in Respect of Signing False Passport Application Forms**

12.15.1 A further matter which occurred between 1989 and 2000 concerns the investigation and conviction of Sergeant Finbarr Hickey for falsely completing passport application forms. After the passport office, in 1996, raised an initial issue with an application signed by Sergeant Hickey of Hackballscross Garda Station, further investigations ensued. It transpired that eight forms were false. The recipients of three of the eight false passports were identified as active members of the Provisional IRA.

12.15.2 The details of the 1998 investigation and the evidence of both former Sergeant Hickey and retired Sergeant Colton in respect of same will be addressed later in this Report. For the moment, suffice it to indicate that shortly after his arrest Sergeant Hickey indicated that he had been asked to sign the forms as a favour by Sergeant Colton. Sergeant Colton has consistently denied this allegation.

12.15.3 On 15<sup>th</sup> May 2001 (after the completion of the *Camon Report*), Sergeant Hickey pleaded guilty to four charges of uttering false documents in the Special Criminal Court and was sentenced to a one – year prison term. He served this sentence at the Curragh. Sergeant Colton was not prosecuted.

## Chapter 13

### Renewal of the Allegation of Collusion and Calls for An Inquiry, 1999 – 2000

#### 13.1 – Publication of *Bandit Country* by Toby Harnden in 1999

13.1.1 Toby Harnden is currently the Washington Bureau Chief of *The Sunday Times*. He spent 17 years as a journalist at *The Daily Telegraph*, commencing in 1994. In 1996, he was posted to Belfast as the newspaper's Ireland correspondent. This was shortly after the end of the first Provisional IRA ceasefire. He remained as Ireland correspondent until 1999, when he was posted to the United States of America.

13.1.2 In November 1999, Hodder & Stoughton published Mr Harnden's book, *Bandit Country: The IRA & South Armagh*. This book contained a specific allegation that there had been Garda collusion in the deaths of Chief Superintendent Harry Breen and Superintendent Bob Buchanan on 20<sup>th</sup> March 1989. It is worth setting out the relevant extract of the 1999 edition of *Bandit Country* in full:

“The most serious blow to RUC – Garda relations came on 20 March 1989 when Chief Superintendent Harry Breen, whom the IRA had intended to abduct at Sturgan Brae in 1978, and Superintendent Bob Buchanan were shot dead on the Edenappa Road, near Jonesborough. They were killed a few yards into Northern Ireland in the Gap of the North, where so many English soldiers had perished centuries before. Senior RUC and Garda officers told the author they were certain that information passed by a Gardaí officer enabled the IRA to ambush them as they returned from meeting with Chief Superintendent John Nolan at Dundalk Garda Station. The subject of the meeting was Tom Murphy's smuggling activities. Tom King, then Northern Ireland Secretary, had ordered the RUC to investigate how Murphy could be reined in after he had been told in an intelligence briefing that a stream of lorries carrying smuggled grain had been seen driving down Larkin's Road by soldiers in Gulf Three Zero watchtower at Glasdrumman. ‘King had blown a fuse and told Herman he wanted action taken and that was the reason Harry Breen was travelling to Dundalk that day,’ said an RUC sergeant who was one of the last to see Breen alive. Breen was uneasy about the meeting and had confided to the sergeant that he was concerned

about one Garda officer, identified here as ‘Garda X’, whom RUC Special Branch believed might be working for the IRA.

Breen was head of the RUC’s H Division, covering County Down and County Armagh, while Buchanan was in charge of cross – border liaison with the Garda Síochána. The meeting had been arranged by telephone three hours before hand and scheduled for 2 pm. Buchanan had been making the journey regularly in his private car, a red Vauxhall Cavalier. RUC officers crossing the border are not permitted to carry weapons for fear of infringing the Republic’s firearms laws and the only precaution Buchanan took was to vary his route back across the border between the Edenappa Road and the main A1. On the day they were shot, Buchanan had driven down to Corry Square station in Newry from Glengormley near Belfast and was met there by Breen, who had travelled there from Armagh city. Although it is likely that on previous trips Buchanan’s registration number had been noted, he had never before left from Newry to go to Dundalk and it is highly unlikely his arrival or departure that day would have been noted by the IRA.

Subsequent events indicated that the IRA must have found out about the visit some time between 11 am and 2 pm, when the two officers arrived at the station after having driven down the A1 and into the town. At 2.30 pm. a beige van arrived at the Edenappa Road and stopped outside a derelict house. Two armed IRA men dressed in full combat gear and wearing camouflage cream went into the house. They had chosen a perfect ambush position: in dead ground (an area which cannot be seen) from Romero Two One watchtower on Jonesborough mountain at a point where the road hit a sharp rise and was sheltered by trees.

An IRA man with a CB radio was watching the two officers as they left Dundalk Garda station at 3.35 pm, drove through the town and turned onto the Edenappa Road. A beige van, which was in CB radio contact with one IRA team at the derelict house and another at a point near the A1, was waiting at the junction and fell in behind Buchanan’s Cavalier at 3.45 pm. The IRA was taking no chances and the car would have been ambushed whichever route it had taken. As Buchanan, who was a slow driver, headed north, the two gunmen at the derelict [house] received a radio message from the beige van that the policemen had chosen the Edenappa Road and would be arriving at the ambush point in a few minutes. The two gunmen then stopped three cars travelling south towards Dundalk and ordered the occupants to get out and lie face down on the grass verge. They were careful to leave the cars on the road so that there was space for only one vehicle to get past.

Seeing men in combat gear ahead, Buchanan began to brake, thinking he had reached an Army checkpoint. As he did so, the beige van overtook them and stopped in the space next to the three cars so that the road ahead was blocked. The back doors of the van burst open and four IRA men in combat gear jumped out and opened fire with Armalites and an AKM assault rifle. Buchanan slammed the gear stick into reverse but he was hit in the head with a 7.62mm bullet and the car skidded and crashed into a dry stone wall; his right foot was still pushed down on the accelerator when he was later pronounced dead. Breen grabbed the hand microphone attached to a radio transceiver in the glove compartment but then dropped it when he realised it was too late to summon help. Already wounded, he staggered out of the passenger seat and waved a white handkerchief as one of the gunmen walked up to him and shot him in the head with a Ruger pistol, blowing off the top of his skull. The gunman then leaned through the open passenger door and fired another shot into the head of Buchanan's body, which was still strapped into the driver's seat. Before the gunmen fled back across the border they pulled out the pockets of the dead officers taking wallets and dairies, and removed their briefcases from the boot, which they unlocked with the ignition key.

Within two days, RUC CID investigators had concluded that Buchanan's visits to Dundalk had been noted previously and an ambush planned with meticulous care. The 10 or 15 IRA men involved had almost certainly been placed on standby but it had not been known Buchanan was planning to travel that day and the volunteers who took up position at the derelict [house] would have needed at least an hour's notice to do so. Analysis of video footage from cameras outside Newry station and along the A1 all but ruled out the possibility that IRA dickers had monitored the car on its way to Dundalk. There was also technical information which confirmed that the IRA had been contacted by someone within Dundalk Station. RUC Special Branch then received intelligence that a Garda officer had telephoned an IRA member to tip him off. This sequence of events was confirmed by Detective Inspector L., a former member of Garda Special Branch, who said: 'I'm afraid the leak came from a guard. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved made the whole thing 10 times worse.'

The implications of two senior RUC men being set up by a member of the Garda Síochána who was in league with the IRA were far – reaching and Sir John Hermon, the RUC Chief Constable, took immediate steps to quash speculation about

the matter. ‘We can categorically deny the betrayal of these officers from within the Irish police’ he said at a press conference the following day. Hermon, however, had not received a full briefing from his CID officers beforehand. Years later, he blamed Buchanan’s belief in predestination for his failure to take basic security measures; the Superintendent had been a lay preacher a member of the Reformed Presbyterian Church. ‘The reason they died was so simple’ he said. ‘There was no advance preparation, they just went. Bob Buchanan was a very devout Christian and he did not believe in taking precautions because God was in control. He did not follow basic, elementary security procedures. I still don’t understand why no – one spotted he was going down there so casually. By the time they left Dundalk, the place was swarming with IRA men and there was no way they were going to get back.’ An RUC Special Branch officer, who was able to name the Garda officer who had told the IRA about the meeting, said: ‘Hermon stamped on that story but it was blatantly true. [Garda X] was a well – known republican sympathiser. The question is: what else did he tell the IRA?.’ Garda X was later involved in laundering money for the IRA but fell out of favour after being accused of creaming off part of the profits.”

13.1.3 Mr Harnden’s book provoked a strong political reaction on both sides of the border. In 2000, Toby Harnden published a revised edition of his book, and this included the following significant addition:

“For the families of Chief Superintendent Breen and Superintendent Bob Buchanan, the anguish of their loved ones’ death was exacerbated by the revelation that they had been betrayed by Garda X. Although Sir Ronnie Flanagan, the RUC Chief Constable, mounted an internal enquiry into the March 1989 killings, at the request of the families, there was little hope of a prosecution being brought. It also emerged that a second Irish police officer, Garda Y, had been working for the IRA in the border area between 1985 and 1991. According to both RUC and Garda sources, Garda X and Garda Y were responsible for the deaths of at least 12 people. Among them were Constable Tracy Doak and her three colleagues, Lord Chief Justice and Lady Gibson and the Hanna family who were all blown up at Killeen during cross border transfers between the Garda and the RUC. Tom Oliver, a farmer from the Cooley peninsula who was passing information about IRA safe houses and weapons dumps to the Garda, was betrayed by Garda Y, abducted and shot dead by the IRA. Sometime later RUC Special Branch told Dublin about Garda Y’s role and he was quietly moved to a

station where he would not be dealing with sensitive information. He subsequently retired to draw his Garda pension and work for an IRA member in North Louth.”

13.1.4 The account in Mr Harnden’s book contains a reasonable amount of detail, some of which resonates with evidence heard by this Tribunal. The Tribunal met with Mr Harnden during its private investigation phase. Mr Harnden was, of course, outside the jurisdiction of the Tribunal and could not be compelled to give evidence. However, he indicated that he would agree to come to the Tribunal to give evidence on the basis that the Tribunal would respect his right not to identify his sources. His evidence was originally scheduled for December 2011, but was postponed at Mr Harnden’s request until 8<sup>th</sup> February 2012. However, on 3<sup>rd</sup> February 2012, Mr Harnden indicated to the Tribunal that he would not attend to give evidence following discussions with his new employer, Associated Newspapers. The Tribunal contacted Associated Newspapers to see if any concerns they may have had about Mr Harnden’s giving evidence could be addressed. The solicitor in this jurisdiction for Associated Newspapers replied indicating the Associated Newspapers had no role in Mr Harnden’s decision not to give evidence, and that the decision was “his and his alone.” Therefore, it would appear that the decision not to give evidence to the Tribunal was ultimately Mr Harnden’s decision alone.

13.1.5 It is a decision which deprived the Tribunal of a valuable and potentially informative witness. Counsel for Owen Corrigan fairly observed that, to some extent, Toby Harnden had “planted the acorn that led to the oak tree that is this Tribunal” and that it was a very serious matter, in those circumstances, for a responsible journalist not to co – operate with the Tribunal. I was extremely disappointed that Toby Harnden did not attend. I also note that notwithstanding that he was not prepared to give evidence before the Tribunal, he recently participated in a RTÉ *Prime Time* television report dealing with the subject matter of this Tribunal. His non – attendance at the Tribunal means that it would not be appropriate to attach weight to the allegations contained in his book.

13.1.6 For the sake of completeness, I should add that Detective Chief Superintendent Seán Camon (now deceased) and then Detective Inspector (now Detective Chief Superintendent) Peter Kirwan interviewed Mr Harnden in Washington. He was also separately interviewed by RUC CID officers. Handwritten notes from that interview were put into evidence before the Tribunal. These, of course, must be treated with some degree of caution as they are not intended to be a verbatim account of the interview, but rather one individual’s subjective

notes as to what he perceived to be relevant. The memo of interview is nevertheless signed by Toby Harnden.

13.1.7 It is fair to summarise that interview by noting that in response to the first question asked, Mr Harnden stated,

“a lot of what was told to me was circumstantial and I do not believe I am in possession of evidence that could result in any charges.”

When asked about the reference to technical information which confirmed that the IRA had been contacted by someone within Dundalk Garda Station, Mr Harnden told the Garda officers interviewing him that:

“the person who told me this was extremely cagey about it. I questioned him about this. The source said this but did not expand. He was certain in his own mind and I believe he had reason to be certain.”

13.1.8 He went on to confirm that this information came from an RUC officer and that he was someone “who had intimate knowledge of the investigation and I trusted him.” He also confirmed that the information that intelligence was received by RUC Special Branch that a Garda officer had telephoned a member of the IRA to tip him off concerning the movements of Breen and Buchanan also came from the same RUC officer. However, Mr Harnden did make clear that he regarded this intelligence and the technical information referred to as two separate pieces of information.

13.1.9 In relation to the allegation in the book that the RUC Special Branch was able to name the Garda officer who told the IRA about the meeting at Dundalk Station, Mr Harnden was asked by Detective Chief Superintendent Camon whether the RUC Special Branch officer had told him the basis on which he knew Owen Corrigan had passed on information. He replied,

“as I recall he (RUC officer) was not as specific or emphatic. It was more from an overview perspective.”

In the interview, Mr Harnden also stated that the quote from Detective Inspector ‘L’ to the effect that he said “I am afraid the leak came from a guard”, was a “verbatim quote.”

13.1.10 I also note that in his interview, Toby Harnden is minuted as having said the following:

“The logic in relation to the attack, there are to my mind four possibilities: –

- (a) leak from Garda.
- (b) leak from RUC.
- (c) technical interception/bug of phone.
- (d) observation.”

13.1.11 When asked by Detective Chief Superintendent Camon whether he regarded all of these as possibilities, he replied that they were all possible, which does not, in my view, sit altogether comfortably with the more definitive assertions made in his book. While acknowledging that all four of these options were still a possibility, he continued:

“But the probability of observation of Newry seems less likely. Observation/following was a theory looked at very closely by RUC and some RUC officers believe this is what happened. If this was the case, i.e. followed from Newry, then the IRA might have had enough time to mount the attack.”

13.1.12 Detective Chief Superintendent Kirwan expressed his view of the interview with Toby Harnden in the following terms:

“He came across as pretty forthright in terms of giving answers to questions that were often to his professional disadvantage in terms of his reputation, and conceding that he probably, on reflection, shouldn’t have put in particular pieces here and there.”

13.1.13 I should also note, in relation to the specific allegations in Toby Harnden’s book as regards Detective Inspector ‘L’, that retired Detective Inspector Dan Prenty confirmed to the Tribunal that he had spoken to Toby Harnden, but did not confirm that he was Detective Inspector ‘L.’ He did however say the following:

“I spoke with that gentleman [Toby Harnden] and he put it to me that he had information there was and we discussed it in general terms, but I could not confirm to him there was a leak from the station or I cannot now and if I could I would.”

13.1.14 Of the specific quote attributed to Detective Inspector 'L', retired Detective Inspector Prenty said that it was quite possible that someone else had said this to Toby Harnden, that he had certainly not said it to him, and that he thought Mr Harnden was "guilty of misrepresentation."

### **13.2 – Column in *The Irish Times* by Kevin Myers on 10<sup>th</sup> March 2000**

13.2.1 On 10<sup>th</sup> March 2000, some months after the publication of the second edition of *Bandit Country*, Kevin Myers, then a columnist in *The Irish Times*, wrote in his column Irishman's Diary in *The Irish Times* as follows:

"We all of us, the Garda Síochána in particular, want to see corrupt or evil Gardaí punished. So what is the Government going to do about the retired member of the Garda Síochána now contently living on a handsome State pension, who as an agent of the IRA, was directly responsible for the murders of six RUC officers, the entire Hanna family from Northern Ireland, and Tom Oliver a citizen and resident of this Republic. While in the Garda Síochána he passed vast amounts of intelligence to the IRA and even recruited for the IRA from within the Force. When evidence of 'his force' and of 'his country' was uncovered by the RUC, far from being prosecuted the man was merely given a post in which minimised the danger he posed to others. Who can say what other damage he managed to do while he worked with access to sensitive information? And as extraordinary as his activities is the poor, blind institutional pride of the Garda Síochána which caused the Force honestly to believe that it had no mole and so had no need even to investigate the possibility of there being one. That really is perfectly amazing because so many of the killings which he in essence organised were identical essentially involving cross – border traffic in which the Garda Síochána and the RUC had information, virtually no one else.

The first operation took place in May 1985 when a Garda escort for Brinks security van passed responsibility of the vehicle to an unmarked RUC two car patrol. Precise information of the intended hand over had already been passed to the IRA by their own Garda and a bomb was detonated as an RUC vehicle passed it. Four officers were killed. One was a 21 year old woman officer Tracy Doak. Her dead colleagues were Steven Rogers 19, David Birr 22 and William Wilson 28. This extraordinary compromise of cross – border security did not provoke any internal inquiry with the Garda Síochána but merely a public row with the RUC about the location of the firing point with Garda authorities strongly denying it was in the Republic. In fact that is

exactly where it was. But the magnificent irrelevance of the row must have assured the mole that he was safe as he was and would be by God still is.

Two years later the information he gave the IRA enabled them to murder Lord Justice Gibson and his wife. Very possibly Lord Gibson had made life easier for his murderer by booking a holiday through Dun Laoghaire in his own name. But, as was to be revealed within a year, the Garda mole was vital. No travel agent's computer could have told the killers where precisely the Garda escort was going to hand over responsibility for the Gibsons' safety to the RUC. The bomb was waiting there and the two were killed instantly when it was detonated.

Surely this have you had a start alarm bells. It didn't. A year later the IRA planned an identical murder of Judge Ian Higgins and his wife but on this occasion the IRA blew up the wrong car wiping out the entire Hanna family; Robert 45, Maureen 44, and their son David aged seven. The IRA's cover story was that its people had picked up Hannas' car at Dublin Airport and mistaken that for the Higgins' and it didn't know the precise location of the hand over. This was a cover story to protect its source who had told the IRA of the precise hand over point, but the Higgins couple were unexpectedly delayed. The Hannas' car resembled the Higgins' car and passed the bomb at about the right time.

Even that slaughter did not cause a hunt for the man responsible for so much murder.

Two years later, RUC Chief Superintendent Harry Breen and Superintendent Bob Buchanan were ambushed while returning from a liaison meeting with Dundalk Gardaí. In order to comply with the law of the Republic they were unarmed and so unarmed went to their deaths in an IRA ambush set up by the Garda mole. If he had felt the warm breath of investigation on his neck it does not seem to have inhibited his activities. His next target was Tom Oliver who had passed on information about IRA activities in the Cooley Peninsula to the Garda Síochána. Nine years ago this native citizen and resident of the Republic was abducted, tortured and murdered by the IRA. We can say two things about this death; one, was that no member of the Fianna Fail Government attended his funeral. The Fianna Gael leader John Bruton did. And the other was that even his murder did not trigger even a minor internal inquiry into the Garda.

That occurred only when RUC intelligence discovered the identity of the mole and informed Dublin. The traitor was then posted to a relatively harmless station. To this day he has never been before a court and was allowed to serve his

time to retirement from which he can at his ease contemplate the mountain of human misery his treachery has caused. Nationalist Ireland is happy to point accusingly at complicity with terrorism in the RUC. It is strangely silent when it comes to confronting similar betrayal of duty in the ranks of the Garda Síochána.”

13.2.2 In his evidence to the Tribunal, Mr Myers explained that the foundation of his interest in this issue was Toby Harnden’s book. He said that his article was also based on two further sources. One was a “former member of Garda Síochána about Dundalk.” This former member told Mr Myers, not long before publication of the article, of an IRA mole who had been operating in Dundalk Garda Station for a considerable time. Mr Myers said the source told him that the activities of that mole were known by the source and by colleagues; the mole was not believed to be an honourable man because he was working for the IRA.

13.2.3 Mr Myers’ second source was a former terrorist who regrets his past. This was a source who had given Mr Myers information in the past. Mr Myers confirmed that he rang him up and the source told him what he knew about activities in Dundalk Garda Síochána. This largely confirmed what Mr Myers had been told by his Garda source, although, as he put it, “not in precise detail, but in general terms.” Mr Myers described his sources in the following terms:

“I was very satisfied that these men would know because they would have been in a position to know and they are also men, in their own way, of honour who would not have willingly misled me.”

13.2.4 Mr Myers explained in his evidence to the Tribunal that his Garda source named the mole as “Colton.” He also explained that throughout his conversation with his former terrorist source, the former terrorist source only referred to the mole by the initial “C.” The former terrorist was reluctant to provide the full name to Mr Myers over the telephone.

13.2.5 On this basis, he explained, when he wrote his column on 10<sup>th</sup> March 2000, he wrote it on the basis that both sources had been talking about one and the same mole, namely Sergeant Colton. However, subsequent to the publication of the column, he learned from his terrorist source that when the terrorist source had used “C”, he was in fact intending to refer to retired Detective Sergeant Owen Corrigan. Thus, Mr Myers explained, information about two

separate individuals who were alleged to have been moles working for the IRA was conflated in the article to refer, in error, to a single Garda mole.

13.2.6 Mr Myers emphasised that his article was not based on Toby Harden’s book alone, but also on information from his two sources and it was the information from those two sources that had made him feel that he had sufficient information to warrant penning the column:

“I did not go on Toby Harnden’s assertions alone and it was the information, the allegations made by those two sources which enabled me to feel able to go ahead with what I wrote.”

13.2.7 Mr Myers explained that he probably had three conversations with his Garda source, and two conversations with his former terrorist source prior to writing the article. He indicated that he had no contact with any RUC sources before he wrote it. He said that he did speak to Toby Harnden at some point, but could not be definitive whether this was before or after the publication of the article.

13.2.8 Mr Myers emphasised that the first murder in which he took an interest, and which ultimately prompted the column, was that of Breen and Buchanan. He was interested when he read what Toby Harnden had to say in relation to these murders because it was something that he had enquired into as a journalist in 1989. Although he could not recall what each of his two sources said in relation to each of the individual incidents referred to in his article, he did have a clear recollection that *both* of his sources were specific about the fact that there had been collusion in the deaths of Breen and Buchanan:

“And then when I enquired with my two sources about Breen and Buchanan, they were both emphatic about Garda collusion bringing the murders about.”

13.2.9 Mr Myers was very frank in acknowledging that he did not base his article on evidence as that term might be understood in the legal process:

“What I have is a report to me, people told me this. I wouldn’t regard that as evidence that qualifies as evidence as such. It is the basis for a newspaper article not for a trial and there is a difference.”

13.2.10 He elaborated on this, explaining that in his view, a different level of evidential certainty is required to state matters as fact in a news report than is required when stating an opinion in a column. ‘The Irishman’s Diary’ piece fell into the latter category:

“It is a column, it is not a news page. Now, a column is based on the opinions of the writer, it is not an assertion in the editorial of the newspaper, nor is it on the news pages. It exists on a different factual plain from that which is elsewhere.”

While this may be the case, it does seem to me that the allegations of collusion in the article in question were stated as matters of fact, rather than as matters of opinion.

13.2.11 A note of interviews conducted with Mr Myers by Detective Chief Superintendent Camon and Detective Inspector Kirwan as part of the investigation was put to the witness. Although he was of the view that the notes were not an accurate shorthand transcription of that interview; were not fully accurate and could not be relied upon, he did describe the following summary of his answer to a question posed as “ a reasonable assessment” of the situation with regard to this article:

**“Question:** Are you saying that you had no specific information in relation to each incident you referred to?

**Answer:** I did not have specific information I wrote from my overview. I may have stated it in a more authoritative way than I probably should. I probably wrote it as a fact where if I wrote the article now I probably would not write it as a fact.”

13.2.12 It was also put to Mr Myers that insofar as it relates to the murder of Tom Oliver, both Owen Corrigan and Leo Colton were no longer working at the time of Tom Oliver’s murder on 19<sup>th</sup> July 1991. When asked would this alter the view of the allegations in his article, he confirmed that it would alter his view in relation to allegations to do with Tom Oliver. However, Mr Myers, on several occasions in his evidence, reiterated that he stood over the central allegation in his article, namely that of collusion between a member of An Garda Síochána based in Dundalk and the IRA:

“Look, do I believe, did I believe that there was collusion in Dundalk Garda Síochána? I absolutely do. I was told it on good authority.”

However, he was anxious to make clear that he was not saying that this meant that the names that he had been given were necessarily the correct identities of any such moles.

13.2.13 A further interesting aspect of Mr Myers' evidence is that he told me that after the publication of his article he received phone calls from members of An Garda Síochána and two members of the Irish Army congratulating him on the article and thanking him for exposing the existence of a mole:

“Every single member of the security forces who has been in touch with me, and I mean the Republic security forces, has said the same thing.”

13.2.14 Mr Myers' evidence was given over the course of two days, with approximately a one week gap. When he gave his evidence on the second day, he indicated that after newspaper reporting of his first day in the witness box, he had received further communications telling him that his assertions were correct. He did, however, indicate that he did not make too much of these as he said he did not want to “muddy the waters.” He stated:

“I have said, and I will repeat, that I have received many communications, both at the time and further communications followed last week, saying that there was a mole and that my assertions were correct, and, without exception, everyone who has contacted me about this, without exception, has said that the revelations about Dundalk were necessary.”

13.2.15 Mr Myers had, prior to coming to give evidence, indicated that he would go back to his Garda and former terrorist sources and ask them if they would be prepared to speak to the Tribunal's legal team. He undertook to do this again after his evidence. However, these witnesses did not come forward to speak with the Tribunal. Mr Myers was not prepared to give the names of his sources to the Tribunal, emphasising the fundamental importance of the principle that a journalist ought to protect the identity of his or her sources. The Tribunal respected his position in this regard and did not take any action to pressurise or compel him to reveal the names of his sources.

13.2.16 As I have already noted above, in his column Mr Myers asserted as fact something which was his opinion based on relatively general information received from two sources. I

do not think that this was appropriate. However, Mr Myers has come to the Tribunal and in a frank and fair manner himself acknowledged the limitations of the article, and accepted that he is not, with hindsight, satisfied with the manner in which it was written, both because it accidentally conflated information about two moles into a single mole, and because it was written more authoritatively than it should have been.

13.2.17 Without hearing evidence from Mr Myers' sources, or at least knowing something more about them so as to be able better to assess their access to relevant knowledge, little evidential weight can be accorded to Mr Myers' article and evidence. However, the communications he recounted, both those with his original sources and those received from others subsequent to the publication of his article and his appearance at the Tribunal, do tend to corroborate one aspect of the evidence, namely that there has, for a long time, been a sense of unease regarding Dundalk Garda Station. This has been something of a recurring theme through a significant portion of the evidence heard by the Tribunal.

### **13.3 Parliamentary Questions in Dáil Éireann**

13.3.1 Charlie Flanagan, T.D., was in April 2000 the Opposition Spokesperson on Northern Ireland, the Vice – Chairperson of the British Irish Parliamentary Body, and the Chairperson of that Body's Security Committee. He told the Tribunal that Kevin Myers' article committed to print:

“issues that had been circulating in certain political circles that would have been mentioned in the fringes of some meetings.”

He said that Unionist politicians were frequently complaining to him of issues concerning border security. In addition, particularly in the context of his role on the British and Irish Parliamentary Body Security Committee, he had meetings with security personnel north of the border. He said that, unlike the politicians, these personnel posed questions about the possibility of collusion rather than making suggestions that there had been collusion. Mr Flanagan told me that after publication of Mr Myers' article, he telephoned Kevin Myers to discuss it. Thereafter, he tabled parliamentary questions to the then Minister for Justice, John O'Donoghue T.D. asking whether the Minister would order an appropriate investigation into the allegations of collusion.

13.3.2 Mr Flanagan also told me that around the time these questions were tabled, he received a phone call one Sunday night from a man purporting to be a member of An Garda Síochána.

He said that he thinks this man was a Detective and he may have told Mr Flanagan that he was from County Monaghan. He did not give him a name. This person had told Mr Flanagan that the questions on the issue of collusion “were very important and should be followed up.” Mr Higgins advised him to report what information he had to his Garda superior. Mr Higgins confirmed to the Tribunal that he was aware of the name of one Garda officer associated with the allegations of collusion, namely that of Detective Sergeant Owen Corrigan. He stated that he was “probably aware of it” before tabling the parliamentary question.

13.3.3 Mr Flanagan, and separately John Bruton TD, the leader of Fine Gael, also wrote to the Garda Commissioner. David Trimble, M.P. and M.L.A., also raised the issue of the allegations made in Mr Myers’ article in a letter to the then Taoiseach, Bertie Ahern, T.D., dated 25<sup>th</sup> March 2000.

13.3.4 The Tribunal also heard evidence from Jim Higgins, M.E.P., who in April 2000 was the Opposition Spokesperson on Justice. He said that it was Kevin Myers’ article which prompted him to table a parliamentary question, which asked the Minister why there had been no follow – up action or arrest following the publication of the article in *The Irish Times*. In the course of his exchange with the Minister on that question, he said the following:

“Does the Minister accept that rank and file Gardaí could name the two people involved, one a uniformed member of the Garda and the other plain clothes member?”

13.3.5 When asked who the two persons were, he confirmed to the Tribunal that he was talking about retired Detective Sergeant Corrigan and retired uniformed Sergeant Colton. He explained that the source of this knowledge were phone calls he received from people purporting to be members of An Garda Síochána. He cannot recall their names due to the passage of time and the busy nature of the Justice portfolio at that time. He stated that he received two or three calls and that both of the two names “were used simultaneously in the same call or calls.” Mr Higgins also said in the Dáil:

“Even the dogs on the street know the names of the people involved. Were they individuals – we know who we are talking about – arrested, questioned, or interrogated in relation to their alleged involvement in these cases?”

13.3.6 At a later point in his exchange with the Minister, Mr Higgins stated, “I will give the Minister the names of the Gardaí if he wishes.” He repeated this offer on a subsequent occasion in the debate. Mr Higgins confirmed to me in evidence that he did not supply the names to the Minister or to the Gardaí, nor was he asked for the names by either the Minister or the Gardaí.

13.3.7 Former Minister for Justice, Equality and Law Reform, John O’Donoghue, also gave evidence to the Tribunal. To set his evidence in context, it is worth setting out the initial part of his response to the parliamentary questions which he gave in Dáil Éireann on 13<sup>th</sup> April 2000:

“I propose to take questions Nos. 1 and 5 together. I am aware of the allegations raised in the newspaper article referred to by Deputy Higgins. Indeed, similar allegations have been made in the past and given coverage in the media. The murders referred to in the article were, of course, the subject of intensive investigations both by the RUC in relation to those incidents which occurred in Northern Ireland and by the Garda Síochána in relation to incidents which occurred in this jurisdiction. The two forces co – operated fully with each other in these investigations. I am advised by the Garda authorities that during the course of the investigations in question, and indeed other investigations into terrorist incidents in the border area throughout the 1980s and 1990s, no tangible evidence was uncovered to show that information was passed by a Garda informant to the Provisional IRA. There is no doubt, however, that the allegations raise issues of the utmost seriousness and that their recent repetition in the media has caused understandable concern. Even though there is no evidence to substantiate the allegations, every effort must be made to assure and reassure the public that they have been thoroughly investigated. The Garda Commissioner has appointed a senior office to re – examine the files and to investigate the allegations raised.”

13.3.8 At a later point in the debate, in response to questioning by Deputy Higgins, the Minister said as follows:

“I said no tangible evidence was uncovered to show that information was passed by a Garda informant to PIRA. I did not say no evidence was uncovered. That has been the position under my predecessors, and it remains so.”

13.3.9 The Tribunal heard evidence from two officials within the Department of Justice which clearly established that the phrase “no tangible evidence” to substantiate the allegation of collusion came from a letter written by the then Detective Chief Superintendent Timothy Maher from the Garda Security and Intelligence Section to the Secretary General of the Department of Justice Equality and Law Reform, dated 3<sup>rd</sup> April 2000. In effect, the Garda phrase was adopted by the Departmental officials who prepared the Minister’s response and underlying briefing documentation, and by the Minister himself.

13.3.10 In his evidence, John O’Donoghue told me that he understood the phrase “no tangible evidence” to mean “that there was no evidence which would have stood up in a court of law which would have been useful in convicting any individual or individuals.” He said that in the circumstances where he wasn’t aware whether or not there was some information in relation to the allegation, he “deemed it best to adopt the information which was given to me and not stray outside of that.” When it was put to Mr O’Donoghue that the phrase “I did not say no evidence was uncovered” inferred that the Minister was aware of some evidence, he denied that this was the case:

“Well, that may be your interpretation of it, but it certainly was not mine. I was emphasising that no tangible evidence was uncovered, that was the information which was available to me.”

13.3.11 The former Minister also went on to state that in a written response to a written question by Breeda Moynihan – Cronin, T.D., in April 2001, he was able to report that there was “no evidence” because, having received a report from the Commissioner of An Garda Síochána, Pat Byrne, summarising the finding of the *Camon Report*, “I was on surer ground.”

13.3.12 John O’Donoghue confirmed that Jim Higgins did not give him the names and also confirmed that he did not ask for them. In the latter regard, he explained that he did not ask Deputy Higgins for the names “for the very simple reason, to be quite frank with you, I am not so sure that I believed him.” In this regard, John O’Donoghue suggested that Mr Higgins had made previous allegations which had turned out not to have been held to be correct by the Morris Tribunal.

13.3.13 One thing which emerges from the Minister’s response in Dáil Éireann is that there appears to have been a clear Garda and Department of Justice view that the Camon Investigation was not really necessary. The Minister stated that:

“even though there is no evidence to substantiate the allegations, every effort must be made to assure and reassure the public that they have been thoroughly investigated.”

This seems to me to be somewhat akin to saying,

“we know there is nothing there to substantiate the allegation of collusion, but we will have the files reviewed again to keep everyone happy.”

It indicates a political rather than operational reason for the instigation of the Camon Investigation. I would also note that the Minister’s response indicates that the senior officer appointed was both to “re – examine the files” and “to investigate the allegations raised.” I will return to this point in the section below dealing with the *Camon Report*.

13.3.14 I accept the evidence of Charlie Flanagan and Jim Higgins that they received phone calls from persons purporting to be members of An Garda Síochána. However, the information which those persons provided cannot be attributed to any named individual at this remove, has not been given in evidence before the Tribunal and is of no value to me in assessing the issues to be determined.

#### **13.4 The Comments of Mr Jeffrey Donaldson MP in the British House of Commons on 13<sup>th</sup> April 2000**

13.4.1 It appears that, by sheer coincidence, on the date that the Irish Minister for Justice was responding to parliamentary questions about the allegation of collusion in Dáil Éireann, 13<sup>th</sup> April 2000, Mr Jeffrey Donaldson M.P. raised the same issue in the British House of Commons.

13.4.2 Mr Donaldson made his comments in the context of the Northern Ireland Grand Committee. After commending Toby Harnden’s book, *Bandit County* to the members of the Committee, Mr Donaldson continued as follows:

“Having conducted my own extensive enquiries since the book was published, I believe that there is an overwhelming case for an independent public inquiry into the

reasons why Chief Superintendent Harry Breen and Superintendent Bob Buchanan, two of the most senior RUC officers to die during the Troubles, were murdered near Jonesborough as they returned from a meeting with the Irish police in Dundalk on 20 March 1989. Superintendent Buchanan lived at Moira in my constituency. The meeting that he and Chief Superintendent Breen attended was arranged only on the morning of the day in question, and took place at 2 pm. How did the IRA know about a meeting involving such senior officers, and the timing of their return to Northern Ireland?

In particular, an independent public inquiry should examine the evidence that Owen Corrigan, a retired Detective Sergeant now living in Drogheda, passed information to the IRA. On the morning on which he died, Chief Superintendent Breen expressed concern about Sergeant Corrigan's known IRA sympathies. Why was action not taken by the Irish police to prevent sensitive information from falling into his hands? Mr Harnden's book alleges that the RUC had technical information, gleaned, one presumes, from the watchtowers in South Armagh, that proves that the IRA was contacted from within Dundalk Garda station on the day on which Chief Superintendent Breen and Superintendent Buchanan were murdered."

13.4.3 At a later point in his speech to the Grand Committee, Mr Donaldson referred to the completion of false application forms by members of An Garda Síochána, which led to false passports being in the possession of members of the Provisional IRA:

"Other examples of collusion between Irish police officers and the IRA could be cited, some of which are detailed in 'Bandit Country.' The Special Criminal Court in Dublin is currently considering a case involving Sergeant Finbarr Hickey, who has been charged with false possession of passports, and a man called Fox, who is allegedly a senior member of the Provisional IRA and was previously charged with the murder of post office worker Frank Kerr in Newry.

The evidence in that case suggests that Sergeant Hickey was involved in providing the Provisional IRA with false passports for use in its illegal activities. The public are entitled to know the truth about Sergeant Hickey's involvement with the IRA and who else in the Garda was associated with his activities. Although the court case will go some way towards tackling those issues, the wider implications can be fully investigated only by an independent public inquiry."

13.3.4 I emphasise that in this speech, Mr Donaldson made no link between the prosecution of Sergeant Hickey and the murders of Chief Superintendent Breen and Superintendent Buchanan. The suggestion made by Mr Donaldson was that there was evidence that Owen Corrigan passed information to the IRA in respect of the movements of Chief Superintendent Breen and Superintendent Buchanan.

13.3.5 Mr Donaldson gave evidence to the Tribunal and explained that he had a particular interest in the South Armagh area, having lost two cousins there, both members of the RUC, at the hands of the IRA. He recalled that in the aftermath of the killings of Chief Superintendent Breen and Superintendent Buchanan there was both press speculation and discussion in political circles about the possibility that someone in Dundalk Garda station had leaked information to the IRA. He acknowledged that the speculation in relation to this incident diminished for a period during the 1990s, but noted that “for a number of us who maintain an interest in this kind of thing, the suspicion, the concern was still there.” He confirmed that he knew Toby Harnden and read and was interested in ‘Bandit Country’ when it was published. He subsequently met Toby Harnden after publication to discuss some of the issues raised in the book. After the publication of the book, he was also approached by William Frazer, a victims’ campaigner from South Armagh, who indicated that he would like to introduce him to someone who might be able to provide information additional to that contained in Toby Harnden’s book. This individual was Kevin Fulton and Mr Donaldson met him at the Houses of Parliament in London. Mr Donaldson confirmed that he was aware of Mr Fulton’s real name, Peter Keeley, and of his family background.

13.3.6 Mr Donaldson said that Kevin Fulton was introduced to him as someone who had been an agent working for the security forces, who had infiltrated the Provisional IRA and who had a strong inside knowledge of the Provisional IRA in the County Louth and South Armagh areas. He told me that he met Kevin Fulton twice prior to making his speech on 13<sup>th</sup> April 2000. He met him for the first time in early 2000 and Mr Fulton told Mr Donaldson his background at this meeting. He said that Mr Fulton also went on to talk, in general terms, about the Breen and Buchanan murders, and told Mr Donaldson that he had information which would link a member of the Gardaí with the passing of information to the IRA at the time of the murders of the two police officers. Prior to meeting Mr Fulton a second time, therefore, Mr Donaldson told me that he:

“spoke with a senior member of the security forces, who I had reason to believe would have knowledge of such matters, and sought to confirm that Fulton was who he said he was, and that was confirmed to me.”

Mr Donaldson said that the person to whom he spoke confirmed that Fulton was an agent of the security forces, but told him no other information about Mr Fulton. That person did not suggest to him that Fulton was an intelligence nuisance.

13.3.7 Mr Donaldson was not willing to name the member of the security forces with whom he spoke with in his evidence to the Tribunal, but did write this name down on a piece of paper and, without objection from any other party, handed that piece of paper to me. I wish to say no more than to state that I am familiar with the person named and acknowledge that one would expect that person to have knowledge of the matters raised by Mr Donaldson. Mr Donaldson said that he shared with the member of the security forces the outline of what Mr Fulton told him and would have expected that, if there had been a major issue about Mr Fulton’s credibility, he would have been told that.

13.3.8 Mr Donaldson gave evidence that probably two or three weeks after his first meeting with Mr Fulton, and having made his enquiries with the senior member of the security forces, he met Mr Fulton for a second time at the Houses of Parliament in London. At the second meeting, Kevin Fulton elaborated on the detail:

“[he] explained that on the day on which Harry Breen and Bob Buchanan were murdered, Patrick Joseph ‘Mooch’ Blair, in conversation with Mr Fulton, had revealed that the Provisional IRA unit who had murdered the two men had been given a tip – off, and the word “tip – off” was used by someone in Dundalk Garda station who had provided the information about the movements of Chief Superintendent Breen and Superintendent Buchanan.

[...]

And he also told me about a subsequent meeting that occurred in the carpark of a public house in the County Louth area in which Detective Sergeant Owen Corrigan met with Patrick Joseph ‘Mooch’ Blair in a vehicle driven by Kevin Fulton and it was evident from the discussion that took place in that vehicle that Owen Corrigan was passing information to the IRA.”

13.3.9 It was put to Mr Donaldson on behalf of Mr Corrigan that he could have agitated for a public inquiry without naming Mr Corrigan in the House of Commons and that, in naming Mr Corrigan, he had “committed one of the most outrageous abuses of parliamentary privilege since the Bill of Rights.” It was also put to him that what he had done to Mr Corrigan was “an absolute disgrace.”

13.3.10 Mr Donaldson in his evidence emphasised that he would not have made the call for a public inquiry on the basis of Toby Harnden’s book alone and that “a far greater factor” was the information given to him by Kevin Fulton. He emphasised that he did not say that Owen Corrigan had colluded with the IRA, but said that there was evidence that he had done so which required to be looked at by a public independent inquiry. He felt that simply to say that there was evidence sufficient to warrant a public inquiry without naming Mr Corrigan would not have been sufficient to secure a public inquiry:

“I made the judgement that that was not sufficient and that naming Owen Corrigan would demonstrate that there was evidence in the possession of the police that warranted the pursuit of these matters through an independent public inquiry.”

13.3.11 He also stated:

“In naming Owen Corrigan, I was demonstrating that there was evidence that was important and relevant and strengthened the case for the holding of such an independent public inquiry. That was my judgment. I made that call. I do not regret making that call. I believe that in making that call, it enhanced the realisation of the holding of this Tribunal of Inquiry.”

13.3.12 Mr Donaldson confirmed that he was not contacted by either An Garda Síochána or the RUC subsequent to his making his speech in the House of Commons Grand Committee. He noted that he would have been expected to have been contacted by the RUC rather than An Garda Síochána and that he was surprised and disappointed that he was not asked by the authorities to provide whatever information he had in relation to the allegation he had made.

13.3.13 Mr Donaldson made it clear that his actions of 13<sup>th</sup> April 2000 were primarily based on the information provided to him by Kevin Fulton and I will analyse Mr Fulton’s information in Chapter 15.

13.3.14 A question has been validly raised as to whether it was necessary to name Owen Corrigan under the protection of parliamentary privilege in order to secure a Inquiry. However, this is ultimately a question for Mr Donaldson to address, and he did not shirk coming to the Tribunal to do so.

13.3.15 All of the events outlined above, in particular the publication of Kevin Myers’ article and the questions which it prompted to be raised in Dáil Éireann, resulted in the Garda Commissioner, Mr Pat Byrne, appointing Chief Superintendent Seán Camon “to re – examine the files and to investigate the allegations raised.” The next chapter therefore deals with the substance of that re – examination and investigation.

## Chapter 14

### The Camon Investigation and Report

#### 14.1 – Initial Review of Files by Crime and Security

14.1.1 It emerged in evidence that there were in fact two reviews of the existing files conducted in 2000 in response to the renewed speculation of collusion. There was an initial, brief review, and then the much lengthier Camon investigation. Retired Assistant Commissioner Pat O’Toole, who in 2000 was the Assistant Commissioner in charge of the Crime and Security Branch, told me that before the Commissioner ordered the Camon investigation, Crime and Security had initiated a review of their intelligence files. He told me that he asked then Chief Superintendent in Crime and Security, Dermot Jennings, to have a review of the files carried out and that this had been done by Detective Garda Lionel Mullally, one of the analytical team in the Security and Intelligence Section,.

14.1.2 Sergeant Mullally (as he now is) explained to me that analysis officers of Security and Intelligence Section were accorded areas of specialisation. He was responsible for the border area of Louth/Meath and Cavan/Monaghan. He recalled being asked to go through the files to see if An Garda Síochána held any intelligence relating to the matters raised in Kevin Myers’ article of 10<sup>th</sup> March 2000. Sergeant Mullally recalled that when he was asked to do this review, the name of Owen Corrigan was mentioned to him in connection with Kevin Myers’ allegations. He recalled that the name was given to him by then Detective Inspector Peter Kirwan.

14.1.3 As a result of this initial review, Chief Superintendent Jennings wrote to Assistant Commissioner O’Toole on 1<sup>st</sup> April 2000 indicating that he had caused a fresh analysis of the files to be carried out within the Security and Intelligence Section and that “no tangible evidence” had been uncovered to support the allegations of collusion. He told me that then Superintendent Timothy Maher drafted this letter for him. It would appear that the phrase “no tangible evidence” was also employed by Chief Superintendent Maher in his own letter to the Secretary General of the Department of Justice. Retired Assistant Commissioner Jennings explained to me that he understood the term “no tangible evidence” to mean “there was nothing real there that you could lay your hands on.” He also explained that once Chief Superintendent Camon was appointed by the Commissioner to carry out an investigation into the allegations in Mr Harnden’s book and Mr Myers’ article, Crime and Security Branch

provided Mr Camon with a Detective Inspector to assist him, particularly in going through the intelligence files. That Detective Inspector was Peter Kirwan, currently Chief Superintendent in Crime and Security.

14.1.4 Before turning to address the Chief Superintendent Kirwan's evidence in relation to the Camon investigation proper, I note that Chief Superintendent Kirwan told me in evidence that he did not give the name of Owen Corrigan to then Detective Garda Lionel Mullally until after Owen Corrigan had been named by Jeffrey Donaldson in the House of Commons or Chief Superintendent Camon and he had interviewed Toby Harnden in Washington. At first blush, this does not appear to fit with the evidence: I was told that Lionel Mullally conducted the initial review which was completed by 1<sup>st</sup> April 2013, some 12 days before Jeffrey Donaldson made his speech in the House of Commons and considerably longer before Toby Harnden was interviewed. If Lionel Mullally had no involvement after 1<sup>st</sup> April 2013, this suggests that Peter Kirwan believed, without learning from Jeffrey Donaldson or being told by Toby Harnden, that the allegations referred to Owen Corrigan. However, it is also possible that Lionel Mullally had an involvement both in the initial review and in assisting Chief Superintendent Camon and Detective Inspector Kirwan subsequently. Given his area of geographical responsibility in the Security and Intelligence Section, this seems eminently possible and even likely. Therefore, I accept Chief Superintendent Kirwan's evidence that he did not give the name of Owen Corrigan to Detective Garda until after 13<sup>th</sup> April 2000 at the earliest.

## **14.2 – An Overview of the Camon Investigation and Report**

14.2.1 Then Commissioner Pat Byrne appointed Detective Chief Superintendent Sean Camon, the head of the National Bureau of Investigation, to "re – examine all available files and investigate the allegations contained in *Bandit Country* and in Kevin Myers' article." Assistant Commissioner Pat O'Toole recommended the appointment of Detective Inspector Peter Kirwan to assist Chief Superintendent Camon. This was because the Detective Inspector knew and had access to all of the intelligence in the Security and Intelligence Section.

14.2.2 Detective Chief Superintendent Kirwan confirmed to me that his role in the *Camon Investigation* was concentrated on the intelligence. He also accompanied Chief Superintendent Camon to the interview of Toby Harnden in Washington and to one of two interviews which Chief Superintendent Camon conducted with Kevin Myers. He recalled considering the *O'Dea Report* at the very early stages of the investigation. He said that the

review of intelligence files was conducted sporadically over a period from April 2000 to February 2001. He and Chief Superintendent Camon interviewed Dan Prenty, Owen Corrigan and Leo Colton. He recalled that Chief Superintendent Camon prepared a draft letter for Deputy Commissioner Noel Conroy to send to the RUC requesting that organisation's assistance. In connection with that request, Seán Camon and Peter Kirwan met the RUC head of CID in South Region, Detective Chief Superintendent Maynard McBurney (deceased) on two occasions. I will return to the issue of the RUC input below.

14.2.3 Chief Superintendent Camon's *Report* is an extensive one, running to 101 pages and containing 25 Appendices. At Section 7, it analyses, with reference to interview notes, the allegations of Toby Harnden and at Section 8, again with reference to interview notes, the allegations of Kevin Myers. Sections 10, 11 and 12 of the Report address the involvement of Sergeant Finbarr Hickey and the alleged involvement of Sergeant Leo Colton in signing application forms which had been used to obtain false passports. Three recipients of the false passports, believed to be members of the Provisional IRA, are named. Section 13 is entitled 'Career Profile and other relevant issues' in relation to retired Detective Sergeant Leo Colton and Section 14 is similarly entitled in relation to retired Detective Sergeant Owen Corrigan. Section 15 contains a summary and section 16 the conclusion.

14.2.4 It is worth setting out the following aspects of the summary section:

“15.6 The allegations seem to centre on two former members of the Garda Síochána, firstly on Owen Corrigan formerly Detective Sergeant in Dundalk, and secondly on Leo Colton former Sergeant in Dundalk.

15.7 Following the murders of RUC officers Breen and Buchanan on their return from their visit to Dundalk on 20<sup>th</sup> March 1989, the Garda Commissioner of the day instructed Assistant Commissioner Edward O'Dea, Crime and Security Section, Garda Headquarters to carry out all necessary enquiries relating to the arrangement and other circumstances surrounding the meeting between the RUC officers and Chief Superintendent, Dundalk.

15.8 All Garda personnel on duty in Dundalk at the relevant time were interviewed, including Detective Sergeant Owen Corrigan and Sergeant Leo Colton who were both on duty on that day. Assistant Commissioner O'Dea

concluded in his report that ‘he was satisfied that no member of An Garda Síochána leaked or passed on any information concerning the visit of the two RUC officers to Dundalk on 20<sup>th</sup> March 1989, to any person outside the force.’.

- 15.9 The present inquiry stems from allegations contained in Toby Harnden’s book ‘Bandit Country’ and which were further publicised in the Irish Times article by Kevin Myers. Harnden in the course of interview readily admits that a lot of what he was told was circumstantial and professes the belief that he is not in possession of any evidence that could result in any charges.
- 15.10 While exercising some ‘journalistic privilege’ Harnden was relatively open to all questions put to him. He refers to some relevant parts of his allegations as being ‘circumstantial, hypothesis, a belief rather than something definite, not specific or more from an overview perspective’.
- 15.11 Kevin Myers based his article on Toby Harnden’s book, although he speaks of having his own informants. In response to questions he speaks of having information but no evidence. On another occasion in response to a query he stated ‘I cannot corroborate it and I don’t have anything that may be used in evidence’.
- 15.12 Myers also stated that he was told that Dundalk Garda Station was compromised and he created a ‘fictional villain’, who he stated in his article was responsible for the incidents referred to. He later clarified this remark by stating that he used the term to incorrectly attribute responsibility for leaking information to the IRA to one man, where he now believed several were involved. He also concedes that there were elements of ‘conjecture and hypothesis’ in his article, that on some matter he did not have specific information and wrote from an overview. [...]”

14.2.5 The summary section then went on to outline the details of Alan Mains’ 1989 and 2000 statements in relation to comments made by Harry Breen on the morning of 20<sup>th</sup> March 1989. At paragraph 15.16, Chief Superintendent Camon stated:

“15.16 The only conclusion we can draw from this aspect of the allegations is that Chief Superintendent Breen felt uneasy about going to Dundalk on 20<sup>th</sup> March 1989 and he felt that Detective Corrigan could not be trusted and that he felt he possibly was on ‘Slab’ Murphy’s payroll.”

14.2.6 At paragraph 15.17, Chief Superintendent Camon summarised the outcome of a request for assistance made of the RUC. In this regard, I note the exchange of correspondence between Noel Conroy, Deputy Commissioner of An Garda Síochána, and Colm Cramphorn, Deputy Chief Constable of the RUC. By letter dated 19<sup>th</sup> June 2000, Mr Conroy wrote to the Deputy Chief Constable to indicate that to advance Chief Superintendent Camon’s investigation, “a number of issues raised by both authors, Harnden and Myers, require investigation in your jurisdiction in order to complete the task.” The letter sought the assistance of the RUC to ascertain whether the RUC has “any intelligence/information or evidence concerning” enumerated allegations of collusion contained in both the book and the article. As noted above, Chief Superintendent Kirwan informed me that he and Chief Superintendent Camon met Chief Superintendent Maynard McBurney on two occasions: first, to discuss the nature of the investigations required; and secondly, to be told informally of the results. The second meeting was succeeded by receipt of an official reply from the Deputy Chief Constable to Deputy Commissioner Conroy dated 29<sup>th</sup> September 2000. Enclosed with the reply was the report of Chief Superintendent McBurney which enclosed the 1989 and a new, 2000 statement of Alan Mains, and otherwise confirmed that “no evidence exists nor can any documentation be located which evidences Garda collusion with subversives.”

14.2.7 The summary of the *Camon Report* then proceeds to outline the position in relation to the false passports affair, noting that Sergeant Hickey “stands suspended from duty and charged before the Special Criminal Court with related offences.” In relation to Sergeant Colton, Chief Superintendent Camon comments:

“It is fair to say that Leo Colton was only put into the frame as a ‘collusion’ suspect, by persons mentioned in this report, as a result of being uncovered by the Garda Síochána in the course of the passport inquiry.”

14.2.8 In relation to Detective Sergeant Corrigan, Chief Superintendent Camon states as follows:

“15.24 Detective Sergeant Owen Corrigan spent many years in Dundalk and was involved in the investigation of crime of a subversive nature. He had a unique highly personalised style of investigation which did not always endear him to people he came in contact with. In the latter years of his service he became embroiled in some minor disciplinary matters. He went off duty sick for a considerable period of time before eventually retiring from An Garda Síochána. During his period of service in Dundalk he supplied a substantial amount of confidential information, which resulted in prisoners arrested and firearms and explosives recovered.”

14.2.9 The final paragraph of the conclusion section of the report states as follows:

“16.6 There is no evidence to suggest collusion between members of the Garda Síochána and subversives in the murder of Chief Superintendent Breen and Superintendent Buchanan or in the other cases as outlined in Toby Harnden’s book ‘Bandit County’ or in Kevin Myers’ Irish Times article.

The Appendices include a copy of a statement made by retired Detective Inspector Dan Prenty, a statement made by retired Sergeant Leo Colton and a memorandum of interview with retired Detective Sergeant Owen Corrigan.

14.2.10 In his statement, retired Detective Inspector Dan Prenty confirmed that he had met Toby Harnden but, as he has done in his evidence to this Tribunal, denied that he had ever said to Mr Harnden, “I am afraid the leak came from the guards” or “the fact that one of my colleagues was involved made the whole thing worse.” He stated, “I could not make those comments because I do not have that knowledge in my possession.” Detective Chief Superintendent Kirwan confirmed in his evidence to the Tribunal that he and Seán Camon were satisfied that Dan Prenty was Detective Inspector L.

14.2.11 In his statement, retired Sergeant Leo Colton confirmed that he had been cautioned and states the following:

“I just want to say that I had nothing to do with any of these allegations of collusion. I was not involved in any way. As a uniformed Sergeant in Dundalk I would not have been made aware of any visits by VIPs etc. I did make a statement after the murders

of the RUC officers Breen and Buchanan concerning a car, which was acting suspiciously in the yard of Dundalk Garda Station of the day of the murders.”

14.2.12 The memo of interview with Detective Sergeant Corrigan begins by noting that Chief Superintendent Camon outlined to Mr Corrigan the nature of the allegations contained in *Bandit Country* and Kevin Myers’ article. The memo of interview continues:

“Mr Corrigan stated that he was aware of the references to ‘Garda X’ in the book and he also stated that he had been made aware that his name had been mentioned in the Belfast Telegraph in the context of reporting a statement of Jeffrey Donaldson M.P. He stated that this matter is in the hands of his solicitor and he believed that the paper was going to publish an apology. Chief Superintendent Camon asked Owen Corrigan if he wished to make any comment concerning the allegations in ‘Bandit Country’ or the Irish Times article. Mr Corrigan stated that he knew nothing about any collusion with subversives and wasn’t even working when Tom Oliver was killed. When asked if he wanted to make a statement on this matter he said ‘I won’t say anything’.”

14.2.13 The executive summary to the *Camon Report* contains the following paragraph:

“Any other published allegations on this matter by Mr Trimble, Mr Donaldson, Mr Bruton, Mr Higgins and Mr Flanagan do not seem to be ‘stand alone’ allegations but rather are based on Toby Harnden’s book and Kevin Myers’ article. Based on this analysis, none of the above mentioned have been interviewed.”

14.2.14 One of the allegations in *Bandit Country* was that: “Garda X was later involved in laundering money for the IRA but fell out of favour after being accused of creaming off part of the profits.” In relation to this allegation, the *Camon Report* makes reference to the abduction of Owen Corrigan outside the Boyne Valley Hotel, Drogheda on 13<sup>th</sup> December 1995. The Report notes that Mr Corrigan subsequently returned to his family home but showed signs of having been badly beaten and required medical attention. The Report continues:

“7.14.4 He was subsequently admitted as a patient at the Louth County Hospital in Dundalk where he underwent treatment and was detained there for a number of days. He was visited by Gardaí in the hospital and interviewed on two occasions but he

declined to make a written statement of complaint. Tiernan was also interviewed but declined to offer any assistance to investigators. The lack of co-operation was a severely limiting factor in the context of progressing the investigation to a successful conclusion. No definite motive was established for the kidnapping and no persons were made amenable. No organisation claimed responsibility for the incident.”

14.2.15 The prosecution of Owen Corrigan for obtaining money by false pretences, arising from an allegedly fraudulent insurance claim, was also addressed:

“14.3.1 On the 14<sup>th</sup> May 1988 [a] traffic accident [occurred] at Dunleer Village, Co. Louth involving a motor car driven by Detective Sergeant Corrigan and motor lorry driven by Patrick Gallagher [age and address removed].

14.3.2 Corrigan subsequently made an insurance claim against the other party’s insurance company. The damage allegedly sustained by Corrigan’s vehicle was disputed and a criminal investigation was undertaken. The decision of DPP was that Owen Corrigan should be prosecuted for obtaining £1,330 by false pretences in relation to the fraudulent insurance claim. At the trial Mr Gallagher failed to appear and the case was ‘struck out’. The DPP decided not to re – enter the case.”

14.1.16 Having summarised the essential contents of the Report, I now wish to comment on a number of aspects of the Camon Investigation. I must qualify these comments by noting that retired Chief Superintendent Camon died before the commencement of public hearings and before the Tribunal had had an opportunity to interview him as part of its private investigation. In these circumstances, I have unfortunately had to make my assessment of the Camon Investigation without having the benefit of his evidence to it.

### **14.3 – The Failure to Interview Jeffrey Donaldson, Jim Higgins and Charlie Flanagan**

14.3.1 Chief Superintendent Camon interviewed both Toby Harnden and Kevin Myers, but did not interview any of the politicians who raised the allegations of collusion in either Dáil Éireann or the House of Commons. While I appreciate that the terms of his brief specifically referred to allegations made by two persons only, Mr Harnden and Mr Myers, it appears that the Chief Superintendent did, quite rightly in my view, give some consideration to interviewing those politicians who had raised the issue of collusion. However, he apparently decided not to do so on the basis that, as noted above, the politicians’ allegations “do not

seem to be ‘stand alone’ allegations but rather are based on Toby Harnden’s book and Kevin Myers’ article.”

14.3.2 As the evidence before this Tribunal has demonstrated, this was not correct. Whilst one cannot be sure of the extent to which interviewing Jim Higgins or Charlie Flanagan would have opened up a definite line of inquiry (Mr Flanagan’s Garda source did not give his name, but may have been identifiable by location and rank; as I understand it, Mr Higgins was given the names of the Garda officers he spoke to at the time, but has since forgotten those names), it is clear that a definite line of inquiry would have presented itself had Chief Superintendent Camon interviewed – or arranged for the RUC to interview – Jeffrey Donaldson.

14.3.3 The decision as to who to interview was one for the Chief Superintendent. However, in his evidence, the then Detective Inspector Kirwan was asked if he could shed some light on that decision. He explained that Sean Camon’s logic appeared to be that he did not consider the politicians’ allegations to be stand alone and said that he could “see his logic in confining it.” He also noted that Mr Camon may have been influenced by the fact that when Mr Donaldson finished his speech, then Minister for State at the Northern Ireland Office, Mr Adam Ingram, indicated, in reply, that the correct procedure was to go to the appropriate authorities. In a similar vein, former Assistant Commissioner Pat O’Toole noted that both Jeffrey Donaldson and Jim Higgins were encouraged to make contact with the appropriate authorities in relation to any information they had and that neither did so. I note from the record, however, that Minister Ingram in fact indicated to Mr Donaldson that he (Mr Ingram) had made a note of Mr Donaldson’s speech, and that the appropriate authorities “will be made aware of it.”

14.3.4 Peter Kirwan told me that he certainly “didn’t disagree” with Chief Superintendent Camon’s decision not to interview the politicians at the time and added that, “I am not going to now say that it was the wrong decision.” Detective Chief Superintendent Kirwan did, however, acknowledge that two potential witnesses, Mr Higgins and Mr Donaldson, had not been spoken to. He did not, however, see this as a flaw in the investigation. When I asked him whether he was taking this position out of loyalty to the force, he replied “I don’t see it as being a question of loyalty.”

14.3.5 Retired Commissioner Byrne confirmed that he was unaware that Jeffrey Donaldson had based his comments in the House of Commons on information he received from Mr Fulton. When it was put to him that this demonstrates that a potential line of inquiry, namely interviewing Kevin Fulton, was missed, the former Commissioner replied, “I don’t accept that. I don’t think there were any limitations to this investigation.” Retired Commissioner Noel Conroy acknowledged in his evidence to the Tribunal that “it would be better if he [Jeffrey Donaldson] was interviewed.”

14.3.6 Having considered what was the state of affairs as of the commencement of the Camon Investigation, and having taken into account the views expressed in evidence and summarised above, I am drawn inexorably to the conclusion that the failure to interview the politicians who had made allegations was a significant flaw in the investigation. The evidence before this Tribunal indicates that had such a step been taken, this would, at a minimum, have opened up a new line of inquiry because it would have been discovered that Jeffrey Donaldson was not in fact primarily relying on Toby Harnden’s book, as was presumed, but was primarily relying on information from the former British agent known as Kevin Fulton.

#### **14.4 – The Failure to Include Certain other Information in the Report**

14.4.1 I have also identified what I consider to be a number of other, ancillary, omissions from the Report. These are:

(i) That although reference is made to the fact that Patrick Gallagher did not turn up for the prosecution of Owen Corrigan, no reference is made to the report of then Detective Superintendent Jim McHugh as to the circumstances in which Mr Gallagher said he had not turned up, or to the intelligence within the Security and Intelligence Section indicating that an upcoming witness in a trial in which Owen Corrigan was a defendant had been intimidated by members of the Provisional IRA;

(ii) that although it is stated in the *Camon Report* that “no definite motive was established for the kidnapping” of Owen Corrigan and Francie Tiernan, the official Garda view at the time, contained in the report of then Detective Superintendent Michael Finnegan, was that their kidnapping was as the result of the souring of a commercial transaction with the Provisional IRA; and

(iii) the three intelligence reports received within a period of a few years after the murders (from the same source and handler) which indicated collusion in the murders of the Gibsons and/or Breen and Buchanan are not referred to at all.

14.4.2 Detective Chief Superintendent Kirwan confirmed to me that Michael Finnegan’s report on the kidnapping of Owen Corrigan, Jim McHugh’s report on the prosecution of Owen Corrigan, the intelligence in relation to the intimidation of a witness in that prosecution, and the three items of intelligence indicating collusion in the murders of the Gibsons and/or Breen and Buchanan were all before Chief Superintendent Camon.

14.4.3 He fairly pointed out that Jim McHugh’s report, insofar as it relates to the suggestion of intimidation, did not go as far as Patrick Gallagher’s evidence to the Tribunal, and observed that Chief Superintendent Camon may have been influenced by the fact that the report concluded with a statement that Mr Gallagher had indicated that he would be prepared to give evidence in any future prosecution.

14.4.4 As regards the reasons why Patrick Gallagher did not turn up at the prosecution of Owen Corrigan, former Commissioner Pat Byrne did concede that the *Camon Report* perhaps ought to have included more detail in relation to this aspect:

“In hindsight, I presume you could say yes, it was worthy of mention, but, at the particular time, it wasn’t mentioned and the people involved who had access to all this intelligence, for whatever reason they didn’t include what you suggested should be included, that extra line or extra two lines, but it doesn’t take from the report in terms of broad trend.”

14.4.5 In relation to Michael Finnegan’s report, Detective Chief Superintendent Kirwan stated that while at the time he had “no idea what Mr Finnegan was basing his report on, but what I can say is that there was no report or no intelligence or information supporting that at Crime and Security.”

14.4.6 In respect of this issue, I note that on receipt of the *Camon Report*, then Commissioner Byrne sent what was in effect an executive summary of the *Camon Report* to the Secretary General of the Department of Justice. Interestingly, while Chief Superintendent Camon stated in his report in relation to the abduction of Owen Corrigan that “no definite motive was

established for the kidnapping and no persons were made amenable” Chief Superintendent Byrne’s summary report is somewhat more forthcoming. He states that:

“The investigation did not reveal any evidence of money laundering for the PIRA. Intelligence would suggest that the kidnapping related to smuggling of beer and the non – payment for same.”

14.4.7 The former Commissioner explained that information as to the motive was obviously available at the time and that was why this additional information was included in his Report. He said he could not say from where the information had come, other than that it had “obviously existed at the time that the synopsis of the report was being prepared.” It seems to me that the fact that this information was available to Commissioner Byrne and that he considered it appropriate for inclusion in what was his summary of the *Camon Report* serves to highlight that it was sufficiently relevant that it ought to have been dealt with in the *Camon Report* itself.

#### **14.5 – The Extent of the Inquiries and Interviews**

14.5.1 The third observation which I wish to make in respect of the Camon Investigation and Report is to note that Chief Superintendent Kirwan was tasked not just with re – examining all relevant files, but also to investigate the allegations of collusion made by Mr Harnden and Mr Myers. In this respect, Chief Superintendent Inspector Kirwan was asked in evidence why, in circumstances where Mr Mains’ 1989 and 2000 statements as to what Harry Breen had said on the morning of 20<sup>th</sup> March 1989 appear to have been accepted by Chief Superintendent Camon (see paragraph 15.16 of his Report, as quoted above), more extensive steps had not been taken to investigate the substance of the concern expressed by Harry Breen, namely that Owen Corrigan was on the payroll of ‘Slab’ Murphy. Chief Superintendent Kirwan replied that, of course, Mr Breen himself was deceased, what was expressed by him was apparently no more than a ‘feeling’ that certain officers were on ‘Slab’ Murphy’s payroll, and that there was nothing on the intelligence system of the PSNI to corroborate this ‘feeling’ or, for that matter, to indicate that Harry Breen had shared his concerns such as to warrant a note being made in the intelligence records.

14.5.2 In this respect, An Garda Síochána clearly – and quite understandably – placed significant weight and reliance on the letter and report received from the RUC to the effect that “no evidence exists nor can any documentation be located which evidences Garda collusion with subversives.” However, as discussed further below, I do not think that the

RUC input was sufficient to excuse the Garda investigators from carrying out more detailed investigations in relation to those former Garda officers named as having been responsible for the alleged collusion. The importance of pursuing all avenues of inquiry to their proper conclusion, regardless of what information had been received from the RUC, is starkly highlighted by the fact that it has since transpired that the letter from the RUC to An Garda Síochána of 19<sup>th</sup> September 2000 was incorrect.

14.5.3 Just three years after that letter was sent, the PSNI produced to Judge Cory intelligence from 1985 indicating that Detective Sergeant Owen Corrigan in Dundalk was passing information to the Provisional IRA. This information will be the subject of greater analysis in chapter 19. For the moment, suffice it to state that this is intelligence which obviously should have been furnished to Chief Superintendent McBurney for the purposes of his review, and should, in turn, have been furnished by him, through his Deputy Chief Constable, to An Garda Síochána. Had this intelligence been provided, it may have prompted Chief Superintendent Camon to conduct a more detailed investigation into the affairs of Owen Corrigan, although, as I note below, I consider that even without the 1985 intelligence a more detailed investigation was already warranted.

14.5.4 The RUC's failure to refer to the 1985 intelligence in its correspondence of 2000 remains unexplained. In this respect, I would simply make the observation that on the basis of evidence I heard from various retired members of the RUC, it became clear to me that until the establishment of the PSNI there was a very strong separation in terms of intelligence between RUC Special Branch and RUC CID. There is certainly a question mark over the extent to which the former shared its intelligence with the latter. I am aware that this strict demarcation has been reformed in the wake of the *Patten Report* into policing, but it does occur to me that it may provide some explanation for the period of time which it took for the 1985 intelligence to see the light of day.

14.5.5 A final aspect of this section concerns the interviews conducted by Chief Superintendent Camon with Owen Corrigan and Leo Colton. Detective Chief Superintendent Kirwan described Mr Corrigan's attitude when he and Seán Camon sought to interview him as "quite dismissive." Chief Superintendent Kirwan was asked why Mr Corrigan was not questioned about the circumstances of his abduction; similarly, he was asked why Leo Colton was not questioned about his role in the passports affair. Chief Superintendent Kirwan replied as follows:

“Sean Camon had arrived at a situation where the inquiries are now complete. [...] the allegations, as they stood when they were first published, are significantly diluted now; things that were written as fact have transpired to be based on hypothesis, speculation. And so as I understand it, or as I understood it, Seán Camon was giving an opportunity to both people named to offer comment in relation to the allegations. It wasn’t an arrest situation, it wasn’t a custody situation.”

14.5.6 I do note that the interviews with Owen Corrigan and Leo Colton both took place on the same date, 10<sup>th</sup> February 2001, some nine months after Toby Harnden and Kevin Myers were interviewed. It seems to me clear from the statement of Leo Colton and the memo of interview of Owen Corrigan that the two men were, at this stage, simply being given an opportunity to comment on the allegations. There were no searching questions asked of them in relation to the evidence, which was before Seán Camon, of associations they appear to have had with the Provisional IRA. As noted above, the terms of reference of the Camon investigation were not simply a re – examination of the files, but an investigation into the allegations of collusion. In all of the circumstances, I do not consider that the interviews conducted adequately probed the matter.

14.5.7 Chief Superintendent Kirwan also confirmed that there was no effort in these interviews to revisit the statements made by then Detective Sergeant Corrigan and Sergeant Colton to Ned O’Dea in March 1989. In his evidence, former Commissioner Byrne did confirm that, on his reading of the *Camon Report*, the conclusion of Assistant Commissioner O’Dea was simply adopted by the Camon Investigation without any attempt to revisit the merits or look behind that conclusion:

“Q. So, taking all those points into account, when Camon/Kirwan came to look at the *O’Dea Report*, they look at the terms of the reference, they look at the conclusion, and, rather than look behind the conclusion, they just tick the conclusion?

A. That’s right. That’s what it seems to me happened as well.

In this manner, the weaknesses of the *O’Dea Report* came to permeate the *Camon Report* also.

## **14.6 – Summary of the Findings in Relation into the Camon Investigation**

14.6.1 In summary, I conclude that the Camon Investigation was flawed in one primary and a number of other ancillary respects:

(i) The failure to interview Charlie Flanagan, Jim Higgins and, in particular, Jeffrey Donaldson. I am satisfied that had Mr Donaldson been interviewed, a new line of inquiry regarding the allegation of collusion would have been established. This would have required An Garda Síochána to seek to interview Kevin Fulton.

(ii) The failure to address properly: the report of Jim McHugh in relation to Patrick Gallagher not attending as a witness in the prosecution of Owen Corrigan for obtaining money by false pretences and the related intelligence report suggesting that Mr Gallagher had been intimidated; the report of Michael Finnegan regarding the reasons why Owen Corrigan was abducted outside the Boyne Valley Hotel, Drogheda on 13<sup>th</sup> December 1995; and the three pieces of intelligence within a few years of the deaths of Chief Superintendent Breen and Superintendent Buchanan which indicated that there was collusion in the murders of the Gibsons and/or Breen and Buchanan.

(iii) The failure, once Toby Harnden and Kevin Myers had been interviewed, to conduct a more in – depth investigation of the allegation that Owen Corrigan and/or Leo Colton had colluded with the IRA, in particular by conducting more probing interviews with these two former officers and by revisiting the accounts of their whereabouts and activities on 20<sup>th</sup> March 1989.

14.6.2 I have also found that there was a failure on the part of the RUC to put all relevant information in its possession before An Garda Síochána, when requested by Deputy Commissioner Conroy to do so. The failure in this respect relates to the 1985 intelligence in its possession, which suggested that Detective Sergeant Owen Corrigan was passing information to the IRA. The reason why this was not provided in the response to the request for assistance generated by the Camon Investigation remains unexplained.

14.6.3 It is clear to me that once Toby Harnden and Kevin Myers confirmed that they had little hard evidence in relation to the allegations they had made in their books, the final terms

of the investigation and report were largely determined. To some extent this was understandable. However, I do consider that there was sufficient information before Chief Superintendent Camon at that stage to sound some alarm bells in respect of former Detective Sergeant Corrigan and former Sergeant Colton. Moreover, I am drawn, when considering the Camon investigation, back to the original comments of then Minister for Justice, Mr John O'Donoghue T.D., in Dáil Éireann on 13<sup>th</sup> April 2000. He said, “even though there is no evidence to substantiate the allegations, every effort must be made to assure and reassure the public that they have been thoroughly investigation.” One wonders as to the extent to which this view prevailing at the outset, that there was no collusion and any review or inquiries were, in effect, merely an exercise in reassurance, affected the breadth and depth of the subsequent investigation.

## Chapter 15

### Allegations Made by Kevin Fulton (Also Known as Peter Keeley)

#### 15.1 – The Evidence Given to Judge Cory

15.1.1 Kevin Fulton’s original name is Peter Keeley. I refer to him as Kevin Fulton in this Report as that is the name under which he chose to give evidence before me. He is a former member of the British Army who alleges that he infiltrated the IRA as a British agent. In 2003, Kevin Fulton met Judge Cory in the context of his investigation as to whether there should be a public inquiry in relation to suggestions of collusion in the deaths of Chief Superintendent Breen and Superintendent Buchanan. At that meeting, Kevin Fulton provided Judge Cory with a written statement which he had prepared in advance. This statement was dated 9<sup>th</sup> September 2003 and stated as follows:

“In 1979, I enlisted in the British Army. Within months of my posting, I was recruited by a British intelligence agency to act as an agent. In this capacity, I became a member of the Provisional IRA.

On one occasion in the late 1980s, I was with my Senior IRA Commander, Joseph Patrick Blair and another individual in my car. I knew the other individual to be Eoin Corrigan, a member of Special Branch of the Gardaí. I was introduced by Blair to Corrigan. I knew that Corrigan, who was stationed at Dundalk, was passing information to the Provisional IRA.

I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, Joseph Patrick Blair was told by a member of PIRA that Sergeant Corrigan had telephoned the Provisional IRA to tell them that officers Breen and Buchanan were at the Dundalk Station.

I should add that I know nothing about the murder of Lord Justice and Lady Gibson.

I have read this statement and its contents are true and accurate.

Kevin Fulton.”

15.1.2 This statement was a key factor in Judge Cory’s decision to recommend the establishment of this Tribunal, and Kevin Fulton was therefore an important witness before

this Tribunal. I should add that although he resides outside the jurisdiction, he came voluntarily to give evidence. Pursuant to the carrying out of a security risk assessment by An Garda Síochána, Mr Fulton was protected for the duration of his stay in the State by a team of armed Gardaí from the Garda Emergency Response Unit. This team was present in and around the Tribunal's hearing room when Mr Fulton gave his evidence. I permitted him to give evidence from behind a screen, although he was visible to me at all times. He was also visible to the Counsel who was questioning him at any given time.

## **15.2 – Kevin Fulton's Background**

15.2.1 Mr Fulton was born in October 1960 in Newry, County Down. When he was 15½ or 16 years old, he joined the British Merchant Navy and subsequently joined the British Army in 1979. He joined the Royal Irish Rangers and was sent to do his basic training at St Patrick's Barracks, Ballymena in Northern Ireland. He told me that after about four weeks, the British Army Intelligence approached him and asked him for assistance in identifying persons in surveillance photographs. He felt that he was asked to do this because he was a Catholic from Newry. This engagement with the Army Intelligence continued every few weeks. At the end of his training, he was sent to the First Battalion of the Royal Irish Rangers in Berlin, Germany. This was in 1980. Whilst there, he was assigned a mentor from Army Intelligence whose function it was to teach Mr Fulton intelligence skills. At the end of his tour of duty in Berlin, he said that the people from Army Intelligence asked him would he come back to Northern Ireland to work for them. They said that they would give him a false discharge from the Royal Irish Rangers.

15.2.2 He confirmed that when he returned to Northern Ireland, he worked for the Force Research Unit (FRU), a military intelligence unit which had been established in 1981. He said that he was instructed to start associating with IRA people in Newry and he was told that he should be open about the fact that he had been in the British Army, but had been kicked out. It was emphasised to him by Army Intelligence that he should not lie about having been in the British Army: if he did not tell the Provisional IRA the truth at the beginning and it was subsequently discovered that he had been in the British Army, he would be killed. He told me that he continued to get paid his army wages, in cash, every week. Army Intelligence taught him how to drive, and subsequently provided him with a car. He got a job in a meat packing factory in Newry for a few years, then took up work as a painter and did some work in his father's shop. He said that initially he was not able to provide Army Intelligence with very good information because it took a long time to become trusted. However, his Army Intelligence handlers advised him to be patient.

15.2.3 Ultimately, Mr Fulton said that he started going to Dundalk where there were a lot of Republicans on the run from locations in Northern Ireland. He began to ingratiate himself with these people. Mr Fulton explained that he pushed too quickly to be admitted into the IRA: he and another potential member were intimidated and accused of being “a Brit agent”:

“The thing is, the secret is that you don’t ask. And I learned a lesson. Maybe they could have shot me. I mean my handlers knew exactly who these people were.”

15.2.4 He emphasised that he did not ask to join the IRA again. Shortly after this incident, he met Patrick Joseph ‘Mooch’ Blair in Newry and became friendly with him. He described ‘Mooch’ Blair as being a very likeable and very sociable character. He said that ‘Mooch’ Blair was not driving and that Mr Fulton’s car was an asset. Mr Fulton was subsequently arrested and went to jail in respect of the theft of a lorry containing televisions and video cassette recorders. He was sentenced to two years’ in prison. He received a lump sum from his handlers on his release. He explained that having been in prison gave him a certain stature and advanced the prospect of his being invited to join the IRA. He explained that ‘Mooch’ Blair was wanted in respect of a mortar attack and fled to Dundalk, where Mr Fulton visited him regularly. At this stage, Mr Fulton claimed that he was “green – booked” i.e. formally initiated as a member of the Provisional IRA.

15.2.5 Mr Fulton said that he knew Freddie Scappaticci at this time because Mr Scappaticci was temporarily living in Dundalk. Mr Scappaticci was in the Internal Security Unit of the Provisional IRA. Mr Fulton said that he had a peripheral role in the Internal Security Unit’s internal inquiries – hiring and driving vans. He recalled that there were two houses available for interrogation purposes by the Internal Security Unit in Omeath. He described his role as follows:

“I never interrogated anybody. I was basically the driver of the van, so when you would arrest the person, he would go down with some of crew with you to the location. They would take him into the house. Inside the house you would have John Joe [Magee], sometimes Mr Scappaticci as well, and what they would do is they would question the person.”

15.2.6 He went on to explain that the IRA had a voice stress analyser, similar to a polygraph. One of his roles was to collect the tapes and ‘coms’ (cigarette papers with messages written on them) from this machine at the end of each day of interrogation. He returned the tape and

the ‘coms’ to Mr Patsy O’Callaghan, a senior figure in the IRA. As I understood his evidence, it was suggested that Mr O’Callaghan analysed the results of the interrogations, and Mr Fulton collected further instructions for the interrogation team from Mr O’Callaghan the following day. Mr Fulton also said that he had a role in providing supplies to those doing the interrogation.

15.2.7 Mr Fulton said that he passed on information to his handlers “whenever it was possible.” He continued to work for Army Intelligence until the early 1990s. He said that there were periods when there was a lot of friction between his handlers and him, but this arose from the very stressful situation of being an agent:

“You can’t explain the stress that you are under. And it really, really, really is hard. You [are] living with it 24/7. It doesn’t go away.”

15.2.8 Mr Fulton explained that as a result of these stresses, he took a job in Euro Disney in 1991. However, a subsequent newspaper report on the presence of an “IRA gang in Euro Disney” resulted in his losing this job. He was only in Euro Disney a few months. On his return to Ireland, he was jointly handled by Army Intelligence and the Security Services (MI5). His recollection is that this was from 1992 to 1994. He also indicated while he never worked for the Special Branch, sometimes his Army and MI5 handlers brought Special Branch along to sit in with him on his briefings. It therefore appears that he did have some contact with the RUC Special Branch during this period.

### **15.3 – Evidence in Relation to 20<sup>th</sup> March 1989**

15.3.1 Mr Fulton said that he recalled the events of 20<sup>th</sup> March 1989. He said that he was at ‘Mooch’ Blair’s house in Dundalk, as he was on most days at that time. ‘Mooch’ was present in the house. He said that Mickey Collins, a friend of ‘Mooch’ and another active member of the Provisional IRA came in to the house around teatime and told them that there were:

“reports coming in” of a shooting incident, which was a catchphrase of Mr Collins: We always nicknamed him “reports coming in” because he had the phone, he always watched the TV and people would ring him.”

Mr Fulton said that neither he nor ‘Mooch’ knew in advance of plans for the ambush:

“No, I don’t think he [Mickey Collins] knew anything about it either. None of us did. The thing is, South Armagh was a different unit than us in Dundalk. Sometimes the

people in the unit in Dundalk were used with South Armagh. A lot of times you wouldn't have got much warning [...].”

15.3.2 He told me that Mr Collins came back later and said that ‘our friend’ had helped the IRA in relation to the shootings of the two RUC officers:

“Well, basically, that there was this shooting and ‘our friend’ – sometimes we use the thing as ‘our friend’. ‘Our friend’ at that time, which was the Garda, there was only one Garda that I knew as “our friend.”

15.3.3 He identified this Garda as Sergeant Owen Corrigan:

“Well that’s what I took it to be, ‘our friend’ and there was only one person I knew as ‘our friend’ in the Garda [...] that was Owen Corrigan.”

He went on to say that this was “actually one of the worst kept secrets within our unit.” Mr Fulton told me that ‘our friend’ was a friend of Patrick (Patsy) O’Callaghan. Mr Fulton said that he also learned that the IRA had planned to abduct the two officers and that every main route out of Dundalk was covered.

15.3.4 Mr Fulton was questioned closely and robustly about the detail of this account. He said that although he couldn’t remember specifically, he thought that Mickey Collins had come over to ‘Mooch’ Blair’s house on two occasions. On the first occasion, he simply stated that there were reports coming in of a shooting; he then returned later in the day, around “late afternoon, early teatime” and referred to the fact that “our friend” had helped out.

15.3.5 It is important to state that Mr Fulton readily accepted that he had no direct knowledge that Owen Corrigan had helped out, and that his evidence was that he assumed or speculated, on the basis of what he was told, about Owen Corrigan being involved.

“Q. You assume that?

A. Do I have actual evidence? Of course not.”

15.3.6 Counsel for Mr Corrigan alleged that Mr Fulton’s evidence to the Tribunal in relation to 20<sup>th</sup> March 1989 was “completely inconsistent” with what he had told Judge Cory. Two inconsistencies were highlighted. First, in the statement to Judge Cory, set out above, there is

no reference to “our friend”; rather, it is simply stated that his IRA Commander “was told by a member of PIRA that Owen Corrigan had telephoned the Provisional IRA.” The second inconsistency arises from this specific reference to a telephone call. When he was asked, in cross – examination, about this reference, he said that Owen Corrigan “would have told, more than likely, Patsy O’Callaghan.”

15.3.7 Mr Fulton acknowledged that the information that he gave to Judge Cory is not totally correct in that Mickey Collins did not say that Owen Corrigan had seen the officers at the Station. He said that he did not purposely mislead Judge Cory in this regard. He suggested that the information about the phone call came at a later date from a conversation with ‘Mooch’. Information about the fact that it was intended to abduct the officers also came in this later conversation.

15.3.8 When it was put to Mr Fulton that if Owen Corrigan phoned the IRA upon having seen the officers at the station, this would have had to have occurred after 2.10 pm on 20<sup>th</sup> March 1989 (I have in fact found the time of arrival to be no earlier than 2.20 pm). Mr Fulton, very validly, replied,

“well he couldn’t have tipped them off before it, could he, unless he knew there was a meeting on.”

He agreed with Counsel for Mr Corrigan that the operation could in all likelihood not have been mounted at such short notice:

“They would have to have known well in advance to make advance plans and, you know, you’d need to know what day they are coming up. You know, I don’t think anybody spotting them there, and then, just on a wing and a prayer, could get that amount of people together. I don’t think its possible, no. Not to cover every road, that is what I was told, every road was covered by IRA Units.”

15.3.9 This was a frank and fair answer by Mr Fulton, given that it would appear to undermine, to some extent, the credibility of some of the information set out in his statement to Judge Cory. When asked to comment on the information from the British Army indicating that the IRA operation commenced at 11.30 am. Mr Fulton replied, “it seems to me that what you are saying, that they had information that maybe those officers were going to come to the place, yeah.” He added:

“I have been in IRA operations where you know where an Army patrol comes down a certain street every day or some days at such a time, but sometimes you need a trigger person to give you the heads up, you know, when they are coming. I am just saying you know they use a certain street, so what you do is you put your trigger man out or your dicker as the Army would call them, and your dicker gives you the heads up of when they are coming, and then you do your job. If you know people are going to a certain place at certain times, you know, you still need your dicker to give you the heads up that the target is coming.”

15.3.10 This is an important observation, albeit one that could be regarded as merely reflecting common sense. Applying this observation to the events of 20<sup>th</sup> March 1989, it suggests that the Provisional IRA required information in two phases:

The initial information which made them believe that the officers were likely to come; and

the information to confirm their officers had arrived.

The possibility of collusion must be considered in respect of either or both of these two phases.

15.3.11 When asked to comment on the British Army information indicating the commencement of an operation at 11.30 am, the witness stated:

“Well, the way you are speaking there, I would nearly think did the IRA know they were going to come down that day? [...] I mean, the IRA would not sit out – I mean, it wouldn’t be my experience that the IRA would sit on a border road, or somewhere, waiting for an army patrol to come with a land mine on the off – chance hoping that they came. They would have to know, you know, they come this way or they should be coming today, you know. You wouldn’t sit out, waiting. Number one, it puts volunteers, IRA volunteers, at risk, great risk of getting caught, shot dead, you know. The IRA just don’t do that, you know. You would have to have some sort of information that, you know, this is going to happen, or whatever, before you would do it.”

15.3.12 He confirmed that he did not know how this operation was launched by the IRA: “No, I wasn’t there, I wasn’t part of it.” He said the information from ‘Mooch’ that the intention of the operation was to abduct and interrogate the two officers was received within days after the murders. He also told me that IRA volunteers were led to believe that the IRA had captured the “books” of the police officers, had worked out the “codes” and identified informants. Mr Fulton told me that he IRA offered an amnesty for informants to come forward in the wake of the attack.

15.3.13 Mr Fulton was asked whether he had reported the information about Owen Corrigan having provided the tip – off to his handlers. He confirmed that he had done so, but that this might have been weeks or months after the event. He emphasised that although this was a shocking suggestion to those involved in this Tribunal, in the context of what was happening at the time, it did not have the same level of significance.

15.3.14 Counsel for Mr Corrigan asked Mr Fulton to give me three examples of occasions on which, he believed, Owen Corrigan had assisted the IRA. The first of these was the murders of Chief Superintendent Breen and Superintendent Buchanan, the second related to the ‘fixing’ of fingerprints found in a bomb factory in Omeath; and the third related to the transmission of information which led to the abduction of Tom Oliver. It was put to Mr Fulton that as the latter two incidents post – dated March 1989, he must have had some knowledge of Owen Corrigan’s assistance to the IRA from before this date; otherwise, he would not have recognised the reference to ‘our friend’ as being a reference to ‘Mooch’ Sergeant Corrigan. Mr Fulton replied that he had heard something about evidence associated with the bombing at Narrow Water, which occurred in August 1979 and in which 18 British soldiers lost their lives, having gone missing from the possession of An Garda Síochána. He emphasised that he had only heard this years after the incident. When pressed to give a further example of assistance that Sergeant Corrigan was alleged to have provided prior to March 1989, Mr Fulton consistently said that he did not know of any other specific examples. When asked again how he knew Owen Corrigan was ‘our friend’, Mr Fulton replied:

“Well, Owen Corrigan is the only person that I knew that helped them in the Garda Station. I didn’t know of anybody else that helped the IRA that was a member of guards.”

15.3.15 Mr Fulton said that he did not know whether Sergeant Corrigan was assisting the Provisional IRA for money or out of political conviction: “I don’t know, I wouldn’t ask.”

15.3.16 Mr Fulton recalled having been arrested once by An Garda Síochána, whilst in the company of ‘Mooch’ Blair. ‘Mooch’ Blair was not arrested, but Mr Fulton, then aka Peter Keeley, was taken out of the car. He was kept overnight in Dundalk Garda Station and recalls Owen Corrigan coming into the interview room. He did not allege that Owen Corrigan actually interviewed him.

#### **15.4 – Evidence in Relation to the Discovery of the Omeath Bomb Factory**

15.4.1 The second example of Mr Corrigan’s assistance to the IRA, cited by Mr Fulton, related to the apparent suppression or destruction of fingerprint evidence from a significant bomb factory which had been discovered in Omeath, County Louth. Mr Fulton stated that fingerprints were found on equipment inside the place where the bomb was being manufactured and, as a result, ‘Mooch’ Blair had to go on the run from Dundalk. Fulton, himself, was advised to return to the North and stay there. He said that about 24 to 48 hours later, word came back from Patsy O’Callaghan that:

“everything is clear, its okay, go back home, there is nothing, it is all cleared up.”

His understanding was that ‘our friend’ had cleared it up. Again he said that Owen Corrigan’s name was not specifically mentioned; rather there was the customary reference to ‘our friend’, but again, Mr Fulton contended “we all knew who ‘our friend’ was in the Garda.”

15.4.2 Mr Fulton was cross – examined as to the fact that in his statement he said that he and ‘Mooch’ Blair had got word from Patsy O’Callaghan that everything was clear, whereas in some of his evidence to the Tribunal he had said that it was Mickey Collins. In reply Mr Fulton stated:

“Everything that would have come from Owen Corrigan would have come through Patsy O’Callaghan. That was the main contact. Mickey Collins was about the only one in Dundalk had a telephone and Mickey would have been the main contact with Patsy as well. I mean, Owen Corrigan would never have contacted ‘Mooch’ me or anybody else. Not even Mickey Collins.”

15.4.3 He explained that the word would have come from Patsy O’Callaghan, but via Mickey Collins; Patsy O’Callaghan would not have contacted him directly:

“Patsy O’Callaghan would not have told me. Patsy O’Callaghan would have no dealings with me, Sir. I was a driver that drove Mickey out and just the Internal Security stuff. That’s it. I went out to Patsy O’Callaghan with Collins. I would not even have talked to Patsy O’Callaghan on the street.”

15.4.4 When asked what Mickey Collins had said to him, he replied that,

“Basically, ‘our friend’ had looked after things, fingerprints are gone, I can take things back.”

15.4.5 He was asked whether he had told his handlers of the specific location that was raided on 28<sup>th</sup> August 1989. He replied that he had not got around to doing so, but someone else had told them.

15.4.6 It appears that a major bomb factory was indeed discovered in Omeath on 28<sup>th</sup> August 1989. In this regard, the following précis of intelligence, put into evidence by Superintendent Brian Brunton of An Garda Síochána is of relevance:

“Information received by An Garda Síochána 1989 suggesting that a prominent PIRA activist was not residing at his home address for a period of some weeks during September 1989. The information further suggested that the reason for his absence was that he was in fear that his fingerprints had been identified on the bomb found in Omeath on 28<sup>th</sup> August 1989.”

15.4.7 The Tribunal is aware of the identity of the PIRA activist referred to in this intelligence report, and I am satisfied that the report lends credibility to Mr Fulton’s evidence that there was a bomb factory and that the IRA members went on the run fearing that their fingerprints had been found.

### **15.5 – Evidence in Relation to the Meeting at Fintan Callan’s Céilí House**

15.5.1 The third incident referred to by Mr Fulton in his evidence related to an occasion when he drove ‘Mooch’ Blair to Fintan Callan’s Céilí House, a public house outside Dundalk. He explained that on this occasion ‘Mooch’ Blair was covering for Patsy O’Callaghan, who was unavailable. Mr Blair got out of the car, walked into the public house and returned with Owen Corrigan. Both gentlemen got back in the car:

“They were talking about, it was Tom Oliver who was working as an informant, he had been got with an unlicensed shotgun and again, I sat there. I never ever spoke, I just sat and listened and looked out. [...] It was basically that he had been caught with an unlicensed shotgun and he had agreed to give the guards – he was giving the guards information.”

15.5.2 He clarified that Owen Corrigan was telling this to ‘Mooch’ Blair: “He was actually telling ‘Mooch’ who an informant was.” Subsequently, he was required to get a van for an internal security operation involving the arrest of Tom Oliver. He said that he drove the van with Mr Oliver in it to a pre – arranged location in Kingscourt. He claims that he subsequently learned that Tom Oliver did not admit to anything under interrogation and was released on that occasion. When asked to identify the date of this incident, he said that it was before he went to Euro Disney in 1991. While he was in Euro Disney, Mr Oliver was abducted a second time and murdered. When asked whether he had passed this information on to his handlers, Mr Fulton said that he would have briefed them on every single thing he did.

15.5.3 Counsel for Mr Corrigan pressed Mr Fulton to state specifically how long before Mr Oliver’s murder, which occurred on 18<sup>th</sup> July 1991, this first abduction had taken place. He replied that the abduction had occurred approximately a couple of months beforehand, and accepted that this would place it in the months of April to June 1991. He was also asked, by both Counsel for Mr Corrigan and Counsel for ‘Mooch’ Blair to describe Fintan Callan’s Céilí House at that time. He replied fluently, and without any hesitation. He identified the location, but told me that he had never actually entered the establishment:

“It was on the left hand side of the road. It was a gravel carpark. I didn’t even go into the premises; I just drove in, stayed in the carpark, and ‘‘Mooch’’ went in.”

He was asked whether ‘Mooch’ Blair had introduced him to Owen Corrigan when Owen Corrigan got in the car, but he replied,

“No, he didn’t. I was basically, a shadow sitting there. I never spoke, never did anything.”

15.5.4 It was then put to Mr Fulton that this was inconsistent with his statement to Judge Cory, wherein he stated that he was “introduced to Garda B.” He was asked to explain the inconsistency in this regard and replied, “Well, I wasn’t introduced as an introduction, no.” He

did not seek to vary his evidence to reconcile it with his earlier statement; rather he simply acknowledged the minor inconsistency. His evidence before the Tribunal as to what occurred at Fintan Callan’s Céilí House remained consistent throughout.

15.5.5 It was put to him by Counsel for Mr Corrigan that this was a reckless thing for Detective Sergeant Corrigan to have done, to get into the car and give sensitive information about Garda operations to ‘Mooch’ Blair and Mr Fulton. He replied:

“I think it would be totally reckless for a Garda to help the IRA in any shape or form wouldn’t it?”

15.5.6 Mr Corrigan’s Counsel also made the point that Owen Corrigan was on certified sick leave from An Garda Síochána from 4<sup>th</sup> December 1989, some 20 months before Tom Oliver was murdered. It was put to him, therefore, that Owen Corrigan had no access to sensitive Garda information. Mr Fulton replied:

“I mean, you are saying that is stating fact. I am stating a fact of what actually happened. Just because he had no official access to information doesn’t say he couldn’t get it or didn’t know it from before. I don’t know.”

15.5.7 Mr Fulton compared the position of a retired Garda with his own position, and noted that he had been able to get information on people in the IRA even after he had left the IRA:

“How could I gain access on people in the IRA even though I had left the IRA maybe two or three years beforehand and was still able to get them arrested?”

15.5.8 This is not an unreasonable point, and one to which I return in addressing Mr Corrigan’s evidence in relation to Mr Fulton’s evidence below.

15.5.9 He was asked about when he passed on the information in relation to the incident in Fintan Callan’s Céilí House to his handlers. He said that it was “a while after” the event and that he “just never bothered with” the information originally. He said that he did not give the information to his handlers until after the death of Mr Oliver. He noted that when he left the country to go and work in Euro Disney, Mr Oliver was still alive. He was asked to write down for my benefit the names of the handlers to whom he gave this information, and I can confirm

that he wrote down the names on a piece of paper and gave them to me. He indicated that another handler whose name he could not recall had also attended the relevant debriefing.

15.5.10 Mr Corrigan’s Counsel put it to Mr Fulton that there was no evidence that Tom Oliver had been abducted on two occasions. In this regard, I note that whilst Kevin Myers said that he believed that Oliver had been abducted on two occasions, the Tribunal has seen no evidence to establish this as a fact. However, the point was made on behalf of Mr Fulton throughout the course of the public hearings that this is not necessarily something that Mr Oliver would have advertised or reported. It was put to Mr Fulton that in his book, *Unsung Hero*, he wrote that he headed to Paris in August 1991, and this would in fact have been after the murder of Tom Oliver on 18<sup>th</sup> July 1991. Mr Fulton said the book was in fact written by a ghost writer, and that he is on record as having stated that there are a number of inaccuracies in it, including some in relation to dates. I have to say that I do not think that this particular inconsistency is terribly significant given:

- (i) Mr Fulton’s original evidence, in the course of his examination in chief, that he could not recall the exact month in 1991 when he had gone to Euro Disney, and
- (ii) the fact that the book was written fifteen years later in 2006. Throughout his evidence to me, he was consistent in stating that he had gone to Euro Disney before Tom Oliver was killed.

15.5.11 It was put to Mr Fulton that the reason he was saying that there was an initial abduction of Tom Oliver:

“is because you are trying to distance yourself from Tom Oliver’s murder?”

He replied:

“No, Sir, I wasn’t here when Tom Oliver was murdered. Definitely not.

[...]

No, Sir, I was not part of the team of thugs that murdered Tom Oliver. I was not present.”

15.5.12 It is perhaps worth observing that the only evidence that implicates Mr Fulton in any way in events relating to the abduction of Tom Oliver, is Mr Fulton’s own evidence. This can

be viewed in either of two ways. On the one hand, this means there is no corroborative evidence. On the other hand, however, it does raise the question of why would Mr Fulton implicate himself in the abduction of a man whose death at the hands of the Provisional IRA was and continues to be a particularly controversial aspect of that organisation's paramilitary campaign (even with the benefit of the statutory protection in respect of evidence given in this Tribunal)?

## **15.6 – Evidence Given by Mr Fulton in Relation to Various Credibility Issues**

15.6.1 Mr Fulton identified three examples of occasions on which he saved lives. The first was when the IRA had planned a mortar attack during the rebuilding of Newry Courthouse. His information allowed barriers to be erected which prevented the van with the mortar bomb getting close enough to the Courthouse. The second related to a planned bomb attack in Patrick Street in Newry. He claims that his information allowed a specialist army unit to be placed in waiting for the bombers. And thirdly, there was a plan to shoot a man who was employed as a cleaner in Newry RUC Station, and Mr Fulton provided information which allowed the cleaner to retire before this plan could be executed; the cleaner was never shot.

15.6.2 Mr Fulton said that he changed from being solely a military agent to being handled jointly by the Military and MI5 after his return from Euro Disney. As already noted above, RUC Special Branch officers were sometimes also involved with these organisations in the debriefing of Mr Fulton. He was subsequently an agent for Customs and Excise and, ultimately, for the RUC CID.

15.6.3 Mr Fulton was registered as an RUC CID Informant in June 1996 and in 1997 and was granted "participating informant" status, which permitted him to participate in criminal activities with the consent of the RUC. In 1998, Mr Fulton claims to have passed information to his CID handler to the effect that 'Mooch' Blair had been mixing explosives. This was in advance of the Omagh bombing of 15<sup>th</sup> August 1988. A dispute subsequently arose between the then Police Ombudsman in Northern Ireland, Nuala O'Loan, and Sir Ronnie Flanagan, the then Chief Constable of the RUC, in relation to whether this information was acted upon and the extent to which it may have prevented the bombing. In the context of that investigation, Sir Ronnie Flanagan described Mr Fulton as a fantasist and "a Walter Mitty character." Mr Fulton alleged that Sir Ronnie Flanagan ultimately had to apologise to his CID handler for asserting that Mr Fulton had not given good information and was not a fantasist. Mr Fulton also said that Sir Ronnie Flanagan was a source who had confirmed to Jeffrey Donaldson that Kevin Fulton's information was "a hundred percent."

15.6.4 The Tribunal heard evidence from two CID officers, including Mr Fulton's direct CID handler. They confirmed in evidence that he did give good information which resulted in successful operations and I deal with this in further detail below.

15.6.5 Mr Fulton also explained that subsequent to the Omagh bombing, a plan was made to mount a sting operation which could lead to the arrest of 'Mooch' Blair. He said that 'Mooch' Blair came to him saying that he had people who had access to one million Viagra tablets held in a secure location in Ireland. In effect, he was inviting Mr Fulton to find a black market purchaser for the tablets. Mr Fulton said that his CID handler told him to get samples and that 'Mooch' Blair subsequently provided him with a blister pack of six tablets, two of which had been removed. He said that he provided these to his CID handler and subsequent inquiries confirmed that these tablets were genuine Pfizer Viagra tablets, not currently in circulation. On that basis, it was intended to organise a sting operation to arrest 'Mooch' Blair and the people who were going to steal the tablets but, he said, the RUC Special Branch stopped the operation and stopped his handler from further speaking to him. There was no suggestion that the mooted theft ever actually occurred. I return to this below

15.6.6 Subsequently, an attempt by the Provisional IRA to kill a senior police officer led to suspicions being awakened within the IRA that Mr Fulton may have been an agent. In these circumstances, he asked his handlers to be pulled out and he left the country.

15.6.7 Kevin Fulton confirmed in his evidence that he had spoken to Jeffrey Donaldson in 2000, and gave unequivocal evidence that he had never spoken to or did not know Toby Harnden or Kevin Myers and that he had not spoken to Alan Mains. Mr Fulton was asked how he had come into contact with Judge Cory. He explained that he was contacted by a journalist who asked him to speak to William Fraser of the victim's organisation FAIR. Mr Fraser asked him if he would meet Judge Cory and he agreed to do so.

15.6.8 Mr Fulton was also closely cross – examined in relation to his evidence that he had encountered Owen Corrigan once when he was arrested by An Garda Síochána. The documentary records of An Garda Síochána suggest that he was arrested on one occasion, on 30<sup>th</sup> June 1989. He was asked whether Owen Corrigan had interrogated him, but he stated that his only recollection was that Owen Corrigan came into the room where he was being interrogated. It was pointed out to him that an *Observer* article written by Henry McDonald had stated that Fulton had been interrogated by Owen Corrigan (who was not actually named in the article). Mr Fulton said that he did not see a great inconsistency between Detective

Sergeant Corrigan being in the room and physically asking the questions. He was asked to describe Mr Corrigan and he described him as tall and bulky. He was asked whether Mr Corrigan was bald and he replied that he had hair. Insofar as it goes, this does not seem to me to be an inaccurate description.

15.6.9 He confirmed to me that he had never seen Patsy O’Callaghan and Mr Corrigan together. When he was asked whether he remembered posters being put up in relation to Owen Corrigan handing over Dominic McGlinchy at the border, he replied that he did not remember this, but that it would not surprise him that it had happened:

“Oh, No, these things happen as well. The best way for anyone’s street credibility, it was same in the RUC with me, I used to get beat up by police officers who wouldn’t have known what I was doing, but again, my handlers used to worry. It could have stopped, but it wasn’t in their interest to stop it because it gave your street credibility the boost. If you were known to be friendly, physically, with people as well, it is not good for your career.”

15.6.10 He was also asked why he did not include the allegation of there being a Garda mole in his book, *Unsung Hero*. Mr Fulton emphasised that there was in fact a ghost writer and that he had no editorial control over the book. I do note however that the book was published in 2006, three years after Mr Fulton made his statement to Judge Cory, and there can therefore be no suggestion that he has made up the allegation against Mr Corrigan since the publication of his book.

15.6.11 He confirmed that he had been paid for information throughout his career:

“I mean, what you have got to understand: when you are working for MI5 or the Army, you are not able to take another job, so therefore, you are doing a full – time job for them, so therefore, they pay your wage, your basic wage.”

15.6.12 He said that he is no longer working for any agency. He said it was common knowledge that he was in dispute with the people he used to work for, and that he had been treated unfairly by his employers in the past. He indicated that he felt that he was now being fairly treated by MI5, who have taken control of his case. His expenses and accommodation are paid for by MI5, but he is not involved with them in the sense that he no longer works for them or with them.

15.6.13 Counsel for Mr Corrigan invited Mr Fulton to withdraw the allegations against his client and Mr Fulton firmly refused to do so. It was put to him that the only reason he had made the claims against Mr Corrigan was:

“to ingratiate yourself to certain parts of the political establishment in order to assist you in your claim against your former employers.”

He replied, “Oh, absolutely not, Sir. That is not correct.”

15.6.14 He was asked by Counsel for the Garda Commissioner whether he was not tasked by his handlers to go back and find out more in relation to Detective Sergeant Corrigan. He replied:

“My whole thing was, the whole rule I was told to pursue, and this is what I did, don’t ask questions. [...] So, you know, the secret – the whole thing I was taught was: do not ask questions. And when I look back over the years, that has really worked, because if you did ask questions, straightway people started asking . . .”

15.6.15 Counsel for Mr ‘Mooch’ Blair put it to Mr Fulton that Mr Fulton had not been in ‘Mooch’ Blair’s house on 20<sup>th</sup> March 1989, that Mr Blair contends that he never ‘green – booked’ Mr Fulton and that he considered Mr Fulton to be a ‘gopher’, and that Mr Blair denies having made bombs with Mr Fulton. In relation to the latter point, Mr Fulton replied by explaining in detail a booby trap bomb which he had seen ‘Mooch’ Blair make and which was subsequently used to blow up a gentleman in Kilkeel. He described how the bomb was made, step by step. It was put to him that ‘Mooch’ Blair was in prison at the time of the Narrow Water bombing. Mr Fulton pointed out, and it was the case, that he had been clear in his earlier evidence that he had not said that he had heard about Owen Corrigan’s possible involvement in the Narrow Water bombing until many years after the event.

15.6.16 Mr Fulton was asked by his own Counsel why he had come to give evidence in the Tribunal. He replied: “Because I have started something, Sir, and I had to finish it.” He confirmed that he was not being paid anything to attend the Tribunal, and he could not conceive of a way in which he could make money by putting retired Detective Sergeant Corrigan in the frame for collusion in the murders of Chief Superintendent Buchanan and Superintendent Breen. Mr Fulton’s Counsel put to him in evidence a letter dated 27<sup>th</sup> February

2001 and signed “P.O’Neil, Óglaigh na hÉireann”, indicating that Peter Keeley had been sentenced to death by Court Martial in his absence.

### **15.7 – The Evidence of Other Witnesses in Relation to the Credibility of Mr Fulton**

15.7.1 The Tribunal also heard evidence from a variety of other witnesses called, in essence, to help me assess Kevin Fulton’s credibility. In this regard, I heard evidence from Kevin Fulton’s CID handler during the period 1994 to 1996, Witness 71. I also heard evidence from Witness 71’s superior officer, Witness 70.

15.7.2 Witness 70 told me that he assessed the quality of information given by Mr Fulton to CID as “reliable.” He acknowledged that there was a difference of opinion between the Special Branch and CID as to the quality of Mr Fulton as an informant, but said that this would have been:

“Normal in that Special Branch officers would not have wanted any person giving intelligence to Special Branch to have any association with CID.”

Witness 70 said that he aware that Kevin Fulton had previously given information to the Special Branch and to the military. He confirmed that Kevin Fulton had given information to CID which led to successful convictions in the ordinary (as opposed to subversive) crime area. This included information that led to the conviction of a well know gangster figure.

15.7.3 Witness 71 was a Detective Sergeant in the Drug Squad in 1996, and retired from the PSNI as a Detective Inspector in 2008. He confirmed that a man then known to him as Peter Keeley came in off the street and offered information in 1996. The information was in relation to drug activity. He said he performed some checks in relation to his background, as well as checking on the individuals about whom he had spoken. He said that some of the information provided by Mr Fulton was verified through the Special Branch Office. However, the officers to whom he spoke in the Special Branch were involved with the registration of informants and had no direct knowledge of Mr Fulton. Witness 71 said that Mr Fulton was “quite credible in his information.” Later in his evidence, he said that he rated Mr Fulton “a very credible informant.” He confirmed that he gave information in relation to high profile figures involved in fraud. Mr Keeley was paid approximately £17,5000 in different cash payments by Witness 71. He always graded Peter Keeley as “A1.” He said that Assistant Chief Constable Ray White, who was in charge of CID at the time, granted Peter Keeley participating informant (“PI”) status in respect of a joint operation with Customs and Excise in order to identify a

warehouse in Belgium which was being used for drug trafficking and cigarette smuggling. Peter Keeley worked for him from 1996 until 2001. Witness 71 did tell me that Fulton “did specifically mention a senior Garda officer leaking information for cash”, but went on to say:

“I can’t remember which unit that was from. I have something in the back of my mind about Dundalk and, to be honest, I can’t say whether that came from him, whether it came from the Tribunal or whether it came from some other document or speech from somewhere else.”

15.7.4 Witness 71 also confirmed that in January 1998, Mr Keeley started to give him intelligence in relation to subversives, including the IRA and the Real IRA in Dundalk. Some of this related to ‘Mooch’ Blair. Prior to the Omagh bombing of August 1998, Mr Fulton had previously provided information that a bomb was being moved north and subsequently, a couple of days after his providing this information, a bomb did explode at Newry Courthouse. In advance of the Omagh bombing on 15<sup>th</sup> August 1998, Mr Fulton provided Witness 71 with information in relation to a meeting he had had with ‘Mooch’ Blair. He said that he had met ‘Mooch’ Blair, that ‘Mooch’ Blair stank of the smell of diesel fertiliser and was “high as a kite.” Mr Fulton told Witness 71 that he felt something big was going to happen. On 12<sup>th</sup> August 1999, Mr Fulton gave Witness 71 information that the Real IRA was about to move a bomb. In both the instances referred to, the information was confined to the fact that a bomb was moving north and he did not know its destination.

15.7.5 Within days of the Omagh bombing, Witness 71 was informed by Special Branch that Keeley was regarded as an intelligence nuisance and that he should no longer be involved with people in Dundalk or people in the Real IRA. Witness 71 also gave evidence that he received a telephone call from the Chief Constable of the RUC, Sir Ronnie Flanagan, to inform him that Mr Fulton was an intelligence nuisance and would be recording him on the telephone. He told Sir Ronnie Flanagan that Mr Fulton had been working for him since 1996 and had been very successful in relation to a number of operations. He said that he got the impression that the Chief Constable was not aware of this information. He reported this call to his senior officer and later on, received a telephone call from the Chief Constable apologising and indicating that he had not been aware of the work Mr Fulton had done for Witness 71.

15.7.6 Witness 71 also confirmed that Mr Fulton supplied him with certain information in relation to a prospective theft of Viagra tablets from Pfizer in Cork, and that he had provided Witness 71 with a sample of the tablets. Witness 71 confirmed that he passed these tablets on

to the Garda Fraud Squad who were able to confirm that the tablets were genuine. He said that they were tablets which had not yet issued on the market.

15.7.7 The Tribunal also heard evidence in relation to the question of the prospective theft from the Pfizer factory in County Cork. In this regard, I heard evidence from Conor Hanlon, Security Director since 2002. He said that in 2000, the Pfizer plants in Ireland only produced the finished power and active pharmaceutical ingredients for all products. The plant only stored Viagra in powder format and never the finished tablet. He also said there was no theft of Viagra tablets in Ireland, though I observe that this is not surprising given that Mr Fulton's evidence was that Special Branch called off the operation and that the theft never occurred. Mr Hanlon confirmed that the finished product, the Viagra tablets are not returned to Pfizer Ireland for distribution, but rather are sent to distribution companies. He confirmed that he was unaware of any theft from Pfizer or from distribution centres. Again, however, at no point in their evidence did Mr Fulton or Witness 71 suggest that a theft had occurred. Rather, their evidence was confined to suggesting that Mr Fulton supplied Witness 71 with a sample of Viagra which was being stored at a location being targeted for potential theft. Nothing in Mr Hanlon's evidence excluded this as a possibility. He did confirm that Viagra was on the market at the relevant time.

15.7.8 The Tribunal also heard evidence from Detective Inspector Denis Heneghan from the Garda Bureau of Fraud Investigation. He was asked some time in 2011 by Garda Headquarters to enquire whether the Garda Bureau of Fraud Investigation had carried out any enquires to establish whether there had been a theft of Viagra from the Pfizer plant in Cork some years previously, around 2000 and 2001. Obviously, it was not in fact being suggested that there had been a theft of Viagra, so the Detective Inspector was, to some extent, sent on a futile line of enquiry. He did, however, also investigate whether there was any record of sample Viagra having been provided by the PSNI to the Garda Fraud Squad. He said that there was no such record, but did acknowledge that if a casual enquiry had been made there may not be a record unless,

“it entailed carrying out some investigative work or enquiry or duty.”

15.7.9 I also heard from Witness 64, a retired RUC Special Branch Officer. In the late 1980s, he was a Detective Inspector in Newry Special Branch. He said he was in charge of the Special Branch Team in Newry which handled Mr Fulton. He described the quality of the information provided by Mr Fulton as “very mixed”:

“There was obviously some truthful information and some useful information to us, but there was also difficulties from very early on in the relationship about inaccurate information and false and misleading information.”

15.7.10 He said that he was not aware of any intelligence ever passed by Mr Fulton to his handlers regarding Owen Corrigan. He gave an example of what he described as bad information provided by Mr Fulton to the effect that an Active Service Unit was planning to travel to Great Britain, only for Mr Fulton subsequently to state that this is something that he had made up. Mr Fulton again acknowledged fully that he had lied on this occasion. Witness 64 described ‘Mooch’ Blair as “a highly significant terrorist.” He said that he was aware that ‘Mooch’ Blair did not drive, but was not aware of Fulton being a regular driver for Mr Blair. He also confirmed in his evidence that at the time that RUC Special Branch had a relationship with Mr Fulton, Mr Fulton was also being handled by the Security Service.

15.7.11 Various parties before me sought to rely on conflicting statements as to Mr Fulton’s reliability as an informant which had been made in a Report by the Northern Ireland Ombudsman, and in a reply to that Report written by Sir. Ronnie Flanagan, Chief Constable of the RUC. Great reliance was placed by parties including the Counsel for Owen Corrigan and the Garda Commissioner on comments made by the Chief Constable. However, I have taken cognisance of the particular context in which these comments – including the comment that Mr Fulton was a Walter Mitty character – were made. They were made as a defence to a critical Report from the Police Ombudsman in respect of a very sensitive issue, whether or not the RUC had information that could have prevented the Omagh bombing, the genesis of which Report was, to a large extent information, provided by Kevin Fulton to Witness 71. I am alert to the fact that there is therefore a high degree of defensiveness in the comments of the RUC Chief Constable.

15.7.12 The Tribunal also heard from retired Assistant Commissioner of An Garda Síochána, Joe Egan in relation to Mr Fulton’s reliability. He said that he received a call from RUC Headquarters in Belfast proposing that some RUC personnel and Mr Fulton come down to Dublin in order that Mr Fulton could point out to An Garda Síochána a premises where a gun that had been used in a gangland killing in Dublin was located. Retired Assistant Commissioner Egan indicated that the RUC personnel came down with Mr Fulton in their car, and drove past a premises in North County Dublin with Assistant Commissioner Egan driving behind them. Mr Fulton pointed out the relevant building. However, after initial enquires, Mr

Egan was not happy with the information that had been provided and asked a particular RUC colleague to enquire further from Mr Fulton as to the authenticity of his recollection. As a result of this enquiry, it was conveyed back to him by the RUC officer that Mr Fulton had retracted the information and that the whole story could be ignored.

15.7.13 I should say that the evidence of the retired Assistant Commissioner in this regard was put to Mr Fulton, who was very forthright in admitting that he had fabricated the information on this occasion. He very frankly told me that relations with his handlers were poor at the time and, for this reason, he had made the information up. While his recollection was that he was to identify where the motorbike that had been used in the gangland killing, rather than where the weapon was stored, he accepted fully that he had lied:

“I lied to my handler because they lied to me. My handlers had set me up to be murdered.”

15.7.14 One further matter to be added to the mix in relation to the question of Mr Fulton’s credibility is a précis of intelligence put into evidence before the Tribunal by Detective Superintendent Brunton of An Garda Síochána. This précis provides as follows:

“On the 22<sup>nd</sup> August 1988, Gardaí stopped a car driven by a person who gave his name as Peter Keeley with an address in Newry, Co. Down, Northern Ireland. When asked what he was doing in Dundalk, he replied that he was visiting the wife of a named member of PIRA. The report further states that he was observed again in Dundalk on the night Robert Russell was extradited to Northern Ireland. Russell was extradited on the 27<sup>th</sup> August, 1988 and was handed over to the RUC at 6.15 am. on that day. He was driving around with leading member of PIRA, including P.J. ‘Mooch’ Blair and Mickey Collins. The report further states that it would appear at this stage that he is a trusted person within the PIRA.”

15.7.15 This is obviously a significant piece of intelligence in that it establishes that Mr Fulton was in precisely the position he claims to have been in, in the late 1980s and, in particular, was in a position of trust less than one year prior to the murders of Chief Superintendent Breen and Superintendent Buchanan. Furthermore, there is a relatively high degree of specificity in this précis in that it identifies specific sightings of Mr Fulton in Dundalk, and identifies PIRA members in whose company he has been seen, including ‘Mooch’ Blair and Mickey Collins.

## **15.8 – The Evidence of Patrick Joseph ‘Mooch’ Blair**

15.8.1 The Tribunal heard evidence from Patrick Joseph Blair. He confirmed having met Kevin Fulton in Newry in early 1983, but said that Kevin Fulton was “a loose associate”, who was around “on and off.” He was not part of the unit, but rather was a ‘gopher’. He denied having ‘green – booked’ Kevin Fulton and said that if Mr Fulton had been ‘green – booked’, he does not know by whom. He said that Kevin Fulton was frequently at Mr Blair’s house, but on the other hand stated this was “on and off.” He confirmed that Mr Fulton sometimes drove him around as he did not have a driving licence.

15.8.2 Mr Blair said that on 20<sup>th</sup> March 1989 he was in Toal’s Pub from noon, occasionally nipping into the Bookies. He was heading home around 4 pm and that was when someone told him about the shooting of the two RUC officers. He arrived home about 4.30 or 5 pm and members of An Garda Síochána came to his house around 6 pm to question him. He said that they could tell by his demeanour that he had been in the pub. He was adamant that Fulton was not in his house on that date. Had he been so, Mr Blair’s wife would have told Mr Blair. Regarding Mr Fulton’s information as to the existence of ‘our friend’ within An Garda Síochána, Mr Blair said that no Garda officer ever assisted him or anyone else in the Provisional IRA to his knowledge. He did not know Owen Corrigan but had heard his name and agreed that Owen Corrigan was known to be anti – republican. He denied that he and Kevin Fulton went on the run because their fingerprints may have been found at the Omeath bomb factory. He said that to the best of his knowledge, Kevin Fulton did not make bombs. He also denies having met Owen Corrigan at Fintan Callan’s Céilí House, or having got into a car with a member of An Garda Síochána:

“the only time I ever got into a car with a Garda Síochána was when I was being arrested.”

15.8.3 Retired Detective Superintendent McConville put into evidence before the Tribunal the following précis, which summarises intelligence dated March 1989:

“Reference the double murder of Superintendent Buchanan and Chief Superintendent Breen, intelligence indicated that a “HardBap’ Hardy and a male known as ‘Mooch’ from the Dundalk area would have been deeply involved in the murder.”

15.8.4 Obviously, this intelligence tends to contradict Patrick Joseph Blair’s oral evidence to this Tribunal that he was in the pub on the day of the murder, and also tends to contradict Kevin Fulton’s evidence to the effect that Mr. Blair had nothing to do with the murders. The intelligence précis is ungraded. It was a report to which I had some, but not undue, regard in my assessment of Kevin Fulton’s evidence.

15.8.5 At the conclusion of his evidence, Mr Blair was asked would he ever name an IRA man, and he replied, “I would never inform on anyone, no.” He was then asked whether, if someone was giving information to the IRA, would he name that person to the Tribunal. He said:

“Well, I don’t know, because I did not receive or know of any detective, north or south, supplying information.”

15.8.6 Asked if he did know of such a person, would he reveal the information, he replied:

“A. Well, I would like to think I would be loyal to any organisation I was in. I wouldn’t betray anybody.

Q. Yes. Sorry, Assistant [...] Commissioner Egan [...] said that if Owen Corrigan was your friend, you would be unlikely to give him up. Is that your view as well?

A. As I said, I would not give up any friend.”

## **15.9 – The Response of Owen Corrigan to the Allegations of Mr Fulton**

15.9.1 Owen Corrigan suggested to me that Mr Fulton, and the allegations he had made, ought to be given no credibility. He described Mr Fulton as:

“a reject from the British Army, a reject from the RUC Special Branch who has described [him] as a compulsive liar, a fantasizer and intelligence nuisance.”

Mr Fulton’s evidence was put to Mr Corrigan at length. Mr Corrigan asserted that:

“at this stage we are not dealing with reality, if you are giving any credibility to what Mr Fulton says. [...] because he has the least credibility of anyone that I have ever met in my lifetime.”

15.9.2 Mr Corrigan alleged that Kevin Fulton:

“continued on with the RUC and he ran out of credibility with them because he – his stories – became more absorbed, with the passage of time and the situation is in order to sustain his weekly salary, if he hadn’t any concrete information, he had to make it up.”

15.9.3 In relation to the statement made by Mr Fulton to Judge Cory, Mr Corrigan stated:

“The British Army saw themselves in a hole and they decided, through their authorities there, that they would take action to divert the thing and turn it completely on its head. So they employed Mr Fulton, or Mr Keeley, to apply to Judge Cory, who had been appointed as a result of the joint meeting, to investigate this matter.

15.9.4 When it was put to him by Counsel for Mr Fulton that the notion of a British Army conspiracy to send Kevin Fulton to Judge Cory was not borne out when one considered that Kevin Fulton had made the same allegations to Jeffrey Donaldson in 2000, Mr Corrigan replied, “this was a total conspiracy on behalf of the British, and I stand by it.” Mr Corrigan also stated:

“I may be wrong on my venue or my time, but it doesn’t change the general theme of my statement.”

15.9.5 Mr Corrigan told me that when he first heard of the name of Kevin Fulton, he went to the Superintendent in Dundalk Garda Station and asked him who was this individual. He said he had never met Mr Fulton before in his life and :

“was at a loss to understand how he was in a position to make these statements, and I later learned more about him, that Mr Fulton is a paid agent of the British Army, and our Government, in the form our Taoiseach and Minister for Justice, travelled to Weston Park to complain about collusion in Northern Ireland, which was rampant. I refer to it in my earlier testimony. It had reached incredible proportions and was causing anxiety about the nationalist community.”

[...]

So, in the aftermath of this Anglo – Irish meeting, the British Army took note of the situation and they, as they are professionals at it, they decided to take action by

way of entering the arm of the dirty tricks department, for which they are noted, and they got a paid informer, Mr Fulton, to approach [Judge Cory].”

15.9.6 He told me that he met Superintendent Jim Sheridan in the precincts of the Garda Station and asked him about Kevin Fulton some time after 1992. He was asked what gave rise to this conversation, and he replied: “the fact that his name was mentioned.” When asked in what context his name was mentioned, Mr Corrigan replied “in newspapers.” However, he then resiled from this somewhat and said:

“I am not saying specifically it was a paper now. I don’t know in what context I found it but I learned of it anyway. I can’t – it’s not clear in my recollection.”

15.9.7 I intervened to ask Mr Corrigan whether the conversation with Jim Sheridan had occurred after Mr Fulton had first made allegations against him. He replied, “As far as I recall now.” However this would have been, it seems to me, at the very least after 2000 and probably after 2003 when Mr Fulton spoke to Judge Cory. This seemed to me to be much later than the timeframe originally suggested by the witness. I pressed Mr Corrigan on this and he clarified that we were talking about a period in time before Judge Cory “came on the scene”:

“Oh yes, it would have been – he would have mentioned my name, Mr Chairman, before he went to Judge Cory.”

I again asked him where had this occurred and he replied “I don’t know, but it was in general circulation.”

15.9.8 At a later point in his evidence, however, Mr Corrigan resiled entirely from the proposition that Kevin Fulton was making the allegation about him, or about any guard, prior to meeting Judge Cory. At this point, I sought to clarify the issue with Mr Corrigan and asked him:

“What I am interested in is, why, long before Judge Cory’s Report, long before Judge Cory made public that statement that was made to him by Kevin Fulton and said that there should be an inquiry, [...] somehow, Mr Corrigan, you got wind of it and you were able to say to Superintendent Sheridan ‘who is this man, Kevin Fulton?’ [...]

How did that happen that you knew, when you talked to Superintendent Sheridan, ‘who is this man Fulton who is telling lies about me?’”

15.9.9 Mr Corrigan replied, “it was from some type of circulation or in some newspaper or something.” He also said that he thought that his name was mentioned in the article. He then elaborated by saying that he thought it might have appeared in *The Phoenix* magazine, but then told me that he did not think it referred to him.

15.9.10 This was a somewhat confusing aspect of Mr Corrigan’s evidence. While he may simply have been confused as to dates, I was left with the distinct impression that he had been aware long before the publication of the *Cory Report* in 2003 and even the statement of Jeffrey Donaldson in 2000 that Kevin Fulton, or Peter Keeley as he may have been known at that time, was saying that he (Corrigan) was assisting the IRA. The question arises, if this is so, how he came into the possession of such knowledge. That is a question to which I never got a satisfactory answer.

15.9.11 Mr Corrigan purported to give me an account of Kevin Fulton’s activities in Dundalk. When I asked him how he knew this, if he hadn’t ever come across Mr Fulton, he replied, “this is from my intelligence that I learned since.”

15.9.12 In relation to the allegation concerning the incident in Fintan Callan’s Céilí House, Mr Corrigan stated:

“absolute lies all the ways. I never met Mooch Blair in my life. And that you recall him and prove that. This is more of it, now. Never met him in my life.”

15.9.13 He said that he resented any suggestion that he passed information in relation to Tom Oliver because he was friendly with the wider Oliver family.

15.9.14 Mr Corrigan asserted that he had never met ‘Mooch’ Blair. It was put to him that given that he had described himself as a thorn in the side of the IRA, it seems surprising that he had never met, arrested, stopped, or spoken to a senior PIRA member living in Dundalk. He replied:

“Well those are the facts on the ground. I never arrested him. I never stopped him. I never spoke to him. So, how more clear could I be.”

When asked whether he had met Mickey Collins, he also replied that he had never met him either. He confirmed that he knew what both men looked like, but said that he did not know Patsy O’Callaghan at all.

15.9.15 In the course of his evidence, Mr Corrigan described Tom Oliver, as a man “who was doing his duty and paid the price.” Subsequently, Counsel for Mr Fulton asked him what duty was Tom Oliver doing and he replied,

“he was doing his duty to society and was answerable to members of the people that you are here representing.”

Mr Corrigan continued,

“he pointed out to the Garda something that he had come across. [...] He came across something and did his duty and reported it to the lawful authority of the State.”

15.9.16 He said that Mr Oliver found a firearm of some sort. The following exchange then occurred between Counsel for Mr Fulton and Mr Corrigan:

**Q.** And you knew that, Sir, at the time that he had reported a firearm.

**A.** Yes.

**Q.** So you did know at the time when Mr Keeley ..

**A.** I didn’t know at the time, but I have learned since.

**Q.** You have learned since. You realise, Sir, that the difficulty about knowing at the time is that that’s exactly what Mr Keeley says you passed on to the IRA about Tom Oliver, that he was cooperating with the Garda.

**A.** Yeah, sure.

[...]

**Q.** I am putting to you, Sir, that you gave the information about Tom Oliver that put him in the grave. You gave that information, Sir, and you have just revealed knowing what that information was for the first time.

**A.** And I am the cause of Tom Oliver's death? That the IRA seek to rule this country, that [...] a man that cooperates with the lawful police force of the State, should be taken out and tied up like a chicken in the back of a HiAce van by clients of yours, and he created a second, a second, a fake kidnapping in order to justify himself and get himself off the loop to go to Euro Disney."

15.9.17 Counsel for Mr Fulton put it to Mr Corrigan that the IRA, after the killing, had;

"alleged that he [Tom Oliver] had aided the organisation by providing sheds for the storage of weapons, explosives and vehicles but said he had passed information to Garda over a six – year period leading to the arrests of several IRA members."

15.9.18 Counsel for Mr Fulton continued:

**Q.** But Keeley is right, Sir, about this. You knew that Tom Oliver had given information about a firearm, didn't you.

**A.** Of course. Does that entitle them to go out and tie him up in a van and shoot him and leave seven little kids walking behind a coffin?"

## **15.10 – Assessment of the Evidence of Kevin Fulton**

15.10.1 I am confronted with a considerable volume of evidence in relation to Kevin Fulton. Much of it relates to the issues of Mr Fulton's general credibility, and the aspects of evidence pertinent to my terms of reference are actually very net. These relate to the alleged meeting between 'Mooch' Blair and Owen Corrigan in Fintan Callan's Céilí House and to Mr Fulton's assertion that on 20<sup>th</sup> March 1989, he was told that 'our friend', whom he understood to be Owen Corrigan, had helped the IRA by giving them information about the two RUC officers.

15.10.2 In relation to the range of witnesses dealing with Mr Fulton's credibility, it is fair to say that varying views were expressed. It is undoubtedly the case that on occasion Mr Fulton has provided valuable information to security agencies in the neighbouring jurisdiction and that this has led to successful criminal prosecutions and, on occasion, according to Mr Fulton's un – contradicted evidence, has saved lives. It is also true that he has deliberately lied

and fed mis – information to his handlers. However, this was not disputed by Mr Fulton. He fully and freely admitted it in his evidence to me, and explained this on the basis of a breakdown of trust between him and his handlers at the relevant time.

15.10.3 The reality is that sometimes Mr Fulton has given truthful information and sometimes he has given untruthful information. This presents to me the challenge of seeing the wood from the trees. I do not attach huge significance to minor, human inconsistencies, for example in relation to the fact that in *Unsung Hero*, which he apparently did not in fact author, it is stated that Mr Fulton went to Euro Disney in August 1991, whereas his consistent evidence to me was that he had gone before the murder of Tom Oliver in July 1991. Nor do I consider that it damages Mr Fulton’s credibility that his book did not refer to the allegation that a Detective Sergeant in Dundalk was helping the IRA, in circumstances when he had clearly made this allegation both six years and three years prior to the publication of that book, to Jeffrey Donaldson and Judge Cory respectively.

15.10.4 There are, however, two substantial issues as to credibility to consider. The first of these is that the various agencies which handled Mr Fulton have provided no information or documentation to the Tribunal which confirms that he told his handler about the incident at Fintan Callan’s Céilí House or about what he learned on 20<sup>th</sup> March 1989. However, in circumstances where the Tribunal has no power to compel the provision of such documents, this cannot be conclusive. There have been examples throughout the course of the Tribunal of intelligence information only turning up late in the progress of the Tribunal’s work, having been missed in earlier searches. There is also the evidence of Witness 64, to consider. He stated that when he was a Detective Inspector in the Special Branch in Newry, he never heard that Kevin Fulton had provided information about Detective Sergeant Owen Corrigan. However, Special Branch does not appear to me, on the evidence, to have been handling Mr Fulton in 1989, and one thread throughout all the evidence before the Tribunal is that it would be very dangerous to assume that one intelligence – gathering agency in Northern Ireland or Great Britain would necessarily share information with another.

15.10.5 The second issue of substance is that there is a degree of inconsistency between the statement provided by Kevin Fulton to Judge Cory in 2003 and his evidence to the Tribunal. In particular, in his 2003 statement, he specifically states that he was told that Owen Corrigan had passed information to the IRA, whereas he has been quite clear in his evidence to the Tribunal that this is an assumption and that Owen Corrigan’s name was never specifically referred to; rather, the reference was to ‘our friend.’ In this regard, however, Mr Fulton’s

evidence throughout his testimony before this Tribunal was consistent. Furthermore if he were fabricating this allegation, it would be very easy for him simply to state that Owen Corrigan's name was specifically referred to in the context of 'our friend' having helped the IRA on 20<sup>th</sup> March 1989. This would make his allegation against Mr Corrigan somewhat more substantial and definite, but despite being questioned repeatedly on this point he never deviated from the position that Owen Corrigan was never named and that his information was based on an assumption. This leaves open the possibility that he was mistaken as to the identity of 'our friend.'

15.10.6 Indeed, consistently in his evidence before me, Mr Fulton never fell into exaggeration or embellishment. He did, however, appear to resile to some extent from the reference made in his statement to Judge Cory to his having been told that Owen Corrigan telephoned the IRA to say that the officers were in Dundalk Garda Station. As I understand his evidence, this was not part of the original information divulged on 20<sup>th</sup> March 1989, but was something he heard subsequently.

15.10.7 In terms of intelligence from An Garda Síochána, both pieces of intelligence, that which refers to him being a trusted member of PIRA, in the company of 'Mooch' Blair and Mickey Collins, in August 1988, and that which refers to a leading PIRA member having fled Dundalk in the aftermath of the discovery of the Omeath Bomb factory because of a fear that his fingerprints would be found, are broadly consistent with parts of the evidence that Mr Fulton has given to the Tribunal.

15.10.8 In relation to the specific submission that because Owen Corrigan had retired by Summer 1991, he would not have been in a position to pass on any information in relation to Tom Oliver, I do not accept that this is correct. As can be discerned from the exchange between Mr Corrigan and Mr Fulton's Counsel outlined above, Mr Corrigan did seem to have some level of knowledge or awareness in relation to Tom Oliver. Although the date on which he came into possession of such knowledge is not conclusively established, he did seem to me to admit that he had such knowledge or awareness around the relevant time. In any event, however, I am satisfied both that he could have acquired knowledge while still working in Dundalk Station, and, as is clear from his evidence in relation to the conversation with Superintendent Sheridan, was not someone who ceased all information – gathering or contact with his former colleagues on retirement.

15.10.9 I am acutely conscious in assessing the evidence of Mr Fulton that as a British agent within the Provisional IRA he has, to be frank about it, made a career out of dissembling. This is unquestionably something I have to bear in mind when I consider his evidence. However, he came to this Tribunal voluntarily and at such personal risk to himself that he was protected throughout the duration of his evidence and presence in the jurisdiction by a full team of the Garda Emergency Response Unit. There is no evidence that he has any particular axe to grind with Mr Corrigan, or that he stands to benefit in any way from identifying Mr Corrigan as someone who assisted the Provisional IRA. He was subject to very robust cross – examination over a number of days, but answered questions fluently and without hesitation. He did not falter.

15.11.10 In the final analysis, having due regard to the evidence which is supportive of him and the evidence which is critical or unsupportive, I must make my judgment based on what I have seen of and heard from Mr Fulton in the course of his three days in the witness box. He sat only metres away from me and I observed him throughout. He was a very impressive and credible witness and I have formed the view that his evidence was truthful. I should add that in coming to this view, I have, of course, carefully taken into account the evidence of Owen Corrigan. However, as is apparent from some of the vague and sometimes shifting responses to some of the questions posed to Mr Corrigan and discussed above, Mr Corrigan’s evidence lacked the same degree credibility.

15.11.11 As regards that portion of Mr Fulton’s evidence that touches directly upon my terms of reference, however, it must be borne in mind that it is both hearsay – relaying what Mickey Collins told him – and is premised upon an assumption, namely that ‘our friend’ was Owen Corrigan. These factors qualify to some extent the weight which can be accorded to the evidence. It cannot stand alone, but, if and where corroborated by other evidence, ought not to be ignored.

## Chapter 16

### **Allegations Made by Ian Hurst (Also Known As Martin Ingram)**

#### **16.1 – An Overview of the Circumstances in which Mr Hurst Came to Give Evidence**

16.1.1 Ian Hurst is a former employee of the British Ministry of Defence. He was a British Army soldier who served in the Intelligence Corps and the Force Research Unit. In 2004, some years after his retirement from the Army, he co – authored a book entitled *Stakeknife* (O'Brien Press), which purported to reveal the identity of a key British intelligence agent at the heart of the Provisional IRA. The book alleges that Mr Freddie Scappaticci was Stakeknife.

16.1.2 Prior to the publication of his book, the British Ministry of Defence applied for and was granted a Gagging Order in respect of Mr Hurst, which prohibited him from divulging certain information obtained in the course of his employment. That Gagging Order was granted by the English High Court in June 2000. Mr Hurst contacted the Tribunal during its private investigation phase, and indicated that he had information relevant to its terms of reference, but that he was legally prohibited from providing that information to the Tribunal. At his request, the Tribunal engaged in discussions with the Treasury Solicitor in London and the Ministry of Defence in order to agree a procedure whereby Mr Hurst would be permitted to provide the Tribunal such information as he had relevant to its terms of reference. Ultimately, on the basis of those discussions, the Treasury Solicitor applied for two sequential variations of the Order of the English High Court:

The first to allow him to meet and speak to Counsel for the Tribunal in the private investigation phase; and

the second to allow him to provide a statement and provide evidence to the Tribunal.

The English High Court Order was varied on 22<sup>nd</sup> March 2011 and 15<sup>th</sup> August 2011.

16.1.3 As part of the negotiations which led to an agreement to vary the High Court Order, the Tribunal indicated that Mr Hurst's evidence would be heard in private session in the first

instance, and that I would then consider submissions from the British Ministry of Defence as to what, if any, redactions were necessary for protection of British national security before his evidence was made public. Mr Hurst gave evidence in a private sitting of the Tribunal on 17<sup>th</sup> and 18<sup>th</sup> April 2012. I then considered submissions made to me by the British Ministry of Defence and I ultimately directed that the transcript of Mr Hurst's evidence be read into the record at public sittings of the Tribunal, with only a small number of redactions. The evidence was read into the Tribunal record over the course of two days, on 24<sup>th</sup> and 25<sup>th</sup> April 2012.

## **16.2 – The Evidence of Mr Hurst in Relation to his Career**

16.2.1 Mr Hurst joined the British Army in 1980. He was initially in the Parachute Regiment, but within a matter of weeks was redeployed to the Intelligence Corps. He was posted to Northern Ireland in late 1981 and said that he was initially in a unit called '3SCT', which came under the command of '12' Intelligence Company. He said that his job at this point in time was to put RUC intelligence documents, known as 'RUCIRACs' into a British military intelligence database. He described a 'RUCIRAC' as a derivative of the RUC Special Branch Intelligence Form, the 'SB50'. (As I understand it, RUC Special Branch intelligence was generally submitted on a 'SB50' and the intelligence was transferred onto a 'RUCIRAC' for the purposes of sharing the information with the Army; Army intelligence was recorded on a document called a MISR). He was based at Thiepval Barracks in Lisburn, which was the British Army's Headquarters in Northern Ireland.

16.2.2 After three months in this position, Mr Hurst told me that he was moved to the 121 Intelligence Section, also located at Thiepval Barracks. His new role was that of a collator, and he was given a specific area of responsibility, supporting a Grade 2 Staff Officer (which is an intelligence grade). His initial area of responsibility was Loyalism in North Belfast, but he subsequently moved to the Derry desk. An opening arose in the British Army's Force Research Unit (FRU) in Ebrington Barracks in Derry and, in 1992 he began working for the FRU.

16.2.3 He explained that before the establishment of the FRU in 1980, British military intelligence – gathering was carried out on an ad hoc and un – centralised basis. The FRU was established to manage intelligence sources in a more professional and coherent way. The FRU had its main headquarters in Thiepval Barracks, but also had a number of satellite offices throughout Northern Ireland. Mr Hurst explained that the FRU reported directly to the Director of Special Forces of the Ministry of Defence, rather than through the normal army hierarchy in Northern Ireland.

16.2.4 In August 1984, Mr Hurst's father became seriously ill and he left Northern Ireland, taking up a position in northern England, close to home. He remained outside Northern Ireland until 1987, when, having completed a FRU handler course, he was posted to the FRU's Western Division based in Enniskillen, Co. Fermanagh. He then acted as a handler of covert sources. He left Northern Ireland again in 1990 (at a later point in his evidence, he seemed to suggest it was 1991). He explained to me that shortly thereafter he retired from the Army. While in Northern Ireland in the late 1980s, he had met his future wife, who was from a family with Republican sympathies. He explained being married to someone of his wife's background would have affected his prospects of being given certain postings; he was faced, in effect, with a choice either between his wife or his chosen career, and he decided to leave the Army.

### **16.3 – The Evidence of Mr Hurst Touching Upon the Tribunal's Terms of Reference**

16.3.1 Turning to the question of my terms of reference, Mr Hurst said that in the course of his duties he saw documents which recorded that Detective Sergeant Owen Corrigan was a rogue Garda. He initially told me that he saw Detective Sergeant Corrigan's name quite regularly from November 1987 onwards. He said that he saw this name more than the name of any other member of An Garda Síochána, but in total "probably less than 10" times. When it was put to Mr Hurst that the PSNI has only provided the Tribunal one 'SB50' in relation to Owen Corrigan, he suggested that information was being deliberately withheld from the Tribunal:

"What chance [have] you in a foreign jurisdiction when Lord Stevens didn't get access to those documents that you have just referred to?"

16.3.2 When it was put to him that the then RUC Detective Chief Superintendent Raymond White, who from early 1984 until 1989 was the Head of Special Branch in Belfast, had no recollection of seeing such intelligence, Mr Hurst said that the information may not necessarily have gone to Mr White.

16.3.3 Mr Hurst also said that he saw references to Sergeant Leo Colton once or twice in the intelligence documents. He said that the name of Leo Colton was also connected to "the same sort of activity, leaking information, association."

16.3.4 Mr Hurst then went on to say that he had a discussion with his superior officer, Witness 82, about Detective Sergeant Corrigan on probably two or three occasions at most.

He said that Witness 82 told him that Mr Freddie Scappaticci was Owen Corrigan's handler and "acted as the conduit for information." These conversations took place socially, at Thiepval Barracks. Mr Hurst said that he used to come up from Enniskillen to socialise at the Green Fly bar at Thiepval, which was restricted to intelligence officers. He also played soccer at Thiepval on Friday evenings. As discussed further below, Witness 82, who subsequently gave evidence before the Tribunal, confirmed that he was the handler of the agent known as Stakeknife, but stated that:

"Stakeknife is not connected to, knew of or was responsible for obtaining information from Garda Corrigan or any member of An Garda Síochána."

Mr Hurst fully accepted in his evidence that I would have to come to a decision that either he or Witness 82 was lying.

16.3.5 Hurst was asked whether he had any information linking the deaths of Chief Superintendent Breen and Superintendent Buchanan to any specific Garda officer. He replied:

"There was a low level information I think in MISRs, that type of thing down at level 3 Brigade which suggested that Mr Corrigan was involved in leaking that information."

16.3.6 I asked him to clarify whether that was "generally?" He replied: "Generally, yes." He then also went on to say that Witness 82 reported to him that Scappaticci was involved with Corrigan, and that Corrigan was the leak. Under cross – examination by Mr Corrigan's Counsel, it was put to Mr Hurst that he had never mentioned this conversation with Witness 82 in the Statement of Intended Evidence that he had provided to the Tribunal in advance of giving evidence; nor had he referred to the "low level, Level 3 information" which suggested that Owen Corrigan was involved in leaking information about the murders. Mr Hurst reiterated that there were MISRs which said that Mr Corrigan had leaked the information. When asked to explain why these two matters – his conversation with Witness 82 and the 'MISR's – were not included in his Statement of Intended Evidence, he replied:

"I was giving an overview of the whole situation. When I came here, I am here today so you can question me and you can ask me a question."

16.3.7 Not only had Mr Hurst not included reference to the alleged conversation with Witness 82 or the low level, Level 3 ‘MISR’s in his Statement of Intended Evidence, but he had in fact stated the following:

“I have no information linking any specific Garda member to the deaths of Breen and Buchanan.”

16.3.8 When asked to explain this, he said, “[y]es. I have no information, me, I am letting you – I have no intelligence linking that. I have none.” He went on to say that none of the ‘MISR’s or ‘SB50’s in his possession (he appears to have retained a large number from his time working for the Intelligence Corps and/or FRU) address the deaths of Chief Superintendent Breen and Superintendent Buchanan, and that it is Witness 82 who was in possession of the relevant information, not him. Mr Hurst was then asked to clarify exactly how many ‘MISR’s or ‘SB50’s he had seen after the murders which had referred to the role of Owen Corrigan. He replied “there would be a few” but refused to be more specific.

16.3.9 Mr Hurst also gave evidence that Kevin Fulton and he had discussed Owen Corrigan. In this regard, Counsel for Mr Corrigan made reference to a note dated 21<sup>st</sup> July 2000 taken by Jane Winter, of the British Irish Human Rights Watch, in respect of a telephone conversation she had had with Mr Hurst. In this conversation, Mr Hurst had briefed her on a meeting he had had with An Garda Síochána around that time, which is discussed further below. This note includes the line, “PK was present when Scappaticci met Corrigan.” Mr Hurst was pressed by Counsel for Mr Corrigan as to whether Peter Keeley (aka Kevin Fulton) had told him that he had been present at a meeting between Owen Corrigan and Freddie Scappaticci. Mr Hurst, however, said that relevant line was not a quote from him, but rather, was Ms Winter’s own note. Despite being pressed on the matter on a number of occasions, Mr Hurst consistently stated that he did not recall Peter Keeley/Kevin Fulton ever having said to him that he had been present for a meeting between Freddie Scappaticci and Owen Corrigan.

16.3.10 At a later stage in his cross – examination, Mr Hurst stated that he thought he had heard of Owen Corrigan’s name on his first tour in Northern Ireland, when he was inputting RUCIRACs on the British Army intelligence database, but he added “I can’t be absolutely certain about that.” His first tour was in the early 1980s. He was then asked how many reports he had seen in relation to Owen Corrigan at that time, and he replied “I can’t be specific.” When it was put to him that in his Statement of Intended Evidence he said that it could have been “up to three times a week”, he confirmed that this could be the case. It was very fairly

noted by Counsel for Mr Corrigan that this contradicted Mr Ingram's earlier evidence to me that he had seen less than 10 reports on Owen Corrigan in total.

#### **16.4 – Meetings Between Mr Hurst and Members of An Garda Síochána**

16.4.1 In 2000, Mr Hurst was living in County Tipperary and had some contact with members of An Garda Síochána. This arose because he had a suspicion that his telephone in Ireland had been bugged by British intelligence operatives, and he also feared for his personal safety. He stated that he met the then Detective Chief Superintendent Peter Maguire and Detective Superintendent Basil Walsh on two occasions in 2000. At one of these meetings – and this does not appear to be in dispute – Mr Hurst divulged to the two officers his allegation in relation to the identity of Stakeknife. There was also a discussion about a Dublin Garda, who, Mr Hurst alleged, was meeting British handlers at Dublin airport and divulging information, and about a member of the Gardaí in Donegal who had been providing information to Mr Hurst while he was in the FRU. Mr Hurst did not divulge the full names of either member of the Gardaí.

16.4.2 Mr Hurst also claimed in his evidence that he met Detective Chief Superintendent Maguire and Detective Superintendent Walsh again in 2004, and that at this meeting, Detective Superintendent Basil Walsh asked him were there any Gardaí around Dundalk leaking information, and Detective Chief Superintendent Maguire asked him specifically about Detective Sergeant Owen Corrigan. He also stated that either Peter Maguire or Basil Walsh referred to Owen Corrigan as a “bad apple” and also referred to the beating that Mr Corrigan had experienced at the hands of the Provisional IRA.

16.4.3 Retired Chief Superintendent Basil Walsh gave evidence before the Tribunal. He confirmed as having asked Mr Hurst as to whether there were any Gardaí in Dundalk giving him information, but said that he did not ask any specific question about Owen Corrigan. Moreover, this conversation took place in 2000 and not in 2004 as Mr Hurst alleged; Chief Superintendent Walsh had in fact retired from An Garda Síochána in 2003.

16.4.4 Retired Chief Superintendent Peter Maguire also gave evidence before me. He said Mr Hurst referred to two members of An Garda Síochána that were in contact with the Unit, a senior Garda officer in Dublin with the codename ‘Eamon’ and a Garda in Donegal who was paid by the FRU for information. Mr Hurst did not identify either of these Gardaí. Retired Detective Chief Superintendent Maguire said that he never spoke to Mr Hurst about Mr Corrigan and that it never crossed his mind to do so. Mr Maguire also stated that he had not

met Mr Hurst in 2004, by which time he was a Chief Superintendent in a Division in North Dublin.

16.4.5 The Tribunal also heard evidence from Detective Chief Superintendent Diarmuid O’Sullivan, who did in fact have a record of meeting Mr Hurst in 2004, along with Detective Inspector Chris Kelly. Detective Chief Superintendent O’Sullivan had replaced Detective Chief Superintendent Maguire. Detective Chief Superintendent O’Sullivan told me that he met Mr Hurst for the purposes of obtaining further information about certain matters referred to in Mr Hurst’s book, *Stakeknife*, in particular details in relation to the allegations that there were members of An Garda Síochána supplying information to the British intelligence agencies and members of An Garda Síochána supplying information to the IRA. He said that Mr Hurst indicated to him that there were about five Gardaí located in the border regions, supplying information to British intelligence agencies. He thought that Donegal had been specifically mentioned. He said that Mr Hurst also told him that other members of the force may have given information to the IRA, and that such information had been conveyed at times under duress. Detective Chief Superintendent O’Sullivan was adamant in his evidence to me that he did not mention the name of Owen Corrigan to Mr Hurst during the course of this meeting:

“Most certainly not. Mr Chairman. My function was to establish what information Mr Hurst had in his possession. It wasn’t my function to convey information to him. I was conducting an inquiry, a serious inquiry in relation to [...] an allegation that certain people were conveying this information, both to British Intelligence and to the IRA and my responsibility was to identify who those people were, not – it wasn’t to speculate who they might be.”

## **16.5 – The Evidence of Witness 82**

16.5.1 I also heard evidence from Witness 82, the FRU officer who Mr Hurst says told him about Owen Corrigan’s involvement with Mr Scappaticci and his involvement in the murders of Chief Superintendent Breen and Superintendent Buchanan. Witness 82’s evidence was also heard in private session, with a transcript subsequently being read into the record of the Tribunal with only minor redactions.

16.5.2 In response to Mr Hurst’s evidence, Witness 82 stated that:

“I have never seen a document referring to Mr Corrigan, as far as I can recall.”

In relation to Mr Hurst's assertion that he saw references to Mr Corrigan in intelligence documents fairly regularly from November 1987 until 1991, Witness 82 observed that Mr Hurst was at that stage working in Enniskillen in the '8' Brigade area, whereas Mr Corrigan was alleged to have colluded with the IRA in the '3' Brigade area. He continued:

“It would be unusual to pay attention to information that was coming in from other areas unless you were responsible for them. There was too much information coming in to try and give a big picture across the Province. So, I would be very doubtful if, in general dissemination, there was any information such as he is trying to describe here.”

16.6.2 As regards the allegation that he and Mr Hurst had discussed Owen Corrigan “two or three times at most”, Witness 82 replied as follows:

“Well, I had no information about Mr Corrigan, so, to the best of my knowledge, I don't see how I could have had that conversation with Mr Hurst.”

16.6.3 He also stated that he was not aware of any relationship between Owen Corrigan and Freddie Scappaticci and confirmed that he had never seen any intelligence linking the agent 'Stakeknife' to Detective Sergeant Corrigan.

16.6.4 Finally, Witness 82 also told me that he had seen no reference in intelligence documents to Mr Colton.

## **16.7 – Assessment of the Evidence of Ian Mr Hurst**

16.7.1 I find it very surprising, given the unambiguous terms of reference of this Tribunal, that Mr Hurst indicated in his Statement of Intended Evidence that he had no information “linking any specific Garda member to the deaths of Breen and Buchanan”, but then proceeded to tell me something quite different in oral evidence.

16.7.2 Dealing first with the question of him having seen Mr Corrigan's name in intelligence documents, my understanding of his initial evidence was that those intelligence documents contained references of a general nature to Mr Corrigan passing information to the IRA. However, Mr Hurst subsequently said that he saw some 'MISRs' or 'SB50s' after the murders which indicated that Detective Sergeant Corrigan had passed the information which led to the deaths of the two RUC officers; he would not indicate how many such documents he had seen. Furthermore, while he initially told me that he had seen less than 10 intelligence

documents referring to Mr Corrigan, and that he had seen these in the period from late 1987 until his departure from Northern Ireland, he subsequently suggested that he had seen such documents in the early 1980s and had seen possibly up to three per week.

16.7.3 Given the striking inconsistency between his Statement of Intended Evidence and his Oral Evidence, and given the changing nature of his oral evidence in relation to when, how often, and in what specific context he had seen Owen Corrigan's name in intelligence documents, I simply did not find Mr Hurst to be a credible witness.

16.7.4 As regards his account of his conversations with Witness 82 in relation to Owen Corrigan, Mr Hurst fairly acknowledged that I would have to reach a determination that either he or Witness 82 was lying. Having carefully considered the evidence of both gentlemen, I prefer the direct and straightforward evidence of Witness 82.

16.7.5 I should add that I also accept the evidence of the three Garda officers in respect of the content of their meeting with Mr Hurst.

16.7.6 In the circumstances, therefore, I attach no weight to the evidence given by Ian Hurst to this Tribunal. I should add, however, that nothing in Mr Hurst's evidence altered in any way my view of the evidence provided to the Tribunal by Kevin Fulton.

## **Chapter 17**

### **The Career and Activities of Former Garda Sergeant**

#### **Finbarr Hickey**

##### **17.1 – Overview of the Career of Finbarr Hickey**

17.1.1 Finbarr Hickey joined An Garda Síochána on 31<sup>st</sup> December 1980. Following his training, he was posted to Dundalk Garda Station in 1981. He was promoted to the rank of Sergeant on 2<sup>nd</sup> March 1992 and was transferred to Castleblayney Garda Station in County Monaghan. He remained in Castleblayney until April 1994, when he was transferred to Hackballscross, one of the outlying stations under the ambit of Dundalk Garda Station. He described Hackballscross Garda Station as “like a little cottage on the side of the road.” It was on the road between Dundalk and Castleblayney, County Monaghan (a road which passes through South Armagh, at which point it is known as the ‘Concession Road’). Mr Hickey told me that there were three or four Sergeants and 14 or 15 Gardaí because Hackballscross Station was so close to the border. Mr Hickey explained to me that for a period of his service there, Hackballscross was a very busy station because of the BSE (‘Mad Cow Disease’) crisis. He explained that during this period of time, Gardaí were drafted in from elsewhere in the country to man checkpoints at every border crossing. There was a lot of overtime available to Gardaí as a result.

17.1.2 In 1984, then Garda Hickey received a First Class Commendation in Dundalk for good policing duties, and on 5<sup>th</sup> September 1991 he was injured in the course of his duties when apprehending a criminal who was breaking into a factory through its roof.

17.1.3 In his evidence to this Tribunal, Mr Hickey frankly described how he experienced some problems in his personal life in the mid – 1990s. He separated from his wife in 1993 and got a formal legal separation in 1995. As a result, he told me that he was “drinking a bit much at that time.” In 1989, he was involved in a road traffic accident in which a child was fatally injured. This was a tragic accident and absolutely no responsibility or negligence was attributed to Mr Hickey in respect of it, but nevertheless he acknowledged that it had an emotional effect. He was also injured in the accident.

17.1.4 As is detailed in the *Canon Report* (and referred to in Chapter 14), Sergeant Hickey came to the attention of the Gardaí in or around 1998 as a result of an investigation in relation to the

making of false passport applications and the procurement of false passports. The investigation was in fact led by the late Detective Chief Superintendent Camon. This incident – to which I intend to refer to as the ‘passports affair’ – resulted in the end of Sergeant Hickey’s career and, I think it is fair to say, is what brought him into the frame in terms of the collusion allegations being investigated by Detective Chief Superintendent Camon shortly thereafter. I now turn to consider then Sergeant Hickey’s role in the passports affair.

## **17.2 – The Impetus for the Arrest of Sergeant Hickey in 1998**

17.2.1 There was some uncertainty in the evidence put before me as to precisely when the possibility that Sergeant Hickey had completed a false passport application form first arose. What was clear is that the first passport in respect of which alarm bells rang was a passport in the false name of ‘Kinsella’. The application form for this passport was signed on 4<sup>th</sup> April 1996. Subsequently, the Passport Office raised a query in respect of this application because the birth certificate accompanying it had, as I understand it, been flagged in the Passport Office, having previously been used to obtain a passport in other suspicious circumstances.

17.2.2 I am not entirely clear as to whether an informal query came back to the then Sergeant Hickey in respect of this passport between 1996 and February 1998. However, in any event, in February 1998 Sergeant Hickey was interviewed by Superintendent Brendan Quinn in respect of the ‘Kinsella’ passport. In his explanation to Superintendent Quinn, Sergeant Hickey said that the person in question must have produced the necessary documents and that he simply signed them (presumably without verifying that person’s identity). In other words, Sergeant Hickey in effect said that he was duped by the applicant for the false passport. He expressed regret to Superintendent Quinn and indicated that he would take care not to allow this to happen again.

17.2.3 However, the Gardaí continued their investigation and reviewed passport applications certified and witnessed by Sergeant Hickey going back over a number of years. It transpired that in the period from 26<sup>th</sup> January 1995 until 4<sup>th</sup> April 1996, Sergeant Hickey had signed eight false applications which led to eight false passports being issued. The Gardaí were ultimately able to identify that three of these eight false passports came into the possession of active members of the Provisional IRA. One passport was in the possession of, and included a photograph of James (Jimmy) Fox who had previously been convicted, along with five other Provisional IRA activists of armed robbery and firearms offences in respect of a robbery in Dundalk. On two occasions, Mr Fox had been arrested arising from the discovery of a substantial quantity of arms and/or explosives, but no charges were directed in respect of those incidents. Mr Fox was also wanted in Northern Ireland in respect of an armed robbery which took place at Newry Post Office in

November 1994, and in the course of which a Post Office employee, Frank Kerr, was shot and fatally wounded.

17.2.4 The second identified Provisional IRA recipient was Damien Stanley who first came to notice in 1992 when approached by a police officer in London. He dropped a holdall bag and fled the scene. The bag contained a handgun and bombing making material. Stanley, as of 2000, was believed to be living in the United States. The third recipient of a false passport was Paul Hughes who was arrested in June 1990 on the Dutch/Belgian border and charged with the murder of two Australian tourists in May of that year. In July 1991, Paul Hughes was extradited from the Netherlands to Germany, where he was charged in connection with the murder of a British Army Major in June 1990. His co – accused were Donna Maguire and Sean Hicks. Ultimately, all three were acquitted by the courts in Germany and he returned to Ireland.

### **17.3 – Summary of Finbarr Hickey’s Response to the Passports Affair**

17.3.1 Mr Hickey told the Tribunal that he signed these passport applications for retired Sergeant Leo Colton as a favour. He said when he first went to Dundalk, he was in Unit ‘A’ and then in about 1983 was moved over to Unit ‘C’. He said that Leo Colton was a Sergeant in Unit ‘C’, and they spent a few years on the same unit. This is how they knew each other. Sergeant Colton was subsequently moved to another unit.

17.3.2 Finbarr Hickey explained to me that Leo Colton would call out to him in Hackballscross Garda Station, have a chat for a minute or two, and then say, “Oh listen, I have a passport form here for a friend of mine, would you sign it?.” Leo Colton generally came out with one passport application form at a time, although Mr Hickey thought that on one occasion he may have had two passport applications with him. Mr Hickey told me that he did not know that the passports were destined for members of the Provisional IRA. He said that he did know of Jimmy Fox and that his photograph had been in *Fogra Tora* (an internal Garda bulletin providing information to members of the force including in relation to wanted persons), but that he did not recognise the photograph presented to him by Mr Colton as being that of Jimmy Fox. He said he had heard of Paul Hughes, and knew where he lived, but did not know what he looked like. He did not know Damien Stanley.

17.3.3 Mr Hickey explained to me that “I just thought I was doing the man [Leo Colton] a favour.” When asked did it not strike him as odd that Leo Colton was coming to him with passport applications with (in some cases at least) addresses of persons allegedly living in the Hackballscross vicinity, he replied:

“it didn’t at the time, no. And like, I suppose I should have known better but I was just the gobshite and I just signed them.”

17.3.4 He said that as far as he was concerned, “Leo Colton was vouching for these people.” He was adamant that he did not receive any financial reward from Mr Colton, stating, “No, no, no, I got nothing, no financial gain out of it whatsoever, nothing.” Mr Hickey went on to say that Leo Colton:

“knew the right man to approach, he knew that I was soft, and that I was an easygoing soft person, and he knew the right person to approach and that is why he approached me.”

17.3.5 Mr Hickey explained that when the query first arose about the ‘Kinsella’ passport, he was requested by Sergeant Ted Jones, the Sergeant – in – charge of Hackballscross, to check out the address given on the ‘Kinsella’ passport. He thinks this occurred after he was visited by Superintendent Brendan Quinn. He said that he went out to the address “hoping against hope that there would be somebody” called Kinsella at the address, but, as he said he knew deep down, this was not the case.

17.3.6 Mr Hickey told me that after the issue with the ‘Kinsella’ passport was raised, he met Leo Colton in O’Carroll’s public house in Dundalk and said something along the lines of: “Leo, there is something wrong with that passport.” He told me that Mr Colton replied: “don’t worry about it, it will be alright” and, as Mr Hickey put it, “that was it.”

17.3.7 I now turn to consider the evidence in relation to the arrest and questioning of Mr Hickey in late September 1998.

#### **17.4 – The Arrest of Sergeant Hickey in September 1998**

17.4.1 On 29<sup>th</sup> September 1998, then Detective Superintendent Martin Callinan (now Commissioner of An Garda Síochána) and then Detective Inspector John O’Mahony (now Assistant Commissioner in charge of Crime and Security) interviewed Sergeant Hickey in his home in Dundalk. During the course of that interview, they asked Sergeant Hickey if he was satisfied as to the identity of the parties whose passport applications he had certified and he told them “I thought I was.” At that stage, he made no reference to Leo Colton.

17.4.2 Later on the same day, then Detective Superintendent Callinan and then Detective Inspector O’Mahony arrested Finbarr Hickey and took him to Navan Garda Station for interview.

Commissioner Callinan told me that in the course of transferring Mr Hickey to Navan, Mr Hickey said to him, “would it make any difference if I told you it was Leo Colton who had asked me to sign the passport forms?.” When asked in his evidence to the Tribunal what he meant when he used the phrase, “would it make any difference” if he told the two Garda Detectives that Leo Colton had asked him to sign the forms, he replied:

“[...] I kind of realised this was serious now. Tell the truth now. Like, this was serious.”

17.4.3 Shortly after naming Leo Colton to the two Detectives on 29<sup>th</sup> September 1998, Sergeant Hickey was asked again whether he received any money for signing the forms, and he replied, “no, definitely not.” He was asked whether he was politically motivated in signing the forms, and he replied,

“No, I was not, I am not a member of any illegal organisation, I didn’t get any money. I don’t know why I did it.”

17.4.4 Commissioner Callinan gave evidence in relation to the interview which he conducted with Sergeant Hickey after his arrival in Navan Station. The notes of this interview – which Finbarr Hickey signed – record that Sergeant Hickey stated as follows:

“I met him [Leo Colton] in O’Carroll’s pub a few days before I signed the first passport forms for him. It was some time in January 1995. He told me he would drop up to the station with a passport form to be signed for a friend of his. I signed no problem. I think it is the Jimmy Fox passport I was asked about.”

17.4.5 He went on to say in the interview that Leo Colton had the passport forms, the accompanying photographs and the birth certificates with him. The following exchange then occurred in the interview:

**“Question** What did Leo Colton tell you the passports were for?

**Answer** I suspected there was something wrong with them but I never challenged him about it. I knew they were funny but I definitely did not challenge him about it. I do not know why.”

17.4.6 I will return to the issue of whether Sergeant Hickey knew that the applications were “funny” below.

17.4.7 On 30<sup>th</sup> September 1998, Leo Colton was arrested at his home and also brought to Navan Garda Station. Finbarr Hickey was asked was he prepared to confront Leo Colton with the allegation that he, Colton, had supplied the passports. Commissioner Callinan told me that he and Detective Inspector O’Mahony brought Finbarr Hickey from the room in which he was being interviewed to the room in which Leo Colton was being interviewed. Commissioner Callinan said that he did not enter the room and did not see the exchange which took place. Assistant Commissioner O’Mahony did enter the room with Finbarr Hickey. What transpired was recorded in a memo made by one of the Detectives interviewing Leo Colton at the time – Detective Garda James Hanley. Mr Hanley (now retired) confirmed to me in evidence that he made the following note of the exchange between Finbarr Hickey and Leo Colton:

“FH: Leo, I am in deep shit, deep shit. Tell the truth about the passport application.

LC: I don’t know what you are talking about.

FH: Please, Leo, I am in deep, deep shit. You know you gave me these application forms. I didn’t know they were for the Provos.

LC: I don’t know what you are talking about. You are away with the fairies.”

17.4.8 That was the end of the exchange and Detective Inspector O’Mahony and Sergeant Hickey left the room. Mr Hanley’s recollection as to the demeanour of Mr Hickey and Mr Colton during the course of this confrontation was as follows:

“My memory is that Finbarr Hickey was [...] a timid type of a person, whereas Leo Colton was not – he wasn’t perturbed or he wasn’t unduly concerned about the confrontation.”

17.4.9 Assistant Commissioner O’Mahony said that Finbarr Hickey’s demeanour was “one of the abiding memories I had of the confrontation.” He said:

“He had agreed to confront Leo Colton in relation to what he had been saying, alleging against Leo Colton, and when he entered the room I suppose I noted that Finbarr

adopted, I suppose, a very – he didn't – I would have expected him to look at Leo Colton when he was accusing him in the eye. He didn't do that. He put his head down and I thought the confrontation was just, I suppose, very meek. That was my memory of it."

17.4.10 When it was put to him that his demeanour, when he confronted Colton, was described as meek, and one might have expected that in the circumstances he would be raging at Mr Colton, Finbarr Hickey explained this in the following terms:

"Well, my world was crashing down around me at that particular time. I was in a state of shock, my world was crashing down around me."

17.4.11 Then Detective Superintendent Callinan and then Detective Inspector O'Mahony conducted a further interview with Finbarr Hickey at this stage. They put to him that Leo Colton had said that he, Hickey, was trying to get Mr Colton to take the rap. Mr Hickey replied:

"No, most definitely not. As I already told you, I met him after the application came back from the Passport Office to state that there was something wrong with the application. I told him there was something wrong with the application. I did not get any answer from him. I spoke to him in O'Carroll's Pub. I met him a couple of times after that and I said it to him. He never answered me. This was around the time there was a question – mark over the application."

17.4.12 It was put to Finbarr Hickey in evidence before the Tribunal that in the course of one of Leo Colton's interviews, Mr Colton had suggested to the Garda Detectives interviewing him that Finbarr Hickey may have signed the passports for money and told them to ask Mr Hickey about his finances. In response, Finbarr Hickey said that he had no financial troubles at that time. Even though he had separated, he was in a position to pay maintenance to his wife and buy a new house for himself. In this regard, he told the Tribunal that he used the compensation which he received in respect of his injuries in the car accident referred to above as a deposit for his house. He also said that he had no difficulty paying the mortgage at the time because of the overtime payments he was receiving as a result of the policing of the border during the BSE crisis.

## **17.5 – Comments of a Note Made by the Investigating and Interviewing Detectives**

17.5.1 The Tribunal also heard evidence from five other detectives who had an involvement in interviewing either Finbarr Hickey and/or Leo Colton in Navan Garda Station. They put into evidence various memoranda of interview and statements. I do not consider it necessary to recite

all of the memoranda of interview and statements in full in this Report. However, I do think it worth citing a number of comments made by these officers in the course of their evidence.

17.5.2 Detective Superintendent Dominic Hayes, then a Detective Sergeant in the National Bureau of Criminal Investigation, told me that Finbarr Hickey “showed remorse” in the interview he conducted with him. When I asked him as to whether he had formed any judgment as to whether Finbarr Hickey was being truthful, he told me that he did believe that Finbarr Hickey’s version was truthful.

17.5.3 Similarly, James Hanley told the Tribunal that it was his impression that Finbarr Hickey was truthful as to how he had come to sign the passport application forms.

17.5.4 Gerard McGrath, who interviewed Finbarr Hickey twice and Leo Colton once, told me that he also believed that Finbarr Hickey was telling the truth. He described Mr Hickey’s demeanour through the process as “upset and embarrassed.”

17.5.5 Commissioner Callinan told me that he found Mr Hickey “to be quite forthcoming in the circumstances.” He said that Sergeant Hickey accepted “without question” that he had signed the forms. When asked whether he was satisfied that Mr Hickey had told the truth, Commissioner Callinan replied:

“As I said, insofar as we cannot put it any further, I accept Mr Hickey’s version of events is true until the point that the contrary is proved. And I make that judgment, Chairman, based on his co – operation and the fluency with which he answered questions and I do accept that some of the questions and some of those answers progressed in the currency of the interviews, which is not at all uncommon, but he was certainly helpful and he did cooperate and he didn’t refuse to answer questions and he didn’t have to rely on legal advice to say ‘no, I am not going to.’ So he did provide a version to us, and we had certainly – certainly I had no reason, and I think my colleague will tell you himself, we had no reason to doubt what he was telling us at the particular time. We couldn’t put it any further.”

17.5.6 Assistant Commissioner O’Mahony told me that he was:

“very, very happy from the investigation that he [Finbarr Hickey] did not have a knowledge of where those passports were going to or were going to [be] utilised.”

As is discussed further below, Assistant Commissioner O’Mahony gave similar evidence to the Special Criminal Court in relation to the sentencing of Finbarr Hickey.

## **17.6 – The Extent of Finbarr Hickey’s Knowledge as to the Irregular Nature of the Passport Applications**

17.6.1 In relation to the statement that Finbarr Hickey knew that the passport applications “were funny” but that he did not challenge Leo Colton about them, Mr Hickey initially denied this in evidence:

“A. I didn’t know there was something wrong. I just thought he was doing it as a favour for people and I was doing it as a favour for him.

Q. But you say here “I knew they were funny but I didn’t challenge him”?

A. No. See, I always said that I never said that. Like, they had in their statement saying I knew they were dodgy. Like, I have maintained from day one that I never said that.”

17.6.2 In further notes of the interview dating from late September 1998, Finbarr Hickey is recorded as having said: “I knew that the names on the passport forms were not the people that they were for.” When asked in the course of his evidence why he said this, he said that he did not understand why he had said it. Again, in further notes, he is recorded as having stated:

“I knew it was dodgy. I thought it had something to do with women. Colton was messing with women. I knew that they were dodgy. I thought that Colton was fixing up false identities for fellas who were messing with women. Nothing else.”

17.6.3 In his evidence, Finbarr Hickey reiterated that he never used the word ‘dodgy’. He noted that when a Garda takes down a statement, he doesn’t take it in the person’s own words: “the Gardaí have their own kind of a format for taking a statement. It is not taken down literally as the person takes it, as the person speaks it.” He acknowledged that the word ‘dodgy’ was in notes of interview that had been signed by him, but said that he definitely had not used that word. However, he then went on to accept that he may have used a similar word, and in subsequent evidence, indicated that he was more comfortable with the assertion that he had employed the word “funny”, and, in probability, had said this.

17.6.4 When it was put to him that the explanation that he thought Colton was fixing up false identities for people who were “messing with women” seemed somewhat farfetched, he replied that he was in a state of shock and did not know why he had said that. Later in his evidence, he said that this explanation “was just something I had said just to try and explain.”

17.6.5 Mr Hickey was asked whether, at any stage, he was suspicious of the fact that he may have been signing applications for false passports. His reply was, “[w]ell, not for the IRA.” He said that he was very surprised when he learned that some of the passports were in the possession of the IRA and said that he would not have associated Leo Colton with the IRA:

“If he [Leo Colton] was doing it for the IRA, he was only doing it for money, if he was doing it.”

17.6.6 Mr Hickey made the point that if he thought he was doing something ‘dodgy’, he would not have recorded the numbers of the relevant passport applications in the Passport Book, with his signature accompanying those entries, at Hackballscross Garda Station.

17.6.7 In the final statement made by Finbarr Hickey on 30<sup>th</sup> September 1998, he stated:

“In relation to these applications, I carried out no checks because I knew they were false identities.”

17.6.8 When this statement was put to him, he initially said that when he was signing the passports he did not think that they were false, but then said “I don’t know, I don’t know.” He then elaborated by saying that he knew he was “doing wrong by signing the forms with the person not being present.”

## **17.7 – The Conviction and Sentencing of Finbarr Hickey**

17.7.1 In May 2001, Finbarr Hickey pleaded guilty to four charges of uttering false documents before the Special Criminal Court in Dublin.

17.7.2 Assistant Commissioner O’Mahony confirmed to me that he told the Special Criminal Court that Mr Hickey had no association with illegal or subversive organisations, and that at the time he had signed the passport applications, he had severe personal problems, and that he had been approached by a former colleague who asked him to do a favour. He confirmed that he told the Special Criminal Court that Finbarr Hickey had played an integral part in the crime, but was not the main instigator. He elaborated upon this in his evidence to me, stating that:

“The crime could not have been committed without Finbarr Hickey, but [...] my solid belief from all the circumstances of the investigation [was] that he was not the main player.”

17.7.3 Mr Hickey told me that he was not expecting a custodial sentence but the Special Criminal Court took the view that a custodial sentence was appropriate. The Court sentenced Finbarr Hickey to one year’s imprisonment, which Mr Hickey served at the Curragh Prison in County Kildare.

### **17.8 – The Request made of Finbarr Hickey to Provide Evidence in Other Prosecutions Arising from the Passports Affair**

17.8.1 Assistant Commissioner O’Mahony told me in evidence that he and Detective Chief Superintendent Camon visited Finbarr Hickey in The Curragh to ask him to give evidence in the upcoming prosecution of Jimmy Fox in respect of the false passport in his possession, and also in a possible prosecution of Leo Colton. Assistant Commissioner O’Mahony said that this visit took place on 31<sup>st</sup> October 2001 and that the trial of Jimmy Fox was scheduled for January 2002. In his note of that meeting, Assistant Commissioner O’Mahony recorded that Finbarr Hickey agreed to think about it, but said that he was afraid of Leo Colton, and that he would have to go back to Dundalk when his sentence was finished and that Leo Colton had political connections. Assistant Commissioner O’Mahony told me that he did not know the reason why Finbarr Hickey was afraid of Leo Colton. His recollection was that Detective Chief Superintendent Camon and he visited the prison again to follow up on this initial meeting, but that Finbarr Hickey would not see them on this second occasion.

17.8.2 In his evidence, Finbarr Hickey confirmed that he had been visited by Detective Chief Superintendent Camon and then Detective Inspector O’Mahony, but disputed Detective Inspector O’Mahony’s version of that meeting. He said that he did not agree to think about giving evidence, but said straightaway that he would not give evidence. He also stated that they did not ask him to give evidence against Leo Colton, but only against Jimmy Fox. However, as his evidence progressed, his position shifted in this regard, and he ultimately told me that the two Garda officers may also have mentioned giving evidence against Leo Colton “as an afterthought.” He clarified that the meeting was “mainly” about Fox but “it is possible they could have just thrown about Colton in.” Finbarr Hickey was asked why he was or might have been reluctant to give evidence against Leo Colton. He replied:

“Because the whole thing was done and dusted. I was after losing everything. I was in jail. I wanted just to forget about the matter. I didn’t want this continuing on for another couple of years, waiting for Colton’s trial to come up and waiting for another couple of years. I just wanted to get out of jail and finish it. That is all I wanted.”

17.8.3 He denied that Leo Colton had any kind of hold over him or that he was doing Leo Colton’s bidding.

17.8.4 He subsequently explained to me the devastating effect this passports affair and conviction has had on his life:

“I lost my job, pension, house, everything. I lost everything over it. It did effectively ruin my life.”

17.8.5 It was put to Mr Hickey by Counsel for Leo Colton that he had not “once scintilla of corroboration” in respect of his allegation that Mr Colton asked him to sign the passport application forms. Finbarr Hickey confirmed that he had no corroborating evidence. When it was put to Mr Hickey by Counsel on behalf of the PSNI that he was a vulnerable person and that persons unknown to the Tribunal might easily have put pressure on him to sign the application forms, he denied that this was the case.

17.8.6 Mr Hickey told the Tribunal that in the last 10 or 12 years, presumably since his release from prison, he has only laid eyes on Leo Colton about three or four times and that he had never spoken to him on these occasions.

## **17.9 – The Assessment of Finbarr Hickey’s Evidence in Relation to the Passports Affair**

17.9.1 I propose to reserve my final assessment of Finbarr Hickey’s evidence as to his role in the procurement of false passports until after I have considered Leo Colton’s evidence in the next chapter. At the conclusion of the next chapter, I will set out my final view in respect of this matter.

17.9.2 At this stage, however, I think it appropriate to make three observations.

17.9.3 Firstly, it is clear that when he was arrested in late September 1998, the then Sergeant Hickey acknowledged that he had a level of awareness that there was something irregular about the passport application forms that he was allegedly asked by Leo Colton to sign. His evidence

before this Tribunal shifted somewhat on this point. He initially denied having said what is recorded in the 1998 memoranda and statements, but then accepted that he may have said that he knew the passports were “funny”, but not “dodgy.” He characterised the explanation that he thought the passports were for “fellas” messing with women in Northern Ireland as just some sort of explanation that he had come up with on the spot.

17.9.4 I think the evidence does clearly establish that Finbarr Hickey knew that the passport application forms that he was being asked to sign were irregular, and that the passports were intended for some type of irregular purpose. One might have thought that, in such circumstances, he would have immediately considered the possibility that they were intended for the IRA, but Mr Hickey has been consistent throughout his arrest, interviews and evidence to the Tribunal that he never thought this was the case. Moreover, I take due note of then Detective Inspector O’Mahony’s comments to the Special Criminal Court and his evidence to this Tribunal that he was very, very satisfied that Finbarr Hickey did not know that the passports were destined for the IRA.

17.9.5 Secondly, Finbarr Hickey’s evidence before the Tribunal on the question of whether he was asked by Detective Chief Superintendent Camon and Detective Inspector O’Mahony to give evidence against Leo Colton also shifted over the course of his appearance before me. While initially denying that he was asked to do so, he subsequently acknowledged that this may have been thrown in “as an afterthought” to the request to give evidence about Jimmy Fox. I accept Assistant Commissioner O’Mahony’s evidence that Finbarr Hickey was asked to give evidence against both men. It may well be the case, given that Jimmy Fox’s trial was imminent, that he was first asked to give evidence against Mr Fox, but, particularly in the light of the shift in Finbarr Hickey’s evidence, I am in very little doubt but that he was also asked to give evidence against Leo Colton.

17.9.6 I find his explanation as to why he would not give evidence against Leo Colton unconvincing. He denies having told Detective Inspector O’Mahony that he was afraid of Mr Colton or afraid of his political connections, and told the Tribunal that he simply had had enough of the whole affair and wanted closure in respect of it. Given the devastating effect the matter has had on Mr Hickey’s life, one cannot help but wonder as to what underlies his lack of desire to see justice done.

17.9.7 Thirdly, Mr Hickey gave evidence that he was a “soft” or “easygoing” person and that Leo Colton knew precisely the right person to approach. I was struck by the fact that in the evidence I

heard from the two members of An Garda Síochána who arrested Finbarr Hickey and the other detectives who conducted the interviews in Navan Garda Station, a very strong view emerged that Finbarr Hickey’s version of events was believed.

17.9.8 A number of his Garda colleagues who served with him in Dundalk also gave evidence that Finbarr Hickey was a gullible or naïve person, and that this ultimately explains his involvement in the passports affair. Retired Detective Garda Terry Hynes expressed the view that Finbarr Hickey had “a malleable personality” and that there would have been no malicious intent in his signing the passport application forms. Retired Detective Joe Flanagan told me that it was his opinion that Finbarr Hickey was telling the truth about the passports affair. Sergeant James Kilcoyne, currently serving in Carlingford, County Louth – had served in Dundalk from 1991 to 1994. He described Finbarr Hickey as “a very decent fellow” but added that he would be “gullible enough.” Regina McArdle, who in 1989 was a Garda in Unit ‘C’, the same Unit as Finbarr Hickey, had a slightly different perspective on Finbarr Hickey in terms of his qualities as a policeman. She said that she considered him a good policeman and said that:

“he seemed to have a sixth sense almost in terms of spotting if somebody was a little bit, just not right, we’ll say, in stopping a car, and he had a great eye, he could remember faces and, from that point of view, I though he was a good policeman.”

In a similar vein, serving Garda Inspector Leo McGinn recalled that Finbarr Hickey was “operationally” a very good policeman and was very good with people, though not great with paperwork. He added that there was an “innate cuteness” about Mr Hickey as well.

17.9.9 Obviously, the observation that he could remember faces is of some interest given that Mr Hickey acknowledged that he had seen photographs of Jimmy Fox, but did not recognise the photograph of Mr Fox which he alleges was presented to him by Leo Colton.

17.9.10 Finally, retired Detective Bernard McGrath gave what I considered to be very genuine and frank evidence in relation to Mr Hickey. He told me that he was “amazed” and “shocked” when he heard of Sergeant Hickey’s involvement in the passports affair, and added, “I’d say he was strapped for cash.” He said that at the time, Mr Hickey “seemed to be living beyond his means” and was “socialising a lot more than a man with his income and family and responsibilities should have been I suppose.” He did add, however, that if Mr Hickey had told the Tribunal he had received nothing in return for signing the forms, he had no evidence to contradict Mr Hickey in this regard.

## **17.10 – Intelligence Information Concerning Finbarr Hickey**

17.10.1 Mr Hickey’s name has also been associated with the allegation of collusion in two strands of intelligence received from the PSNI.

17.10.2 The first of these was put into evidence in the Tribunal in précis form and stated as follows:

“Subject disclosed the following information to uniformed police in June 2009:

Garda Sergeant Finbarr Hickey who was recently charged in the Republic of Ireland with Jimmy Fox re passport fraud was responsible for the passing of information to PIRA, which resulted in the murder of Chief Superintendent Breen and Superintendent Buchanan.

**Comment:** Subsequently, when questioned by CID over the information he had given to uniformed police, he denied giving the information and was released without charge.”

17.10.3 The information was apparently given to uniformed PSNI officers. As I commented at the time at which this précis was put into evidence, it appears to me that the source of the information resiled from it as soon as he was interviewed by PSNI Detectives from CID. In these circumstances, I am of the view that it would be unwise to attach any weight to this information.

17.10.4 The second strand of intelligence identifying Mr Hickey arose in the context of the “live and of the moment” intelligence, put into evidence by Detective Superintendent Roy McComb and Assistant Chief Constable Drew Harris of the PSNI towards the end of the Tribunal’s public hearings. Strand no. 3 of this intelligence provides:

“Since the 1970s a number of AGS and Republic of Ireland (ROI) Customs Officers have provided information to PIRA, in particular, forewarning of searches and arrests. In this connection, Garda Hickey’s name has been mentioned as has that of [another Garda whose name has been redacted].”

17.10.5 This intelligence was assessed by the PSNI as being “reliable, accurate and credible.” I deal with the “of the moment intelligence” in greater detail in Chapter 21. However, for the moment, it is worth observing that the allegation against Mr Hickey in this précis is in quite

vague and unspecific terms and the allegation is not connected with the deaths of Chief Superintendent Breen and Superintendent Buchanan.

### **17.11 – The Issue of Whether Finbarr Hickey was Present in Dundalk Garda Station on 20<sup>th</sup> March 1989**

17.11.1 When Finbarr Hickey initially met with the Tribunal’s legal representatives during the Tribunal’s private investigation phase, he told the Tribunal that he thought that he was working on 20<sup>th</sup> March 1989 on the shift which commenced at 2pm. In this regard, he said that he had a recollection of a panic in Dundalk Garda Station because Chief Superintendent Nolan could not be found, and there was a fear that he may have been with Chief Superintendent Breen and Superintendent Buchanan. This resonates with evidence given by a number of other Garda Officers serving in Dundalk on that date, which is outlined at section 5.3 of this Report. Mr Hickey’s recollection was quite specific in this regard, in that he recalled that Chief Superintendent Nolan had in fact been out visiting a man in relation to renting a house.

17.11.2 When an application was made on Mr Hickey’s behalf for legal representation before this Tribunal on 30<sup>th</sup> September, 2009, his legal representative stated that:

“Finbarr Hickey, the Applicant, was a serving Sergeant in An Garda Síochána. He was on duty at Dundalk Garda Station on the date that RUC Chief Superintendent Harry Breen and RUC Superintendent Bob Buchanan attended a meeting there and were assassinated on their return from that meeting.”

17.11.3 Mr Hickey provided a formal statement to the Tribunal on 26<sup>th</sup> July 2010, and in it he indicated in that statement that he was on duty from 2 pm. to 10 pm. A note of intended evidence was signed by Mr Hickey on 20<sup>th</sup> May 2011 and again he reiterated that he was serving from 2 pm. to 10 pm on the day in question.

17.11.4 However, on 6<sup>th</sup> March 2012, Mr Hickey provided a further statement stating as follows:

“I wish to make this statement, supplemental to my earlier statement to the Tribunal made on the 26<sup>th</sup> July, 2010. When I was originally interviewed by the Tribunal, I did not have access to any of the material in relation to those Gardaí who were scheduled to be on duty on the 20<sup>th</sup> March, 1989. I could not recollect at all what I was doing on that date, but I believed that it was possible that I might have worked the 2 pm. to 10 pm. shift as I had some memory of there being concern about the Chief Superintendent not being in his office.

Since the Tribunal has embarked on public hearings it has come to my attention that all the evidence before the Tribunal is that it was the ‘A’ Unit that was working the 2 pm. to 10 pm. shift on the 20<sup>th</sup> March, 1989. I was attached to ‘C’ Unit in 1989, and had been in ‘C’ since 1983, and therefore was not attached to the ‘A’ Unit. I believe that the evidence is that all members that were on duty from 2 pm. where interviewed by Assistant Commissioner O’Dea and Detective Inspector Kevin Carty in the days following the murders. I know that I was never interviewed by either of these members. As I was not attached to the ‘A’ Unit, I was not interviewed by Assistant Commissioner O’Dea, nor Detective Inspector Carty, and was not listed in Assistant Commissioner O’Dea’s Report as having worked the 2 pm. shift that day, I am now sure that I was not working the 2 – 10 shift on the 20<sup>th</sup> March 1989. I further don’t believe that I worked the 6 am. to 2 pm. shift, as I understand that the evidence from at least five members of the ‘D’ Unit is that the ‘D’ Unit worked that shift. I never worked on the ‘D’ Unit. I believe that my unit, the ‘C’ Unit, was the resting unit that day.

I understand that there has been evidence before the Tribunal that members from other units, including the ‘C’ Unit, were called into the station on overtime after the murders, and I now believe that I was called into the station in the afternoon after the murders. This explains my memory of working that day. I have no memory whatsoever of Superintendent Buchanan and Chief Superintendent Harry Breen visiting the station on the 20<sup>th</sup> March, 1989.”

17.11.5 It is the case that Sergeant Hickey is not mentioned in Assistant Commissioner O’Dea’s Report as someone who was working the 2 pm to 6 pm shift.

17.11.6 In his evidence to this Tribunal, Mr Hickey confirmed the content of this supplemental statement. He said that by the time he arrived at the station, having been called in on overtime, Chief Superintendent Nolan was still missing. However, he explained that he lived close to the station and that, therefore, he would have arrived not too long after news of the ambush on the Edenappa Road had been received. His recollection is that someone called to his door, told him what had happened and asked him to come in to do overtime.

17.11.7 Mr Hickey was asked whether he remembered hearing any concerns or rumours circulating in the immediate aftermath of the murders suggesting that there was a mole in Dundalk. He stated that he did hear a rumour that Leo Colton:

“had some knowledge of it, that he had, you know, that he knew something about it.”

However, he subsequently clarified in his evidence that he was simply referring to the fact that there was talk in Dundalk Garda Station of Leo Colton having seen a car which was potentially connected to the ambush.

17.11.8 As already noted above, Regina McArdle was in the same unit as Finbarr Hickey, namely Unit ‘C’. She confirmed to me that she was not working on 20<sup>th</sup> March 1989. She recalls that she was actually out with her father, and when they returned her mother told her that Dundalk Garda Station had telephoned to request that Regina come in to work overtime. She did not recall who else from her unit was called in on overtime that day but commented that,

“the resting unit would have been the first unit that was called in, for obvious reasons; they were available.”

17.11.9 John Daly, a uniform Garda in 1989, confirmed that he was on Unit ‘A’ and worked the 2 pm to 6 pm shift on Monday, 20<sup>th</sup> March 1989. He confirmed in evidence that he did not see Finbarr Hickey working that day. Garda David Sheridan also confirmed that the ‘A’ Unit was working the 2 pm to 10 pm shift, and that Finbarr Hickey would not therefore have been working that shift.

17.11.10 Serving Sergeant Vincent Jackson told the Tribunal that he was on ‘D’ Unit on 20<sup>th</sup> March 1989, and that this unit had been on the 6 am to 2 pm shift on that date. He said that the roster was so structured that one could tell from one Christmas what shift one was going to be on the next Christmas day. He explained to me that the ‘D’ Unit were on the Monday morning shift on 20<sup>th</sup> March 1989, from 6 am to 2 pm, the ‘A’ Unit were on the afternoon shift from 2 pm to 10 pm and the ‘B’ Unit would have followed the ‘A’ Unit. The ‘B’ Unit would therefore have commenced on the night of Monday, 20<sup>th</sup> March 1989 at 10 pm. According to his assessment of the roster, the ‘C’ Unit, to which Finbarr Hickey was attached, would have been resting and therefore was not due to be back on duty until the night of Wednesday, 22<sup>nd</sup> March 1989.

17.11.11 Serving Sergeant Donal Smyth also gave authoritative evidence in relation to the roster system. Like Garda Jackson, he too said that the roster was so structured that one would know from one Christmas to the next what shift one would be working. As noted in earlier chapters, An Garda Síochána informed the Tribunal that the Station Diary for 20<sup>th</sup> March 1989 cannot be located. However, the diary from 7<sup>th</sup> March 1989 indicates that Unit ‘C’ was resting for the Sunday, Monday and Tuesday of that week. Sergeant Smyth explained that this therefore meant

that the same unit would be resting for the same period two weeks thereafter, i.e., from Sunday 19<sup>th</sup> March 1989 until Wednesday 22<sup>nd</sup> March 1989. He confirmed that the ‘D’ Unit would be due back on nights on Wednesday, 22<sup>nd</sup> March 1989.

### **17.12 – The Conclusion in Relation to Evidence as to Finbarr Hickey’s Presence in the Station on 20<sup>th</sup> March 1989**

17.12.1 On the basis of all of this evidence, I am satisfied that Finbarr Hickey was not scheduled for duty on Monday, 20<sup>th</sup> March 1989. His recollection is that he was called in on overtime duty after the ambush on the Edenappa Road, and this is consistent with the evidence of Regina McArdle, who was on the same unit as Finbarr Hickey. Mr Hickey’s recollection is that there was still a concern about the whereabouts of Chief Superintendent Nolan when he arrived at Dundalk Garda Station. This suggests that he must have arrived at the station quite quickly after the incident, but he has explained that he lived close to the Garda Station and therefore I am inclined to accept his evidence in this regard.

17.12.2 Of course, the fact that one was not scheduled for duty does not mean that a police officer may not, for another reason, have occasion to be in his station during the course of any given day. In this regard, I bear in mind that when Detective Superintendent Tom Connolly gave evidence in relation his investigation conducted after 20<sup>th</sup> March 1989, he confirmed that he had directed that statements be taken from members of An Garda Síochána who were “on duty or otherwise” from 2pm to 8pm. He explained to me that “a member could be in the station and not on duty for some reason or another.”

17.12.3 It is entirely possible that Finbarr Hickey was in the station earlier in the day. However, this is speculative and there is in fact no evidence to suggest that Finbarr Hickey was in the station before he was called in to carry out overtime work in the aftermath of the incident on the Edenappa Road.

17.12.4 Taking all this evidence into account, I am satisfied on a strong balance of probabilities that Finbarr Hickey was not in Dundalk Garda Station on 20<sup>th</sup> March 1989 before Chief Superintendent Harry Breen and Superintendent Buchanan were killed on the Edenappa Road. On this basis, I am satisfied that he was not in a position to have colluded in their murders by providing the IRA with information that the two officers were expected, or had arrived, at Dundalk Garda Station that afternoon.

## Chapter 18

### The Career and Activities of Retired Garda Sergeant Leo Colton

#### 18.1 – An Overview of the Career of Leo Colton

18.1.1 Leo Colton is from Belturbet, County Cavan. He joined An Garda Síochána on 17<sup>th</sup> April 1958. He initially served in Buncrana, and was then transferred to Letterkenny, both in County Donegal. On 18<sup>th</sup> March 1966, he was promoted to the rank of Sergeant and transferred to Ballinrobe, Co. Mayo. In 1972, he was transferred to Dundalk Garda Station and served the remainder of his Garda career in that station. He received five commendations in the course of his policing duties. At different points in his service, he served in all four of the uniform Garda units in Dundalk Station. As of March 1989, he was the Sergeant in Unit ‘A’.

18.1.2 Retired Sergeant Colton’s evidence in relation to the events of 20<sup>th</sup> March 1989, and in particular, in relation to his having seen a car driving through the forecourt of the station on the afternoon of that date, has already been set out in section 4.2 of this Report. Ultimately, I will return to the events of 20<sup>th</sup> March 1989 at the conclusion of this chapter.

18.1.3 In the course of the Tribunal’s hearings, I heard evidence in respect of a number of alleged instances of wrongdoing on the part of Leo Colton, dating from both during and after his career in An Garda Síochána. These are:

- (i) allegations of wrongdoing made by retired Sergeant Thomas Byrne;
- (ii) the instigation of disciplinary proceedings against Sergeant Colton in respect of his certifying that Brian Ruddy was eligible for a trade plate (this has already been touched on, to some extent, in section 11.12); and
- (iii) the alleged role of Leo Colton in the making of false applications for passports, which resulted in three false passports ending up in the possession of active Provisional IRA members.

18.1.4 It is the last of these matters which appears to have resulted in Mr Colton’s name becoming associated with the allegation of collusion in the deaths of Chief Superintendent Breen and Superintendent Buchanan. As already noted in Chapter 13, the second edition of

*Bandit Country*, published in 2000, made reference to Garda Y who, Harnden alleged, was “working for the IRA in the border area between 1985 and 1991.” It was also specifically alleged in the book that Garda Y betrayed Tom Oliver to the IRA. The book also stated that RUC Special Branch told Dublin about Garda Y’s role:

“and he was quietly moved to a station where he would not be dealing with sensitive information. He subsequently retired to draw his Garda pension and worked for an IRA member in North Louth.”

In his interview with Detective Chief Superintendent Camon and then Detective Inspector Kirwan, Toby Harnden indicated that the name of Leo Colton:

“has recently been mentioned to me in the context of the passports being given to the IRA. Looking in hindsight he must also now be a suspect.”

18.1.5 I observe at the outset that there is nothing in the career history of Leo Colton which fits with the description in *Bandit Country* of Garda Y being:

“quietly moved to a station where he would not be dealing with sensitive information.”

Sergeant Colton remained in service in Dundalk Garda Station from 1972 until his retirement in May 1991. Subsequent to his retirement, he did, however, take up employment with an amusement arcade owner by the name of Jim McCann in Dundalk. As will be explored further below, there were certainly some members of An Garda Síochána who were of the view that Jim McCann was associated with the Provisional IRA.

18.1.6 I now propose to deal with each of the alleged instances of wrongdoing referred to above in turn.

## **18.2 – The Evidence of Retired Sergeant Thomas Byrne**

18.2.1 Thomas Byrne was a Sergeant in Dundalk from 1983. He was a Sergeant in Unit ‘B’, together with the Sergeant in charge of that unit, John Coggins. He remained in Unit ‘B’ throughout his service. He did not believe that he was on duty on 20<sup>th</sup> March 1989. He told the Tribunal that at a certain point in his service, he was joined in Unit ‘B’ by Sergeant Leo Colton. He suggested that Sergeant Colton had been in Unit ‘C’ but was not running the unit properly and was transferred so that Sergeant Brady could keep an eye on him. In effect, he said, Sergeant

Colton swapped units with Sergeant Coggins. The transfer of Sergeant Colton from Unit ‘C’ is consistent with Finbarr Hickey’s evidence that he and Sergeant Colton were on the same unit for a number of years in the 1980s, before Sergeant Colton was transferred to a different unit.

18.2.2 Retired Sergeant Brady said that as time went on, a number of wrongs associated with Sergeant Colton came to his notice. He indicated that he found his position untenable. He complained, insisted that Sergeant be transferred to another unit, and this occurred. It is certainly the case that by the time of the ambush of March 1989, Sergeant Colton was no longer on Unit ‘B’ but had moved to Unit ‘A’.

18.2.3 Retired Sergeant Brady said that he indicated that he was frustrated with the activities of Sergeant Colton and decided to take some action in this regard. He explained that he wrote on a blackboard in the Parade Room, under the heading “who was responsible?”, 12 instances of what he described as criminal and other despicable conduct, all of which had been linked by hearsay or circumstance to Sergeant Colton. The blackboard was wiped clean on three occasions; after the first two of these occasions, he re – wrote the message. He was ultimately told to desist by Superintendent Frank Murray (now deceased).

18.2.4 I do not intend to list each of the matters raised on the blackboard here, but rather will summarise them in general terms and identify anything of particular relevance. The first was an allegation of shoplifting; the second, an allegation of the theft of money from the pool table; another was a suggestion of the improper use of the patrol car for importing contraband; another involved the misappropriation of a file on gaming from Unit ‘B’’s locker. In relation to this last item, retired Sergeant Brady explained that the file in question related to an application by him to the Superintendent to have cash available for the purpose of inspecting the gaming machines in Jim McCann’s amusement arcade so as to ascertain whether those machines complied with the relevant legislation. The file was taken from the Unit ‘B’ locker, to which all members of the unit had access. This is the most relevant allegation, as it suggests a possible relationship between Leo Colton and Jim McCann prior to Sergeant Colton’s retirement.

18.2.5 Finally, a further allegation was made questioning “Who was doing what in the Tax Office?”. Retired Sergeant Brady explained that the Tax Office was approximately 200 metres from the Garda Station and all the Gardaí in Dundalk Station had access to the Tax Office in order, for example, to ascertain the owner of a car with a given vehicle registration number. He said that there was a key to the Tax Office kept in the Dundalk Garda Station Radio

Room. The Tax Office held information both in respect of vehicle registration numbers and driving licence numbers. Retired Sergeant Brady expressed the view that Leo Colton took the key to go into the Tax Office at night with an unnecessary degree of regularity. He considered that the extent to which Sergeant Colton was going into the Tax Office was suspicious “because he wasn’t an active policeman in relation to prosecutions.”

18.2.6 Throughout his evidence, Retired Sergeant Byrne emphasised that the allegations which he had put on the blackboard were based on hearsay.

18.2.7 In his evidence, Leo Colton said that he recalled these matters being written up on the blackboard on one occasion. He said he was not the person who had erased them. Mr Colton denied the allegation in relation to the money from the pool table going missing, and expressed the view that he had never seen the alleged file in relation to Jim McCann’s gaming machines, and did not think such a file ever existed. He said that Sergeant Byrne had a vendetta against Jim McCann because Jim McCann refused to give his son a job, and he described Sergeant Byrne as “a very vindictive type of person, cowardly.” Mr Colton confirmed that he often went into the Tax Office. He explained that by going to get the necessary details himself at night, this saved time during the day when Tax Office personnel would have to attend to his queries. He denied ever having smuggled any goods across the border and also denied the allegation of shoplifting.

18.2.8 Given the admission of retired Sergeant Byrne that these allegations are all based on hearsay or speculation, and given the somewhat unusual circumstances in which these allegations were originally aired, I have formed the view that I should attach no weight to these allegations in my assessment of Sergeant Colton’s activities as a member of An Garda Síochána. It was very clear to me that there was a strong element of personal animosity between retired Sergeant Byrne and retired Sergeant Colton. This has the capacity to colour both individuals’ versions of events and I therefore simply consider it wise to make no judgment on this matter and not to take it into account.

### **18.3 – Disciplinary Proceedings Initiated Against Leo Colton**

18.3.1 The circumstances and nature of the disciplinary proceedings initiated against Leo Colton in 1991 are set out in Section 11.12 of this Report. As noted in that section, on 15<sup>th</sup> June 1990, Sergeant Colton provided a letter in support of an application for a trade plate certificate by Brian Ruddy. Sergeant Colton certified that Mr Ruddy was a “garage owner and dealer in cars, heavy and light commercial vehicles.” Chief Superintendent Burns took the view that Brian Ruddy was not a bona fide garage owner, and was in fact an associate of

leading members of the Provisional IRA in the Dundalk area. Mr Ruddy had been deeply involved in trading the illegal cattle hormone ‘angel dust’, and had a conviction in this regard. Sergeant Colton was accused of “falsehood or prevarication” in breach of the disciplinary regulations, by virtue of the content of the letter of 15<sup>th</sup> June 1990. As stated in section 11.12 of this Report, a sworn inquiry in respect of the alleged breach of discipline was due to take place on 21<sup>st</sup> May 1991. However, Sergeant Colton retired on 12<sup>th</sup> May 1991, having been off on sick leave from 23<sup>rd</sup> April 1991, and the inquiry never took place.

18.3.2 In his evidence, Leo Colton indicated that although he was served with notice of an investigation in relation to the trade plate certificate issue, he never received the formal papers putting him on notice of the date of the sworn inquiry. The documentary evidence seems to confirm that this is correct. When asked whether he had retired so as to avoid the disciplinary proceedings, Mr Colton claimed that this was not the case. He explained that he was admitted to hospital in April 1990, and after this, had had enough of his career as a police officer and in particular, of the anti – social hours.

18.3.3 Leo Colton told me that he called to Brian Ruddy’s premises on behalf of his son and his son’s friend, who were looking for a small tow ambulance that would hook on to the back of a car to tow broken down vehicles. He said he never met Brian Ruddy prior to this occasion and “never knew him, never knew anything about him.” Brian Ruddy did not have what he was looking for but during the course of his visit, Brian Ruddy asked him what the procedure was for getting a trade plate. Retired Sergeant Colton told me that there were a couple of trucks and a couple of vans there, and a large old timber shed in which a mechanic was working on a van. He did not consider it necessary to make any further inquiries. On the basis of what he had seen, he was satisfied that Mr Ruddy was entitled to a trade plate.

18.3.4 When asked what was his reaction to the service of the documents indicating that there was to be an investigation, he replied:

“I just laughed, I didn’t say anything [...] because I thought it was a complete mickey mouse set up. It wasn’t a serious thing, as everybody is trying to proclaim.”

18.3.5 He elaborated that there was bad blood between Superintendent Frank Murray and Brian Ruddy, and that Superintendent Murray was using the disciplinary proceedings to get at Mr Ruddy. He subsequently qualified this evidence slightly by saying that, in fact,

Superintendent Murray was using Brian Ruddy to get at him. He said that Superintendent Murray was:

“A great visitor to a certain area out in Cooley, and he never wanted any of the personnel out there, the truckers, or that, to be prosecuted.”

18.3.6 He alleged that Superintendent Murray had asked Sergeant Colton not to prosecute certain truck drivers from the Cooley Peninsula in respect of road offences such as driving untaxed lorries, having no insurance, or having defective lighting or bald tyres. He claimed that Superintendent Murray did not like it when Sergeant Colton refused this request to “square the summonses” against these truck drivers. Superintendent Murray is deceased and therefore did not have the opportunity to respond to Mr Colton’s evidence.

18.3.7 This allegation was only made by Mr Colton, for the first time, in the course of his cross – examination. When asked why he had not put this information in his statement to the Tribunal, he replied:

“There is many a thing I could say that I didn’t put in my statement, many’s a thing. It’s all a private matter now.”

18.3.8 The Tribunal also heard evidence from Sergeant Paul O’Hanlon, who compiled a report in relation to Brian Ruddy’s application for a trade plate. He explained that the advantage for a garage owner in holding a trade plate was that the plate entitled him to drive any of the vehicles in his possession without having to tax each individual vehicle. Thus it was hugely advantageous financially, and also extremely convenient. Sergeant O’Hanlon inspected the address given in the application as being the address of the relevant premises, and indicated that there nothing on the site to suggest that a bona fide garage was located there. He also indicated that there was some question – mark over the ownership of the site. Sergeant O’Hanlon described Mr Ruddy as “a person that we kept an eye on locally.” It was suggested to Sergeant O’Hanlon in cross – examination by Counsel on behalf of Leo Colton that he had not inspected the right premises, and that Mr Ruddy had, in fact, rented a shed behind the house adjacent to the site inspected by Sergeant O’Hanlon.

18.3.9 I found Mr Colton’s attitude to the disciplinary proceedings initiated against him, and to the whole issue of his having certified Mr Ruddy as being eligible for a trade plate, surprisingly dismissive and even scornful. I found his explanation that the entire disciplinary

proceedings were initiated as some form of vendetta by the late Superintendent Murray – whether, as initially alleged, against Mr Ruddy or, as subsequently alleged, against Sergeant Colton – to be unconvincing. This explanation was espoused by Leo Colton for the very first time under cross – examination and had never been offered prior to that point in time. I am equally not convinced by his explanation that he never knew or heard of Brian Ruddy before the summer of 1990; I feel that Mr Ruddy’s involvement in the growth hormone trade, at the very least, would have been widely known to all Garda members in Dundalk prior to this date. On the whole, therefore, I did not find Leo Colton’s evidence in relation to this matter to be credible.

#### **18.4 – Leo Colton’s Response to the Allegations made by Finbarr Hickey in Relation to the Passports Affair**

18.4.1 Retired Sergeant Colton was arrested in relation to the passports affair on 30th September 1998 and brought to Navan Garda Station. His house was searched and, as I understand it, 10 blank driving licence forms and two blank passport application forms were found. At this stage, Sergeant Colton had been retired from An Garda Síochána for more than seven years. Throughout his Garda interviews in late September 1998, and throughout his evidence to this Tribunal, Leo Colton consistently denied that he had ever asked Finbarr Hickey to sign passport application forms for him. I do not think it necessary to repeat in full the contents of the memoranda of interview with Mr Colton dating from September 1988 (which he did not sign). Instead, I will refer to a number of relevant extracts.

18.4.2 In relation to the first interview, the first question Leo Colton was asked was whether or not he was married. He replied, “yes, I have two sons.” He referred to the sons by name and then continued, “this is nothing to do with them.” When it was put to him that this was a somewhat strange thing to say in that it suggested that he knew fully what the interview was about, he explained that at this stage he did know why he had been arrested. I note that one could draw from the phrase, “this is nothing to do with them”, an inference that it perhaps did have something to do with the person who made this statement, but I think this is attaching too much significance to the words and I am not inclined to draw such an inference.

18.4.3 In the course of his interview, Sergeant Colton dismissed Finbarr Hickey’s allegations against him as “rubbish.” He went on to say that the Gardaí should not believe anything that Finbarr Hickey says and stated, “Finbarr has his own troubles, why don’t you ask him?” He elaborated on this statement before the Tribunal, explaining that Finbarr Hickey was at the time “hitting the drug scene and the drink scene.”

18.4.4 Initially in his interviews in late September 1998, Mr Colton said that he never visited Finbarr Hickey at Hackballscross Garda Station and that, “I was never in Hackballscross since I retired.” In his evidence to this Tribunal, he also stated that after he retired from An Garda Síochána, he did not keep in contact with Finbarr Hickey. At another point in his evidence, he said “I had no dealings whatsoever [with Finbarr Hickey]. When Finbarr Hickey was out in Hackballscross, I didn’t even know what he was doing out there.”

18.4.5 However, in one of his later interviews in September 1998, he is recorded as having said:

“I might have called in to see him at the Hack if I was passing, but he never signed anything for me.”

18.4.6 Mr Colton was asked, during the course of his evidence to the Tribunal, to explain this apparent shift in his position during the course of his interviews by An Garda Síochána. He replied,

“I have no recollection of ever calling in to see him. [...] I said there I might have called. I didn’t say I did call.”

When asked to confirm whether or not he called to Hackballscross, he replied “I did not” and said that he “might have said it wrong” to the Gardaí during the course of his interview. Under cross – examination, he said “I said I might have” called in, but continued “but I have no recollection of calling, because I had no business to call.” He then clarified,

“[w]hat I am saying is, I might have called in, but I have no recollection of ever calling in, and I wouldn’t be calling in on a regular basis.”

18.4.7 I asked him why would he call in to see Sergeant Hickey at Hackballscross at all and he replied:

“Well, just on account of him being on the unit with me in Dundalk. I am not saying I did call in, but that might have been – just called in, bit of a craic, bit of chat.”

18.4.8 Mr Colton did confirm in his evidence that after his retirement, he drank in the same pub that Finbarr Hickey drank in “an odd time”, but that it “wasn’t a constant affair.” This is O’Carroll’s Pub in Dundalk.

18.4.9 There was a somewhat similar shift in Mr Colton’s evidence as regards the issue of whether Finbarr Hickey had, as Mr Hickey alleged, mentioned the fact that there was a problem with the ‘Kinsella’ passport to him after Superintendent Quinn had first raised the issue with Sergeant Hickey. In his initial evidence to the Tribunal, he said that he did not recall Finbarr Hickey coming to him at any stage to indicate that he (Hickey) had a problem with a passport. However, when it was pointed out to him in evidence that in the course of one of his Garda interviews in late September 1998 he had stated,

“he [Hickey] mentioned something to me about being investigated about a passport, he mentioned it to me, that’s all”,

18.4.10 Leo Colton replied, “I don’t remember that but probably might have done.” He elaborated that this,

“[m]ight have been just general conversation. I don’t know. I have no idea why he would bring it up.”

He said that he may have had a recollection of this when he was interviewed, but that he did not have a recollection of it now.

18.4.11 Mr Colton went on to reiterate on a number of occasions during his evidence to the Tribunal that although he did not recall discussing the passports with Finbarr Hickey, this might have occurred. Then, however, his recollection seemed to improve somewhat:

**Q.** Then, in the interviews, you acknowledged that Hickey did speak to you about being investigated in relation to a passport?

**A.** He mentioned about one passport.

**Q.** You can spot the difference between the two pieces of evidence, Mr Colton, can you? One, you say you never discussed it; and the second, you are saying he did mention a passport.

**A.** He mentioned a passport; he didn’t mention the passport.

**Q.** He mentioned a passport?

A. Yes.

Q. And can you recall anything else about that conversation?

A. No.

Q. Nothing at all?

A. Not a thing.”

18.4.12 Under cross – examination by Mr Hickey’s Counsel, Mr Colton’s recollection of the discussion about the passport seemed to improve further, as the following exchange illustrates:

“Q. You indicated under cross – examination by Mr Robinson just now, that you accept that Mr Hickey might have said something to you about a passport. You do accept that, do you?

A. Yes.

Q. And do you know when he said that to you?

A. I haven’t an idea.

Q. Did he say it to you in [O’]Carroll’s Pub?

A. That’s right.

Q. Because I think Mr Hickey gave evidence last week, and he said that he did mention to you that there was a problem with one of the passports you had asked him to sign, and that you said, “Oh, don’t worry about it”, do you remember that, Mr Colton?

A. The only thing he said to me was that – we were having general conversation – he says, “I am in a bit of trouble over issuing a passport.”

Q. Oh, so you do remember that?

A. Yes, I said that earlier on.

Q. And what else did he say?

A. He didn’t say anything else.

Q. And what did you say to him, “don’t worry about it”?

A. I can’t remember what I said to him.”

18.4.13 Mr Colton was then asked why Finbarr Hickey would mention to Mr Colton that he was in trouble over a passport. He replied:

“Well, we were just standing there having a pint in the middle of the floor. [...] Well, he wasn’t talking to anybody else, only me.”

18.4.14 I asked him why, if he had no dealings with Finbarr Hickey in relation to passport applications, would Finbarr Hickey have raised the issue with him. He replied:

“Well, we would be having general conversation, and I would say, “how are things going?” something like that. Then he’d say whatever, the pressure is on out in ‘Hackball’, the pressure is on I’m up in Dundalk, or whatever. But then he probably just said, “I have a bit of a problem with a passport”, that is all he said.”

18.4.15 He also told me that Finbarr Hickey may well have said this to other people as well; he did not know. He said that Mr Hickey may have been looking for a bit of consolation.

18.4.16 Mr Colton was asked in his evidence to the Tribunal to explain why he did not sign the memoranda of interview of late September 1998. He stated:

“I didn’t feel like signing them. I didn’t have to sign them. It was my statement.”

He also indicated that his solicitor had advised him to sign nothing in the solicitor’s absence.

18.4.17 When asked to explain why a number of blank driving licence forms and one or two passport application forms were found in his house, Leo Colton told the Tribunal that he was often asked by local people to assist them in filling out forms, and that the assistance he offered in this regard sometimes went so far as to bring someone to the Garda Station to have a form signed and stamped.

18.4.18 Mr Colton also gave evidence that he last saw Finbarr Hickey a couple of months prior to his appearance before the Tribunal. He was asked whether he had a conversation with Mr Hickey on this occasion, and he replied, “just said ‘hello! How are you doing?’.” This appears to be in contradiction to the evidence of Finbarr Hickey who said that he had not spoken to Leo Colton in 12 or 13 years, since his release from prison.

18.4.19 I also note the evidence from the investigating and interviewing Detective Gardaí, both as to Mr Colton’s demeanour during interview, and their assessment of his contention that he was not involved in the submission of the false passport applications.

18.4.20 Assistant Commissioner O’Mahony acknowledged that Leo Colton was “quite strong and quite robust in his defence of what he was saying. He denied vehemently Mr Hickey’s allegations.” John Fitzpatrick told me that Leo Colton answered all the questions that were asked of him and was consistent in his denials. He said that he did not form an opinion as to whether or not Leo Colton was telling the truth, but described him as a “very cute man.” John Melody, describes Leo Colton’s attitude in his final interview as “arrogant.” James Hanley said that Leo Colton “wasn’t perturbed or he wasn’t unduly concerned about the confrontation.” Finally, I note that Detective Superintendent Dominic Hayes expressed the view that Mr Colton had played a part in the procurement of false passports.

### **18.5 – Conclusions in Respect of Evidence on the Passports Affair**

18.5.1 It seems to me that Mr Colton shifted his evidence in relation to two key aspects of the passports affair. Firstly, while initially denying, when he was interviewed in 1998, that he had ever called to Hackballscross, he – subsequently in that interview and then in evidence before the Tribunal – acknowledged that he may have called into Finbarr Hickey for a chat. This does not fit comfortably with his evidence that he did not keep in contact with Finbarr Hickey after retiring from An Garda Síochána. Secondly, whilst initially stating that Finbarr Hickey never discussed being in trouble in relation to a passport with him, he subsequently admitted that such a conversation did take place and was gradually able to recover some memory of it. I am not convinced by his explanation that Finbarr Hickey would simply have raised this with him as part of a general conversation or for the purposes of receiving some consolation.

18.5.2 I believe that the shifts in evidence point to the fact that Mr Colton was aware of the passports and I have come to the conclusion, having listened carefully to both the evidence of Finbarr Hickey and Leo Colton, that he was so aware because he had asked Finbarr Hickey to sign the passport application forms. In reaching this conclusion, I have borne in mind that of the officers that were involved in the investigation and interviews, a number stated explicitly that they believed Finbarr Hickey was telling the truth, but none stated that they believed that Leo Colton was telling the truth. I have had regard to these views, but it has been my own assessment of the evidence and demeanour of the two witnesses at the centre of these allegations, Finbarr Hickey and Leo Colton, that has been the determinative factor in my view of the passports affair.

18.5.3 As regards Finbarr Hickey, I believe that his own evidence establishes that he was aware that the application forms he was being asked to sign were irregular. The explanations which he advanced in 1998 as to what he thought Leo Colton may have been using the passports for do not seem to me to have been credible. I am, however, ultimately inclined to accept that he did not advert his mind to the possibility that the passports were destined for use by members of the

Provisional IRA. Despite his denials, I cannot exclude the possibility that Finbarr Hickey received some payment from Leo Colton in return for signing the passports.

18.5.4 I accept that there was no relationship between the Provisional IRA and Finbarr Hickey; that he was not a member of that organisation or a sympathiser with its cause; and that while he somewhat foolishly and naively did not advert his mind to the possible uses of the false passport application forms, he did not deliberately assist the IRA with the procurement of false passports.

### **18.6 – Retired Sergeant Colton’s Employment with Jim McCann**

18.6.1 In the course of his evidence, Mr Colton was asked about his work for Jim McCann. He acknowledged that Mr McCann was someone known for “strong republican views.” He said that his work for McCann involved giving out change to the people using the gambling machines, and he was keen to point out that he had replaced a previous retired Garda Sergeant in this position. He said that he did his work and got paid, and that that was effectively the extent of his relationship with Mr McCann.

### **18.7 – A Phone Conversation with Retired Detective Sergeant Corrigan in the Context of the Camon Investigation**

18.7.1 Mr Colton told the Tribunal that during the course of Detective Chief Superintendent Camon’s investigation, he received a phone call from Detective Sergeant Owen Corrigan warning him that two officers, Detective Chief Superintendent Camon and Detective Inspector Kirwan, would be coming to see him. He said in his evidence that he understood from the conversation that Owen Corrigan “didn’t entertain” the two Garda officers. Curiously, and somewhat incredibly, Mr Colton said that he did not ask Owen Corrigan why these two detectives were coming to see him and he did not know the purpose of their visit until they called to him. It seems very difficult to believe that if he was being warned by Owen Corrigan that two detectives were coming to interview him about a matter, he would not have asked Mr Corrigan what that matter was. I find this evidence to be utterly incredible.

### **18.8 – The Events of 20<sup>th</sup> March 1989**

18.8.1 Returning to the events of 20<sup>th</sup> March, 1989, I have already set out at Section 4.2 of this Report details of then Sergeant Colton’s statement in relation to a car which passed through the forecourt of Dundalk Garda Station at approximately 2.25 pm on that date. Sergeant Colton thought the driver was behaving somewhat suspiciously because he seemed to be looking for a car as he passed through the forecourt. He was distracted before reporting this sighting, and then forgot about it until after the ambush. He reported it later in the day, but by that stage could only remember the letters and first two numbers of the vehicle registration number (“EIB32??”). The

car could not be traced. In his evidence, Mr Colton said that he had sight of the vehicle for “20 seconds, possibly 30 seconds maybe, at the most.”

18.8.2 This sighting occurred as Sergeant Colton was on the front steps of Dundalk Garda Station. An issue did arise in the course of the evidence as to whether he attended the parading of Unit ‘A’ in the Parade Room at 2 pm. Both Sergeant Colton and Sergeant Thomas Brady, the Sergeant in charge of Unit ‘A’ and the Sergeant – in – charge of Dundalk Garda Station, provided almost identical statements to Assistant Commissioner O’Dea in the immediate aftermath of the ambush. Both essentially claimed to have paraded and assigned duties to the same members of the unit. Efforts were made during the course of the evidence to tease out the extent to which two people could in fact carry out precisely the same job.

18.8.3 Retired Superintendent Thomas Brady, gave evidence that he detailed Unit ‘A’ at 2 pm. He had in fact come on duty at 9.30 am and had been in the Sergeant’s office dealing with correspondence for most of the morning. He explained that he would have been in and out of the public office during the course of the day. He explained that parading – effectively assigning duties to members – is carried out on the basis of a sheet that is prepared seven days in advance.. His name is on the sheet as Sergeant in charge of the unit, and Sergeant Colton’s name would also be on the sheet, marked for supervision duty on that unit. Mr Brady told me that the parade briefing usually took 10 to 15 minutes.

18.8.4 When retired Superintendent Brady was shown then Sergeant Colton’s statement to Assistant Commissioner O’Dea, which is in very similar terms to his own, he was asked whether it was possible that both Sergeant Colton and he had detailed the same Garda members in the same terms. He replied, “there would be no need for two Sergeants to detail them.” He was asked by Counsel for Mr Colton whether one could have a situation where there may be a split of duties between himself and Sergeant Colton, such that Sergeant Colton could detail some of the unit and he the remainder. He accepted that it was possible that both Sergeants could be involved.

18.8.5 Garda David Sheridan also provided some useful information in relation to the parading. He was a member of Unit ‘A’ and came on duty at 2 pm on 20<sup>th</sup> March 1989. He explained that the Parade Room was at the back of the main stairs on the ground floor of Dundalk Garda Station. He was asked who did the parading and he replied as follows:

“Generally, it was done by the Sergeant in charge, and, if anything else needed to be added, the second Sergeant would add it. If he felt something had been missed out on, he would probably add it to it.”

18.8.6 He went on to say that he did not recall specifically which of Unit ‘A’'s two Sergeants carried out the parading on 20<sup>th</sup> March 1989. He stated:

“Generally, Sergeant Brady would parade us and Sergeant Colton may or may not be there. He may be out in the front office or he may be coming and going. Unless he had something specific, maybe, to say, he may not be there.”

18.8.7 In his evidence, retired Sergeant Colton said that both he and Sergeant Brady were there at the one time. He said that both Sergeants would participate to a certain extent in the detailing of the unit. For example, Sergeant Brady would be writing the assigned tasks into the book, while he read out the list of stolen cars or other incidents that had occurred. When Sergeant Brady’s evidence to the effect that he detailed the members was put to Leo Colton, he replied, “he is not wrong but I am not wrong either.” When asked to reconcile the idea that two people can simultaneously assign the same task to the same member, he replied, “the fact of me being there is the equivalent of me detailing the unit.” He also said that he did participate in the briefing.

18.8.8 This issue is of potential relevance in that if Sergeant Colton was not detailing the unit in exactly the same manner as Sergeant Brady, this raises two questions:

- (i) What was he doing between 2 pm and 2.25pm when he was on the steps of Dundalk Garda Station; and
- (ii) why did he lie to Assistant Commissioner O’Dea about what he was doing during that period?

Obviously, a possibility that must be considered, given the terms of reference of this Tribunal, is that he was either at a front window of or outside the Garda Station scouting for the arrival of two RUC officers.

18.8.9 I do not think it is credible or feasible that both Sergeant Brady and Sergeant Colton performed exactly the same task, i.e., that they both told each member what that member’s duties for the day would be. That said, I am ultimately inclined to agree with the opinion expressed by

Detective Chief Superintendent Kirwan who, whilst acknowledging that there is “a level of contradiction there” offered the opinion that he didn’t see this “as being significant.”

18.8.10 I suspect that the reality of the situation was close to what was described by Garda David Sheridan in his evidence, namely that the Sergeant – in – charge was primarily responsible for the detailing and Sergeant Colton may have been in and out. Ultimately, the briefing would have been over by 2.10 pm or 2.15 pm at the latest, before the point in time at which, I have found, Harry Breen and Bob Buchanan arrived at Dundalk Garda Station. Therefore, I am satisfied on the evidence that Sergeant Colton was in the vicinity of the front of Dundalk Garda Station at around the time the two RUC officers arrived and would, in all probability, have had an opportunity to observe their arrival.

18.8.11 It is also possible to conceive, if Sergeant Colton were alerting someone in the Provisional IRA to the arrival of the two officers, that the sighting of the silver/grey Cavalier could perform one of two useful roles in this respect.

18.8.12 First, in theory, Sergeant Colton could have signalled to the driver of that car so as to confirm that the two RUC officers had arrived and any planned operation could proceed. I say planned operation at this point, because, as is clear from my conclusion in Chapter 7, I do not think that an operation could have been mounted from scratch on the basis of the RUC officers’ arrival. In this first scenario, Sergeant Colton could then seek to distract attention from his own involvement by reporting the sighting of the car.

18.8.13 In the second scenario, the car did not exist. Rather, Sergeant Colton fabricated this sighting both to offer some form of legitimate explanation for his presence on the steps, and cause a distraction from some other means that he may have employed to signal to the Provisional IRA that the officers had arrived.

18.8.14 I emphasise that I am speculating in outlining these scenarios: there is no evidence to show that Sergeant Colton did signal the arrival of the officers to the Provisional IRA. I am simply noting that the two scenarios outlined are, on the evidence, physically possible. Ultimately, I will return to this question in Chapter 23 which sets out my final analysis of the issues to be determined by this Tribunal of Inquiry.

## **18.9 – Conclusion in Respect of Allegations Made Against Retired Sergeant Colton**

18.9.1 As regards Mr Colton’s evidence overall, I have found as a fact that he was someone who in the course of 1995 and 1996 assisted the Provisional IRA by having his former colleague,

Sergeant Hickey, sign false passport applications. This is a relatively significant form of assistance and suggests to me that members of the Provisional IRA reposed considerable trust in Mr Colton at that point.

18.9.2 This does raise the question of how far back in time that relationship went. In this regard, I have also found that in June 1990, when he was still a Sergeant, Leo Colton did a favour for Brian Ruddy by seeking to help him obtain a trade plate. I have not accepted Mr Colton's evidence that he knew nothing of Mr Ruddy, including his background, conviction or criminal associations, when he certified that Mr Ruddy was eligible for a trade plate. The evidence of a direct connection with the Provisional IRA is not, however, as clear in relation to this incident. I note that Chief Superintendent Camon in his Report described Mr Ruddy as someone who at the time as:

“under suspicion for his association with members of PIRA and was suspected of raising funds on behalf of the organisation.”

I do not, however, think that this is sufficient evidence to establish that there was a relationship between Leo Colton and the Provisional IRA as far back as 1990.

18.9.3 For the sake of completeness, I should add that during the Tribunal's private investigation phase, Mr. Colton was requested to discover voluntarily certain financial records. He complied with this request and I was satisfied that there was nothing arising which required to be explored in evidence with Mr. Colton at a public hearing of the Tribunal.

## **Chapter 19**

### **The Career and Activities of Retired Detective Sergeant**

#### **Owen Corrigan**

##### **19.1 – An Overview of the Career of Owen Corrigan**

19.1.1 Owen Corrigan is from Belturbet, County Cavan. He joined An Garda Síochána on 7<sup>th</sup> September 1960, and ultimately retired in February 1992. He was posted to Drogheda Garda Station in 1961 and went to Dundalk Garda Station for the first time in 1964. He remained there for about 18 months before returning to Drogheda in 1966. In 1975, he was transferred to Union Quay in County Cork and promoted to the rank of Detective Sergeant. He told me in evidence that he stayed in Union Quay for just one day. He explained that there was a bomb explosion at the Monasterboice Inn, owned by the then Minister for Defence, P.S. Donegan T.D., and the Assistant Commissioner for Crime and Security specifically requested that he be brought back to Drogheda to investigate that crime in conjunction with members of the Murder Squad from Garda Headquarters. His personnel record indicates that he spent three months in Union Quay, but in reality it appears that he was back in County Louth within the first week. He remained in Dundalk Garda Station from 1975 until he went on sick – leave in December 1989.

19.1.2 He explained his duties as being the supervision of the Detective Branch staff and the allocation of duties. He said the Detective Branch staff engaged in surveillance and reported back to the collator and himself in relation to the movements of subversives residing in Dundalk. When he returned to Dundalk in 1975, there were just ten Detective Gardaí and one Sergeant, himself. A number of his early personnel reports were put into evidence before me. These included very positive reports from then Superintendent Mick Bohan dating from 1970 1972, 1973 and 1974. In these reports, Superintendent Bohan outlined how then Detective Garda Corrigan contributed to the successful investigation of a number of serious crimes including, for example, an armed robbery at the Employment Exchange in Drogheda.

19.1.3 In 1979/1980, Detective Sergeant Corrigan applied for promotion to the rank of Detective Inspector. At this stage, the Chief Superintendent in Louth/Meath, Richard Cotterell, submitted a report which recommended against promotion. This stated as follows:

“He is a very good worker and is interested in his job. He has figured in many excellent cases, both ordinary and subversive. He has a lot of contact with the RUC and gets on well with them. In his dealings with the RUC, he is very well known for his tact and shrewd approach. He leaves them happy without giving too much away. Certainly, he has never put his foot in it when dealing with the RUC Special Branch and he has been involved in tricky situations. He has no great source of information, but then it’s very hard to have a really good contact in his particular stretch of the border.”

19.1.4 The report continues with a section in which the reporting officer is asked to identify the member’s main weaknesses. Chief Superintendent Cotterell stated:

“He is greedy for money and I doubt very much if he pays his way. He has at least three houses, one in Drogheda and one in the Navan area and a rather expensive one in Dundalk. In addition, he owns a valuable building site in Drogheda within the town limits.”

19.1.5 The Tribunal took evidence on commission from Mr Cotterell prior to the commencement of its public hearing. When Chief Superintendent Cotterell’s comments were put to Mr Corrigan, he replied, “what about money? Is there anything wrong with being fond of money?”

19.1.6 Mr Corrigan told me that he did not in fact have many dealings with Mr Cotterell. Rather, he reported directly to Crime and Security Branch in Headquarters in Dublin. At the relevant time, he reported to Chief Superintendent Michael Fitzgerald, Assistant Commissioner Joseph Ainsworth and the Commissioner, Patrick McLaughlin. He explained that “events took a dramatic turn in our country with the emergence of the phone tapping allegations” and Mr Ainsworth and Mr McLoughlin retired; Mr Fitzgerald died. Mr Corrigan stated, “so, in simple terms, my power base disappeared practically overnight.”

19.1.7 In a report dated 27<sup>th</sup> September, 1982, Assistant Commissioner Ainsworth recommended Detective Sergeant Corrigan for promotion and stated:

“Comments are made on this file to the member not paying his way. At no time has this been proved or indeed have the officers concerned attempted to prove or disprove this. This is most unfair to the Detective Sergeant.”

## **19.2 – Opinions Expressed About Retired Detective Sergeant Corrigan**

19.2.1 As noted in section 11.2 of this Report, evidence establishes that there were clearly rumours both in Dundalk Station, within Garda Headquarters and within the RUC which were not complimentary to Detective Sergeant Corrigan. These rumours included the suggestion that he was smuggling, questioned how he could afford the amount of property which he owned, and expressed concern that he had an inappropriate relationship with subversives.

19.2.2 I have already found that Bob Buchanan expressed such concerns to Detective Superintendent Tom Curran in Monaghan in 1987 and that Harry Breen expressed such concerns to his Staff Officer on the morning of his death. In relation to the former, Mr Corrigan appeared, at one stage at least, to accept that Mr Curran had been asked to pass on concerns about him by the RUC. He described this as an RUC conspiracy to blacken his name. As I understand his evidence, the RUC wished to dictate what was to happen within An Garda Síochána along the border.

19.2.3 The Tribunal heard evidence from many different persons who expressed varying opinions of Mr Corrigan, and who equally expressed varying degrees of knowledge about the rumours to which I have already referred. Frankly, it was, at times, difficult to make any sense of the picture that emerged. Many individuals, particularly former colleagues of Owen Corrigan in both the Detective and Uniform Branches in Dundalk Garda Station, spoke in very positive terms about his commitment to An Garda Síochána and, in particular, his commitment to counteracting the activities of the IRA. However, I also heard evidence from other individuals who told me that they had been warned against Mr Corrigan; one retired RUC officer told me he had been warned by a witness who had, in fact, been very supportive of Mr Corrigan in his evidence to me.

19.2.4 I do not intend to summarise the evidence of everyone who expressed a view in relation to Mr Corrigan (not least because, in the end, I have to reach my own view of Mr Corrigan), but do want to identify a few particular points. Sergeant Matthew O'Reilly, joined the Uniform Branch in Dundalk Garda Station in 1982 and served in Dundalk until 1993. His evidence aptly and succinctly summarised a view shared by many of Owen Corrigan's former colleagues in Dundalk:

“I arrived in '82 and I suppose Owen Corrigan was someone that was looked up to from the point of view that he had a good reputation, he had a good knowledge of

subversives, had good knowledge of their movements, and he probably would have hassled them a bit and he probably would have suffered as a result.”

19.2.5 Retired Detective Sergeant Seán Gethins, who impressed me with his knowledge and experience, told me that the IRA hated Owen Corrigan with a vengeance. He continued by saying that this was:

“Because he was very actively involved in arresting several members, [...] being involved in searches of places where there were explosives found. Myself and himself, on one occasion, arrested a high ranking IRA Officer who had shot and seriously wounded one of our colleagues in uniform.”

19.2.6 Retired Assistant Commissioner Joe Ainsworth told me that supply of intelligence information from Owen Corrigan was among the best in the State. On the other hand, as already outlined in section 11.2, I also heard evidence from the man who was Commissioner of An Garda Síochána for much of this time (1983 – 1987), Laurence Wren. His evidence differed somewhat from that of retired Assistant Commissioner Ainsworth. He said:

“If he had acquired x number of houses, you’d have to ask yourself the question where did the cash for that come from, because you don’t – for a member of any rank in the Garda Síochána, you couldn’t acquire as much property as he was supposed to have had.”

19.2.7 Retired Commissioner Wren also stated that he did not recall having received a lot of intelligence from Mr Corrigan. When it was put to him that it had been suggested that Owen Corrigan’s supply of intelligence was among the best in the State, he replied “I don’t remember him as shining to that extent.”

19.2.8 Particularly noteworthy evidence was given by Witness 27, a retired Chief Superintendent of the RUC who, in 1989, was acting as Deputy to the Assistant Chief Constable for the Border Zone. He was a Detective Chief Inspector in RUC Special Branch in Newry from 1980 to 1981. In this capacity, he became acquainted with Detective Sergeant Corrigan. He said that at that point in time no – one raised any concern in relation to his contact with Detective Sergeant Corrigan. He described his relationship with the Detective Sergeant as “never particularly dramatic, but it was functional, it was practical, and it solved some of my problems, not them all.” Witness 27 recalled one particular incident in relation to

Owen Corrigan and produced to me his diary entry in respect of it. The diary entry is dated 27<sup>th</sup> April 1981 and provides as follows:

“Travelled to Dundalk and met with Garda source. Made arrangement with the source. Returned to Newry and attended supervision duties. Obtained necessary papers for operations [which he told me were unrelated to Dundalk]. Returned to Dundalk and met with Garda source out in the area to meet the person “

19.2.9 Witness 27 explained that he was going to meet an informant who resided south of the border. He had introduced Owen Corrigan to his informant twice before and the informant had agreed to co – operate in working with both Detective Sergeant Corrigan and with Witness 27. He said that when they arrived at the meeting point there were three vehicles there which Owen Corrigan recognised. Detective Sergeant Corrigan said, “this is a trap. Get out of here.” Detective Sergeant Corrigan escorted Witness 27 to the border at a rapid pace and Witness 27 drove to Newry.

19.2.10 Witness 27’s journal also showed that he remained in contact with Owen Corrigan long after he left Newry. He put into evidence a journal entry for 28<sup>th</sup> February 1989, less than one month before the murders of Chief Superintendent Breen and Superintendent Buchanan, which showed that he travelled to Dundalk and met Detective Sergeant Corrigan on that date. He also told me that around this time, a close friend of his, the late Detective Chief Superintendent Frank Murray, who was the Head of Special Branch in the South Region, said to him in the course of a telephone conversation, “Oh, by the way, are you still in touch with Owen Corrigan?”, to which he replied, “Yes I am.” Witness 27 told me that Detective Chief Superintendent Murray then said, “Well do you think at your level you need to remain in contact?” He said he had no idea why Detective Chief Superintendent Murray asked that question at that particular point in time. Witness 27 did not read too much into the remark and thought it may just have been a reflection of the hierarchical nature of police forces. Witness 27 also confirmed in his evidence that Owen Corrigan was friendly with Brian Fitzsimons, who ultimately became Assistant Chief Constable in charge of Special Branch and who was killed in the Mull of Kintyre Chinook helicopter accident. When asked by Counsel for Mr Corrigan whether he believed that Owen Corrigan had saved his life in April 1981, Witness 27 replied that:

“he probably saved both our lives if the circumstances were what we believed them to be.”

19.2.11 For the sake of completeness I should add that I did hear in evidence an alternative interpretation of these events, one which suggested that the circumstances might not necessarily have been, to use the words of Witness 27, “what we believed them to be.” When the circumstances as described by Witness 27 were put to Witness 62, an experienced former RUC Special Branch Officer, he replied:

“Well, I don’t want to be detrimental to your client but I mean a cynic might say that maybe he had set the whole thing up to impress Witness 27.”

19.2.12 He did however qualify this by saying he was not in a position to contradict Witness 27’s evidence. It was put to him that the informant whom Witness 27 had met previously never materialised again. In this respect Witness 62 replied: “which would support my thesis, my thesis that perhaps your client set the whole thing up, but that is purely speculation.” I also note that the same retired RUC Officer gave evidence that simply because someone behaves in a manner which tends to suggest they are not assisting the IRA in 1981, does not rule out the possibility that they could assist the IRA at a later date:

“All I can say is that times, of course, do change. I would be naturally, as any detective in the guards or the RUC would be, we tend to be cynics by experience. I would simply say that because somebody does something or says something in 1980 doesn’t mean to say they are in exactly the same position in 1985 or in 1990 or in 1995. So, yeah, I mean I agree with your, – the words that you are saying. I just don’t agree that because they would hold fast in 1980 that they would necessarily hold fast ten years later.”

19.2.13 Witness 62 also told me that he had heard of Owen Corrigan on many occasions, had heard that Owen Corrigan was very close to certain members of the IRA and that this was a severe problem for An Garda Síochána. He said he was “genuinely surprised” that the PSNI had indicated to the Tribunal that it could only find one SB50 relating to Detective Sergeant Corrigan in the Special Branch Registry (this RUC Special Branch Intelligence document is discussed further below). When questioned as to when he had heard that Mr Corrigan was close to certain members of the IRA, Witness 62 indicated that this post – dated the murders of Chief Superintendent Breen and Superintendent Buchanan, but “not by very much.” He also stated that: “there was an assumption, I think, amongst quite a number of my colleagues” that Owen Corrigan had provided information to the IRA which had led to the ambush on the

Edenappa Road in March 1989. Witness 62 also told me that while he had mostly heard of Mr Corrigan from his own colleagues in RUC Special Branch, he also had “a recollection of discussing him with some colleagues from the guards, and they accepted that they had a problem there, but that it was very difficult to deal with.” When asked to clarify what exactly had been said to him by members of An Garda Síochána, he said that “there was just a tacit acknowledgement that there was a bit of a problem there.” He confirmed that this conversation took place before the abduction of Mr Corrigan in December 1995, which has already been referred to in Chapter 12.

19.2.14 The difficulties I have faced in reconciling the many different views expressed and the contradictory evidence presented in relation to Detective Sergeant Owen Corrigan is simply illustrated by reference to the evidence of Witness 33. He was the RUC Chief Inspector in Newry from 1986 to 1989 and was, as I understand it, the first RUC officer on the scene at the Edenappa Road. He said that he had been told on a couple of occasions to be careful about whom he spoke to in Dundalk, and that Detective Inspector Prenty was one of the people who warned him in this regard. He said that one of his former Sub – Divisional Commanders also warned him about Owen Corrigan. When asked to identify who that Sub – Divisional Commander was, he indicated that it was Witness 27. It was then put to Witness 33 that Witness 27 had already given evidence to me and had not expressed any such concerns. Witness 33 said that he was surprised by this:

“I mean, I can certainly recall it being mentioned to me at the time. Now, there may have been a totally different reason for telling me that, I don’t know, but that’s what I was told ...”.

19.2.15 I also heard evidence in relation to suggestions that there was unease within the RUC about how An Garda Síochána from Dundalk had conducted the investigation, on their side of the border, into the Narrow Water bombing which occurred at Narrow Water Castle, near Warrenpoint on 27<sup>th</sup> August 1979. Two bombs were detonated at Narrow Water Castle, killing eighteen British soldiers. The detonation point was across the river in County Louth. I heard evidence, including from retired Assistant Chief Constable of the RUC Raymond White, that there was frustration among the CID Officers who had investigated the Narrow Water bombing in that they felt that the detonation site had been seriously trampled before a proper forensic investigation could be carried out. He added that there was a suggestion from one officer that the grass had been cut, the inference being that this had been deliberately done to destroy any evidence. I also note that Kevin Fulton in his evidence said that years

after Narrow Water he heard rumours that Owen Corrigan had been implicated in the destruction of evidence (though he referred to the disappearance of evidence in the form of a motorbike or firing mechanism, rather than the destruction of the detonation site).

19.2.16 The investigation of the Narrow Water bombing in and of itself is outside my terms of reference, but on the basis that it had been suggested that Owen Corrigan assisted the Provisional IRA in respect of that investigation, I directed that some evidence be heard in relation to this matter. Ultimately, however, I accept the written submission made on behalf of Mr Corrigan that the allegation made against him, “namely that he was in charge of the investigation, ordered the grass cut down or interfered with the evidence, has not been made out at all.” I note, for example, that Gerry McCann, a retired RUC officer who was an Inspector in charge of the Criminal Investigation Unit in Newry at the time, said that Detective Sergeant Corrigan was not in charge of the scene and also recalled co – operating well with Detective Sergeant Corrigan in relation to the investigation.

19.2.17 In these circumstances, the evidence in relation to the Narrow Water bombing is ultimately irrelevant to my terms of reference and I do not propose to deal with it further in this report. However, this incident does provide a cautionary note in terms of illustrating how unfounded rumours can take hold. The submission is made on behalf of Mr Corrigan that this incident may well have given rise to all of the rumours circulating about him within the RUC. This attribution, however, goes too far. It is clear to me that the rumours were not rooted in the Narrow Water bombing alone. As already noted, Mr Corrigan’s relationship with money, and property, certainly seems to have been the origin for some of the rumours. There were also allegations of smuggling, which seem to me to stand separately from the Narrow Water bombing.

### **19.3 – 1985 RUC SB50 in relation to Owen Corrigan**

19.3.1 Moreover, there were at least three RUC officers who were aware of intelligence received and submitted to RUC Special Branch Headquarters in June 1985 which suggested that Owen Corrigan was helping out the IRA. The Tribunal made considerable efforts to find former RUC Special Branch officers in Headquarters who were aware of this information, but was unable to do so. The Tribunal also made considerable efforts to establish whether this information had been passed at the time by the RUC to An Garda Síochána, but no Garda officer who was serving in Crime and Security at that time had any recollection of seeing it. The PSNI indicate to me that there is no documentary evidence to establish that the intelligence was passed. While there was considerable evidence before me that information such as this would most likely have been passed at a face to face meeting between senior

officers, there is simply no evidence before me that this occurred. I have accordingly reached the conclusion that the RUC did not provide this intelligence to An Garda Síochána. Intelligence such as this, which, if true, could have seriously affected the security of both forces, ought to have been shared.

19.3.2 Retired Detective Superintendent McConville put a redacted version of this SB50 into evidence at a public session of the Tribunal, and a less heavily redacted version of it into evidence in a private session of the Tribunal. The intelligence states that:

“Owen Corrigan a Sergeant in the Garda Special Branch in Dundalk is helping out the PIRA. Corrigan is keeping both the boys and the organisation well informed and he lets the boys know what the Security Forces are doing in the North when he can.

**Comment:** There is a Sergeant Owen Corrigan attached to the Garda Special Branch stationed in Dundalk.”

19.3.3 There was a reference in the box entitled “Part 1 – Comment by originator” stating, “associate of PIRA/INLA members.” The intelligence was identified as medium grade and was specifically graded C6. It was established in the course of the evidence that the letter ‘C’ relates to the source and the number ‘6’ to the information. There was some dispute in evidence as to the meaning of the number ‘6’, but I adopt as the most definitive evidence in this regard that of Assistant Chief Constable Drew Harris of the PSNI who told me that it meant that the information was “impossible to assess accurately.” Retired Detective Superintendent McConville indicates that the grading ‘C’ means that the source is known to the handlers.

19.3.4 In any event, however, in respect of this intelligence I was able to hear direct evidence from both of the handlers of the source in question. Uniquely in respect of this intelligence, this evidence included evidence as to the identity of the source.

19.3.5 Witness Z gave evidence via video link from Belfast. He was a Detective Constable attached to Newry Special Branch in 1985 and he confirmed to me that he was the author of the SB50 naming Detective Sergeant Corrigan. He confirmed in evidence that his source was John McAnulty, who had previously worked with a colleague of his. He said that he met the source on a face to face basis with another colleague, Witness Q. He confirmed that the source was relaying information that he had heard and that it was, in effect, hearsay. He

confirmed that he consulted with senior officers above his own rank in relation to the content, was advised to put the matter down on paper and submitted it as an SB50 through his Regional Head and then onwards to RUC Headquarters.

19.3.6 Witness Z said that his source, Mr McAnulty, was involved in transporting grain and was very much involved in grain – smuggling. Explaining the context of the SB50, he said that Mr McAnulty rang him and his colleague one day and said that he needed to see them about something important. Witness Z went on to say that John McAnulty was arrested in May 1987 and interviewed by Customs. He was subsequently released, but on 17<sup>th</sup> July 1989 was abducted from a public house south of the border and he subsequently turned up dead in Northern Ireland. He had been tortured and shot. An IRA statement released identifying him as an informer. He said the source was generally not paid, but on rare occasions given small sums of money to cover expenses. Counsel on behalf of Mr Corrigan asked whether Witness Z had taken any action, arising from the information he had been given in 1985, when there was newspaper speculation as to the possibility that a mole had led to the deaths of Chief Superintendent Breen and Superintendent Buchanan in 1989. He replied that he had not. It was put to him therefore that he must not have had much confidence in the credibility of the 1985 information. He replied:

“I would totally disagree with that. I did give it credibility. I believed it at the time, and that was the reason why I actually reported it. If I didn’t believe it, I would have no reason whatsoever to report it, but I had based it on what I did believe – I gave it some amount of credibility, and, therefore I thought it should have been reported, and, consequently, I submitted it to paper and that was the way I dealt with it.”

19.3.7 The tribunal also heard from Witness X, who in 1985 was the Deputy Head of Special Branch in South Region East, which covered Newry, Armagh, Lurgan and Portadown. He was based at Gough Barracks in Armagh. He confirmed that he was the Submitting Officer in respect of the SB50 in question. His recollection was that the intelligence was graded as “a medium grade contact.” He said that he would have dealt with fifty or sixty SB50s such as this on a daily basis. He confirmed that he submitted the document through the normal channels, to Special Branch Office at RUC Headquarters. He did not share it with any officer of An Garda Síochána or with any uniformed officers in H Division. His immediate boss would have read most of the intelligence. He said that when he received the intelligence he recognised the name of Detective Sergeant Corrigan because he had had dealings with him on a professional level. He said that he had heard, within the RUC, something of a similar nature

to what was recorded in the document. However, as he had known Sergeant Corrigan for some time the intelligence information “didn’t really cause me a thought.” When asked whether he believed the information when he received it in June 1985 he replied: “to be quite honest, it didn’t really – it didn’t concern me. From my own point of view, I didn’t believe it.” He went on to say that it, “just seemed to me like gossip more than intelligence.”

19.3.8 I also heard evidence from Witness Z’s colleague, Witness Q, who also gave evidence by video link from Belfast. He confirmed that he was also a Detective Constable in Newry Special Branch in 1985. He referred to the source as “Big Note” and confirmed that the source was the person identified by Witness Z, namely John McAnulty. He confirmed that the SB50, which was drawn up by Witness Z, accurately reflected what the source had told them. He said it was assessed as “being of medium intelligence; was believable.” He said that he had known the source for two years in 1985 and the source had given information “of note.” He said that he and his colleague had no reason to discount what he told them. He also confirmed that Mr McAnulty would have circulated “among high ranking and the lower echelons of the Provisional IRA.” Witness Q that the source gave him the impression that he was anti – violence. The witness was asked whether the murder of the source impacted his assessment of the intelligence received in 1985. He replied: “I asked myself the question, Mr Chairman: why, otherwise would he be murdered?”

19.3.9 It was put to Witness Q that Witness X had expressed the view that the information was gossip and that he did not believe it. In reply, Witness Q simply stated that Witness X had never expressed those views to him.

19.3.10 In the unusual circumstances where the source of information has been identified to me, where I have evidence from his handler that he was associating with persons in both the higher and lower levels of the Provisional IRA and where I know that the source was subsequently murdered by the Provisional IRA for being an informant, it seems to me that I should not ignore the intelligence on this SB50. In determining what weight to accord to it, however, I must bear in mind that Mr McAnulty was relaying hearsay information to his handlers.

19.3.11 The SB50 has, however, as discussed further in the section below in relation to disciplinary proceedings initiated against Owen Corrigan, a potential significance beyond simply the information contained in it.

#### **19.4 – The Career of Detective Sergeant Corrigan in the Mid – 1980s**

19.4.1 Detective Superintendent Brian Brunton of An Garda Síochána, at the request of Mr Corrigan’s legal team, conducted a search in Crime and Security of all the intelligence reports – which are generally submitted on a form known as a C77 – submitted by Owen Corrigan in 1985. Detective Superintendent Brunton put précis of the intelligence reports submitted into evidence before me. In total, Detective Sergeant Corrigan submitted 38 intelligence reports in 1985. I do not think it necessary to list these in the report but it is fair to say that they cover a range of areas, including identifying persons who are active in the Provisional IRA, persons who may be at risk of being targeted by the Provisional IRA, sightings of suspected IRA members, the results of searches conducted, details of motor vehicles used by the Provisional IRA and details of the new addresses of suspected IRA or INLA members.

19.4.2 As I indicated earlier in this Chapter, it seems to me that there is little doubt but that Detective Sergeant Corrigan did supply good information during the ten years from his return to Dundalk in 1975 until 1985. As noted earlier in the report, after the Anglo Irish Agreement, there was a significant increase in the size of the Detective Branch in Dundalk Station. In short, this meant that Detective Sergeant Corrigan was no longer the most senior Detective in the station. Rather, he was joined by, I think, four other Sergeants and was answerable to the occupants of the posts of Detective Superintendent and Detective Inspector (the Detective Inspector for much of the relevant period was Dan Prenty; it might be observed that there was no love lost between Detective Sergeant Corrigan and Detective Inspector Prenty). From the evidence I heard from Mr Corrigan over the course of his days in the witness box, it was clear to me that he deeply resented this change and the diminution of his authority. In his evidence, he talked of “the new regime” in Dundalk Garda Station and stated:

“The new regime – not one of them ever served a day as a detective. They brought in other men who never served as a detective [...] not one of them ever served one day and they were tasked with running a place like Dundalk to satisfy other elements who had replaced the people who had been so good to me for thirteen years. And it happens in all walks of life, as you will appreciate, Mr Chairman. The changing of the guard brings its features in all walks of life.”

19.4.3 When asked how he responded to the introduction of a new regime, he replied:

“I just did what a lot of others were doing; I did as little as possible.”

19.4.4 By his own admission, Detective Sergeant Corrigan effectively opted out of his duties when the changes were introduced after the Anglo – Irish Agreement. In this regard, he seems to have had a particular difficulty with the new Chief Superintendent in Dundalk, Chief Superintendent John Nolan: “Well if you [had] John Nolan as a boss, you’d opt out too.” He said that when John Nolan took up his post he did not come to him to employ the resources that Detective Sergeant Corrigan had to offer:

“I was the ideal man for Mr Nolan to recruit and incorporate the collective unit. After all, I was the man that had the collective expertise of the whole border area.”

[...]

A man goes to see his subordinates. I was the jewel in the crown. If I was in his position I’d be – the first man that I would go to would be me. Here’s the guy with all the answers, well known throughout, undisputed, and it is up to me to motivate him to motivate his subordinates correspondingly. This is the new regime. We can’t win without him. He is indispensable. That is my way of working if I were John Nolan. But John Nolan, there again, had no experience. He served up in Discipline in the Garda Bureau, never had any – had not one day in Detective Branch and did not understand how it worked. It was in his interest to come to me and avail of my numerous qualities.”

19.4.5 He continued by saying that once the “new regime” came into place, he in effect saw little future for himself in Dundalk Garda Station:

“Because I didn’t see any future in staying in. I contributed more than any member of the force. I say that without fear of contradiction, and to turn around then and to be saddled with four individuals that never worked an hour in Detective Branch. I don’t think that it was an unreasonable attitude to adopt. A person that has [any] semblance of IQ, I think their answer would be universal, they would do the same.”

19.4.6 In relation to this SB50, Mr Corrigan said that the contents were no different from the rumours that the Provisional IRA were spreading about him at the time. He was asked by Counsel for the PSNI whether he discussed these rumours with his superior officers and he said that he did not. He said that “spreading of rumours is the oldest tactic in the operation of guerrilla warfare, you have to down the enemy at all costs.” He told me that he was aware of the rumours about him, but members of his team were not.

19.4.7 I think it was extremely clear from this evidence that Detective Sergeant Corrigan was deeply disaffected in his role from the mid 1980s onwards. He clearly felt that his talents were neither being appreciated nor utilised. This disaffection appears to have manifested itself in a deterioration in relations between Detective Sergeant Corrigan and his superior officers and, as already referred to in sections 9.7 and 11.3 of this Report, resulted in the initiation of disciplinary proceedings against Detective Sergeant Corrigan, as well as an application by Chief Superintendent Nolan to have him transferred away from Dundalk.

### **19.5 – Disciplinary Proceedings Against then Detective Sergeant Corrigan**

19.5.1 To recap on the first set of disciplinary proceedings, this concerned the alleged alteration of the mileage in an official car logbook by Detective Sergeant Corrigan. This related to an incident on 14<sup>th</sup> December 1988. Mr Corrigan was listed for duty from 9 am. to 5 pm. but took one of the official cars out that evening. Detective Superintendent Connolly made a statement at the time indicating that he had the car called by a radio on a number of occasions but there was no response. The car was back at the station the following morning. Detective Superintendent Connolly inspected the entries in relation to the logbook and indicated that he was ultimately satisfied that Detective Sergeant Corrigan had falsified the mileage entered in the logbook by the previous driver so as to reduce the number of miles that he (Corrigan) had apparently travelled. Detective Superintendent Connolly gave evidence that Detective Sergeant Corrigan had in fact travelled 237 miles on the night in question. When asked by Mr Corrigan’s Counsel whether the alteration of the logbook caused him to think that the matter may have had anything to do with the Provisional IRA, retired Detective Superintendent replied, “it would.” The exchange continued:

“Q. Why?

A. Because as I could gather from the logbook and the entries that were put in the following day by Mr Corrigan, there was a great number of miles involved.

Q. But what has that to do with an allegation of collusion with the IRA?

A. As to where he was. Why didn’t he come upfront when he was at the disciplinary inquiry or before it and put his cards on the table and say, ‘listen, I was such a place making enquiries’?

Q. Why would his failure to do that cause you to associate him with the IRA?

A. Well, it crossed my mind to know why wouldn’t he say where he was.

- Q.** But, no, there is a difference between saying why wouldn't he say where he was and saying, oh, is it something to do with the IRA?
- A.** Well, I was in Dundalk, I knew of just allegations about him in relation to the IRA. It certainly crossed my mind where he was."

19.5.2 Detective Sergeant Corrigan was found guilty of four breaches of the Regulations arising from this incident. When asked about this in his own evidence, he replied "the whole thing was a charade." Documentary evidence was put before the Tribunal that Mr Corrigan made a written complaint alleging that Detective Superintendent Tom Connolly, Detective Sergeant Gannon and Detective Garda Patrick O'Connor had all perjured themselves in the sworn Disciplinary Inquiry against him. Mr Corrigan stated in evidence:

"This was a complete and utter fabrication. Mr Connolly, I served with eleven Superintendents in Dundalk in my time there, and each and every one of them was depending on me to assist them because they were – invariably, they were transferred to Dundalk for a period of twelve to fourteen months, and Mr Connolly was the only one that came along and had his own agenda, together with three others, like, and he wasn't interested in forming any kind of relationship with me."

19.5.3 He said that Detective Superintendent Connolly requested him to complete the logbook because he was doing an inspection, and once Detective Sergeant Corrigan had completed it, Superintendent Connolly forged the document.

19.5.4 As also noted in Section 11.3 of the report, further disciplinary proceedings were initiated later in 1989, in respect of Detective Sergeant Corrigan being un – contactable while on duty on the night that two significant subversive incidents occurred. One of these incidents was the firebombing of a house in Dundalk on 22<sup>nd</sup> August 1989. This was recorded by Chief Superintendent Nolan in the following terms:

"[On] the 22<sup>nd</sup> August, 1989, at 10.50 pm. a firebomb was thrown at a house occupied by Brendan Duffy. Sergeant Corrigan was the only Detective Sergeant on duty from 10 pm. to 6 am. on the 22<sup>nd</sup> /23<sup>rd</sup> August 1989. He reported on duty at 10 pm. and was not subsequently seen or heard during the night. He did not report off duty at 6 am. and did not take an official car or personal radio with him when going on duty."

19.5.5 Mr Corrigan was asked what he was doing on the night Brendan Duffy's house was firebombed. He replied, "Oh, I was out meeting contacts in relation to matters ongoing that I was investigating." When asked why he simply did not provide this explanation to the authorities when they were minded to charge him with breaches of discipline, he replied "Oh, I don't know." I myself posed the same question again to him and he replied, "Well, I didn't do it and that's it."

## **19.6 – The Abduction and Murder of John McAnulty**

19.6.1 The second such incident (which in fact occurred one month earlier) was the abduction of John McAnulty from the Rosewood Club, Dromad. Chief Superintendent John Nolan's report in relation to this incident stated as follows:

"On the 17<sup>th</sup> July 1989 John McAnulty was abducted from the Rosewood Club, Dromad, and murdered across the border. Detective Sergeant Corrigan was the only detective on duty from 10 pm. to 6 am. that night. He reported on duty and was not seen or heard from by any of his supervisors after that. He was not involved in the immediate investigation of the crime."

19.6.2 Given that the Tribunal had learned that John McAnulty was the source of the 1985 intelligence implicating Owen Corrigan in passing information to the IRA, the fact that Detective Sergeant Corrigan was missing and could not be contacted on the night of his murder was, to say the least, disconcerting information. It could, of course, be a coincidence, but I nevertheless found this aspect of the evidence troubling.

19.6.3 Mr Corrigan explained his absence on that night by saying that he was "engaged on a very, very dangerous mission meeting [...] with very, very dangerous people." I asked Mr Corrigan whether he had accounted for his movements on the night of John McAnulty's murder to his superior officer. He replied:

"No. because if you see my report, my report supersedes everything, and I was asked where I was that night. I was attempting to save a man's life. So, I think we can reserve commenting further on it until you see yourself what I was doing. And it wasn't that night. It was the matter leading up to it. I was aware of the circumstances that were building up, and I cannot go any further than that. It wasn't what happened that night. It was what happened – there again, I don't want to go any further."

19.6.4 Subsequently, An Garda Síochána provided the Tribunal with a précis of the intelligence report which Mr Corrigan was anxious that I should see. He believed that it explained where he was on the night John McNulty was killed. I think it worth setting out this Report in full.

“Undated and ungraded: Garda information reported that John McNulty had been abducted by the South Armagh PIRA Unit and was being held by them. Reported that it was believed that a decision to execute Mr McNulty had been taken by PIRA. Reported that McNulty had recently been involved in litigation with a named company in the Republic of Ireland. Reported that McNulty had approached PIRA and asked them to put pressure on the management of company not to pursue their litigation against him. Members of South Armagh PIRA then threatened the senior management of the company. PIRA was to receive a financial payment in return. Meanwhile, McNulty was arrested in Northern Ireland and questioned about grain smuggling. He was released from custody without charge and this led PIRA to believe that he may have given information to the authorities. The information stated that a named person had telephoned PIRA and provided information that assisted the abduction. The document named the PIRA Commander and the PIRA Unit who were responsible for the abduction of McNulty. The same PIRA Unit was responsible for the earlier threat against the company management and was also responsible for the murders of RUC Officers Breen and Buchanan. The Garda member reported that he was monitoring the situation closely and he may have further information regarding the identity of the culprits and the location of the house where Mr McNulty was being held.”

19.6.5 When asked how this explains where he was and what he was doing on the night in question, Mr Corrigan stated that it was “my belief that McNulty was still alive.” He continued:

“I was meeting a number of people who would be in a position to tell me where McNulty was, because I had reason to believe that he was moved from a couple of locations north and south of the border.”

19.6.6 It appears that Mr McNulty was kidnapped at quarter past midnight on the night in question. When asked what he was doing before the kidnap, Mr Corrigan replied,

“I was making contact with various people in relation to this McAnulty thing in general. It was a long drawn out thing. It wasn’t the McAnulty – it didn’t happen on that night now. That was the culmination of several incidents in relation to Mr McAnulty’s [dis]appearance. There [are] several items of a rather delicate nature in relation to Mr McAnulty’s dealings, his domestic situation and what not, and the situations of the source that placed – that alerted the IRA of his location on the night in question.”

19.6.7 When asked when he first became aware that John McAnulty had been kidnapped, he replied that “I couldn’t be specific on dates like, but I had heard from the very early stages [...]” He subsequently clarified that, “it was sometime within twenty – four hours” of the abduction. He continued:

“Yeah. I had been following – pursuing the thing from the outset of, this threat was ongoing for some time against him, you know, and I was expecting development, and feared the worst, because that was my – that was the tone of the message that I had received, that he was going to be executed, you know.”

19.6.8 Mr Corrigan confirmed that notwithstanding he knew of this threat, he had taken no steps to warn Mr McAnulty. When asked why he had not taken any such steps, he replied “I don’t know”:

“Q. You see, again it comes back to if there always a possibility that he was going to be kidnapped, why didn’t you tell him, or tell the RUC to tell him, because he lived in Northern Ireland?

A. I didn’t tell. I am sorry, I can’t put it any further.”

19.6.9 Notwithstanding this unequivocal evidence, subsequently Mr Corrigan told me that he had reported to his own authorities that Mr McAnulty was under threat. When asked if he had done this before the kidnapping, he replied: “I don’t know, but my understanding is that I had reported it, but I couldn’t be specific on what date.” He went on to say that he reported the facts to his own authorities, who were meeting the RUC on a regular basis. However, then he told me that he had perhaps reported the threat to the RUC. He then said that he had submitted “numerous reports” in relation to Mr McAnulty and that “it’s in some of the reports, that he was to be kidnapped and executed.” However despite the best efforts of An Garda Síochána in

this regard, no such report has been produced to the Tribunal. When this was put to Mr Corrigan, he stated:

“Well, I didn’t say it was a written report. I may have reported it by telephone or anything.”

19.6.10 Ultimately, Mr Corrigan said “I can’t say that I did or I can’t say that I didn’t” take steps to try to save Mr McAnulty’s life.

19.6.11 An Garda Síochána indicated to the Tribunal that eleven intelligence reports submitted by Detective Sergeant Corrigan in 1989 could be found. These included the undated report in relation to John McAnulty above. A second, later report also related to Mr McAnulty:

“Report dated 27<sup>th</sup> July 1989, outlining Garda information concerning John McAnulty, who was murdered by PIRA in 1989. The report refers to a previous report dated 17<sup>th</sup> July 1989. The report outlines the business and smuggling activities of Mr McAnulty and the assistance that he was providing to PIRA, which included getting ‘stuff’ into Northern Ireland. PIRA became suspicious of Mr McAnulty following occasions where he was arrested and released without charge and following searches of premises in South Armagh. He had been detained for a period of two weeks before he was finally taken away and shot. The report named two suspects who formed the nucleus of a vicious dangerous unit within PIRA. The report further details a threat to unnamed persons who may suffer the same fate as Mr McAnulty, North and South.”

19.6.12 Given that this report appears to date the first report as having been submitted on 17<sup>th</sup> July 1989, the day of Mr McAnulty’s abduction, Mr Corrigan’s Counsel put it to him that he had produced a C77 after Mr McAnulty was kidnapped but before he was aware that Mr Anulty had been murdered. Mr Corrigan replied that that was correct. His Counsel also then suggested to him that he would have had to have gone out and met people, contacted sources in order to compile that C77 and Mr Corrigan confirmed that this was the case. His Counsel also suggested to Mr Corrigan that he had probably warned the RUC orally about the threat to Mr McAnulty, and he confirmed that he probably had done so.

19.6.13 However, at this stage in his evidence, I had, frankly become confused as to precisely whom Mr Corrigan was saying he had warned about the threat to John McAnulty and when that warning had been given. Initially he said that it would not have been appropriate to warn the RUC and then he said that he did warn the RUC. He said that he had put in numerous C77s in advance of Mr McAnulty's abduction but when it was pointed out to him that none existed from that period, he seemed less sure of this point. His answers were so varied that at the end of his evidence, I felt that I could attach little credibility to any answer he had given in relation to this issue.

19.6.14 It was suggested to Mr Corrigan by his own Counsel that he was being treated unfairly by the Tribunal insofar as Detective Superintendent Tom Curran had not been questioned by Tribunal Counsel as to why he had not directly warned Bob Buchanan of the threat to his life. In this respect, I am compelled to make the observation, however, that Tom Curran provided a clear and consistent account – which I accepted – of having submitted a written report of the threat to Bob Buchanan to Crime and Security Branch. Detective Sergeant Corrigan provided various inconsistent accounts of the steps that he had taken, but ultimately concluded that “I can't say that I did and I can't say that I didn't” take any such steps.

19.6.15 On his final day in the witness box, Mr Corrigan was asked again what he was doing on the night on which John McAnulty was abducted and murdered. On this occasion, he replied that he was “meeting an individual” and added that this was “by appointment.” He said that person in question had “sympathies” but he was not aware that he or she was a member of an unlawful organisation. When questioned further how that appointment was arranged, he stated, “I don't know. I can't honestly tell or assist the Tribunal.” I pointed out to Mr Corrigan that he had told me that he was saving a man's life and, therefore, I took it that he obviously remembered what he was doing on the night in question. He replied that his memory had failed considerably since his earlier appearance before the Tribunal. Mr Corrigan then said that he thought the appointment may have been in relation to “finding the body.” He explained that by this he meant finding Mr McAnulty himself: “How would I know if he was dead or alive?”

19.6.16 Regrettably, I feel that I never got a satisfactory explanation from Mr Corrigan as to what he was doing the night John McAnulty was murdered. It would, of course, be understandable if someone had no memory of where they were on a given night more than twenty years ago. However, Mr Corrigan initially, in very strong terms, told me that he was

out on duty trying to save the man's life, which clearly suggested that he had a memory of the night in question. However when this was probed further, his answers were vague, evasive and somewhat unclear. Further, I simply cannot understand why Mr Corrigan did not explain that he was out taking action to save Mr McAnulty's life when disciplinary proceedings were being contemplated against him in 1989.

19.6.17 In his evidence, Mr Corrigan did consistently assert that he was aware of the threat to Mr McAnulty in what he described as the "build – up" to the abduction. When asked what steps he had taken to alert others to the threat, his answers were unfortunately again vague, varying and ultimately unsatisfactory. In these circumstances, I have to find that he did not take appropriate steps to alert the authorities to what he perceived to be an imminent threat to the life of John McAnulty.

19.6.18 There remains the question of whether there is any link between Mr Corrigan's absence on this night and the fact that four years previously, Mr McAnulty had informed the RUC that Detective Sergeant Corrigan was passing information to the IRA. There is no evidence that Detective Sergeant Corrigan was aware that John McAnulty had passed this information to the RUC at that stage and, in these circumstances, I am not inclined to make any such link.

19.6.19 Finally, Mr Corrigan did suggest in evidence that in naming him, Mr McAnulty was trying to ingratiate himself with the RUC: "Oh, absolutely, yeah, absolutely, he was caught in a compromising situation. He is one of six men that was arrested, of course he was."

## **19.7 – The Events of 20<sup>th</sup> March 1989**

19.7.1 I now turn to the events of 20<sup>th</sup> March 1989. It will be recalled from Chapter 9 of this Report that Detective Sergeant Corrigan provided an extremely succinct statement to then Detective Inspector Carty in the context of the O'Dea Investigation. It was put to him that when he provided that statement he would have had perfect recall of the detail of what he had been doing on 20<sup>th</sup> March 1989 and he confirmed that this was absolutely so. He was then asked why he did not provide a more detailed statement. He replied:

"Well, I provided as much as I could. I was doing nothing of any consequence or I would have included it and I had no reason not to."

19.7.2 As already noted above, the Tribunal heard evidence in relation to the eleven C77s submitted by Mr Corrigan in 1989 (which are significantly smaller in number than those

submitted in 1985 (38)). One of these related to the murders of Chief Superintendent Breen and Superintendent Buchanan. It stated:

“Garda information, 1989, suggested that PIRA were in possession of the late Superintendent Buchanan’s notebook taken from the scene of the shooting and PIRA were anxious to identify a named person in it.”

19.7.3 In his evidence, Mr Corrigan provided quite detailed information as to how the operation was mounted. He estimated that at least thirty people were involved in the ambush. In this regard he said that, “it’s the middle of the day and a lot of these people were working and it wouldn’t be possible at short notice to get that number of people to absent themselves from work altogether.” He expressly referred me to the evidence of the Retired Brigadier Liles in relation to the radio signals intelligence recorded by the British Army and stated:

“Well, as I said, the British Army were very precise and they said that the feverish activity, Mr Chairman, started at exactly 11.30 am. and stopped immediately the tragedy happened. So they were in close proximity and they had – they were in possession of clear signal of what was happening so I think they are the people we should listen to in relation to the duration or how long it took to carry out the operation, both planning and execution.”

19.7.4 He went on to tell me that the IRA had been planning the operation since January (at an earlier point he said Christmas ’88; I am not attaching any significance to this slight variation). In this regard he stated as follows:

“They had been – they had been planning this, as I said, they were ready to go in January of that year when they had all their data and it was only as the emergence of Mr Breen, because they had known all along that Mr Buchanan was coming and going north and south, you know what I mean?”

19.7.5 He went on to explain that the IRA had “reached an impasse in their investigation as to who gave the information in relation to Loughgall” and that they had narrowed the list of possible suspects down to a number of senior members. In order to take things any further, they needed concrete evidence: “in other words they couldn’t shoot the chiefs without having concrete evidence, so the next essential move was to get these men ....” This echoes the evidence given to me by retired Detective Seán Gethins, who also seemed to be in possession

of some detailed knowledge as to the circumstances in which the operation was mounted. Mr Corrigan's evidence in this regard is also consistent with some of the intelligence received in the immediate aftermath of the murders.

19.7.6 In the course of his cross – examination by Counsel for Mr Fulton, it was put to Mr Corrigan that the British Army information “tipped the lie that this was surveillance because we know that Mr Buchanan's car hadn't left his home at half eleven so there is no surveillance? [...] how could the IRA know they were coming if there was no car to watch at half eleven?” Mr Corrigan replied, “[...] [t]hey had to have prior knowledge and it certainly wasn't a member of the force.” The exchange continued:

“Q. That's the point. They had to have prior knowledge of their impending arrival?

A. I agree with you.

Q. I am glad we agree on something, Sir.

A. Well, thank you.

Q. Do you accept that somebody must have leaked somewhere, somebody must have leaked that they were coming down?

A. Somebody?

Q. Must have leaked that these two officers were coming down to Dundalk?

A. Yes.”

19.7.7 However on his final day of evidence, Mr Corrigan resiled completely from this opinion. He was asked whether he was of the opinion that a leak enabled the IRA to carry out the murder and he replied, “No.” When his previous evidence as outlined above was put to him he replied:

“Well, that could be in the context of somebody must have leaked, of course, yeah. I didn't say who could have leaked, it could have been amongst themselves. They had to get advance information, and that advance information could be their surveillance.”

19.7.8 The explanation that the reference to a “leak” could refer to surveillance is entirely unconvincing. Unfortunately, this was another example of Mr Corrigan changing his evidence

on the basis of what answer he felt suited best at any given moment in time. As a result, I find it difficult to ascertain precisely what his evidence is in relation to some of the questions posed and to ascertain where the truth lies in his responses to those questions.

19.7.9 One final matter to address in the context of discussion of the events of 20<sup>th</sup> March 1989 is a piece of intelligence received by An Garda Síochána indicating that Mr Corrigan was not responsible for colluding with the IRA in relation to those events. Detective Superintendent Brunton of An Garda Síochána put the following précis into evidence:

“Garda information (received many years after 1989) assessed as reliable. Information of the movements of Chief Superintendent Harry Breen and Superintendent Buchanan was not given to the IRA by Owen Corrigan.”

19.7.10 I note the somewhat curious use of the passive voice in this précis. It could be interpreted as inferring that although information was not given to the IRA by Owen Corrigan, it may have been given to the IRA by another. However I accept that this is speculation based on syntax.

## **19.8 – The Retirement of Owen Corrigan and the Beit Paintings**

19.8.1 As noted earlier in this report, Detective Sergeant Corrigan was due to transfer to Dublin on 5<sup>th</sup> December 1989, but went on certified sick leave from 4<sup>th</sup> December 1989. He told me how then Assistant Commissioner in charge of Crime and Security, Noel Conroy, contacted him shortly after he submitted his retirement notice in December 1991 and asked Mr Corrigan to meet him in a hotel in Drogheda. Mr Corrigan recalled that Assistant Commissioner Conroy was accompanied by his then secretary, the late Sean Camon. He says that Assistant Commissioner Conroy invited him to come and work for him in Dublin. Subsequently, he asked him to act on behalf of the Garda Commissioner to do a deal for the retrieval of the Beit Paintings which had been stolen in a robbery from Russborough House, County Wicklow. Mr Corrigan said he had one initial meeting with the “middleman” but thereafter realised the serious consequences for himself and his family. He decided not to remain involved in this task. He said he rang Mr Conroy, thanked him for having faith in him “by asking me to do this very dangerous and thankless task”, but indicated that he would prefer not to become involved and to simply retire, which he did on 4<sup>th</sup> February 1992.

19.8.2 Retired Commissioner Conroy confirmed this in his evidence to the Tribunal. Interestingly, when Detective Superintendent Connolly’s assessment of Owen Corrigan, to the effect that he was not satisfied that Detective Sergeant Corrigan’s integrity was up to standard

and that he had no confidence in the member, was put to retired Commissioner Conroy, the latter replied that he had no reason to disbelieve Tom Connolly's assessment and stated that he did not know Owen Corrigan "to that extent." He added, however, "but I, when I used him in relation to the Beit Paintings I wouldn't have been thinking any way in that direction." Mr Corrigan's Counsel then subsequently asked Mr Conroy why he had chosen Owen Corrigan for the retrieval of the Beit Paintings. In response, Mr Conroy confirmed that the task was a very sensitive and serious one. Counsel for Mr Corrigan then asked:

- “Q And in order to choose a member of An Garda Síochána to do that task, would you agree with me that must have been a member of An Garda Síochána which you would have to trust?
- A. Yes, to deliver the information that I was hopeful would be gleaned.”

19.8.3 I find this to be a somewhat intriguing piece of evidence. On the one hand, Noel Conroy did not disagree with Tom Connolly's assessment of Owen Corrigan, but added that he trusted Mr Corrigan, "to deliver the information that I was hopeful would be gleaned" from the meeting with the criminals or representatives of the criminals who had stolen the Beit Paintings. To my mind, this apparent contradiction aptly sums up the enigmatic nature of the relationship between the retired Detective Sergeant and the hierarchy in An Garda Síochána.

19.8.4 I have already expressed the view that there was an awareness of unease about Owen Corrigan in Headquarters before Tom Connolly came to Dundalk. I find myself drawn to the conclusion that at some point in time a decision was made within Garda Headquarters that what the late Detective Chief Superintendent Seán Camon described as Owen Corrigan's "unique, highly personalised style of investigation" should be tolerated. One can only assume that this was because it was considered that some benefit was accruing to the force. What this may have been, I do not know. Such tolerance was not universal – ultimately, in 1989, Owen Corrigan was to be transferred from Dundalk due in large measure to the steps taken by Detective Superintendent Tom Connolly and Chief Superintendent John Nolan – but it certainly seems to have been a feature of parts of Owen Corrigan's career,

19.8.5 I would add that this enigmatic relationship between Mr Corrigan and the Garda hierarchy resurfaced, at times, in the course of the Tribunal's hearings. I have already expressed my views about the manner in which the Garda Commissioner's legal representatives sought to undermine evidence, given by Tom Curran and Tom Connolly, which was adverse to Mr Corrigan. Witnesses whose evidence impugned retired Sergeant

Colton or former Sergeant Hickey were not subject to the same treatment. In the course of his evidence, Owen Corrigan made serious allegations of perjury against a number of Detectives, including Tom Connolly. I felt compelled to ask Counsel for the Garda Commissioner whether the Garda Commissioner intended to cross – examine Mr Corrigan in relation to those allegations. Ultimately, it was put to Mr Corrigan on behalf of the Garda Commissioner that his allegations had been properly investigated and the Director of Public Prosecutions had directed that no further steps be taken. I was surprised, however, that the Commissioner did not see fit to challenge more vigorously the serious allegations that Mr Corrigan was making against senior Garda officers.

19.8.6 I have dealt elsewhere with a number of incidents which occurred after Mr Corrigan ceased work, and have set out my conclusions in relation to them. These are: the allegation of Mr Patrick Gallagher that Mr Corrigan made a fraudulent insurance claim and the circumstances in which the consequent prosecution of Mr Corrigan for obtaining money by false pretences did not proceed; the circumstances surrounding the abduction of Mr Corrigan in December 1996; and the allegation that Mr Corrigan met and gave information to ‘Mooch’ Blair in the carpark of Fintan Callan’s Céilí House in 1991. I now propose to deal with one final matter – that of Mr Corrigan’s finances – before setting out my conclusions.

### **19.9 – Issues in Relation to Owen Corrigan’s Finances**

19.9.1 As noted in Chapter 1, retired RUC Deputy Chief Constable Blair Wallace identified as one of the signifiers one should look out for in respect of a police officer identified as a possible security risk whether “he was living beyond his means insofar as the type of property he had...”. Former Commissioner Pat Byrne endorsed Mr Wallace’s evidence in this regard, as, indeed, did Mr Corrigan. In the light of the evidence of retired Commissioner Laurence Wren and the reports of retired Chief Superintendent Richard Cotterell (deceased) regarding question marks in respect of Owen Corrigan’s finances, and his property portfolio in particular, this was an issue which was explored with Mr Corrigan in his evidence before the Tribunal.

19.9.2 An Order for Discovery in respect of certain bank records had been made during the course of the Tribunal’s private investigation phase, and there had been compliance with that Order. The Order included discovery of bank records in respect of a bank account in the name of Bloombridge Properties Limited, the principal purpose of which was to either own or manage a small building he had purchased. He said that that building was self – financing in that the rent received covered the loan repayments in respect of it.

19.9.3 In evidence, Counsel for the Tribunal sought to explore with Mr Corrigan how he had financed the purchase of properties, and, in particular, where the money for various cash deposits had originated. Mr Corrigan said that this deposits had been paid for out of his savings.

19.9.4 Mr Corrigan was asked whether he had another personal bank account in addition to the Bloombridge Property account, but explained that his original bank account was incorporated into the Bloombridge Property Company Ltd. bank account when this latter account was opened: “my bank account assumed the mantle of Bloombridge Property. They were one and the same thing. There was no two separate accounts.” However, it was put to him by Counsel for the Tribunal that if this were the case, one would expect to see an immediate opening balance in the Bloombridge account, representing the money transferred over from his existing personal account. No such opening balance is shown and it was therefore put to him that “there must have been a second parallel account in your own name, isn’t that right?” He replied, “I have to clarify that.” He said he couldn’t recall whether he had another parallel personal account, but stated that he would “pursue it next week when I have an opportunity.” He told me he would do this on 8<sup>th</sup> June 2012.

19.9.5 On his subsequent appearance, on 19<sup>th</sup> June 2012, Mr Corrigan was asked by Counsel for the Tribunal whether he had been able to make any more progress in relation to the question of his personal bank account. He indicated that “I can’t help you until the thing is resolved with the bank” but agreed to ensure that his solicitor deal with the issue. On the following day, Counsel again raised the issue of the outstanding bank accounts with Mr Corrigan and he confirmed that his solicitor was attending to the matter. He was informed that his examination by Counsel for the Tribunal could not be completed until that issue was resolved. He told me that he was “very anxious to do all in his power” to resolve the issue and that he and his solicitor had been in discussions with the relevant bank in this regard. On 3<sup>rd</sup> July 2012, Mr Corrigan was asked at the commencement of his evidence whether he had made any progress in obtaining the relevant bank statements. He replied:

“As you can appreciate, at this particular point in time, the Ulster Bank have their own difficulties, but my solicitor is handling it on my behalf.”

19.9.6 The matter was raised again on 10<sup>th</sup> July 2012 at the commencement of Mr Corrigan’s evidence before the Tribunal. He was asked what progress was made in relation to recovery of the bank statements and he replied: “I don’t know. My solicitor is dealing with that.” On this

occasion it was expressly noted by Counsel to the Tribunal that in the Bloombridge Account Statement for July 1997, there was a standing order in favour of Mr Corrigan, clearly indicating that he had a parallel personal account at that time. At this point, correspondence had been received from Mr Corrigan’s solicitor enclosing a communication received from Ulster Bank which stated that “we have no knowledge of what account Mr Corrigan was using as a personal account before that [the opening of the Bloombridge Account]”. It was put to him therefore that he may have had an account with a different bank and he confirmed that this was the case. Mr Corrigan then said that he had an account with Ulster Bank when he purchased the house “Oakdene” “years earlier.” It was pointed out to him that Ulster Bank said that they were not aware of what account he might have had prior to the opening of the Bloombridge Account, and he replied:

“Yes, but the difficulty we have found with it is that they have shown little desire to go back so far in records, you know. That’s the problem I have.”

19.9.7 Mr Corrigan subsequently became ill and was hospitalised for surgery, which resulted in a significant gap before he could return to conclude his evidence before the Tribunal. He ultimately returned in May 2013 and concluded his examination by his own Counsel. On 30<sup>th</sup> May 2013, Counsel for the Tribunal re – examined Mr Corrigan and the following exchange occurred:

- “Q. This brings us back to a commitment you gave to the Chairman when you were last in the box, before your operation –
- A. Yes.
- Q. – that you would try to find details of a bank account which it seems you had round about the time that the Bloombridge Property Account was set up?
- A. Yes.
- Q. Well it does appear to be the case that you had a personal account running parallel with the Broombridge Property Account and may well have merged, later on, into the two, but not at the beginning. Now, you were to instruct your solicitor to conduct enquiries. Now, I am not asking you what your instructions are, but could you confirm to the Chairman that you have given those instructions to your solicitors?
- A. No, I decided that I wouldn’t. I have thought about it, and nobody else was asked here to disclose a thing, and I am telling, here and now, that I don’t intend to divulge my private bank business.

- Q. So you have decided –
- A. That I am not –
- Q. – Not to assist the Tribunal?
- A. Yes, that’s right. I have suffered enough. I have thought about it in hospital. I don’t want to go into very private details to the extent of my injuries, but to come here and to state – come here in the state that I am in, and I don’t intend to come any further and will be leaving today and may not be back because I think it’s grossly unfair to be going over this in view of my health, but that I have gone through – I am obliging the Tribunal by coming here, under very serious circumstances. And as a matter of fact, my memory doesn’t recall – my recollection of affairs is such that I couldn’t honestly think back on an awful lot of those things that happened me and all the things that have happened to me in the meantime, my family, and all, have suffered over this horrific set of circumstances.
- Q. All you are being asked to do is clarify the existence of a bank account, that is all.
- A. Well, I don’t know, I thought about it and I thought – and I had a lot of time to think about it when I was lying on my deathbed at the hospital, and I realised if I ever, ever recovered, which I was that close, ever recovered, I wouldn’t have anything got to do more with –
- Q. I am going to ask you again, and think carefully about your answer, are you refusing to assist the Tribunal in this respect?
- A. Yes.
- Q. And the reasons that you have set out, they are the reasons why you feel you are entitled to refuse to assist, is that right?
- A. No, I don’t – I have thought – I can’t – I am not handing over my bank accounts, and that is it.”

19.9.8 In the light of Mr Corrigan’s refusal under oath to assist the Tribunal, I made an Order for Discovery in respect of the particular bank accounts sought. I had not seen fit to do this earlier because Mr Corrigan had reassured me in the witness box that the matter was in hand and that he was going to assist the Tribunal in this regard. However, given his express statement that he had decided not to assist the Tribunal and would not hand over details in relation to the parallel bank account, I made an Order compelling him to do so. Regrettably, I have to say that I am not satisfied that he has complied fully with that Order. Given that this

has occurred late in the day in terms of the Tribunal's work, I have not taken any further steps in relation to Mr Corrigan's non – compliance with the Discovery Order.

19.9.9 From the passage set out above, and the earlier evidence given by Mr Corrigan to the Tribunal, I think that the inference can clearly be drawn that Mr Corrigan did have a personal bank account the details of which he is deliberately withholding from the Tribunal. I cannot say what the statements in respect of that account might reveal, but I do draw the inference that if there was nothing irregular in that account, Mr Corrigan would not have decided, in breach of a commitment given to me under oath and in breach of a Discovery Order subsequently made, not to disclose the details of that account to this Tribunal.

### **19.10 – Conclusion**

19.10.1 I found Owen Corrigan's evidence across the range of matters upon which he was questioned – issues addressed in this and previous chapters – to be vague, evasive and inconsistent. It is impossible to attach any credibility to his evidence in circumstances where he frequently provided one answer to a question, only subsequently to provide an entirely different answer to the same question. I do not think that he has been truthful to the Tribunal in his evidence in relation to a number of matters.

19.10.2 As is already clear from earlier sections of this report, I have concluded that Owen Corrigan's evidence in relation to the traffic accident in Dunleer in 1988 and his subsequent insurance claim is untruthful. I have also found his explanation for his abduction in December 1995 by the Provisional IRA to be untruthful, and I am of the view that he and Francis Tiernan were abducted arising from a commercial transaction with the IRA which had turned sour. I have accepted Kevin Fulton's evidence in relation to Mr Corrigan providing information to 'Mooch' Blair in the car park of Fintan Callan's Céilí House in 1991. The first of these incidents occurred when he was still a serving Detective. I also accept that there were widespread concerns about Detective Sergeant Corrigan's extra – curricular activities, including smuggling and the nature and extent of his relationship with subversives, going back a number of years before 1988.

19.10.3 I believe that there were sufficient warning signs such that senior Garda officers should have taken steps to have Detective Sergeant Corrigan transferred away from the border area earlier than this in fact occurred. I have found that Detective Superintendent Tom Curran relayed concerns which the RUC had in relation to Detective Sergeant Corrigan to the Assistant Commissioner, Crime and Security in 1987, but there is no evidence of any action having been taken on foot of this information.

19.10.4 I recognise that Detective Corrigan did for a period provide very useful information to An Garda Síochána, but I conclude that at some point this situation altered, possibly in the mid 1980s as a result of his disaffection from the changes to the structure of the Detective Branch in Dundalk Station. I also find that what may have started out as professional relationship with subversives for the legitimate purpose of intelligence – gathering, ultimately developed into a relationship of an inappropriate nature. As regards whether this inappropriate relationship extended to acts of collusion in the murder of Chief Superintendent Breen and Superintendent Buchanan, I will address this question in Chapter 23.

## Chapter 20

### Alternative Theories: Phone – tapping and RUC Collusion

#### 20.1 – Overview

20.1.1 As part of the question of whether there was collusion by members of An Garda Síochána or other agents of the State in the fatal shootings of Chief Superintendent Breen and Superintendent Buchanan, one must consider the means by which the ambush of 20<sup>th</sup> March 1989 might have been carried out without such collusion. The principal alternative in this regard, that the IRA based the operation on information gleaned through its own surveillance is considered in Chapter 22, which addresses the information provided by former volunteers of the Provisional IRA to the Tribunal.

20.1.2 In this Chapter, two other alternatives are considered. The first arises from an allegation in *The Phoenix* magazine that the IRA had tapped telephone wires going into Dundalk Garda Station and, by this means, learned of the arrangements for the meeting of 20<sup>th</sup> March 1989. The second alternative is that information was leaked to the IRA, but not by an agent of this State; rather, the information was leaked by an RUC officer in Northern Ireland. I will now consider these two alternative possibilities in turn.

#### 20.2 The 2005 *Phoenix* Article

20.2.1 In an article published on 3<sup>rd</sup> June 2005, *The Phoenix* magazine put forward the theory that the Provisional IRA had tapped telephone wires at the Ramparts Telephone Exchange in Dundalk. The wires in question went to the Garda Station, and by intercepting telephone calls, the IRA were able to obtain the information which facilitated the ambush on the Edenappa Road. The article states part that:

“From 1987 until 1990 a Garda private wire (P.W.) circuit was intercepted 24/7 by the IRA at the Telecom Éireann telephone exchange at the Ramparts, Dundalk known as E10. The PW was a dedicated RUC liaison hotline. At the main distribution frame (MDF) IRA engineers covertly connected a hidden ‘jumper’ to the Garda line running this to spare wires on the termination block of a 400 pair underground distribution cable running through the basement jointing chamber. The technicians (ironically trained by British Telecom) had free access after hours to E10 and other exchanges. In the cable chamber they slit the sheath of the PUT (Poly Unit Twin) cable and extracted the tapped circuit. This was then linked to a modified US voice operated

long – playing recorder hidden in jointers’ test equipment. Each time the RUC hot line was used the listening device switched on and automatically recorded conversations on cassettes which were changed regularly. Since the cable was air pressurised the IRA had to heat shrink a repair sleeve and nozzle on to it to avoid a tell tale loss of air. This work still exists and Judge Smithwick may care to inspect it with technical advisors. Alternatively, he may ask the various Eircom employees what they know about the covert interception which was discovered by the late Gerry Finnegan, the Dundalk engineering superintendent, and reported to Telecom headquarters in Cumberland House, Dublin. Finnegan and a colleague inspected the recording machine and traced the interception point at the MDF. Three members of Telecom’s Investigation Branch (IB) interviewed staff members with access to the exchange. Strangely although names and home addresses were taken by the IB there appears to have been no follow – up by An Garda Síochána, no raids, no interviews and no statements taken from staff, none of whom were involved in any way with the interception.”

20.2.2 The article goes on to state that the tapping of the RUC/Garda private wire was part of a large eavesdropping system run by a standalone IRA CI (Communications Interruption) unit, which monitored various dial – up phone lines including those going into Dundalk Garda Station. A separate CI unit monitored the RUC pocket phone 160 MHz radio network on which Buchanan spoke to Newry RUC headquarters on the fateful day.

20.2.3 The article continues:

“On February 2, 1989 a month before his death, Breen attended an intelligence meeting with Garda Chief Superintendent Nolan in Dundalk. The IRA knew this from their CI monitors but got the information too late to set up ambush positions. He had been a prestige target since May 1987 when eight IRA men were killed in an SAS ambush at Loughgall which he had planned. The week before the Breen ambush a phone call alerted the IRA to an upcoming intelligence meeting he would attend. The date and time were unknown because Breen played his cards so close to his chest but a contingency plan was set up. At 9:20am on March 20<sup>th</sup> the first of several intercepted phone calls from Buchanan to Dundalk gave the IRA an indication that Breen would fall into their trap that day. By 10:45 the intercepts confirmed that he would leave Dundalk between 3:00 and 4:00pm, only the route was unknown.”

### **20.3 – The Background to the Investigation of the Theory**

20.3.1 The allegations made in *The Phoenix* article were investigated initially by An Garda Síochána and subsequently by the Tribunal. A significant number of witnesses gave evidence before me. Much of it was technical, and I was shown a large number of detailed photographs of elements of the Telephone Exchange in Dundalk and various wires and cables coming into Dundalk Station. The layout of the Dundalk Ramparts Exchange remains much as it was in 1989.

20.3.2 I propose to first set out the evidence and conclusions of Detective Inspector Chris Kelly, before identifying relevant extracts from the evidence of the witnesses the Tribunal itself called in relation to the matter. Before I do so, however, I think it worth stating at the outset that there is an immediate question – mark over whether the theory advanced in this article is feasible.

20.3.3 *The Phoenix* article describes, at great length, a wire tap with delayed retrieval of recorded intercepts. Allegedly, the intercepts were recorded on a “long – playing recorder” and the cassettes were changed “regularly”, presumably, although it is not specified, at night by the technicians who then had the alleged “free access.” Of course, once these long – playing cassettes were retrieved, they would need to be listened to and the information contained on them transcribed, assessed and disseminated. In other words, it was not a contemporaneous monitoring of telephone conversations. Therefore, *The Phoenix*’s assertion that the 9:20 am and 10:45 am intercepts on the morning of the 20<sup>th</sup> March 1989 alerted the IRA to the timing of the meeting at Dundalk seems to be irreconcilable with the method of intercept alleged.

20.3.4 This inconsistency undermines *The Phoenix*’s theory at the outset; even if such a wire tap did exist, I find it difficult to conceive how it could have been the tip – off in respect of the arrangements for the Dundalk meeting and subsequent ambush.

### **20.4 – The Evidence of Detective Inspector Chris Kelly**

20.4.1 *The Phoenix*’s theory was the subject of an in – depth investigation by Detective Inspector Chris Kelly of An Garda Síochána Special Detective Unit in Harcourt Square acting under the instructions of Assistant Commissioner Joseph Egan. Detective Inspector Kelly was appointed to the investigation on June 10<sup>th</sup> 2005. He gave evidence that he made contact with Telecom Éireann Investigation Branch, known in 1989 as An Post Investigation Branch. (The

staff were originally from the Department of Posts and Telegraphs, then transferred to An Post, then Telecom Éireann, and finally Eircom). Detective Inspector Kelly spoke to, among others, Tom Corbett from the Telecom Éireann Investigation Branch, senior officers in An Garda Síochána as well as senior members of the Investigation Branch of An Post and its successors who were there at the time of the alleged intercept. In all, he took 105 statements.

20.4.2 Detective Inspector Kelly, with the assistance of the Garda Technical Bureau, the Garda Telecommunications Section, and Eircom, photographed and mapped the Ramparts Exchange, and subsequently identified locations as a reference for his investigation. He made inspections of the Exchange accompanied by senior and technical personnel from An Garda Síochána and Eircom.

20.4.3 Initially Detective Inspector Kelly sought a meeting with the editor of *The Phoenix* magazine and/or the author of the article by telephone and by registered post but *The Phoenix* did not co – operate and declined to meet Detective Inspector Kelly at any stage.

20.4.4 Two other papers, *The Argus*, a local County Louth paper, and *The Cork Examiner*, printed relevant articles and the journalists of both those papers co – operated satisfactorily with Detective Inspector Kelly to the maximum extent possible (without compromising their journalistic integrity). *The Argus* article appeared on 17<sup>th</sup> June 2005 and concluded that “a controversial magazine article[‘s]” claim had been discounted by local sources contacted by *The Argus*. *The Cork Examiner* article, which appeared on the 22<sup>nd</sup> March 1989, related to alternative surveillance equipment available to the IRA which was highly sophisticated and was said to be used by the IRA in several operations.

20.4.5 Detective Inspector Kelly considered that a number of aspects of the *Phoenix* article were simply incorrect.

20.4.6 Firstly – and significantly in my view – his evidence was that there were 40 or 41 private wires in the border area but none between Armagh and Dundalk, the line on which, the evidence indicates to me, the relevant telephone call setting up the meeting of 20<sup>th</sup> March 1989 was made. While there was a PSNI record of such a wire, all the Garda records and all the people to whom Detective Inspector Kelly spoke were consistent in stating that while there was a private wire from Dundalk to Newry and Bessbrook, and between Monaghan and Armagh, there was none from Dundalk to Armagh. Detective Inspector Kelly was unable to obtain records to determine if any relevant calls had been made from Newry on the morning

of the 20<sup>th</sup> March 1989, but I note that there is no evidence to suggest that this is the case. Moreover, the phone call between Superintendent Buchanan and Chief Superintendent Nolan was made on his ordinary telephone in the Chief Superintendent's office. Detective Inspector Kelly said *The Phoenix* put a lot of emphasis on the private wire and agreed that if the arrangements were made on an open line then the article could not be true.

20.4.7 A second area which Detective Inspector Kelly considered could not be correct related to the allegation that the IRA had split the sheath of the PUT cable in the cable chamber (at basement level) in the Ramparts Exchange. Detective Inspector Kelly said the PUT cable could not have been covertly split: if the cables were interfered with an alarm would have gone off triggering an immediate investigation.

20.4.8 As to the suggestion that the physical evidence of the phone tapping still exists, Detective Inspector Kelly, together with Mr Tom Corbett from Eircom, Detective Sergeant James Pius Butler and Detective Inspector Michael Flynn inspected the Ramparts Exchange in June of 2006. In particular, they checked the Garda lines in the cable chamber. They also inspected the manhole outside Dundalk Garda station and the cable cabinet outside the Garda station. Detective Inspector Kelly was informed that an 18 to 24 inch section of the cable would have had to have been removed in order to spread out the cable pairs to identify the correct one. There was no evidence of such an interference.

20.4.9 In relation to the allegation that a modified US voice – operated, long – playing recorder was hidden in the jointers' test equipment in the cable chamber, Detective Inspector Kelly told me that this would not have survived the frequent flooding of the Dundalk Ramparts Exchange cable chamber without being damaged by the water. He also did not think the recorder could have been left in the jointer's box. Firstly, the available space in a jointer's box is quite small and secondly, the boxes were very valuable. The jointer who owned it would reclaim it and, of course, discover the recorder there. Furthermore, the jointer's box closes tightly and the wire to the recorder would impede it from being shut tight. Given its size, it would not have been possible to hide a jointer's box in the chamber without it having been quickly discovered and there is no record that this ever occurred.

20.4.10 As regards the allegation that the late Gerry Finnegan, the Dundalk Engineering Superintendent, had discovered the interference and reported it to Telecom headquarters in Cumberland House, Dublin, Detective Inspector Kelly could find little evidence to substantiate this claim. He traced many of the people who worked with the late Mr Finnegan

and they all confirmed they held Mr Finnegan in the highest esteem and that, had he found any interception, he would have reported it. Detective Inspector Kelly was satisfied that he had not done so: he could find no records to substantiate an investigation by Mr Finnegan despite an extensive search. Detective Inspector Kelly did, however, take a statement from Mr William Prendergast who recollected an investigation similar to that detailed in the article, but was unable to connect it with the late Mr Finnegan and could not be sure it was the same one.

20.4.11 I also heard evidence from Mr Prendergast in this regard. He served as an Investigation Officer for An Post until 1979, and said he recalled an investigation in Dundalk during his time as an investigator which was reminiscent of what was described in the article. His recollection is that he was called to investigate an interference at the MDF. However, he thinks it was removed before he arrived and he never saw the alleged interference. His recollection is it was regarding a “spare set”; not a line in use, and certainly not a Garda line or Garda private wire. He did not recall any mention of any equipment other than the jumper wire. Mr Prendergast was unable to recall the specific time of this incident, but he speculated that if it had been around the 20<sup>th</sup> March 1989, as an experienced investigator he would have made a connection with the death of the RUC officers if it had been appropriate to do so.

20.4.12 Detective Inspector Kelly spoke to numerous technical experts in the course of his investigation and he reported that the majority of them told him that:

“Where[as] it was technically feasible to carry out an intercept as described, it would be highly unlikely if not impossible. It was pointed out it would have been much easier to intercept the main distribution frame at the cable cabinet, which is on the roadside outside Dundalk Garda Station in the vicinity or from the Garda Station itself. There was more of a chance of it being discovered if it was done from the cable chamber. It could be done from the main distribution frame in the Exchange, but, again, it would, sooner or later, would have been discovered.”

20.4.13 Detective Inspector Kelly told me that, with the assistance of some of the technical experts, he had carried out an experiment to see if it was technically possible to intercept a wire as described in the article. He concluded that although the interception was technically possible, it was impractical and unlikely to have occurred:

“The investigation concluded in 2008 and where details within the article indicated the possibility of such an intercept, the technical experts who assisted me with the

investigation were largely in agreement that although technically feasible to conduct such an intercept, it would be a most cumbersome method which could easily be detected [while] much simpler and available means could be engaged with less chance of detection.”

20.4.14 Detective Inspector Kelly concluded that in the end, “the article was not relevant to the material facts.”

## **20.5 – The Evidence of the Technical Experts in Relation to *The Phoenix* Article**

20.5.1. Mr John McGuone joined the Department of Posts and Telegraphs in 1959 and worked with them in maintenance (and with Telecom and Eircom) until he retired as technician in charge until 1999 when he retired. He confirmed that while it would be technically possible to open the relevant cable in the cable chamber to extract the relevant private wire, it would have had to be repaired and this work would be obvious forever. Mr McGuone said it would be “virtually impossible” to pick out a specific wire from a 400 pair (this is the number of pairs of wires carried in a single cable) in the cable chamber, let alone a 1,200 pair or 2,400 pair. He said there was a “cable card” system for keeping track of the wires which was replaced throughout the 1980s by a computer system which required a unique password for each person and tracked each access for auditing. The records for the private wires were kept locked in a supervisor’s office. A private wire was indistinguishable from any other wire. Mr McGuone confessed that although he had access to the records every time he went to use it he was “totally confused” and needed the help of experts to get the information.

20.5.2 Mr Tommy Commins who joined Posts and Telegraphs in 1954 continued as an electrician, transferred to RTE but returned as engineering inspector in Eircom in 1973, told me that a jumper wire running from a cable, which is was alleged had been slit open, to a recorder in a jointer’s box would be obvious to anyone in the cable chamber and would be investigated. He recalled no such investigation: if there had been one, he was absolutely certain that he would have heard of it.

20.5.3 Mr Peter Clarke was of the view that the amount of sheathing which would have to be removed from the cable to extract the relevant private wire would be approximately 2 metres long. If this was done in 1987, the evidence would still be plain to see. He made investigations and saw no evidence of such tampering. He added that there was absolutely no chance of a recording machine remaining in the chamber unnoticed.

20.5.4 Mr Thomas Martin was a technical, class one lineman dealing with repairs and callouts to Dundalk Garda Station. He told me that he was not impressed by the manner in which *The Phoenix* magazine suggested the lines had been interfered with. It would have been far easier to tap at the Garda Station.

20.5.5 In a similar vein, Mr Leo Duffy, a technical officer working on the Dundalk Exchange maintenance team in the late 1980s, gave evidence to the Tribunal that there was a much easier way to tap the Garda station than that described in the article. The IRA could have intercepted the telephone at one of the exterior cabinets in Dundalk, near the Garda Station, He said this would be less likely to be spotted because a local cabinet was less frequently visited than the cable chamber. As an alternative, it would also have been easier to run a jumper wire from a private Garda wire on the Main Distribution Frame of the Exchange (which is on the floor above the cable chamber), down through the hole to the cable chamber underneath and into the jointer’s box. This could have been done in five minutes whereas it would have required hours to split open and re – seal the PUT cable sheath.

20.5.6 This is only a brief summary of the extensive technical evidence that I heard, but I believe that it is sufficient to demonstrate that the overwhelming evidence was that:

- (i) There was no physical evidence or documentary records to substantiate the allegation; and
- (ii) had the Provisional IRA wished to tap Dundalk Garda Station, it would, in all likelihood, not have done so in the manner suggested in *The Phoenix* article.

20.5.7 In the latter respect, I think that it is significant that *The Phoenix* itself, after becoming aware of at least some of the evidence before the Tribunal, saw fit to publish a revised theory, with unmistakable parallels to the suggestions made by witnesses before the Tribunal of “better” ways the tapping could have been carried out. This seems to demonstrate a lack of confidence in its own original report.

## **20.6 – The Second *Phoenix* Theory**

20.6.1 On 4<sup>th</sup> November 2011, *The Phoenix* published a second article regarding allegations of telephone tapping as follows:

“In evidence at the Smithwick Tribunal of Inquiry into the 1989 killing of two senior RUC officers, telecoms experts pooh – poohed *The Phoenix* investigation in 2005 that

concluded the IRA had tapped Dundalk Garda Station phones via the local telephone exchange. ‘Not possible . . . a load of rubbish . . . too complicated’ were just some of the dismissive remarks made by Telecoms witnesses and a Garda officer, all of whom agreed that subversives did not have such expertise. While official experts may know lots about legitimate communications, their knowledge of Improvised Communications Interception (ICT), like their knowledge of Improvised Explosive Devices (IED) at which the Provos were long acknowledged world experts (see British Army Training manuals on same), is less so. For example, Smithwick was told it would be impossible to locate a specific circuit in a large (say 800 pair) cable. If the Provo tappers couldn’t find the lines they wanted to tap they would not have been able to intercept them. So the Dundalk tapping didn’t happen, say the experts. Nonsense. The key piece of equipment used to track a cable or the wires inside a cable is called an oscillator (size of a mobile phone).

[...]

[O]scillators were standard kit with all jointing teams, as they continued to be in Eircom, BT, and in private contractors who renew cables. An oscillator can track a cable and an individual pair of wires in a cable from Newry to Dundalk no bother.”

20.6.2 The article also stated:

“No employee of Eircom or any of its contractors were involved in the deniable unit tapping at Dundalk. But BT trained jointers (also known as U/G staff) were widely available to the IRA for a generation.”

20.6.3 The article provides fresh details as to how the recordings were monitored. The monitoring as accomplished saying:

“One difficulty with the Dundalk tapping (as well as the Belfast East Exchange) was that it had to be transferred to an untraceable place where it could be monitored securely. Using improvised tactics, this could be ten miles or more away, or any distance required, via metal roadside connection boxes called Cabinets. These are termination points for cables of all sorts including subscriber’s home lines. They are a hotch potch of new and old; a rabbit warren of jumpers connecting suburban subscribers lines with main exchange cables, spare lines and abandoned links which have been replaced by newer cables because of partial faults. Just the place to hide away a covert connection. Cabinets stand alone and unguarded, often only secured by

a spigot key of the sort used to close a gas meter in a suburban front garden. A two – person IRA party working at a cabinet, to transfer the tapped line to another cabinet or elsewhere, would attract no attention.

[...]

It may be difficult politically and professionally for the Special Branch and others to admit that the IRA tapped their phones, but the claim that it was not technically feasible is simply untrue. Goldhawk was told that having got into the exchange in Dundalk in 1987 the two IRA jointers climbed the 20 foot travelling ladders at each side of the Main Distribution frame (MDF) to the layers of silk and cotton internal cables neatly hand – stitched like thatch.

Each silk and cotton cable connects to cables running out of the exchange. Slicing through the fabric covered silk and cotton for 12 inches, the material was peeled back until the target pair was identified by means of an oscillator tone (aka a chirper).

One piece of evidence offered to the Tribunal was that tampering with the air pressurised cable would have set off an alarm. As recounted by Goldhawk (see *The Phoenix* 17/6/11 and passim) the IRA heat shrunk a repair sleeve and nozzle onto the cable to avoid the tell – tale loss of air.

The target pair was removed from the cable. Its paper and enamel insulation was removed a 6lbs copper wire is attached by means of a twist joint. This was then crimped for secure permanent electrical connection.

An insulating paper sleeve was then slipped over the connection and this tapped link was placed inside its parent cable and the cutaway silk and cotton fabric pulled tight to create the impression the original cable had never been opened. The mark of perfection though came from the use of Denso tape. This is a grey, oozing, two inch wide, water – protective fabric tape used extensively in U/G works in BT and Eircom. Binding it tightly on the internal cable and burying it in the inches of dust on top of the Frame gave cover that ensured the tap would be extremely difficult to find.”

20.6.4 Mr John O’Halloran, who was a District Manager and consultant engineer in Telecom overseeing the northeast, addressed this new allegation in his evidence. He said an oscillator is a piece of equipment that generates a signal and has been in existence since practically the beginning of telecommunications. He agreed it was standard equipment. One can use an oscillator on a pair of wires to send a signal, then go miles away and, with a sensor device that accompanies the oscillator, detect the relevant pair of wires at any cabinet or pole. He agreed

that an oscillator could track a line from Newry to Dundalk. Normally records would be used but there might be an error in jointing or other problem and this method could be used to track a specific pair. However, this would not work at a main distribution frame cable because the wires are too close together; it only works when the pairs are spatially removed from each other and one could identify the signal on one or the other.

20.6.5 Mr O'Halloran told me that slicing into the silk and cotton cable as described in the second article would have been a complete waste of effort, and the oscillator would not have worked in such a scenario. He described this as nonsense. Depending on where you sliced into the cable, the alarm would be activated. If one then put a sleeve on the cable, this would serve no purpose. Once the sleeve had been put on, one would still have to re – pressurise the cable or the alarm would continue. He characterised the description of removing the target pair, stripping the insulation, twisting and crimping as a “nonsense.” He concluded that there was no evidence in either article which would lead him to believe that there was any tapping.

### **20.7 – The Possibility that Dundalk Garda Station Itself was Tapped**

20.7.1 In the course of investigating *The Phoenix* theory, other possible methods of intercepting phone calls to and from Dundalk Garda Station were explored in evidence. One of the more notable possibilities mooted in this regard was the placement of an intercept at the Garda Station itself. Evidence was heard from Mr Thomas Martin, a technical first class linesman, who had experience dealing with the telephone lines in Dundalk Garda Station and Garda Garavan McFadden, from the Telecommunications Division of An Garda Síochána.

20.7.2 Mr Martin believed that it would have been technically far easier to tap a line within the Station than at the Ramparts Exchange. He described the internal distribution frame at the station as a large cream box with a lid: this is where all the lines coming into the station from the street terminated. He said the box was not locked but secured with a couple of screws. There was a mass of wires or lines inside the box. These lines each had a label on them, which would enable the identification of the relevant telephone line, but the labels were not one hundred percent accurate. There was a “book of codes” hanging on the wall nearby which was a system of cards to assist in tracking the lines.

20.7.3 This internal distribution frame was accessible not only by people from Telecom but also by Garda technical people and alarm people. Mr Martin was not aware of any sweeps done for bugs or taps. He said he would not have noticed a jumper wire tap because different companies, like Chubb, had their own colour – coded wiring.

20.7.4 Garda McFadden explained that in 1989, Garda Telecommunications Division looked after the lines which were supplied by Telecom Éireann. Siemens was contracted to supply the private branch exchange (“PBX”) within the building, and Telecom Éireann would have some responsibility for ordinary lines to the desks that were not going through the PBX, and for the scrambled lines. Telecom Éireann also brought in private wires to the Radio Control Room, including from RUC stations in Newry and Bessbrook. As noted earlier in the Report, to use a private wire one had to go into the Radio Control Room. Garda McFadden broadly agreed with the description of the internal distribution frame given by Mr Martin. He elaborated that it was located in the basement, in a wide corridor that also had the ESB boards, sub – boards and generator changeover switches. He said there was a locker room down there along with a snooker table and toilets, so people were going up and down regularly. Anything unusual would likely be spotted by local members.

20.7.5 He was never asked to look for bugs or taps at Dundalk Garda Station, nor was he aware of any suggestion in 1989 that there may have been a tap. If there was a concern, he would likely have been asked to carry out the sweep.

## **20.8 – Conclusion in Relation to the Phone – tapping Theory**

20.8.1 In the light of all of the evidence outlined above, I must reach the conclusion that the theory advanced by *The Phoenix* magazine is without foundation. While telephones in Dundalk Garda Station could in theory have been tapped, most likely in ways other than that suggested by *The Phoenix*, there is simply no evidence to indicate that this occurred. In this regard, it is also worth mentioning that the former volunteers of the Provisional IRA who co – operated with the Tribunal described the theory that the IRA had tapped Dundalk Garda Station as “fanciful”; though I acknowledge that there might be reasons why they would not wish to reveal if this had in fact been done.

## **20.9 – Reference to Collusion by an RUC Officer in the Northern Ireland Office Minute of August 2002**

20.9.1 A further alternative theory as to how the IRA mounted the operation of 20<sup>th</sup> March 1989 is that the organisation received information from a member of the RUC. As identified earlier in this Report, this is certainly a theoretical possibility given my finding that from the conclusion of the meeting in Armagh RUC Station on the late afternoon or early evening on Thursday, 16<sup>th</sup> March 1989, there was knowledge among a number of RUC officers that Harry Breen and Bob Buchanan would be travelling to Dundalk early the following week. This circle of knowledge further widened in the course of Friday, 17<sup>th</sup> March 1989 and Saturday, 18<sup>th</sup> March 1989. Throughout its private investigation, the Tribunal was alive to this possibility. Likewise, I have borne in mind this possibility throughout the public hearings and

my analysis of the evidence. However, despite the huge volume of documentation which the Tribunal has considered, emanating both from the authorities in the State and those in the neighbouring jurisdiction, only one document tends to support this alternative theory of RUC collusion.

20.9.2 This is a document which was provided voluntarily to the Tribunal by the Northern Ireland Office and in fact originally emanated from the Northern Ireland Office. It is a letter, dated August 2002, from Peter Waterworth, then Principal Private Secretary to the Secretary of State for Northern Ireland. When it was initially provided for use in public hearings, the document was so heavily redacted that it was difficult to make any sense of it. After some discussion with the Northern Ireland Office, it was agreed that some of the redactions could be lifted.

20.9.3 The letter was addressed to a person who, the Tribunal was able to ascertain, was a member of the British Security Service. It was also copied to a number of officials in the Northern Ireland Office. The document is entitled '*Follow Up Discussion with Sylvia Hermon*'. It begins with the line, "I had a brief discussion with Sylvia Hermon yesterday afternoon." There then follow three paragraphs which are redacted. The Tribunal has had sight of the original of this letter and I am satisfied that these three paragraphs did not relate at all to my terms of reference.

20.9.4 Paragraph 5 of the letter was ultimately provided in a fully un – redacted form and states as follows:

"What seems to have inspired Hermon to speak out was Trimble almost divulging in front of Donaldson and Burnside at the Parliamentary Party meeting, information she had given to Campbell a year ago that the likely source of collusion in the Buchanan and Breen case was 'a senior Catholic RUC officer'. She did not have any more specific information about the individual's identity but had been sufficiently impressed by the evidence that she had sought and failed to persuade Trimble not to include the case on the Weston Park list. She feared the consequences for the PSNI if the story was to emerge from a review and had talked Trimble down when he had come so close to blurting it out."

20.9.5 It is therefore suggested in this document that Lady Sylvia Hermon, sometime in 2001, told "Campbell" that the likely source of collusion in the case the subject matter of this

Tribunal of Inquiry was a Catholic RUC officer. The Tribunal had established that the “Campbell” referred to is David Campbell who was, at the time when this document was written, Chief of Staff to David Trimble, then leader of the Ulster Unionist Party. Mr Campbell subsequently became Chairman of the Ulster Unionist Party.

20.9.6 The Tribunal made contact with Mr Waterworth, who now resides in Western Canada. He provided a detailed letter in response to the Tribunal’s request for information in relation to his Memorandum dated August 2002, and this letter was read into the record of the Tribunal. In it, he said that his recollection of the conversation with Lady Hermon is limited to the minute of August 2002, except that he does recall:

“Lady Hermon saying that Mr Trimble raised the Breen and Buchanan murders at the Weston Park Conference as a disincentive to, or tit – for – tat for, the investigation of alleged collusion cases in Northern Ireland.”

He continued:

“While paragraph 5 is a summary, it is relatively detailed and, as an experienced note taker, I would not have reported on the substance or used quotation marks unless I was sure that I was accurately reflecting what I had been told.

I had no independent knowledge of the discussion between Lady Hermon and Mr Campbell the previous year, or of Mr Trimble’s motivation, or of the discussion at the UUP Parliamentary meeting referred to in the Minute.”

20.9.7 The Tribunal also, as part of its private investigation phase, met Lady Sylvia Hermon, Lord Trimble and Mr David Campbell. Lady Hermon declined to give evidence before the Tribunal but did provide a sworn Affidavit which was read into the record of the Tribunal. In it, Lady Hermon accepted that she was the person referred to in paragraph 5 of the Minute of August 2002 but continued:

“The remainder of paragraph 5 of that NIO document is however grossly inaccurate and grossly untrue. It is wholly untrue for paragraph 5 of the NIO document to assert that I had ‘sought and failed to persuade’ the UUP leadership not to include the Breen and Buchanan case on the Weston Park list because ‘the likely source of collusion in the Buchanan and Breen case was a senior Catholic officer’.

Since I was first elected to the House of Commons as an Ulster Unionist in the 2001 General Election held on the 7<sup>th</sup> June that year, I was so inexperienced politically that I was not even included in the UUP team at the Weston Park talks held a month later in July 2001.

It is also wholly untrue for paragraph 5 of the NIO document to claim that a year ago I had given to ‘a prominent member of the UUP information that the likely source of collusion in the Breen and Buchanan case was a senior RUC Catholic officer’.

Furthermore, it is wholly untrue of paragraph 5 of the NIO document to claim that I had been ‘sufficiently impressed by the evidence’ of collusion by ‘a senior Catholic RUC officer’ in the murder of Chief Superintendent Breen and Superintendent Buchanan. On the contrary, I have never seen or been given any evidence of collusion by a ‘senior Catholic RUC officer’ in the murder of Chief Superintendent Breen and Superintendent Buchanan.”

20.9.8 Mr David Campbell also provided a sworn Affidavit and this, likewise, was read into the record of the Tribunal. In his Affidavit, he stated:

“At paragraph 5 of the document it states that I was given information by Sylvia Hermon ‘a year ago’. Bearing in mind that the document is dated [.] August 2002, that would mean that I was supposed to have been given information some time in August or September 2001 that the likely source of collusion in the Buchanan and Breen case was ‘a senior Catholic RUC officer’. I never received, at any time, any such information from Sylvia Hermon.”

20.9.9 Lord Trimble also provided a sworn Affidavit in which he confirmed that Lady Hermon was not part of his UUP negotiating team at Weston Park. His Affidavit continued:

“At no stage did Lady Hermon seek and fail to persuade me ‘not to include the case on the Weston Park list’ because the likely source of collusion in the Buchanan and Breen case was ‘a senior Catholic RUC officer’. In this regard, paragraph 5 of the NIO document is entirely incorrect.

Furthermore, I have never seen or been given any evidence that the likely source of collusion in the Buchanan and Breen case was ‘a senior Catholic RUC officer’.”

20.9.10 Furthermore, Jeffrey Donaldson, MP, and David Burnside, in correspondence with the Tribunal, indicated that they had no knowledge of the information which, the minute alleges, Lady Sylvia Hermon possessed.

20.9.11 The Tribunal also heard evidence from Baron Maginnis of Drumglass, the former MP for Fermanagh and South Tyrone. Lord Maginnis confirmed that he was part of the Weston Park negotiating team for the Ulster Unionist Party, and that he worked closely with David Trimble and David Trimble’s Chief of Staff, David Campbell, throughout the period of the Peace Process. He gave evidence that neither around the time of the Weston Park negotiations, nor before or since that time, had he heard information circulating in Ulster Unionist circles about the suggestion of RUC collusion in the death of the two officers. He also added that he was closely associated with the Security Services, the Army and the RUC throughout his political career, and likewise never heard the suggestion in those circles.

20.9.12 When it was put to him by Counsel on behalf of Finbarr Hickey that someone in the position of Private Secretary to the Secretary of State must be considered to be reliable and, implicitly therefore, unlikely to have made an error in recording the minute of a conversation with Sylvia Hermon, Lord Maginnis noted that,

“I found some of the most experienced people who came with years of experience to Northern Ireland totally lost and pretty useless, and I can’t remember whether Mr Waterworth was of that ilk or not.”

Lord Maginnis said that he had the advantage of having heard the Affidavits from David Campbell, Sylvia Hermon and David Trimble being read into the record, that he had worked closely with David Trimble and David Campbell, and that he “will be and continue to be influenced by what they say.” He continued:

“Added to that, I have never in all the multitude of meetings that I have attended, I have never heard either or them make that allegation. And hence I – perhaps somewhat unkindly, I hope not – think that Mr Waterworth may have made a mistake.”

20.9.13 I should add that the Tribunal has also had correspondence with the British Security Service, which has indicated that it has shown Peter Waterworth’s minute of August 2002 to

the member of that Service to whom the Minute was addressed. By correspondence, the Security Service indicated to the Tribunal that:

“the individual concerned told me that he recalled the subject matter of this communication but did not recall anything beyond this.”

By subsequent written communication, the British Security Service further confirmed that the individual concerned has confirmed that “he is not aware of any evidence supporting the theory referred to in your letter”, namely the theory of RUC collusion in the murders.

### **20.10 – Conclusion in Relation to the Suggestion of Collusion by a Catholic RUC Officer**

20.10.1 Given the unequivocal and robust denials, on sworn Affidavit, of Lady Sylvia Hermon, Lord Trimble and Mr David Campbell, as well as the sworn testimony of Lord Maginnis, I cannot come to the conclusion that there was a view within the leadership of the Ulster Unionist Party that a Catholic RUC officer colluded in the murders of Chief Superintendent Breen and Superintendent Buchanan. I accept the information provided by Lady Hermon and Mr David Campbell that the conversation which is alleged to have taken place between them did not take place, and I likewise accept the information of Lady Hermon and Lord Trimble to the effect that Lady Hermon did not seek to prevent Lord Trimble divulging to other members of the Ulster Unionist Party information that a Catholic RUC officer colluded in the murders.

20.10.2 As I have already indicated above, this NIO minute was the only document which supported this theory of RUC collusion.

20.10.3 I should add that I note that in written submissions made to the Tribunal on behalf of the Garda Commissioner, a number of lines of inquiry are identified which, it is submitted, the Tribunal has failed to pursue. I mention this here because a large proportion of the identified lines of inquiry relate to the possibility of RUC collusion. This submission by the Garda Commissioner is, however, premised on a mistaken assumption that if evidence was not called in relation to a matter in public hearings, that matter was not explored as part of the Tribunal’s private investigation. To put the matter another way, one cannot put into evidence evidence which does not exist. I am satisfied that as part of the private investigation, which was conducted under my direction, the possibility of RUC collusion was pursued as far as it could be. (This applies equally to the other items identified in the Garda Commissioner’s submissions). However, as indicated at section 2.8 of this Report, barring this 2002 NIO

minute, there was no evidence which advanced that theory from the realm of theoretical possibility into a more credible and substantial line of inquiry. Accordingly, and given that I place no weight in the assertions made in the minute of August 2002, I find that there is no evidence to support the possibility that the IRA received assistance from a member of the RUC which facilitated the murder of Chief Superintendent Breen and Superintendent Buchanan.

# Chapter 21

## Intelligence Material

### 21.1 – Introduction

21.1.1 In this chapter, I set out and address intelligence material provided to the Tribunal by the security agencies in this and the neighbouring jurisdiction. Much of the intelligence received by and put into evidence before the Tribunal has already been outlined in its proper context in earlier chapters of this Report and I do not propose to repeat that material here. This chapter will therefore focus on intelligence not outlined elsewhere; a significant part of it will address 20 strands of intelligence provided by the Northern Ireland Office to the Tribunal from late spring 2012 onwards.

21.1.2 I think it important to state at the outset that “intelligence” can come in many different forms and from many different sources, human and technical. What distinguishes “intelligence” from bare information is that it has been subject to some form of collation and analysis by professional intelligence – gathering agencies. This is not, however, to say that “intelligence” is to be treated reverentially. I recognise that the circumstances in which intelligence is received, the motivations of those who provide it, and, therefore, the quality of intelligence, can vary enormously.

21.1.3 However, given the nature of the allegations being inquired into by this Tribunal – collusion with a subversive organisation – I also recognise that it is an important and potentially useful means of acquiring relevant information. If collusion did occur, the best evidence of it will rest with the colluder and those with whom he or she colluded; however, these people are unlikely to provide such evidence. They might however, disclose in it inadvertently, or someone within the ranks of the subversive organisation might disclose it surreptitiously if he or she is an informant. Such information would not, however, become available to the Tribunal in the normal course, and, in that respect, I must have regard to the intelligence picture in relation to the deaths of Chief Superintendent Breen and Superintendent Buchanan. Counsel for the Tribunal stated in her opening statement at the commencement of the public hearings, “intelligence reports ought to be approached with an open but cautious and questioning mind.” Intelligence must of course be considered cautiously by a Tribunal such as this, but it cannot and must not be ignored.

21.1.4 Before turning to consider intelligence not previously addressed in this Report, it is worth recalling some of the intelligence to which reference has already been made. This includes:

(i) An intelligence report submitted by Tom Curran in relation to the existence of a general threat to RUC officers visiting An Garda Síochána south of the border.

(ii) Intelligence received in the immediate aftermath of 20<sup>th</sup> March 1989, which included intelligence indicating that the IRA had four roads covered on the day in question and intelligence indicating that the intention of the operation was to abduct and interrogate the officers to obtain information about the ambush at Loughgall;

(iii) Three items of intelligence received from the same source within a few years after the shooting which was suggestive of collusion both in the deaths of Chief Superintendent Breen and Superintendent Buchanan and those of the Gibsons (see section 11.11 of this report);

(vi) A single piece of intelligence suggesting that Finbarr Hickey colluded in the murders of the two RUC officers, which statement was retracted when follow – up enquires were made;

(v) Intelligence reports submitted to Garda Headquarters by Detective Sergeant Owen Corrigan in the years 1985 (38 items) and 1989 (11 items). The items submitted in the latter year included one which referred to the IRA being in possession of Bob Buchanan's notebook and two items in relation to the murder of John McAnulty;

(vi) Intelligence material relating to Detective Sergeant Corrigan dating from both before and after his retirement from An Garda Síochána; this includes the RUC SB50 dating from 1985 suggesting that he was passing information to the IRA, an intelligence document suggesting that Owen Corrigan was not the person who provided information to the IRA in respect of the Breen and Buchanan murders, an intelligence item relating to the intimidation of a witness in the prosecution of Owen Corrigan for obtaining money by false pretences, an intelligence document in relation to his relationship with Finbarr Dillon, and a number of intelligence documents,

received by both An Garda Síochána and the RUC, in relation to the abduction of Mr Corrigan in December 1996; and

(vii) Intelligence documentation connected with the evidence of Kevin Fulton, (also known as Peter Keeley): intelligence received by An Garda Síochána in August 1988 indicating that he was a trusted person within the IRA ;and intelligence in relation to the aftermath of discovery of a bomb – making factory in Omeath on 28<sup>th</sup> August 1985.

21.1.5 I now propose to deal with additional intelligence reports which have been not previously referred to.

## **21.2 – An Allegation About a ‘Civilian Administrator’**

21.2.1 Retired Detective Superintendent David McConville of the PSNI put into evidence the following précis of intelligence, received by the PSNI in early summer 2003:

“Reliable intelligence indicates that a civilian administrator based at an unknown location in the Republic of Ireland organised meetings between the Garda and RUC in 1989. This administrator was responsible for the leak to PIRA that led to the death of Chief Superintendent Harry Breen and Superintendent Robert James Buchanan on 20<sup>th</sup> March 1989 in South Armagh.

**Comment:** We hold no further intelligence on this matter, should we obtain anything further we shall appraise you immediately.”

21.2.2 Replicas of this intelligence were put into evidence by Detective Superintendent Brunton of An Garda Síochána, indicating that the intelligence information had been shared by the PSNI with the Gardaí.

21.2.3 As regards the contents of the intelligence, I note the evidence of Mr Pat Tierney, who in March 1989 was the Superintendent and District Officer in Dundalk, in which he confirmed that he could not recall any situation in which a civilian administrator organised meetings between RUC officers and either him or his Chief Superintendent. The Tribunal also established during the course of its evidence that the civilian employee who normally worked in the District (or Superintendent’s) Office in Dundalk Garda Station in 1988/89, Kathleen Freeman, was in fact on certified sick leave, following on from maternity leave, on the day of the ambush. The Tribunal also heard evidence from the civilian employee who worked in the

Sergeant's Office on 20<sup>th</sup> March 1989, Nora Burns, and there was no evidence whatsoever to suggest that she had any role in organising these meetings. Furthermore, it seems to me highly unlikely that this would be done through the Sergeant's Office. Ms Burns referred to two other civilian clerical officers who worked in the Garda station around the time of March 1989, but there is no evidence before me to suggest that these two clerical officers were in fact employed in the station on the date of the ambush.

### **21.3 An Allegation About an 'Unknown Female'**

21.3.1 Retired Detective Superintendent McConville also put into evidence intelligence received by the RUC dated January 1991 which provided as follows:

“Intelligence indicated that an unknown female who works in Dundalk Garda Station made a phone call to an unknown member of PIRA when Chief Superintendent Breen and Superintendent Buchanan were leaving the barracks. This phone call enabled the two officers to be triggered into an ambush on the Edenappa Road, Jonesborough on 20 3 89.

Enquiries continue to identify the female concerned.”

21.3.2 In relation to this intelligence, I note, first and foremost, that it suggests that a telephone call was made when the two RUC officers were leaving Dundalk Garda Station. Given that I have accepted that an Active Service Unit was in place on the Edenappa Road at 2.30pm, I do not think this intelligence gives a credible account of how the ambush was set up. I have noted earlier in this Report that the arrival of the two officers no earlier than 2.20pm was witnessed by a number of individuals at the Garda station and there was quite a high level of awareness of their presence in the station subsequent to their arrival. This means that it is certainly, in theory, possible that a female in the station was aware of their presence; however, a phone call as they left the station would not have constituted adequate notice in order to set up the ambush and is not consistent with the established facts.

### **21.4 – An Allegation About a 'Person on Legitimate Business at the Garda Station'**

21.4.1 Detective Superintendent McConville also put into evidence the following intelligence received by the RUC and dated March 1989:

“Intelligence received indicated that the information obtained by PIRA in respect of the movement of Chief Superintendent Breen and Superintendent Buchanan was

obtained by a person visiting Dundalk Garda Station on legitimate business at the same time as the arrival of Mr Breen and Buchanan and recognised them.”

21.4.2 As I have outlined earlier in this Report, the possibility of a member of the public visiting the Garda Station having seen and reported their arrival to the Provisional IRA formed a significant line of inquiry in the investigation conducted under the direction of Detective Superintendent Tom Connolly in the immediate aftermath of the murders. As indicated earlier in sections 4.2 and 6.4 of this Report, that investigation did not yield any positive results and I am satisfied that the matter was pursued adequately. Furthermore, and in any event, I have already noted in my conclusion that, given that an Active Service Unit was dropped off on the Edenappa Road at 2.30 pm, the arrival of the officers not before 2.20pm could not have been the trigger for the mounting of an operation from scratch. Rather, it can only have been the trigger for the second phase of an operation already under way.

## **21.5 – The Visit of Bob Buchanan to a Garda Station ‘Alleged to be Under Surveillance’**

21.5.1 Detective Superintendent Brunton of An Garda Síochána put into evidence two précis relating to the same intelligence information, which provided as follows:

“Information (May 1995) available to the Gardaí indicated that Superintendent Bob Buchanan visited a Garda Station that was alleged to be under surveillance a short period prior to his murder.”

21.5.2 The Garda Station concerned is not specified and might very well be Dundalk Garda Station. However, equally, I must bear in mind the intelligence report which, as I have found, Detective Superintendent Tom Curran submitted to Garda Headquarters in respect of a specific threat to Bob Buchanan. If the information that Tom Curran had received was correct, this would tend to suggest that a Garda station in Monaghan was under surveillance. The information could also apply to any of the number of smaller stations visited regularly by Superintendent Buchanan. In the absence of any more detailed or further information, I do not think that I can come to any particular view on the basis of this strand of intelligence.

## **21.6 – The Allegation of an Accidental Sighting by a PIRA Member**

21.6.1 Detective Superintendent Brunton also put in to evidence the following précis of intelligence:

“Garda information received in the final quarter of 1989 suggested that the two RUC officers who were killed were accidentally sighted on the southern side of the border by a named PIRA member. The PIRA member recognised one of the officers and then passed details of the sighting on to PIRA. PIRA checked at Dundalk Garda Station and confirmed the officers were there. “

21.6.2 Retired Assistant Commissioner Pat O’Toole said in evidence that there was “impeccable intelligence” which established that no collusion was required. In this regard, he placed considerable evidence on this intelligence précis. He told me in evidence that he knew the Garda handler, and proceeded to show me the original intelligence report in a private session of the Tribunal. The named PIRA member who, it is said, accidentally saw the two officers south of the border is named in that report and that name is known to me.

21.6.3 However, this report is again premised on the operation having been mounted once it was confirmed that the RUC officers were already in Dundalk Garda Station, which puts it sometime after 2.20 pm. As I have already indicated, I do not consider that this is feasible. In this regard, I also note the opinion expressed by Witness 62, an experienced retired RUC Special Branch officer, who was asked to comment on this strand of intelligence. He described the theory espoused in it as “nonsense.” He said that the IRA:

“could not have mounted that operation in that time, and they simply wouldn’t have done it unless they were absolutely certain that the risk to themselves was minimal.”

## **21.7 – The Monitoring of Dundalk Garda Station in 1984**

21.7.1 Detective Superintendent Brunton also put into evidence the following précis of intelligence, suggesting that the monitoring of Dundalk Garda Station occurred in 1984:

“Garda information (1984) detailed assorted information including the fact that PIRA were monitoring movements of Garda vehicles to and from Dundalk Garda Station. Report also detailed the vantage points used by PIRA to survey the Garda Station.”

21.7.2 I do not think that this adds anything to the consideration of the question of collusion in the March 1989 ambush.

### **21.8 – The Intelligence Report of Comments Suggesting that the Planning and Ambush were Carried out on the Same Day**

21.8.1 Retired Detective Superintendent McConville also put into evidence a Memorandum from a PSNI CID Detective Chief Inspector to his District Commander (Newry & Mourne) dated 26<sup>th</sup> February 2004. This is written in the wake of Mr Justice Cory's recommendation that this Tribunal be established. The Memorandum notes:

“I should point out that I am additionally in receipt of further intelligence in Action Sheet 0104/4026 dated 16/1/04 and graded [redacted]. This states that, ‘recent comments made by a senior member of South Armagh PIRA would suggest that he is of the opinion that the murder of Chief Supt. Breen and Supt. Buchanan was planned and carried out on the same day. Hence any inquiry would have difficulty discovering any evidence of collusion between Garda and PIRA’.

This latter intelligence tends to negate the implication that there was collusion but this is by no means certain.”

21.8.2 I have to say that I do not think that this adds anything to my consideration of the matters before me. I do not fully understand the suggestion that if the operation were planned on the 20<sup>th</sup> March 1989, this rules out collusion. Certainly, I have an open mind on this issue in that I think that one possibility worthy of consideration is that the fact that the two RUC officers would be coming to Dundalk Garda Station later in the day may have been leaked by someone in that Garda Station in the course of the morning or early afternoon of 20<sup>th</sup> March 1989.

### **21.9 – An Allegation of Targeting of RUC Officers After the Hanna Killings**

21.9.1 Detective Superintendent McConville also put into evidence, at a relatively late date in the Tribunal's public hearings, a document which he explained had surfaced only very recently due to having previously been misfiled. The document was in the form of an ‘SB57’ message form; he said this was a form of recording information received in local Special Branch offices. The document emanated from Newry Special Branch Office and was addressed to the Special Branch Headquarters office in Belfast. The document is dated 27<sup>th</sup> July 1988 and provides as follows:

“PIRA are monitoring the movement of plainclothes RUC officers who, since the triple fatal explosion at Killeen border crossing on 24.7.88 are travelling on a regular basis to Dundalk Garda Station.

**Action taken:** All involved have been informed for info.”

21.9.2 This is obviously of interest given that it suggests that the IRA were monitoring the comings and goings of RUC officers at Dundalk Station in July 1988. This is something to be borne in mind, particularly when considering the version of events provided to the Tribunal by former personnel of the Provisional IRA, which is outlined in the next chapter. However, a note of caution must also be sounded in this regard because it seems to me that this information is quite specific in time. The intelligence is dated just three days after the deaths of the Hanna Family at Killeen, and appears to me to specifically relate to the immediate cross – border liaison associated with the investigation of that atrocity. It is, however, possible that a sighting which occurred in the context of an operation specifically connected to the investigation of the Hannas’ deaths, could have led to a separate Provisional IRA surveillance operation.

### **21.10 – The Results of the British Army’s ‘Vengeful’ Analysis**

21.10.1 Also relevant to the issue of potential surveillance having been carried out by the Provisional IRA are the results of British Army’s ‘Vengeful’ analysis carried out after the deaths of the two RUC officers. This analysis has already been referred to briefly in section 2.5 of the Report, but it is proposed to deal with it in some more detail here. ‘Vengeful’ entailed the carrying out of a retrospective review of recorded sightings of Bob Buchanan’s car in the months prior to the ambush, together with an analysis of the cars recorded in the vicinity of his.

21.10.2 The Tribunal received two British Ministry of Defence reports from the Northern Ireland office. The first is dated 5<sup>th</sup> May 1989. This noted that three particular vehicles:

“have drawn particular interest due to their close proximity to the RUC vehicle.”

The report also indicates, in respect of one of these cars and Bob Buchanan’s car:

“On three separate occasions both vehicles were travelling in the same direction through the vehicle checkpoint but within a short space of time. In one instance, the vehicles were separated by only one minute. The odds against this happening at random are very high.”

21.10.3 The second report is dated 6<sup>th</sup> June 1989. It concluded that there was “evidence to suggest that there was targeting carried out by PIRA from the following areas:

- (a) Camlough/North Louth;
- (b) South Armagh; and
- (c) Dundalk.”

In conclusion, the report stated that:

“It cannot be ruled out that the sightings of the vehicles are merely co – incidental, but it is considered that some of them are significant and cannot afford to be overlooked.”

21.10.4 These are further reports which are to be borne in mind, particularly in the context of considering, in the next chapter, the account of events provided by former volunteers of the Provisional IRA.

## **21.11 – An Overview of the ‘Live and of the Moment Intelligence’ Provided by the Northern Ireland Office**

21.11.1 I now turn to consider the intelligence provided to the Tribunal by the Northern Ireland Office from late Spring 2012 onwards.

21.11.2 An initial three strands of intelligence were put into evidence by Detective Chief Superintendent Roy McComb in May 2012; a further five strands of intelligence were put into evidence by him in July 2012; and Assistant Chief Constable Drew Harris put into evidence a further 12 strands of evidence, and gave global evidence in relation to all 20 strands, in September 2012. Assistant Chief Constable Harris had more knowledge of the intelligence than his colleague Detective Chief Superintendent McComb, and had, unlike Detective Chief Superintendent McComb, access to all the raw intelligence upon which the 20 précis were based. An application was therefore made that Assistant Chief Constable Harris be permitted to give this evidence initially in private session lest his answers stray into areas which could lead to the identification of sources. That evidence was ultimately read into the record of the Tribunal at a subsequent public sitting with minimal redactions which I determined to be in the interests of the protection of sources and/or the protection of British national security. I am satisfied that none of the redactions affected the essence of the evidence given by the Assistant Chief Constable.

21.11.3 Before setting out the individual stands, I propose to summarise some of Assistant Chief Constable Harris's evidence regarding the background to and nature of this intelligence. I note at the outset that in his evidence, under cross – examination, Detective Chief Superintendent McComb indicated that a decision had been taken not to share this intelligence with the Tribunal earlier in time. Part of the reason why Assistant Chief Constable Harris ultimately came to give evidence in respect of the final 12 strands was to correct and clarify this. It appears that Detective Chief Superintendent McComb was not fully familiar with the circumstances in which these précis of intelligence had come to be prepared and, probably somewhat unfairly, was handed the intelligence a short time before his appearance at the Tribunal and, in effect, asked simply to go to the Tribunal formally to prove the intelligence précis on behalf of the PSNI.

21.11.4 Assistant Chief Constable Harris is the Assistant Chief Constable of the PSNI with responsibility for the Crime Operations Department. The ambit of this department includes organised crime, major investigation teams, Intelligence Branch, Special Operations Branch and Scientific Support Branch. He told me that he has overall responsibility for intelligence within the PSNI. In this capacity, he is also responsible for interface between the PSNI and the Security Service, the Security Service having primacy in respect of national security intelligence. He confirmed that the 20 précis of intelligence had been prepared and provided to the Tribunal in consultation with the Security Service. He also explained that in Northern Ireland, the police service has sole responsibility for covert operations and majority responsibility for managing covert human intelligence sources. As a result, a lot of the raw intelligence material comes through his department and he is responsible for its transmission to the Security Service.

21.11.5 Assistant Chief Constable Harris described these 20 strands of intelligence as “live and of the moment” information. He said that the information arose “as a direct result of gathering intelligence on the activity of dissident Republican groups”:

“This was intelligence of the moment, and it is an extraordinary position, one which we haven't been in before, where we have sought to share live intelligence, intelligence of the moment, with an ongoing public inquiry.”

21.11.6 He went on to explain that this presents unique challenges in terms of balancing the desire to provide relevant information to an ongoing Tribunal of Inquiry on the one hand, and

the need to protect sources, which is the paramount consideration, and not to jeopardise the current streams of intelligence which are of great benefit to the PSNI in addressing the very real threat from dissident Republicans. For these reasons, he was not prepared to put the précis of intelligence in a chronological order or to give information as to the date on which each of them was received. He said that all as he could say in this regard was that the intelligence had been received in a period “much shorter” than the past seven years and that “other than for the work of the Tribunal, this wouldn’t have particularly been talked about.”

21.11.7 Assistant Chief Constable Harris confirmed that as a result of seeing some of the initial raw material behind some of this intelligence, he instigated further searches of the databases which resulted in other material being retrieved. Further material came to light as a result of separate searches altogether, these latter searches being totally unconnected to the work of the Tribunal. He was questioned closely as to why Detective Chief Superintendent McComb, when he gave evidence in May 2012 in relation to the initial three strands of intelligence, said that the PSNI held no more intelligence relevant to the Terms of Reference of the Tribunal. Assistant Chief Constable Harris said that some of the subsequent seventeen strands were received since May 2012, and the others existed as of that date but were only retrieved or processed in such a manner that they could be given to the Tribunal afterwards. Accordingly, Detective Chief Superintendent McComb was not aware of them.

21.11.8 Assistant Chief Constable Harris indicated that he was not in a position to give the individual grading in respect of each précis, but told me, emphasising that he himself had viewed the underlying raw intelligence, that all of this intelligence had been through a process of analysis within the PSNI and that he was happy to stand over all of the intelligence as being “accurate and reliable.” He said that the intelligence had been subject to analysis:

“in terms of what the source might have been, what are the secondary sources in behind that, how [...] valid is their opinion or comment and actually just a view on the overall reliability of this, in effect, is this just idle gossip, circular reporting and something which we feel we would have doubts about.”

21.11.9 When asked to elaborate on the term “accurate and reliable” he stated:

“we are convinced through further work that the information that’s conveyed to us has been accurately conveyed to us and it is reliable both in terms of the context of how it was obtained and the means by which it was obtained and from whom it was

obtained as well. So, there is an element of judgment which is based on experience and hindsight in terms of previous reporting and also, then, an analysis of the actual situation itself which arose in terms of providing the raw material.”

21.11.10 He emphasised, in using the term “source”, this should be accorded the widest possible meaning and included both human and technical sources. He also emphasised that there may be multiple strands of raw material making up a single one of the 20 strands of intelligence put into evidence before the Tribunal.

21.11.11 He was asked as to the possibility that some of the strands of intelligence were simply echoes of other strands, or echoes of evidence given to the Tribunal. He replied:

“we are careful to avoid circular reporting in terms of how matters are expressed and going back into the raw material to make sure that, in effect, we are not getting an echo from, be it media reporting or other conversation in respect of the Tribunal, so that test has been applied.”

21.11.12 He also stated that:

“We are very conscious that we don’t want to bring material which is, in effect, will – o’ – the – wisp or is misleading or just which we have significant doubt in respect of. We wanted to be sure that we were bringing material which is of value to yourself.”

21.11.13 The Assistant Chief Constable said that he had formed the view that the information was not coming from mischievous or ill – informed sources. He also confirmed that the analysis included a process of ascertaining whether and to what extent the intelligence is corroborated by other information or intelligence that is known.

21.11.14 Assistant Chief Constable Harris indicated that the Tribunal would not be given access to the intelligence underlying these précis. As stated in the introductory chapter, this was a deviation from the normal practice whereby the PSNI allowed the Tribunal access to un – redacted intelligence so as to verify that the précis accurately reflected the essence of the intelligence. He explained that this new procedure had to be applied in respect of the “live and of the moment” intelligence:

“Given the sensitivity of the information that is being provided, I think this is the prudent way of dealing with this and managing the risk that we are taking in providing the information.”

21.11.15 An Garda Síochána made a number of criticisms of the précis, the manner in which they had been produced and the fact that the intelligence underlying them was not being shared with either the Tribunal or An Garda Síochána. I propose to return to these criticisms after having dealt with 20 strands of intelligence.

## **21.12 – The Initial Three Strands of the “Live and of the Moment” Intelligence**

### 21.12.1 Strand 1:

“The current Smithwick Tribunal has become a significant issue amongst leading republicans. In the course of the current Smithwick Tribunal, members of PIRA are concerned that individuals associated with PIRA’s testimony to the Tribunal will lead to other material coming to light. By this, they mean information about past murders and leaks from An Garda Síochána (AGS). For these reasons members of PIRA are anxious that the Tribunal should complete its work as soon as possible. Key PIRA members are aware that some of the testimony to the Tribunal is deliberately false and is intended to bring it to an early conclusion.”

21.12.2 Detective Chief Superintendent Peter Kirwan of An Garda Síochána indicated that he felt that this précis was open to the interpretation that the evidence which was intended to bring the Tribunal to an early conclusion, and which was known to PIRA members as being “deliberately false”, could be that of those alleging collusion. While the words have been crafted in such a way as to leave open, in theory at least, this possible interpretation, I do not share Chief Superintendent Kirwan’s view of it. It is difficult to see how any evidence tending to show collusion would bring the Tribunal to an early conclusion, unless it was so indisputable as to enable me to produce a short report confirming that there was overwhelming evidence of collusion. That has not occurred. A much more sensible interpretation seems to me to be that in providing a version of events outlining how this operation was mounted without collusion (dealt with in the next chapter), former personnel may have hoped that I might accept that version of events and come to a speedy conclusion that there was no collusion in these murders. The difficulties in relying on the wording of a précis are, however, acknowledged.

21.12.3 Strand 2:

“Since the 1970s a number of AGS and Republic of Ireland (ROI) Customs Officers have provided information to PIRA, particularly forewarning of searches and arrests. In this connection, Garda Hickey’s name has been mentioned as has that of [another Garda whose name has been redacted].

21.12.4 Strand 3:

“PIRA’s intention had been to kidnap Breen and Buchanan. The PIRA operation was planned and led by [redacted] and involved other members of South Armagh PIRA. [Redacted] was directly involved in the shooting attack on Breen and Buchanan’s car. At this time there was a major dispute amongst those directly involved as to how the attack was to be conducted.”

21.12.5 In relation to this strand, I would make one observation in respect of the final sentence. As is referred to in the next chapter, when former personnel of the Provisional IRA were asked in a face to face meeting with members of the Tribunal’s legal team why, if the intention had been to capture and interrogate the two officers, this did not occur, there seemed to be some discomfiture with this question and the former personnel requested a break in the meeting. I now move on to the subsequent five strands of intelligence.

**21.13 – The Subsequent Five Strands of the “Live and of the Moment” Intelligence**

21.13.1 Strand 4:

“Intelligence relating to PIRA indicates that PIRA had received information regarding Chief Superintendent Breen and Superintendent Buchanan from a Detective AGS officer who has not been publicly associated to the Smithwick Tribunal and that this individual had been paid a considerable amount of finance for the information.”

21.13.2 Strand 5:

“Intelligence indicates that this AGS officer also provided information in relation to Tom Oliver and continued to provide a variety of information to PIRA for a number

of years. It is believed that this AGS officer is now retired. This AGS officer was handled as a source by a senior member of PIRA.”

21.13.3 In respect of these two stands, I note that they are clearly intended to refer to the same Garda officer. In his evidence, Assistant Chief Constable Harris confirmed that the intelligence did not reveal the name of that officer.

21.13.4 Strand 6:

“Separate intelligence indicates that a senior AGS member in Dundalk provided the IRA with the intelligence that enabled PIRA to murder Chief Superintendent Breen and Superintendent Buchanan.”

21.13.5 This strand stands separately from the previous two strands, and may well refer to a different Garda officer.

21.13.6 Strand 7:

“Additional intelligence regarding the murders of Chief Superintendent Breen and Buchanan indicated that an AGS officer played a role in passing the details of the officers’ movements to the PIRA. Intelligence also exists to link a criminal from the border area to their targeting.”

21.13.7 The comment in relation to the previous strand applies equally in this case.

21.13.8 Strand 8:

“Intelligence indicates that a former AGS officer, Jim Lane, who was based in Dundalk frequently expressed his concerns to associates that fellow AGS officers Finbarr Hickey and Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area.”

21.13.9 This is a strand in respect of which the Tribunal was able to call direct evidence. In this regard, retired Detective Jim Lane was given an opportunity to comment on this précis of intelligence and stated:

“I can truly say that the only conversation I had in relation to Finbarr Hickey, Leo Colton and Owen Corrigan was what we would have discussed – with my colleagues and myself, we would have discussed the incidents that they were involved in. That would be quite natural, that we would have done that, because we were working together every single day [...] they were colleagues of ours, and it would have been natural to discuss the incidents; namely the passport incident and the kidnapping of Owen Corrigan. We would – it would be – even though I cannot remember any specific conversation I had about them, but it would be natural to say that we would have discussed those things among one another.”

21.13.10 Mr Lane also confirmed that he would have had “very rare” general conversations about what was happening at the Tribunal during the previous 12 months. He also confirmed that subsequent to Owen Corrigan’s kidnapping, he had visited him in hospital in a personal as opposed to a professional capacity, but he told me that he did not ask Owen Corrigan what had happened to him. He told me that there probably was speculation about what had happened to Owen Corrigan around that time, but he did not remember the exact nature of that speculation. In his earlier evidence to the Tribunal, Mr Lane had already told me that he did not believe the allegation that Owen Corrigan was a mole, and had also said that he never had any suspicion or information that Finbarr Hickey had a connection with the Provisional IRA.

#### **21.14 – The Subsequent 12 Strands of the “Live and of the Moment” Intelligence**

Finally, a further 12 strands of intelligence were put into evidence by Assistant Chief Constable Harris. These were:

##### 21.14.1 Strand 9:

“PIRA traditionally obtained extremely good intelligence from Dundalk Garda station. When in PIRA, [name redacted] was involved in intelligence gathering operations and would have been aware of PIRA’s contact in the Garda.”

21.14.2 Detective Chief Superintendent Kirwan stated in his evidence to me that the language used in this précis – “would have been aware” – was speculative.

21.14.3: Strand 10:

“KEVIN FULTON is understood to have received information regarding the murders of Chief Superintendent Breen and Superintendent Buchanan from a PIRA member linked to a senior PIRA figure.”

21.14.4 Detective Chief Superintendent Kirwan described this as “vague.”

21.14.5: Strand 11:

“In summer 2011, ‘Mooch’ Blair commented that he was not involved in the murders of RUC officers Breen and Buchanan as was claimed during the Smithwick Tribunal in Dublin. Blair stated that he was actually engaged on a separate operation at the time of the murders. Blair also confirmed that there was a Garda spy involved. This fact had been speculated during the Tribunal.”

21.14.6 The point was made by Detective Chief Superintendent Kirwan of An Garda Síochána that there seemed to have been no consideration taken by Assistant Chief Constable Harris of the fact that this piece of intelligence was in direct contradiction to a piece of PSNI intelligence that indicated that Mooch Blair and ‘Hard Bap’ Hardy “would have been deeply involved in the murder” (March 1989 intelligence, referred to in Chapter 15). However, I do not think that this is strictly correct. This intelligence simply states that Mooch Blair is reported to have “commented” that he was not involved in the murders; it does not state that Mooch Blair was not involved in the murders. Mooch Blair may have commented that he was not involved, but have been involved in murders, and in this respect both pieces of intelligence could be correct.

21.14.7: Strand 12:

“During 2011, a senior PIRA Member confided to an associate their personal fears considering the ongoing Smithwick Tribunal, particularly that the AGS personnel that were previously under PIRA’s control would potentially highlight the level of co – operation previously provided.

21.4.8 In relation to this strand, I note the reference to “AGS personnel” who “were” under PIRA’s control: this is clearly a reference made in the plural.

21.14.9: Strand 13:

“In late 2011, a senior PIRA member [whose name was given as P.J. O’Callaghan otherwise Patsy O’Callaghan] commented that to his knowledge, AGS Sergeant Owen Corrigan had no time for the IRA, but was a gangster who was out for money”

21.14.10 Strand 14:

“A senior PIRA figure had several AGS officers passing information to PIRA including officers of a more senior position than Owen Corrigan.”

21.14.11 Detective Chief Superintendent Kirwan described this as an allegation that was very serious to An Garda Síochána as it suggested collusion by multiple Gardaí. He criticised the précis as being “extraordinarily vague.”

21.14.12 Strand 15:

“In relation to the murder of Lord Justice Gibson, a senior member of PIRA has since revealed that the information which led to the PIRA operation emanated from the Garda Síochána.”

21.14.13 Strand 16:

“Sinn Fein/PIRA members remain concerned that the Smithwick Tribunal continues to disclose possible damaging information. Sinn Fein/PIRA members remain concerned that specific detail regarding the murder of TOM OLIVER may be disclosed.”

21.14.14 Strand 17:

“Intelligence indicates that a senior PIRA Army Council member was directly involved in ordering the murder of TOM OLIVER. The senior PIRA Army Council [“PAC”] member had been approached by several PIRA members and others

requesting that TOM OLIVER not be killed. Despite these requests, the senior PAC member directed that OLIVER be executed.”

21.14.15 Strand 18:

“Further intelligence suggest that a senior PIRA figure sought direction and instruction from a senior PAC member in relation to the discovery of allegations of TOM OLIVER being an AGS informant. The senior PAC member subsequently ordered OLIVER to be executed.

21.14.16 The name of the senior PIRA figure referred to in this intelligence was provided to me by Assistant Chief Constable Harris in writing during the course of his evidence to the Tribunal.

21.14.17 Strand 19:

“Intelligence suggests that Owen Corrigan engaged in corrupt activity targeting criminals, and was motivated by greed. The intelligence also suggests that he did provide sensitive information to the PIRA and that he did so for reasons of self – preservation.”

21.14.18 In relation to this strand of intelligence, Detective Chief Superintendent Kirwan suggested that the reference to Owen Corrigan providing information for self – preservation ties in with the Garda intelligence received to the effect that when Owen Corrigan was abducted in December 1995, he was asked by his interrogators about people providing information to the Gardaí in Dundalk. I have already found as a fact that I do not accept that that was the purpose of the abduction and interrogation of Owen Corrigan. Also, I do not find Detective Chief Superintendent’s interpretation on this point persuasive. When the second sentence is read in the full context of the strand as whole, it seems to me that a more obvious interpretation is that by engaging in corrupt activity, he left himself vulnerable to exposure and, therefore, compromised in the sense that he may have had to provide information to avoid such exposure. I do of course, accept, however, that the précis are worded in such a way as not to be too specific, and this does create a difficulty in terms of being 100% certain of the intended meaning.

21.14.19 Strand 20:

“A senior PIRA member revealed that he was responsible for the murder of John McANULTY. Intelligence indicates that someone informed PIRA that McANULTY was meeting with RUC officers. The senior PIRA member was subsequently informed of the allegations and McANULTY was later murdered.”

### **21.15 – The Evidence of Detective Chief Superintendent Kirwan in Relation to the ‘Live and of the Moment’ Intelligence Generally**

21.15.1 While emphasising that there was “seamless co – operation” between An Garda Síochána and the PSNI in intelligence matters, Detective Chief Superintendent Peter Kirwan of An Garda Síochána, Crime and Security Division, was critical of the précis. He explained that in his approach to the processing of intelligence information, there are two phases: the evaluation phase and the analysis phase. He described the evaluation phase as:

“the appraisal of an item of information in relation to the reliability of the source, taken in conjunction with the credibility of the information.”

The latter aspect would seem to include the circumstances in which the information was provided. The analysis phase was described by Chief Superintendent Kirwan as the most important phase. He said:

“it’s really examining the different strands of information which you have, examining for meaning, highlighting the essential features of it, integrating it with other strands and, hopefully, coming out the other end with a kind of a clearer picture.”

21.15.2 He placed emphasis, in this “analysis” phase, on cross – referencing the intelligence to see how it fits in with other information that the holder has. In essence, he believed that Assistant Chief Constable Drew Harris’ evidence seems to suggest that there had been an over – reliance on the first “evaluation” phase and not sufficient cross – referencing of the information against other information held. In this respect, he emphasised that the PSNI had produced no intelligence received in 1989 indicating that there was collusion, and that this was something that had to be taken into account seriously in assessing the credibility of the current intelligence.

21.15.3 Equally, I must observe that very little of the intelligence received by the PSNI at the time of the deaths of Chief Superintendent Breen and Superintendent Buchanan can be said to rule out the possibility of collusion. There was the one report received by the RUC in March 1989, and referred to at section 21.4 above, to the effect that someone on legitimate business at the Garda station recognised the officer, but for the reasons already explained, I do not think this to be credible. Similar considerations apply in respect of the intelligence report received by An Garda Síochána in the final quarter of 1989 to the effect that a PIRA member had accidentally spotted the two RUC officers south of the border on 20<sup>th</sup> March 1989. Furthermore, as outlined in section 9.9 of this Report, I have seen no evidence from either police service which justified the assertion, in then Commissioner Crowley's report to the Department of Justice of 18<sup>th</sup> April 1989, that there was:

“a consensus in both forces that the RUC officers were targeted when leaving Armagh or en route and followed to Dundalk.”

21.15.4 An Garda Síochána did, however, within a few years of the murders, receive intelligence which indicated there was collusion, namely the three strands received from the same source suggesting collusion both in the murders of Chief Superintendent Breen and Superintendent Buchanan and in those of the Gibsons. Chief Superintendent Kirwan himself acknowledged that this intelligence came from “a reliable source” but qualified this by saying that the source was reliable “in a confined area of activity and in a specific geographic area.”

21.15.5 He also confirmed that there was no indication that An Garda Síochána had passed those three strands of intelligence to the RUC at the time when they were received. This is an important point, because in the early 1990s the investigations into the murders of Chief Superintendent Breen and Superintendent Buchanan, which occurred within the jurisdiction of Northern Ireland, would still have been very much live files.

21.15.6 To illustrate his belief that the PSNI had not carried out an adequate “comparable objective analysis of the information” available to it, Detective Chief Superintendent Kirwan identified four strands of PSNI intelligence which he said were contradictory. In this regard, he compared two older pieces of intelligence, which had been received by the RUC, with two of the current strands of intelligence. The first he cited was the 1991 intelligence to the effect that:

“an unknown female who worked in Dundalk Garda Station passed information to an unknown Provisional IRA man.”

21.15.7 The second was the March 1989 intelligence that:

“a person visiting Dundalk Garda Station on legitimate business recognised the RUC officers and passed details to the IRA.”

The two items of the current intelligence he cited in comparison were: “an unknown Garda officer passed details of the RUC officers’ movements” and “a criminal from the border area was linked to the targeting of the RUC officers” (both, as far as I can make out, a reference to strand no.7 above).

21.15.8 However, I do not think that all of these strands are necessarily as contradictory as the Detective Chief Superintendent suggests. In particular, both of the current items in fact seem to me to form part of the same strand (though I add that Assistant Chief Constable Drew Harris did acknowledge that several strands of raw intelligence may make up a strand contained in précis form). A senior PIRA figure can be involved in the targeting of the RUC officers without this excluding the possibility of collusion. Indeed, it can almost be assumed that if a senior PIRA figure were targeting the RUC officers, he would use all of the resources at his disposal to do so and, if he had a source within Dundalk Garda Station, would employ this resource to assist him in his task. Therefore I do not see that these two elements are contradictory. In relation to the older intelligence, I have already expressed the view in relation to both strands that there is no evidence to suggest that these are credible. In these circumstances, one would be entitled to form the view that information received today is credible, notwithstanding that it contradicts information which one believed – wrongly, as it has turned out – to have been credible in 1989 or 1990. (I should add that an “unknown female” working in Dundalk Garda Station is not, in theory, incompatible with an “unknown Garda officer”, but if an officer is intended to convey a member at the rank of Sergeant or above, I am not aware of any females of such rank in Dundalk in 1989).

## **21.16 – The Sharing of Intelligence Information between An Garda Síochána and the PSNI**

21.16.1 Detective Chief Superintendent Kirwan also raised the separate issue of the sharing of intelligence. He said that he was happy that intelligence of this nature should be put into evidence in public hearings of the Tribunal in précis form, but that it creates a difficulty both for the Tribunal and for An Garda Síochána:

“I am not unhappy with the précis at all. It serves the purpose that [is] prescribed for it. It serves the purpose of articulating, in a public forum, matters of great sensitivity. What I am unhappy about is that that would be seen as an appropriate format to share information with me and my Department. It’s completely out of the norm. It leaves me at a complete disadvantage, or the people that work with me at a complete disadvantage, in trying to figure out what it means.”

21.16.2 Insofar as relates to the Tribunal, Detective Chief Superintendent Kirwan said that there is a double difficulty for the Tribunal in that not only does it not get to see the underlying intelligence, but it is also deprived of the benefit of An Garda Síochána’s proper assessment of that intelligence.

21.16.3 It seems to me that there are two separate issues here which should not be conflated. The first is the sharing of information by the PSNI with An Garda Síochána for operational policing purposes. Some of the strands, in particular those which related to the murder of Tom Oliver which is an unsolved crime in this jurisdiction, were shared by the PSNI with An Garda Síochána. Drew Harris gave evidence that there was less urgency in the sharing of historical intelligence. An Garda Síochána contend that they have a legitimate interest in investigating the allegation that there were, historically, several Garda officers in Dundalk colluding with the Provisional IRA. In this regard, I do, however, note that although An Garda Síochána was provided with the name of the second Garda officer referred to in Strand 3 above (along with Finbarr Hickey) in May 2012, when he was asked in April 2013 what investigations had been conducted on receipt of this information, Detective Chief Superintendent Kirwan’s reply suggested to me that not a huge amount had been done.

21.16.4 This suggests to me that an element of An Garda Síochána’s complaint in fact arises from the entirely separate second issue, namely the provision and sharing of information to assist this Tribunal inquiring into historical events.

21.16.5 Ultimately the question of the sharing of operational intelligence is a matter between the two police forces and, strictly speaking, not part of my terms of reference. However, anyone present at the Tribunal for the cross – examination of Assistant Chief Constable Harris by Counsel for the Commissioner of An Garda Síochána, or that of Chief Superintendent Kirwan by Counsel for the PSNI, or for the final oral submission made on behalf of the Garda Commissioner, would be left in little doubt but that the co – operation between the forces might

not always be “seamless.” This is something which does not have a bearing on my analysis of the central issue to be determined by this Tribunal, but it is something to which I shall return in my recommendations.

### **21.17 – Assessment of the “Live and of the Moment” Intelligence**

21.17.1 As regards the issue of how the Tribunal is to assess the current intelligence, this unquestionably places me in a difficult position. I do not have access to the underlying raw intelligence to verify for myself the circumstances in which this intelligence was provided. Undoubtedly, this would have been preferable, and it is something which I sought to achieve in discussions with the Northern Ireland Office, the Security Service and the PSNI.

21.17.2 I do have to recognise, however, that we find ourselves in a somewhat unique situation, in which the security agencies of one jurisdiction are sharing current intelligence with a public Tribunal of Inquiry sitting in another jurisdiction. I am told by Assistant Chief Constable Drew Harris, under oath, that this intelligence had been properly processed such that he is happy to stand over the assertion that it is accurate and reliable, but that that is as far as he can go.

21.17.3 It has been suggested in a submission on behalf of the Garda Commissioner that this “of the moment intelligence” is “nonsense upon stilts.” That is a serious accusation. It calls into question the good faith and competence of the PSNI officers who analysed this information and, in particular, of Assistant Chief Constable Drew Harris who gave evidence that he is personally familiar with all of the underlying raw intelligence.

21.17.4 In the final analysis, I must make a judgment call. I must decide whether, as is urged upon me by some of the parties, to dismiss this intelligence from my mind altogether on the basis that it is a “nonsense upon stilts”, or to accept the *bona fides* of Assistant Chief Constable Drew Harris, and to rely, to some degree, on his sworn evidence. In this respect, I have been immensely impressed by his evidence, not only in terms of his professional expertise and experience, but also by his explanation of the constraints under which he is operating, his concern for the protection of life and the of preservation of peace, and his genuine desire to assist the Tribunal in so far as he can. In these circumstances, the judgment call that I have made is to attach some – although not undue – weight to this intelligence.

21.17.5 Insofar as it relates directly to the Tribunal’s of reference, the “of the moment” intelligence gives an indication that there was collusion. In this respect, I think it is noteworthy that both police services have now, at separate times and from sources which they regard as reliable, received intelligence suggesting collusion in the deaths of Chief Superintendent Breen

and Superintendent Buchanan. In this jurisdiction, I have had the benefit of seeing the three original intelligence reports in question and have heard evidence from the Detective who handled the source. As stated in section 11.11 of this Report, on this basis I am satisfied that weight ought to be attached to them.

21.17.6 The intelligence material is in no way conclusive or determinative of the issues before me, but nor is it something which I can, in good conscience, ignore. It is an element to which I believe regard must be had in my ultimate analysis, set out in Chapter 23, of the question of whether or not there was collusion.

## **Chapter 22**

# **Account Provided by Former Personnel of the Provisional IRA**

### **22.1 Introduction**

22.1.1 In this chapter, I summarise and address material which is not, strictly speaking, evidence. As outlined in the introductory chapter to this report, the Tribunal, through an intermediary, secured the voluntary co-operation of former personnel of the Provisional IRA, including some former members who had an operational role in the events of 20<sup>th</sup> March 1989. In the first instance, former personnel who were involved in the operation provided a written document, entitled 'Final Approved Note', setting out their version of how the operation was mounted. The Tribunal subsequently sought clarification, by way of written questions, of certain aspects of this account. Written responses were provided and, at that point, the Tribunal sought a meeting between members of its legal team and some of the former members of the Provisional IRA. After some negotiation as to the modalities, a meeting ultimately occurred in April 2011. This was a face to face meeting between three members of the Tribunal's legal team and three former members of the Provisional IRA, in the presence of intermediaries. One of the former members of the Provisional IRA who was present at that meeting had a command and operational role in the events of 20<sup>th</sup> March 1989.

22.1.2 The written account provided by the former members of the Provisional IRA is not a statement of evidence as such; it is not the signed witness statement of any individual. It is, nevertheless, a valuable resource for the Tribunal.

22.1.3 It should be noted that at no point did I meet or speak to the former members of the Provisional IRA. In these circumstances, I was extremely anxious to hear evidence from one of the former personnel, whether in person behind a screen or by video link. I think that information can best be assessed when it is given by a live witness and tested by cross – examination. The Tribunal made its best endeavours to secure the attendance of such a witness, but in January 2013 I was definitively informed that no such evidence would be provided. I was very disappointed. I then made the decision that the written record of the Tribunal's exchanges with the former personnel should be read into the record of the Tribunal at a public sitting.

22.1.4 I think it important that the version of events provided by the former members of the Provisional IRA be assessed against the other evidence heard by the Tribunal. However, it

ought to be borne in mind that this written record of the exchange between the Tribunal and the former members is not best evidence in circumstances where it has not been given orally and tested under cross – examination.

## **22.2 – ‘Final Approved Note’**

22.2.1 In the first instance, I think it useful to set out the content of the ‘Final Approved Note’ provided to the Tribunal in full:

### “FINAL APPROVED NOTE

On March 20<sup>th</sup> 1989, RUC Chief Superintendent Harry Breen and RUC Superintendent Bob Buchanan were killed at Jonesboro by an Active Service Unit of the IRA, attached to the South Armagh Brigade.

This operation was executed as a result of lengthy and detailed surveillance initiated and conducted by IRA Volunteers.

At no time was there any input from the Gardaí or any other outside source or agency regarding the planning and execution of this operation.

In the late spring/early summer of 1988, one of our Volunteers spotted a red Cavalier car, registration no. KIB 1204, entering the (D.G.S.) Dundalk Garda Station complex from the Carrickmacross Road entrance. The car parked at the front of the station and two males got out.

The Volunteer immediately recognised the front seat passenger as an RUC detective who he believed was named Nigel Day, but was not certain of the name. He was approximately 40 years of age, 6ft tall, black hair with a hint of grey. He had a thick black moustache and was wearing a jacket, shirt and tie.

The Volunteer did not recognise the driver, although we now know it to have been Bob Buchanan. The Volunteer watched both men being admitted to the working area of D.G.S.. The Volunteer was able to leave the vicinity of D.G.S. confident at not having been noticed by either of the two men.

When this information was fed back by the Volunteer to the IRA structures, it was decided to mount a surveillance operation around D.G.S.. This was initially done by designated Volunteers driving and walking past and around D.G.S.. The focus was to locate the red Cavalier, but the presence of any Northern registered vehicles was also to be noted.

The red Cavalier was spotted on a number of occasions. It would be parked in roughly the same spot at the front of the Station, and would remain there for up to three hours.

At that stage it was decided to mount a more intense surveillance operation. This continued throughout the summer and winter of 1988 to 1989. During this period a derelict house, with a direct view of D.G.S., was identified and was used to conduct the majority of the surveillance on D.G.S. The house was No. 12 – The Crescent, Dundalk. It's on the corner of The Crescent and Vincent Avenue (refer to sketch) [This sketch is set out in Appendix 2 to this Report]."

Access was gained by scaling a garden wall at the back of the house at Vincent Avenue. The garden was overgrown. A concrete path ran to the back door. This door was wooden and was unlocked.

This gave access to a kitchen area where on turning right you entered a rear living – room and from there onto the main entrance hall. On the left hand side of the hall was a wooden staircase.

The surveillance was carried out from a large front bedroom window on the Vincent Avenue side of the house. This window was covered with an old, dirty net curtain. It gave cover to those carrying out the surveillance while affording them a clear view of D.G.S.

There was no furniture in the room except for an old rolled up carpet sitting in the middle of the floor. The room was generally in a bad state of disrepair. There was no electricity supply to the house. Volunteers would enter and leave the house under cover of darkness, scaling the garden wall.

On those occasions when the car was spotted its make, colour and registration were always clearly identifiable and were noted.

After a period of surveillance a number of consistencies emerged: –

- In the aftermath of any major incident in the South Armagh border region, the car would appear within days.
  
- Monday and Tuesday were more regular days for it to be seen.
  
- At one point we thought that we had lost the operation as the car was not noticed for approximately 6 – 8 weeks.

Information also came in that the car was spotted south of Dundalk, heading north. For a period casual surveillance was mounted around Drogheda Garda Station, with no results.

Two other Northern registered cars were noticed at D.G.S.. One was a black Audi. The other was a silver vehicle. We cannot recall its make or the registrations of either vehicle. We could not identify anyone linked to these cars and it was decided to focus on the red Cavalier.

After the 6 to 8 week gap we picked up the red Cavalier again around late summer, early winter 1988.

One of the surveillance teams made, what was for us, a significant breakthrough. The Volunteer met the red Cavalier in Meigh village at around 2 – 3 o'clock (pm). The car was travelling slowly through the village heading towards Newry. The Volunteer recognised the front seat passenger as Harry Breen. Harry Breen had a high media exposure following the ambush in Loughgall in 1987. We had video footage from news bulletins and photos from the press. He was, for obvious reasons, a target we had particular interest in. The car was also placed at D.G.S. earlier that same day.

Equally significant was that given its location, the car had to have crossed border crossings around the Forkhill area.

We assumed that they would vary their routes and because of previous operations along the main Dublin – Belfast Road at Killeen they would not use that stretch on a regular basis.

The surveillance operation was further intensified. We monitored D.G.S. more frequently and set up an elaborate communications system. That involved, among other things, radios and landlines. This enabled us to activate a wider surveillance team once the car was placed at D.G.S. The task for this team was to monitor and track the car as it left Dundalk to travel north and cross the border.

This was carried out successfully, and we soon established that they generally followed two routes: –

- Out onto the Carrickmacross Road, past the Harp Lager Brewery – – Pearse Park – – McSwiney Street – Castletown Road – – Bridge Street – – Newry Road.
- Onto the Carrickmacross Road, Anne Street, Park Street, Clanbrassil Street, Bridge Street, Newry Road.

We also established that they generally used three border crossing points:

1. Main Killeen Road.
2. Edenappa Road.
3. Carrickasticken Road.

On one occasion we tracked them out to the Carrickasticken crossing. We observed a fair – haired male in his late 30s, early 40s in the front passenger seat. At all times the man, who we now know to be Bob Buchanan, was driving the car.

We now moved from a purely surveillance – based operation to a military operation. This was around the end of 1988 into very early 1989. We proceeded on the basis that they could use any of the crossings between Tullydonnell and Killeen, inclusive, to return home.

The operation was planned around three stages: arrest, question and execute those on board.

Prior to March 20th, 1989, we mounted a military operation on three occasions. Twice the car didn't show, on the third occasion it was tracked using the Edenappa Road on the return journey. However, due to unconnected high levels of enemy activity in the general area we were unable to execute the operation.

On Monday, March 20th 1989, we again put the military operation in place. We planned to keep it in place for seven days with a review after three days.

Surveillance was placed on D.G.S. from No. 12 – The Crescent. Other volunteers were in place to track the car leaving Dundalk town. The communications system, which had already proved efficient and reliable, was also put in place.

Two armed operational squads were put on the ground. One was based in the Forkhill area to cover the Carrickasticken and Tievcrum roads. The second squad was based in the Jonesboro area to cover the Omeath, Killeen, Flurry Bridge, Edenappa and Carrickbroad roads.

At approximately 12:30 pm the red Cavalier arrived at D.G.S. and parked in the usual spot. The communications system was activated at approximately 2:30 pm. The car was tracked leaving D.G.S. via the Harp Brewery route, onto the Newry Road.

The car was tracked en route to the Edenappa Road. The Active Service Unit in the Jonesboro area had already been alerted and had moved into place, setting up a checkpoint at a pre – picked spot along the Edenappa Road.

The ASU intercepted the red Cavalier. The two male occupants were challenged to step out of the car with their hands up.

The car was put into reverse and attempted to escape. At that point both RUC Detectives were executed. The instructions to the ASU were to intercept the car, and arrest the occupants, but if that was not possible then they were to ensure that neither occupant escaped.

Documents of an intelligence interest belonging to both RUC men, found in the car, were removed from the scene by the ASU.”

22.2.2 A second map annexed was then annexed to that document, with the border crossing points numbered by hand “1 – 12” and the positions of the two Active Service Units marked by hand at locations ‘A’ and ‘B’. This map is set out in Appendix 3 to this Report. The key to this map was set out in the ‘Final Approved Note’ and is repeated below:

1. “Carrickasticken Road.
2. Captain's Road and 11. Tievcrum Road.
3. Carrickbroad Road.
4. Edenappa Road.
5. Jonesboro Hill (Flurry Bridge).
6. Faughillitra Road.
7. Main Belfast to Dublin Road at Killeen.
8. King's Border at Clontigoro.
12. Clontigoro Road.
9. Flagstaff Border Crossing.
10. Omeath – Newry Road.”

22.2.3 There is a paragraph then indicating that:

“1 to 12 are all the border crossings from Carrickasticken to Omeath. Not included is the road that runs along the railway line at Kilnasaggart, which is also a border crossing. This was [a] closed road in 1989, having been cratered by the British Army.”

22.2.4 The key for positions ‘A’ and ‘B’ marked on the map is as follows:

- A. Where one of the ASUs was positioned and could intercept the car at 1, 2 and 11.
- B. Where the other ASU was positioned and could intercept the car at 4, 5, 6, 7, 8, 9, 10 and 12.”

### **22.3 – Written Questions and Answers**

22.3.1 The time of arrival stated in this ‘Final Approved Note’, 12.30 pm, is simply incorrect. This was brought to the attention of the former personnel through their intermediaries. The

Tribunal, through its then solicitor, Mr Buckley, sought clarification by posing a number of questions. A written response was received, which was prefaced with the following introduction:

"Following receipt of the questions, the relevant individuals were brought together in an effort to address the issues raised. The passage of time and the covert nature of the IRA, coupled with the fact that they did not keep records of operations for obvious security reasons, have all impacted on events.

As a consequence, they are not able to provide exact dates or times in answer to some questions posed.

During the course of their discussions around the Tribunal's questions they went back over as best as personal recall allowed, all aspects of the operation. As a result, some variations emerged. Some of the team believe that the two RUC personnel arrived at Dundalk later in the afternoon than stated in the initial statement.

The surveillance operation mounted from a vacant premises at No. 12 was conducted from the bedroom window on the Crescent side looking on to Dundalk Garda Station."

22.3.2 The response indicated that the former personnel were not in a position to give further information as to the date on which Nigel Day was seen at Dundalk Garda Station or the date on which it was decided to mount the surveillance operation (other than that the latter post – dated the former). When asked for the dates on which volunteers walked or drove past Dundalk Garda Station, the former members replied,

"on a regular basis throughout the working week, once again it was after the person who we believed to be N. Day was seen."

22.3.3 Exact dates on which the red Cavalier was spotted could not be provided, nor could dates in relation to the use of the derelict house on The Crescent. The former personnel were asked who was identified as having been in the red car on the dates on which it was spotted subsequent to the first sighting. The former personnel replied:

"Apart from the initial sighting of the person we believed was N. Day and H. Breen subsequently being sighted travelling through Meigh, we did not identify any other occupants using the car."

22.3.4 The former personnel identified the six to eight week period when the red cavalier was not seen as being “possibly the summer of 1988.” The former personnel provided the following information in relation to the spotting of the red cavalier south of Dundalk and at the end of the six to eight week period referred to in the statement:

“During the six to eight week period referred to in the initial statement, we received intelligence from our surveillance team that the car had been sighted south of Dundalk. At the end of that six to eight week period the car was sighted back at Dundalk Garda Station.”

22.3.5 The date on which Harry Breen had been spotted in Meigh Village was not recalled but it was believed that the operation was intensified from the summer of 1988. The responses reiterated that the decision to move to a military operation was made in late 1988 or into early 1989, and this decision was made on the basis that “months of surveillance established the regular presence of the red Cavalier at Dundalk Garda Station. On that basis we deemed it worthwhile to prepare a military operation.” The date on which the red Cavalier was seen at Carricasticken with a fair – haired male in his late thirties or early forties was not recalled. The dates of the three prior attempted operations were not recalled and it was stated that none of the occupants of the car were known on the third attempt, when the operation had to be aborted due to the presence of enemy activity. The enemy activity was confirmed to have been helicopter activity. The former personnel were not, “for reasons of security”, prepared to identify the positions of volunteers outside Dundalk Garda Station on 20<sup>th</sup> March 1989, other than those in the derelict house, or the precise locations of the two Active Service Units on the ground on that date. It was stated that the two Active Service Units each comprised six volunteers. The former members confirmed that the documents removed from the car were:

“two diaries [...] a brief case containing documents, including religious tracts, and an electronic pager.”

## **22.4 – A Face to Face Meeting Between Former Personnel of the Provisional IRA and Members of the Tribunal’s Legal Team**

22.4.1 I now propose to outline the salient details from the meeting which the members of the Tribunal’s legal team had with three former personnel in April 2011.

22.4.2 At the outset of the meeting, one of the three former personnel present explained that the South Armagh Unit of the IRA was the IRA’s most effective and most efficient unit. He also stated that 90% of the IRA’s operations were based on the human weakness of habit. In

this case, the original sighting of the car was the most important element which led to the mounting of surveillance and, ultimately, the operation. During this introduction one of the former volunteers produced a copy of the *An Phoblacht* newspaper published after the ambush. It carried what that the former volunteer described as a “famous photo” of Harry Breen in the aftermath of Loughgall. He said that Harry Breen was very well known and that “this image was etched on every Republican’s mind.”

22.4.3 During this introduction, the former volunteers also made clear that they would not compromise former comrades and locations. They stated that the Provisional IRA was not a conventional army and did not therefore have logs. Instead, the former members had sat down and tried to recall the event. This was subject to the caveat, however, that recollections could be different, just as with any group of individuals recollecting an event.

22.4.5 One of the three former volunteers indicated that he was in a leadership role in the area, was in the Command Structure and knew everything about the operation. He stated:

“I put the note together which was previously sent to the Tribunal with other members. I convened approximately six people who were involved in the operation. There was a human error in the statement in respect of the car arriving at Dundalk Garda Station at 12.30. We think it was later than that.”

22.4.6 The former personnel were asked about the tipping point for moving from surveillance phrase to military operation. One replied, “[i]dentification is important. A Northern registered car was not enough.” They were then asked, “[s]o it was the occupants, Harry Breen was seen in Meigh?” The former member who had been in Command Structure replied:

“Harry Breen being spotted in Meigh added impetus to the operation but was not the tipping point. At that time Buchanan's identity was unknown. It could have been anyone in the car that day. It could have been Bob Buchanan and someone other than Breen.”

22.4.7 This former volunteer explained that after the initial sighting of Nigel Day, casual surveillance was mounted and the Provisional IRA was surprised to see the red Cavalier in front of the station on a number of occasions: “it was very sloppy work by our enemy at that stage.” At this point it was decided to mount a more intense surveillance operation and a derelict house was identified at No.12 The Crescent. He said that the car was first spotted

around April 1988 and the derelict house used from about the summer of 1988. The house was used solely for this operation and there was no phone or electricity in it. He confirmed that a pattern emerged from the casual surveillance such that “after major operations it appeared the RUC directly came up to Dundalk Garda Station. It must have been for briefings. Monday and Tuesday seemed to be the days they came on.” It was therefore decided to mount surveillance on Mondays and Tuesdays.

22.4.8 The former volunteer gave the following description of the use of No. 12 – The Crescent:

“The house was difficult to use because of neighbouring houses and the fact that you had to scale the wall to get in. If a volunteer entered, for example, at 5 a.m. in the summer and he would stay in the house until 10 p.m. at night. The volunteer would take lunch or whatever provisions that were necessary. If the neighbours had seen this activity, it would have compromised the entire operation.”

22.4.9 The former volunteer specifically said that “it was Nigel Day that identified it to us as an RUC car.” The following series of questions then ensued:

“Q. The car was the target?

A. Yes.

Q. Harry Breen was a bonus?

A. Yes, Harry Breen was a bonus.

Q: So it didn't make a difference who was in the car?

A. No, the occupants of the car were targets.

Q. So, it was the identification of the RUC man that was critical?

A. Yes, Nigel Day. I'm not sure if you have checked that out but the volunteer was certain he was an RUC man.

Q: The car had been spotted south of Dundalk, then about six weeks later in Meigh a spotting happened?

A. It was a critical occurrence. Firstly it confirmed that was an RUC car with the presence of Breen in that car. That also added interest to the operation, but leaving

Breen aside, it was the fact that the car was travelling through Meigh from Forkhill which qualified something for us. The car had to have come across the border between Forkhill and Jonesboro. It could only have come through Meigh from Forkhill/Jonesboro. Our rationale for that was that the main Killeen Road, due to successful operations, for example, Maurice Gibson, that the RUC were obviously afraid of that stretch of road. Our analysis was that they were slipping in on the side roads in an inconspicuous car being driven by an older man.

Q. So the car was the target, not Breen?

A. You would be wrong to think it was about Breen.”

22.4.10 The volunteer also stated that no – one from South Down, in particular Peter Keally, knew anything about this operation “either before or since.” He stated, “it was a South Armagh operation and he had nothing to do with it.” He confirmed that they used CBs/radios with landlines as a backup. He denied that there was any tapping of phone lines at the Ramparts Telephone Exchange as claimed in *The Phoenix* magazine. He also denied that there was any phone tapping of Dundalk Garda Station and described the notion of any phone tapping at all as “just fanciful.” As regards the three previous operations, the former member indicated that the collective view of everyone involved in the operation as that “the operation was mounted in November/December 1988, one in January and then one in March but we cannot be sure.” He then set out the procedure on each of these occasions:

“No, on every occasion two Active Service Units went into position, not into roadblock, they would have been sitting in a quiet, discreet location. They would have been armed. It is not uncommon for the IRA to wait weeks. Two ASUs parked up at private locations where it was possible to cover all crossings.”

22.4.11 As regards the location of the Active Service Units, the following exchange occurred:

“Q. How far was it from position A [marked on the map in Appendix 3 to this Report] to the border?

A. About a mile. An ASU was positioned at A. When the car comes out of Dundalk it may turn at the Lisdoon, they would hear by radio contact what road the car was travelling on. ASU could intercept the Carrickasticken or Tievcrum Road. It would have been easy for them if they were sitting in vehicles in a discreet location. They would wait and if nobody turned up they would pack up at the end of the day and go

home. ASU B was based at Jonesboro and they could cover all other crossings. Even if the car went by the Omeath Road the ASU could go over Clontigora, Flagstaff and intercept the car easily.”

22.4.12 When asked how long before March 1989 had the aborted operation occurred, the member replied, “it is hard to say. Two weeks, up to four weeks, maybe three weeks, I am not sure.” It was specifically put to the members that the week prior to 20<sup>th</sup> March 1989 one of the passengers in Bob Buchanan’s car had felt that their car was being followed. The members were asked could that have been the day of the aborted operation. The reply was as follows:

“I can’t say if the occupants of the car felt that they were being followed or not on the day we aborted the operation. Surveillance would have carried on although the operation was aborted.”

22.4.13 He stated that the operation was in fact aborted before the car left Dundalk on the day in question: “there were too many British troops on the ground. Our surveillance continued and established they went home by the Edenappa Road.” Only three or four “sharp people” were used for the surveillance. In total, thirty or forty people were on the ground for the operation on 20<sup>th</sup> March 1989:

“A. Yes, on this operation there was someone in number 12, the surveillance team, 5 or 6 in each ASU making a dozen, and then there was scouting people on the ground, approximately 30 or 40 on the ground at least for the operation as a whole.

**Q.** And was that a big operation?

**A.** No, it was standard.

**Q.** Was someone in 12, The Crescent that day?

**A.** Yes.”

22.4.14 The following exchange, as to what transpired once the car had been sighted at Dundalk Garda Station on 20<sup>th</sup> March 1989, is of particular importance:

“**Q.** What was the sighting that set it up?

A. ASUs were in place and a volunteer was also in 12, The Crescent. Someone went to Dundalk and met the person from, who came out of number 12 in a pre – arranged location in town. It was confirmed in person that the car that arrived was the red Cavalier. Word was sent back to the ASU and that was done to confirm that it was the target. The code word was used, sent through the communication systems, the target had arrived. It was then checked on the ground with the volunteer from number 12.

Q. At that point then do the ASU go to Edenappa?

A. When it was confirmed that the target was in Dundalk. Because the Edenappa Road was likely to be used, the ASU at point B went at that stage to the Edenappa Road, they could still cover the other roads.

Q. What did the ASU at point A do?

A. They did not have to move.

Q. Were there people in Jonesboro?

A. Yes.

Q. How did they hide themselves, was it workmen in disguise?

A. No, we would have people on high points.

Q. High points?

A. Hill tops, we did not put people out in disguise as workmen or anything like that, that did not happen.

Q. How long from the arrival of the car at Dundalk Garda Station to the meeting down the town?

A. Half an hour to 20 minutes.

Q. And after that the ASU would have moved?

A. No, they would have started to move already, but then there would have been a face – to – face confirmation. ASU would have been in a safe yard from early morning. We had a large support network of safe houses and yards.

Q. They moved onto the radio signal and it would be full go on a face – to – face confirmation?

A. Yes, the ASU moved to premises on the Edenappa Road on the sighting, the ASU would not have stayed there all day as this was not a safe location.

Q. You still didn't know the road?

A. Surveillance team picked up the car. They would have been in radio contact with the ASU. They would confirm with the ASU, 'definitely Edenappa'. At that point the ASU would set up the roadblock.

Q. Does the man who attended the face – to – face meeting have to go to the ASU personally?

A. Yes, or he would tell another man who then goes to the ASU personally. The reason for using different types of communication was that made it harder for the enemy to pick up, it was a system of creating snippets everywhere. That's why we used different types of communication.

22.4.15 The former personnel confirmed that the intention of the operation was to “take away and question the occupants” of the car. When asked why that changed, the former personnel requested a short break in the meeting; when the meeting resumed, they explained that the car had reversed and the two RUC officers had tried to escape.

22.4.16 It was stated that Harry Breen was shot in the car and had not got out of the car with a handkerchief as had been suggested elsewhere: “Buchanan reversed the car and both men died instantly in gunfire.” If Harry Breen’s body was out of the car, this was because he had removed by the Active Service Unit in order to search his body. As regards the van used in the operation, the Tribunal’s legal team was told that “the IRA were stealing vans for operations all the time”:

“We have answered that. We have given the timings. At any particular time the IRA had vans for operations of opportunity.

You must remember that we have a duty of care to former comrades. This is an historic occasion here today. Answering that question was the van stolen for this operation? Someone might have been identified for stealing that van. We are not going to endanger any former comrade. What I can say is that the IRA had a fleet of vehicles. We didn't plan on a Saturday night the operations for a Monday morning. Stealing vans was ongoing. But as to the question whether the van was stolen for this

operation, it wasn't stolen specifically for it. The van was ideal for this operation. You could move men discreetly.”

22.4.17 The former personnel said that Garda Corrigan definitely did not have anything to do with the operation and was hostile to the IRA. He stated that the IRA had definitely not had any help from anyone else in Dundalk Garda Station and stated that he never heard of Leo Colton: “This operation had no help from anyone in the Garda. This was classic surveillance, hard dogged work, there was no help from anyone at all.”

22.4.18 It was to put the former personnel that Bob Buchanan had in fact ordered a new car and they were asked what would have happened had he changed his car prior to 20<sup>th</sup> March 1989:

“If he had got a new car we would have lost the operation. It was the car. We did not know Bob Buchanan. We knew the car. I have no hesitation in saying that a new car would have lost the operation for us.”

22.4.19 The Tribunal then sought a second meeting with former volunteers, in parallel with ongoing discussions to try and secure the attendance of a witness. An agenda was requested for that anticipated second meeting and this was provided by the Tribunal. Ultimately, the second meeting did not proceed and, instead, the former volunteers provided a written response to the agenda items. The former volunteers were asked specifically what time the Active Service Units moved into position on 20<sup>th</sup> March 1989, and they replied: “some time between 9 am and 11 am.” The Tribunal indicated that it wished to put to them evidence given in relation to an increase in radio signal activity at 11:30 am to noon on the day in question. The reply received in respect of this agenda item was as follows:

“The Active Service Units were involved in no radio activity at that time on that day as it was operational practice not to activate radios prior to an operation actually going live. Active Service Units were fully aware such activity would put British Army, RUC on a state of alert. The first radio activity was after Harry Breen and Bob Buchanan arrived at Dundalk Garda Station.”

## **22.5 – Matters Corroborative of the Version of Events Provided by Former Members of the Provisional IRA**

22.5.1 I wish to identify at this stage a number of aspects of the evidence which are broadly consistent with parts of the account given by former members of the Provisional IRA.

22.5.2 In the first instance, evidence was put before me of Bob Buchanan's diary entry for 26<sup>th</sup> April 1988. This provides as follows:

“Duty with Inspector Day to Dundalk. Liaison with Superintendent McCabe, Garda. Duty in Bessbrook Mill, Armagh, etc.”

22.5.3 I accept Bob Buchanan's journal as a contemporaneous record of his travels south of the border in 1988 and as convincing evidence in this regard. I therefore fully accept that Inspector Day accompanied Bob Buchanan to Dundalk on 26<sup>th</sup> April 1988. This is fully consistent with the explanation given by the Provisional IRA of how their interest in Bob Buchanan's car was first aroused. They said one of the volunteers recognised an RUC Detective whom he believed to be Nigel Day in “the late spring/early summer of 1988.” Indeed, in the face to face meeting which took place, the volunteer who was in a command position in respect of the operation indicated that this sighting occurred “about this time of year” (April). This is fully consistent with the evidence before me. In this regard, I attach no significance to the fact that the former personnel were incorrect as the Christian name of Inspector Day and I am also not inclined to attach any significance to the fact that they believed he was a detective when in fact he was a uniform police officer. For the sake of completeness, I should add that Bob Buchanan's also shows that Inspector Day accompanied him to Dundalk on 7<sup>th</sup> July 1988. Offering his views on the version of events set out above, Detective Chief Superintendent Kirwan said in evidence to me that he considered the sighting of Inspector Day as “one critical aspect.” If this could be corroborated, it would be “persuasive but not conclusive” that the former volunteers were telling the truth.

22.5.4 The next issue relates to the reference to there being a six to eight week gap in Bob Buchanan's appearances at Dundalk. Bob Buchanan's journal confirms that he was on annual leave from 27<sup>th</sup> July 1988 until 23<sup>rd</sup> August 1988. I should add that the version provided by the former members of the Provisional IRA also indicates that during the course of this six to eight period, Bob Buchanan's car was sighted south of Dundalk. I have reviewed Bob Buchanan's diary entries for a period of a few weeks either side of his annual leave in August

1988 and cannot identify an entry which clearly corresponds with this possible sighting. However, this is not conclusive.

22.5.5 It is noted that at the end of the six to eight week period, Bob Buchanan's car was sighted back in Dundalk Station. The first date that I can ascertain from his diary on which Bob Buchanan's car was in Dundalk Station after his annual leave was Tuesday, 6<sup>th</sup> September 1988. I note that he was in Dundalk with Chief Superintendent Breen on Wednesday, 24<sup>th</sup> August 1988, but I believe Chief Superintendent Breen drove on this occasion. In this regard, Superintendent Buchanan's diary entry states, "accompanied C/Supt Breen to Dundalk liaison with Ch Supt John Nolan." Harry Breen's entry for this date states, "Duty to Dundalk [...] . Acc. By Supt Buchanan." I interpret the phrase "accompanied" as meaning that the author did not drive; and "accompanied by" as meaning the author did drive. If one applies such an interpretation to the entries for 24<sup>th</sup> August 1988, the entries dovetail. Moreover, I heard evidence that the journal could form the basis of a mileage claim, and I therefore think it likely that relative care would be taken to distinguish between the dates on which the author drove and those on which he was driven.

22.5.6 The Final Approved Note continued that "after the six to eight week gap we picked up the red Cavalier again around late summer, early winter 1988." It then proceeds to note that one of the surveillance teams

"made, what was for us, a significant breakthrough. The volunteer met the red Cavalier in Meigh Village at around 2 to 3 o'clock (pm) the car was travelling slowly through the village heading towards Newry. The volunteer recognised the front seat passenger as Harry Breen. [...] The car was also placed at D.G.S. earlier that same day. Equally significant was that given its location the car had to have crossed border crossing around the Forkhill area."

22.5.7 At the face to face meeting, a former volunteer added: "the car was seen in Meigh, not sure if someone in house in Dundalk the same day but coincidentally the car was seen in Dundalk." Therefore, it is clear that it has been suggested that Harry Breen was spotted in Bob Buchanan's car in Meigh and, on the same date, Bob Buchanan's car was spotted in Dundalk. On this basis, I have reviewed Bob Buchanan's journal entries from summer 1988 until the March 1989 with a view to identifying the dates on which he was in Dundalk Station and, of those dates, the dates on which he states that he was accompanied by Chief Superintendent Breen. I am also alive to the possibility that Bob Buchanan could have been in

Dundalk on the day in question without Harry Breen, but have been accompanied by Harry Breen elsewhere later in the day. On this basis I have therefore also checked Harry Breen's diary for every date on which Bob Buchanan was in Dundalk from summer 1988 until the end of that year, to ascertain whether Breen accompanied Bob Buchanan to any destination on any of those days. Having carried out that exercise, I have not been able to identify an entry or series of entries which corresponds to the alleged sighting of Harry Breen in Bob Buchanan's car in Meigh on the day when Bob Buchanan's was separately spotted at Dundalk Garda Station.

22.5.8 The two officers did travel together to Monaghan to meet Chief Superintendent B. King on 18<sup>th</sup> January 1989. However, it is not clear to me who drove on that occasion (both journal entries record duty to Monaghan "with" the other), and this would also seem to be too late in the timeline to be the sighting in Meigh noted by the former personnel.

22.5.9 The Final Approved Note and face to face interview indicates that the operation was mounted four times in total, with three previous unsuccessful attempts. It is stated that the third of these was aborted and during the course of the interview, Tribunal Counsel questioned the former volunteers as to whether this had possibly occurred the week before the murders. The volunteers were asked, "how long before March was the aborted operation?" The volunteer with operational knowledge replied, "It is hard to say, two weeks up to four weeks, maybe three weeks, I am not sure."

22.5.10 As is set out earlier in this Report, Charles Day gave evidence to the Tribunal that he accompanied Bob Buchanan to Dundalk on Tuesday, 14<sup>th</sup> March 1989 and, on the return North, was suspicious that Bob Buchanan's car was being followed. As noted in section 2.5, there was a slight discrepancy as between Charles Day's evidence and his original statement made in 1988. In his evidence, he stated that he was concerned that the car was being followed whereas in his original statement of 1988, it was suggested that the Superintendent had commented that he was suspicious that the car was being followed. In his evidence, he suggested they travelled north on the main road, but in his statement he said that Bob Buchanan turned off the main road on to the Edenappa Road.

22.5.11 Four comments can be made in relation to the possibility that this was the date on which the Provisional IRA aborted their third attempt at a military operation in respect of Bob Buchanan's car.

22.5.12 First, the Provisional IRA state that “on the third occasion it was tracked using the Edenappa Road on the return journey.” This would be consistent with Inspector Day’s original statement.

22.5.13 Secondly, the former volunteers informed the Tribunal that the operation was aborted before the officers left Dundalk due to helicopter activity. I note that during the week of the 14<sup>th</sup> March 1989, documents provided by the NIO and put into evidence by Detective Superintendent McConville, indicates that the Edenappa Road was out of bounds due to an ongoing military operation monitoring the Kilnasaggart railway bridge. This could have involved helicopter activity such as that described by the former volunteers. Equally, however, I heard evidence that Bessbrook Mill was the busiest heliport in Europe and there in fact could have been helicopter activity on any given day so this is not necessarily significant.

22.5.14 Thirdly, in response to a written question posed by the Tribunal after receipt of the original Approved Note, former volunteers indicated that on the occasion of the aborted attempt at the operation, “the occupants [of the red car] were not known.” Given that Inspector Day was the occupant originally recognised and appears to have been known, this might tend to suggest that he was not the person in the car on the occasion of the aborted attempt. However, it is of course possible that the person or persons observing the car on that third aborted attempt did not know Inspector Day.

22.5.15 Fourthly, and possibly most significantly, as noted by Detective Chief Superintendent Kirwan of An Garda Síochána in his evidence, the timing provided by the former personnel at the face to face meeting “didn’t actually gel completely” with the sighting of a suspicious car by Inspector Day on 14<sup>th</sup> March 1989. Indeed, the answer given certainly tends to suggest that the aborted attempt could not have been just six days prior to the successful attempt, but the former volunteer did emphasise that he was not sure and therefore I must leave open the possibility.

22.5.16 In summary, therefore, one can conclude that the 14<sup>th</sup> March 1989 could have been the date of the third, aborted attempt of the operation, but the information provided by the former volunteers tends to suggest that this aborted attempt occurred earlier in the month of March 1989.

22.5.17 In relation to the assertion of surveillance more generally, one must have due regard to the British Army ‘Vengeful’ reports which are capable of corroborating the suggestion that

Bob Buchanan's car was the subject of targeting by members of the Provisional IRA and that it was being followed on various occasions in early 1989, including, possibly, on 15<sup>th</sup> March 1989. However, on the basis of the Provisional IRA version of events, there was a single aborted attempt at mounting the operation in March 1989 and I am not clear that it is being suggested that the car was followed on more than one date in that month. On that basis, it seems unlikely that the car was being followed both on 14<sup>th</sup> March 1989, when Inspector Day recalls a suspicion that the car may have been followed, and on 15<sup>th</sup> March 1989 when British Army surveillance suggest that the car was being followed at Keady.

22.5.18 I now turn to deal with the evidence in relation to No. 12, The Crescent, Dundalk. The Tribunal heard evidence from Mrs Moira Carroll who in 2007 provided a statement to An Garda Síochána indicating that she recalled seeing a suspicious looking gentleman on Stapleton Place on the day of the murders of Chief Superintendent Breen and Superintendent Buchanan. However, in her evidence before the Tribunal she retracted this statement and indicated that she must have been mistaken. Enquiries conducted both by Mrs Carroll and by the Tribunal established that she did not in fact purchase No. 12, The Crescent, until 19<sup>th</sup> July 1989, some four months after the murders. She also indicated that it was two or three months after purchase that she and her family moved into the house. Mrs Carroll indicated that when she purchased the house it was in a relatively derelict state. She did not think it had been vandalised and thought that it was securely locked up. Mrs Carroll provided a description of the layout of the house which seems to me to be consistent with the description contained in the 'Final Approved Note'. I note that the Final Approved Note stated that, "the surveillance was carried out from a large front bedroom window on the Vincent Avenue side of the house." Mrs Carroll recalled that there were two bedrooms at the front of the house, and when she purchased the house there was no furniture in either; she did, however, say that there were bits of newspaper and bit of paper in these rooms. There was also a third bedroom on this floor, with a window facing onto Vincent Avenue, in the gable end of the house, and a second window facing into the back garden. Mrs Carroll explained that one could not see the Garda Station properly from the window looking out on to Vincent Avenue. However, like Detective Chief Superintendent Kirwan, I interpret the reference in the Final Approved Note to "a large bedroom window on the Vincent Avenue side of the house" as being a reference to one of the two front bedroom windows, namely the front window to the left as one faced the house with one's back to Dundalk Garda Station.

22.5.19 The Tribunal also heard evidence from Mr Kenneth Farnon, a retired dentist who lived on The Crescent for a considerable period of time. His house is No. 11 the Crescent, and

forms the corner between The Crescent and Vincent Avenue directly across from the corner formed by No.12. Mr Farnan confirmed that No. 12, The Crescent was empty in 1989 and that it had been empty for several years.

22.5.20 On the basis of the evidence given by these two witnesses, I am satisfied that No. 12, The Crescent was vacant during the period when the former volunteers said they used it for surveillance. As against this, I refer to the evidence, summarised in section 6.4 of this Report, of retired Detective Sergeant Seán Gethins, retired Garda Detective Patrick O'Connor and retired Detective Garda Terry Hynes which suggest that the houses on The Crescent were investigated in the immediate aftermath of the murders to ascertain whether any of them might have been used for surveillance and the results of this investigation were negative. In particular, Detective Garda O'Connor stated that he visited:

“all the houses, I think every one of them [...] at The Crescent facing the Garda Station to check them out to see if there was any possibility that they might have been used for surveillance or anything like that.”

He said that he and Detective Sergeant Gethins “didn’t find anything that led to any suspicion in relation to any of the houses.” There was one unoccupied house, he said, but this was at the Stapleton Place end of The Crescent, facing the old Louth Hospital. He told me that he eventually found the owner of this house and was satisfied that there was no unauthorised entry.

22.15.21 It is of course possible that Detective Garda O'Connor was mixed up in his recollection as to the location of the one unoccupied house in March 1989, when he and Detective Sergeant Gethins conducted their enquiries. Given that the documentation appears to establish that No. 12, The Crescent was unoccupied at that time, I cannot rule out this possibility. However, I do note that in respect of the unoccupied house to which he was referring, he did recall ultimately gaining access and satisfying himself that there had been no unauthorised use of that house. I give due weight to that evidence, but ultimately have to conclude that it is quite possible that the IRA conducted surveillance from No. 12 – The Crescent at periods of time from summer 1988 until March 1989.

## **22.6 – A Two Phase Operation on 20<sup>th</sup> March 1989**

22.6.1 As outlined earlier in section 4.1 of this Report, I have concluded that Harry Breen and Bob Buchanan arrived at Dundalk Garda Station no earlier than 2:20 pm on 20<sup>th</sup> March 1989. I have also accepted as fact information contained in the documents provided to the Tribunal

by the various security agencies to the effect that at 2:30 pm an Active Service Unit was dropped off at Jordan's derelict house on the Edenappa Road. On this basis, as explained in section 7.4, I have concluded that the operation could not have been mounted from scratch on the basis of the arrival of the two officers at the Garda Station. The version of events provided by the former personnel of the Provisional IRA similarly indicates a two – phase operation. In other words, Active Service Units of the IRA were active, on standby for an anticipated operation prior to the arrival of the two officers at the station and then, upon confirmation of their arrival, moved into full operational mode.

22.6.2 I think that the evidence clearly establishes that this two – phase operation was employed on 20<sup>th</sup> March 1989. The question for me to resolve is what was the trigger for the commencement of each of these two phases. In relation to the first phase, the IRA says that this was mounted on the basis of surveillance and a pattern having been established by Bob Buchanan's car. An alternative theory was that this was mounted on the basis of information having been supplied to the Provisional IRA at some point during the course of the weekend or on the morning or early afternoon of 20<sup>th</sup> March 1989 to indicate that Chief Superintendent Breen and Superintendent Buchanan would be travelling to Dundalk that day. In relation to the trigger for the second phase, it seems beyond doubt that the IRA acquired information that the two officers arrived at the station. They say that this information was acquired by a volunteer in No. 12, The Crescent. The former volunteers clarified at the face to face meeting with the Tribunal that this information was then immediately conveyed by radio to the Active Service Unit, which immediately moved into position. I think that this is just achievable within the ten minute timeframe established by the evidence – between the arrival of the officers no earlier than 2:20pm and the arrival of the ASU on the Edenappa Road at 2:30 pm – on the basis that the Active Service Unit was on standby, awaiting further instructions, at a location very convenient to the Edenappa Road. However, this timing is equally consistent with a Garda in Dundalk Station either telephoning someone in the Provisional IRA at 2:20 pm or shortly thereafter to indicate that the officers had arrived, or signalling from the Garda Station to someone, whether in No. 12, The Crescent or elsewhere, the confirmation of their arrival.

22.6.3 The former volunteers also indicated that upon the arrival of the two officers, the volunteer in No. 12, The Crescent left the house, jumped over the wall and went down to a pre – arranged location in Dundalk Town. It appears to be suggested that he confirmed the arrival of the car to another volunteer who in turn travelled to and provided this confirmation directly to the Active Service Unit. The former personnel indicated in the course of the face to

face interview that the meeting down the town in Dundalk probably occurred within twenty to thirty minutes of the arrival of the two officers at the station, which puts this meeting at approximately 2:40 to 2:50 pm.

22.6.4 I have to say that I find this aspect of the account somewhat curious. Given the great care that had been taken, as described by the former personnel, to enter and leave No. 12, The Crescent under cover of darkness, it seems to me that a significant risk was being taken by the volunteer exiting just after 2:20 pm in broad daylight directly in front of the Garda Station. This does not necessarily sit comfortably with the significant volume of evidence I have heard in relation to the aversion to risk of the South Armagh Unit of the IRA.

22.6.5 Secondly, one wonders why such a precaution was being taken to confirm that a red car carrying two RUC officers had arrived at the station. I note that this detail was not included in the Final Approved Note or written answers to questions, but only emerged during the course of the face to face meeting with Tribunal Counsel. The former volunteer with operational knowledge explained,

“the reason for using different types of communication was that it made it harder for the enemy to pick up, it was system of creating snippets everywhere. That’s why we used different types of communication.”

However, I do not do fully understand this point. The information was not being conveyed in snippets; it has been suggested that the arrival of red cavalier was communicated by radio and precisely the same information was also communicated in person.

22.6.6 Perhaps this ‘in person’ confirmation was more akin to a safety mechanism so as to avoid the possibility of mistaken identities. This suggestion is made in the particular context of the outrage which followed the accidental killing of the Hanna family members less than one year previously. However, if the target was simply the red car, and this had been communicated by radio, one wonders whether precautions against mistaken identity would have been required to the same extent. This in fact brings me to the first of four areas of concern I have in relation to the version of events provided by the former IRA personnel.

## **22.7 Areas of Concern in Respect of Account Provided by Former IRA Personnel**

22.7.1 It seems to me that there is something of a significant contradiction lying at the heart of the version of events which the former personnel provided to the Tribunal. It is stated in the Final Approved Note that the spotting of Harry Breen in the red Cavalier during the initial

surveillance phase in respect of the car was “for us, a significant breakthrough.” The Final Approved Note continued that “Harry Breen had a high media exposure following the ambush in Loughgall in 1987. We had video footage from news bulletins and photos from the press. He was, for obvious reasons, a target we had particular interest in.” Moreover, I note that during the course of the face to face interview between three former personnel of the IRA and the Tribunal’s legal team, in the course of the introduction provided by one of the former personnel, a copy of the *An Phoblacht* newspaper published in the aftermath of the shooting was produced. One of the former volunteers described the photograph of Harry Breen on the front page of that newspaper as an “image [...] etched on every republican’s mind.” Ultimately, the Tribunal was told, however, that notwithstanding all this, Harry Breen was not the target of the operation. Rather, any occupants of the red Cavalier were the targets of the operation.

22.7.2 Furthermore, we are told that at no point during this operation, up until and including the moment at which he was killed, was the IRA aware of the identity of Bob Buchanan. Given the frequency with which he visited Dundalk, this is surprising. Moreover, as noted at paragraph 22.4.6 above, one of the former personnel stressed “identification is important. A Northern registered car was not enough.” This does not, in my view, sit easily with the contention that any occupants of the car would have been the targets of the operation.

22.7.3 I can see an argument that the contradiction I am highlighting is more apparent than real. In other words, the car was the target, but the reason it became a target in the first place was because Harry Breen was spotted in it on one occasion. However, I am not entirely convinced about such an argument given the weight that has been attached to Harry Breen’s role in Loughgall and to the importance of that sighting of Harry Breen in this car. This issue also needs to be considered in the context of other evidence, including intelligence received shortly after the shooting and the evidence of retired Detective Sergeant Seán Gethins and that of retired Detective Sergeant Owen Corrigan, which suggested that Harry Breen was very much the target of the operation. In this respect, I also note that the former volunteer of the IRA confirmed, consistent with that intelligence received after the killings, that the intention was, “to take away and question the occupants.” I will return to this issue of the target of the operation in my next chapter, containing my analysis.

22.7.4 The second issue of concern is that the version of events provided by the former personnel of the IRA cannot be reconciled at all in my view with the evidence I have heard in relation to an increase in radio signals activity from between 11.30 and 12 noon on 20<sup>th</sup> March

1989. This evidence was expressly put to the former personnel, in writing subsequent to the face to face meeting, in order to give them an opportunity to address it. In essence, the response seems to suggest that their version of events and this evidence in relation to radio signals cannot be reconciled. The evidence cannot be correct. As noted above, they state that the Active Service Units were involved in “no radio activity on that time on that day as it was operational practice not to activate radios prior to an operation actually going live.” I will return to this question in the next chapter also.

22.7.5 Thirdly, there was a clear contradiction between the answers given by the former personnel in the course of the face to face interview on the one hand, and the evidence before me of the autopsy performed on Harry Breen on the other, in relation to how Harry Breen was shot. The autopsy conclusion, which notes that the fatal shot was fired in the back of Harry Breen’s head, is simply inconsistent with the former members’ account that he was shot while still sitting in the car. Their version also does not account for the presence of a white handkerchief on the road near his body. I have to say that I think I must accept and prefer the un-contradicted autopsy evidence in this respect.

22.7.6 This undermines to some extent the credibility of the version of events provided by the former personnel of the Provisional IRA. As noted by Detective Chief Superintendent Kirwan, “it requires explanation.” However, I am cognisant of the fact that there may be some political sensitivity in their admitting to this Tribunal that Harry Breen was shot when he had, as one eyewitness described it, gotten out of the car with his arms raised, or that he was subsequently shot at close range in the back of the head. Thus, while this inconsistency must be taken into account in assessing the overall credibility of the account, I must equally be conscious that particular factors may be at play in relation to this aspect of the information. I should not therefore necessarily allow this inconsistency to dictate my overall view of the credibility of the former personnel.

22.7.7 This does, however, bring me to my fourth point, which is simply to note that in the introduction to the face to face meeting, one of the former personnel noted that “we are not going to compromise former comrades and locations.” There was sensitivity, in this regard, around ensuring that no one was identified as having stolen the van for the operation. This does raise the very valid question in my mind, if the Provisional IRA had received assistance from a member of An Garda Síochána, would they be prepared potentially to compromise that person by revealing that fact to this Tribunal?

22.7.8 Having set out areas of the IRA account which are capable of corroboration and areas of concern, I shall now proceed to my final analysis of the evidence put before me in this Tribunal.

## Chapter 23

### Analysis and Conclusions

#### 23.1 – Analysis

23.1.1 To those who may have been tempted to turn first to this page of the Report, I wish to emphasise that this chapter does not stand in isolation but must be read in the context of what has gone before. As I have pursued the evidence in this Report, I have drawn interim conclusions which relate to particular issues. These interim conclusions are the building blocks of my final conclusions set out in this chapter.

23.1.2 Collusive acts are, by their very nature, surreptitious. Absent a phone call or incriminating bank transfer, if collusion has occurred, the evidence of it will almost certainly be difficult to find. In the instant case, leaving to one side the question of intelligence, the Tribunal has not uncovered direct evidence of collusion. There is no record of a phone call, no traceable payment, no smoking gun. This is not surprising. That being the case, I believe that the starting point of the analysis required by the Tribunal's terms of reference must be a detailed consideration of the events of 20<sup>th</sup> March 1989, when Chief Superintendent Harry Breen and Superintendent Bob Buchanan, two highly regarded RUC Officers and two highly respected men, were ambushed and killed on the Edenappa Road on their way back to Northern Ireland from a meeting in Dundalk Garda Station. I have gone into considerable detail, in the earlier parts of this Report, in setting out the events of that day, and, in particular the times at which those events occurred. This has allowed me to build up a picture of how and when the Provisional IRA ambush was mounted and executed.

23.1.3 I have reached the conclusion that from the afternoon or early evening of the previous Thursday, 16<sup>th</sup> March 1989, it was intended that Chief Superintendent Breen and Superintendent Buchanan would travel to Dundalk at the beginning of the following week. Those RUC Officers who attended that meeting would have been aware of this plan, and a number of others became aware of it during the course of Friday, 17<sup>th</sup> March 1989 and Saturday, 19<sup>th</sup> March 1989.

23.1.4 Just after 10 am. on Monday, 20<sup>th</sup> March 1989, Superintendent Buchanan told Superintendent Tierney in Dundalk Garda Station that he and his Divisional Commander wished to visit the station that day. I have concluded that at 10:15 am, Superintendent

Buchanan spoke to Chief Superintendent Nolan and a meeting was arranged. Chief Superintendent Nolan shared that information with Inspector Frank Murray at a tea break at around 11 am. and the possibility that other persons heard that conversation cannot be excluded. In particular, Sergeant Vincent Rowan learned at some stage in the course of the morning that Bob Buchanan was to be transferred from his post in Armagh to Newtownards the following month. I find this information can only have come to his knowledge that morning or early afternoon, and must have arisen in the context of some discussion about Superintendent Buchanan. It is probable that the any such discussion included reference to the fact that Chief Superintendent Breen and Superintendent Buchanan were travelling to Dundalk later that day. It has always been recognised, since the *O'Dea Report* in 1989, that there was some degree of knowledge within the station of the impending visit, but I am of the view that that knowledge was more widely held than was recognised in that Report.

23.1.5 I also have found as a fact that Chief Superintendent Breen and Superintendent Buchanan arrived at Dundalk Garda Station no earlier than 2:20 pm. Their arrival and entry into the station was quite widely witnessed. I have found that at 2:30 pm., the Provisional IRA placed an Active Service Unit on the Edenappa Road. This was as a direct result of confirmation having been received that the officers had arrived at Dundalk. I am satisfied that this marked the commencement of the second phase of a two – phase operation.

23.1.6 On the version of events provided to the Tribunal by former members of the Provisional IRA, the first phase of this two – phase operation was initiated on the basis of an established pattern of travel by Superintendent Buchanan. The target was a red Cavalier with the vehicle registration no. KIB 1240, which was known to be a car occupied by RUC Officers. The former members said that they had been monitoring this car since the previous summer, that they had mounted an operation with a view to ambushing its occupants on three previous occasions and that they intended to maintain the operation of 20<sup>th</sup> March 1989 in place for a week to see if the car materialised at Dundalk Garda Station. They also said that the first phase of the operation commenced in the early morning; this was subsequently clarified as being between 9 am and 11 am on the morning in question. They maintained that there was radio silence until the ambush.

23.1.7 There is much to lend credibility to and corroborate elements of the version of events provided by the former personnel of the Provisional IRA. On the basis of Bob Buchanan's diary entry, I accept that Inspector Day was spotted in Bob Buchanan's car in Dundalk in

April 1988. The Vengeful analyses carried out by the British Army in the wake of the shooting, together with some of the intelligence reports put into evidence before me (including the evidence of Detective Superintendent Curran in relation to the intelligence report, I have found, he submitted, but which has never been found) and, to a certain extent, the evidence of Inspector Day in relation to the possibility that he and Bob Buchanan were followed on the 14<sup>th</sup> March 1989, convinces me that there was interest in, surveillance on and possible targeting of Bob Buchanan's car at points during the period of time from summer 1988 until March 1989. It is entirely plausible that some of this surveillance was carried out from No. 12, the Crescent, Dundalk.

23.1.8 The evidence of surveillance, together with the frequency of Bob Buchanan's visits south of the border, make it plausible that the IRA could have mounted an operation to ambush Bob Buchanan on the basis of an established pattern of travel.

23.1.9 However, this brings me to my first major stumbling block in accepting that this is what in fact occurred. The former personnel of the IRA say that not even Bob Buchanan was the specific target of this operation, but rather that his car, which was known to have been occupied by RUC Officers and, on one occasion, to have been occupied by Harry Breen, was the target. I cannot accept this. The preponderance of evidence before me points to Chief Superintendent Harry Breen having been the specific target of this operation. In this regard, I rely on the intelligence received in the immediate wake of the murders, the evidence given by retired Detective Sergeant Seán Gethins and on the fact that the vast majority of the evidence suggests that the intention was to abduct and interrogate these officers. In the latter respect, the evidence keeps pointing back to the desire of the IRA to acquire information as to how the British Security Services had gotten advance warning of the IRA ambush on Loughgall Police Station in May 1987.

23.1.10 Of the video footage that I have viewed in this Tribunal, two images stick in my mind. The first is the scene on the Edenappa Road; the second is the image of Chief Superintendent Breen, standing erect in his uniform before the media, pointing out the weapons that had been retrieved in the Loughgall ambush. The evidence continually draws me back to the conclusion that Harry Breen was the target of this operation. Despite their denials in this regard, much of what the Tribunal was told by the former personnel of the Provisional IRA also tends to support this fact. Great significance was attached by them to the alleged sighting of Harry Breen in Bob Buchanan's car after the summer of 1988, and there

was, in the wake of the murder, triumphalism in relation to the fact that the Provisional IRA had killed the officer who had appeared in that photograph “etched in every Republican’s mind.”

23.1.10 As Brigadier Mike Smith said in his evidence to the Tribunal:

“For the Chief Superintendent that pattern [of travel to Dundalk] seems to be far less strong, and therefore at what moment PIRA decided to launch an attack, whether the Chief Superintendent was simply unlucky in terms of being in that vehicle on that day or there was an additional factor, of which I am unaware, that initiated the attack, I am able to be much less conclusive there because there doesn’t seem to be that collateral information.”

23.1.11 Counsel for the Tribunal put into evidence various extracts from Chief Superintendent Breen’s and Superintendent Buchanan’s journals for the years 1988 and 1989. The focus in this regard was to seek to corroborate certain references in the information provided by the former personnel of the Provisional IRA. However, I have reviewed these diary entries and what has struck me about them is that, by my calculations, from when he returned from his summer holiday in late August 1988 until the date of his death in March 1989, Bob Buchanan travelled to Dundalk 20 or 21 times (one entry refers to liaison with an officer in Dundalk and it is unclear whether this was in person or by telephone). Of those 20 or 21 times over the course of seven months, I can identify only one date on which he travelled with Chief Superintendent Breen, 2<sup>nd</sup> February 1989, and it is not clear from the diary entries whose car they took on that day.

23.1.12 Either the IRA did have an extraordinary piece of good fortune, or Harry Breen was the target of this operation. I believe that the evidence points to the latter conclusion. I also think that this makes it significantly more likely that the Provisional IRA knew that Chief Superintendent Breen was coming, and were not simply waiting on the off – chance that he might turn up.

23.1.12 My conclusion in this regard is reinforced by the evidence of Brigadier Liles to the effect that radio signals traffic increased between 11:30 am and 12 noon on the day in question. I think that this is the second major obstacle to the credibility of the version of events provided by the former volunteers of the Provisional IRA, insofar as relates to 20<sup>th</sup>

March 1989 itself. Brigadier Liles had direct access to this intelligence material and I have no reason to doubt his evidence. Furthermore, it is corroborated by way of the hearsay evidence of Witness 27, who says that the late Chief Superintendent Frank Murray, the Regional Head of Special Branch in South Region, told him the exactly same thing.

## **23.2 – Conclusions**

23.2.1 I conclude that the first phase of the two – phase operation commenced some time in the late morning of 20<sup>th</sup> March 1989, probably around 11:30 am.

23.2.2 I think that the circumstances alone point towards a conclusion that information was leaked in order to trigger the commencement of the operation at this time. I have considered the possibility that information was leaked by the RUC but, as already stated in this Report, I have found no evidence to support this. Moreover, if the information had been leaked by the RUC over the course of the weekend to the Provisional IRA, the IRA would likely have made its preparations earlier on the morning of Monday, 20<sup>th</sup> March 1989 and the fact that the preparations commenced so late in the morning tends, in my view, to make it more likely that the information came from Dundalk Garda Station.

23.2.3 In reaching the conclusion that here was collusion, however, I have not relied on the circumstances alone. I have also taken due account of the three strands of intelligence received by An Garda Síochána, from the same source, within a few years of the murders. I have already stated clearly in Chapter 11, having heard evidence from the handler of the source of that information, that considerably more weight can be attached to this intelligence that Judge Cory was in a position to attach to it in 2003. Furthermore, I have accepted the evidence of Assistant Chief Constable Drew Harris to the effect that the security agencies in Northern Ireland have recently received “live and of the moment” intelligence suggesting that there was collusion by a member (or members) of An Garda Síochána in the murders of Chief Superintendent Breen and Superintendent Buchanan. I think it significant that both police services have received information from reliable sources indicating that there was collusion.

23.2.4 I have accepted the evidence of Kevin Fulton as to what he was told by Mickey Collins on 20<sup>th</sup> March 1989, but this is hearsay evidence, and is premised on an assumption, and has therefore been of lesser weight than the factors I have already outlined in my coming to the conclusion that there was collusion. I have also taken into account my conclusion that in January 1990, a search of the house of Michael McKeivitt by Detective Branch in Dundalk

was compromised, though this tends to corroborate the more general allegation of a mole in Dundalk Station rather than establishing collusion in this case.

23.2.5 I conclude that the passing of information by a member of An Garda Síochána was the trigger for the commencement of the first phase of the operation. However, having regard to the intelligence, I think it is quite possible that there was also an act of collusion to trigger the commencement of the second phase of the operation upon the arrival of the two officers at the Garda Station in Dundalk. Having regard to the fact that the “live and of the moment” intelligence received by the PSNI contemplates more than one member of An Garda Síochána in Dundalk assisting the IRA, a second act of collusion may have been committed by the same, or possibly a different, member of An Garda Síochána. I am satisfied that the IRA required positive identification that Harry Breen, in particular, had arrived at Dundalk Garda Station. Whilst his image was well known, and therefore he may well have been recognised by a member of the Provisional IRA observing the station, the optimum confirmation of his identity from the point of view of the Provisional IRA would likely be by a member of An Garda Síochána. Given that I am satisfied that the evidence points to the fact that there was someone within the Garda Station assisting the IRA, it also seems to me to be likely that the Provisional IRA would seek to exploit that resource by having that individual or individuals confirm the arrival of the two officers.

23.2.5 Being satisfied that there was collusion in the murders, I now turn to address the question as to whether there is evidence as to who within An Garda Síochána may have leaked information to the Provisional IRA. As outlined in Chapter 1, I approach this aspect of my deliberations having regard to the judgment of the Supreme Court in *Lawlor v. Planning Tribunal* [2010] 1 I.R. 170.

23.2.6 In respect of former Sergeant Finbarr Hickey, I have concluded that he was not on duty on 20<sup>th</sup> March 1989 and was, in all probability, not in the station before the murders occurred. In these circumstances, I am satisfied that he was not in a position to pass information to the IRA which facilitated the ambush on the Edenappa Road.

23.2.7 In relation to retired Sergeant Leo Colton, I have found as a fact, on a strong balance of probabilities, that he was someone who in the course of 1995 and 1996 assisted the Provisional IRA by having his former colleague, Sergeant Hickey, sign false passport applications. This is a relatively significant form of assistance and suggests to me that members of the Provisional IRA

reposed considerable trust in Mr Colton at that point. The evidence before me does not establish when this relationship began. Mr Colton would have been in the position to provide information to facilitate the commencement of the second phase of the operation, but the evidence does not establish that he colluded with the Provisional IRA in the murders of the two officers.

23.2.8 In relation to retired Detective Sergeant Owen Corrigan, I have found that Detective Sergeant Corrigan had a series of inappropriate dealings with the Provisional IRA going back until at least mid – 1991 (after he went on sick – leave but before his retirement from An Garda Síochána). It is not possible for me to say when this inappropriate relationship first developed. It may well have been as a result of disaffection following the reorganisation of the Detective Branch in Dundalk in the mid 1980s. Detective Sergeant Corrigan has consciously withheld evidence in relation to a personal bank account and, in these circumstances, my conclusion is not being made on the basis of all relevant considerations.

23.2.9 I have had regard to the intelligence received by the RUC in June 1985 indicating that Owen Corrigan was passing information to the IRA, but equally I have had regard to the intelligence received by An Garda Síochána to the effect that:

“intelligence indicating that information regarding the movements of Chief Superintendent Breen and Superintendent Buchanan was not given to the IRA by retired Detective Sergeant Owen Corrigan.”

The latter is more directly relevant to my terms of reference. I have also had regard to the strand of “live and of the moment” PSNI intelligence to the effect that the Provisional IRA received information regarding Chief Superintendent Breen and Superintendent Buchanan from a Detective Garda Officer “who had not been publicly associated to the Smithwick Tribunal.”

23.2.10 I have accepted the evidence of Kevin Fulton to the effect that he was told on 20<sup>th</sup> March 1989 after the murders that “our friend” passed information to the IRA which facilitated the murder. I also accept his evidence that he understood “our friend” to refer to Owen Corrigan. However, this is hearsay evidence, premised on an assumption.

23.2.11 Taking all of the above matters into account, while there is some evidence that Mr Corrigan passed information to the Provisional IRA, I am not satisfied that that evidence is of sufficient substance and weight to establish that Mr Corrigan did in fact collude in the fatal shootings of Chief Superintendent Breen and Superintendent Buchanan.

23.2.12 I should add that I have concluded that the two earlier investigations into the question of Garda collusion in the murders of Chief Superintendent Breen and Superintendent Buchanan, the O’Dea Investigation and the Camon Investigation, were inadequate. I think that the best opportunity of establishing the truth of the matter arose in the days and weeks following the ambush. In these circumstances, it is particularly regrettable that both police services acted swiftly to dismiss speculation of the possibility of collusion rather than to deal with that by means of a through and credible investigation. This was an example of the prioritisation of political expediency in the short term, without due regard to the rights of victims and the importance of placing justice at the centre of any policing system.

23.2.13 The integrity of and confidence in An Garda Síochána can properly be maintained only if suggestions of inappropriate or illegal conduct by members are taken seriously, transparently and thoroughly investigated and, above all, not tolerated or ignored on the basis of some misguided sense of loyalty to the force or to its members.

23.2.14 The culture of failing adequately to address suggestions of wrongdoing, either for reasons of political expediency or by virtue of misguided loyalty, has been a feature of life in this State. Too often that culture has resulted, some years later, after doubts, grievances and injustices have festered, in the setting up of investigations, commissions or Tribunals of Inquiry. This Tribunal has sought to establish the truth and, in so doing, I hope that it has contributed one small part to changing that culture.

HIS HONOUR JUDGE PETER SMITHWICK

29<sup>TH</sup> NOVEMBER 2013.

## Chapter 24

### Recommendations

This Tribunal has been charged with inquiring into a single event which occurred more than two decades ago, just one of the many of the horrific incidents which took place during the Troubles.

Given the intervening years, the scope for making recommendations is more limited than it would have been, for example, in the context of a public Tribunal of Inquiry in the immediate aftermath of the events of 20th March 1989. To the immense credit of so many on this island and beyond, the political and security landscape today is a very different and improved one to that which prevailed at the end of the 1980s. In these circumstances, many of the changes which one might have recommended then are now moot, or have already taken place.

As recent events have reminded us, however, the threat from subversives still exists. The dissidents who seek to undo the progress that has been achieved pose a threat to life and security in this State, as well as in Northern Ireland. In this context, there are a number of recommendations which I do wish to make in terms of cross – border police co-operation. These recommendations have arisen from the evidence that has emerged during the course of the Tribunal’s hearings, as well as from the stances sometimes adopted by various parties before the Tribunal.

#### **Cross – Border Policing**

1. The Tribunal found instances dating from the 1980s to the present day where there has been a failure on the part of the RUC/PSNI or An Garda Síochána to share information which was of relevance either to a criminal investigation being conducted in the other jurisdiction or to the integrity of the police service in the other jurisdiction. I recommend that frameworks and procedures be put in place to allow for the structured and regular exchange of intelligence between the two police services, which exchange should be governed by information – sharing protocols rather than ad hoc decision – making.

In this regard, I commend as a potential model worthy of study, the Integrated Border Intelligence Team (IBIT) made up of agencies from the United States and Canada. Intelligence operatives from the stakeholder agencies co – locate, each having exclusive access to his or her own national intelligence database, but

sharing intelligence with the other stakeholders on a daily basis and subject to information – sharing protocols.

2. The evidence before me highlighted that the need for structured frameworks for cross – border policing, and enhanced personal relationships go hand in hand. I recommend that a programme of personnel exchanges, such as fixed term secondments, be agreed and implemented between the PSNI and An Garda Síochána, as recommended in the Report on the Independent Commission for Policing in Northern Ireland (the Patten Report). Consideration could also be given to posting liaison officers from each service to the central headquarters of the other.
3. I recommend that consideration should be given to the establishment of protocols, if necessary underpinned by appropriate legislative changes, providing the legal and procedural structures for the seamless investigation by joint police teams of crimes with a cross – border element. Such protocols would lay down and govern such matters as the collection of evidence, the circumstances in which legal status may be accorded to a police officer from the neighbouring jurisdiction, the sharing of appropriate intelligence and the jurisdiction for the prosecution of cross – border crime.

Whether the threat to security, the peace and law or order comes from subversives or ordinary criminality, all societies need a professional and representative police service founded on integrity, justice and respect for human rights. The public is entitled to expect that members of An Garda Síochána are held to the highest ethical standards, and that where those standards are not observed, appropriate action will be taken.

In this respect I make the following recommendations:

4. An Garda Síochána should not tolerate irregular or unethical behaviour by any of its members. In this respect, the importance of proper vetting for prospective members before their appointment, and proper personnel management after appointment, cannot be underestimated. I recommend that An Garda Síochána review current vetting procedures to ensure that they comply with best international practice

5. Proper personnel management includes appropriate application of a disciplinary code. I recommend that breaches of discipline continue to be investigated and enforced after a member of An Garda Síochána has left the force and should not be aborted by reason of his or her certified ill – health, resignation or retirement. The penalties of breaches of discipline in this regard could, if necessary, be enforced against the former member’s pension.
  
6. Where a member of An Garda Síochána carries on business activities in his or her own time, such activities should be subject to review by the member’s superior officers so as to ensure that they are in compliance with law and do not conflict with the member’s legal obligations and ethical duties as a member of An Garda Síochána. Superior officers should be afforded necessary and proportionate powers in order to carry out this task and take appropriate action on foot thereof, as required.

Finally, the achievement of the Good Friday Agreement and its implementation notwithstanding, the question of how to deal with the past remains unresolved. It is not a question for me, but I do hope that some progress is made in the context of the talks currently being chaired by Mr. Richard Haass. I do, however, consider it appropriate to make one suggestion:

7. In the event of that any future investigation, commission or Tribunal of Inquiry in relation to a historic crime with a cross – border element is to be established, consideration ought to be given to establishing same on the basis that it has the power to hear evidence, compel the attendance of witnesses and make orders for the discovery of documents in both jurisdictions.

HIS HONOUR JUDGE PETER SMITHWICK

29<sup>TH</sup> NOVEMBER 2013

## **APPENDIX 1**

### **Names of Counsel Who Appeared Before the Tribunal**

#### **For The Tribunal**

Mrs Mary Lavery, S.C.

Mr Justin Dillon, S.C.

Mr Dara Hayes, B.L.

Mr Fintan Valentine, B.L.

Mr Michael Buckley, Solicitor

Mr Matthew Shaw, Solicitor

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Mr Darren Lehane, B.L.

Mr Fintan Lawlor, Solicitor

#### **For Finbarr Hickey**

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**For Freddie Scappaticci**

Mr Niall Mooney, B.L.

Ms Evanna Fitzgerald, B.L.

Martin O'Rourke, Q.C.

Mr Michael Flanigan, Solicitor

**For Kevin Fulton**

Mr Neil Rafferty, Q.C.

Mr Richard Smith, B.L.

Mr John McAtamney, Solicitor

**For The PSNI**

Mr Mark Robinson, B.L.

Colin Stafford, Solicitor.

**For The Breen Family**

Mr John McBurney, Solicitor

**For The Buchanan Family (Including Heather Currie)**

Mr Ernie Waterworth, Solicitor

Mr Norman Hill, B.L.

**For Patrick Blair**

Ms Tara Mulvenna, B.L.

Michael Egan, B.L.

Mr Sean Sheehan, Solicitor

**For Michael McKevitt**

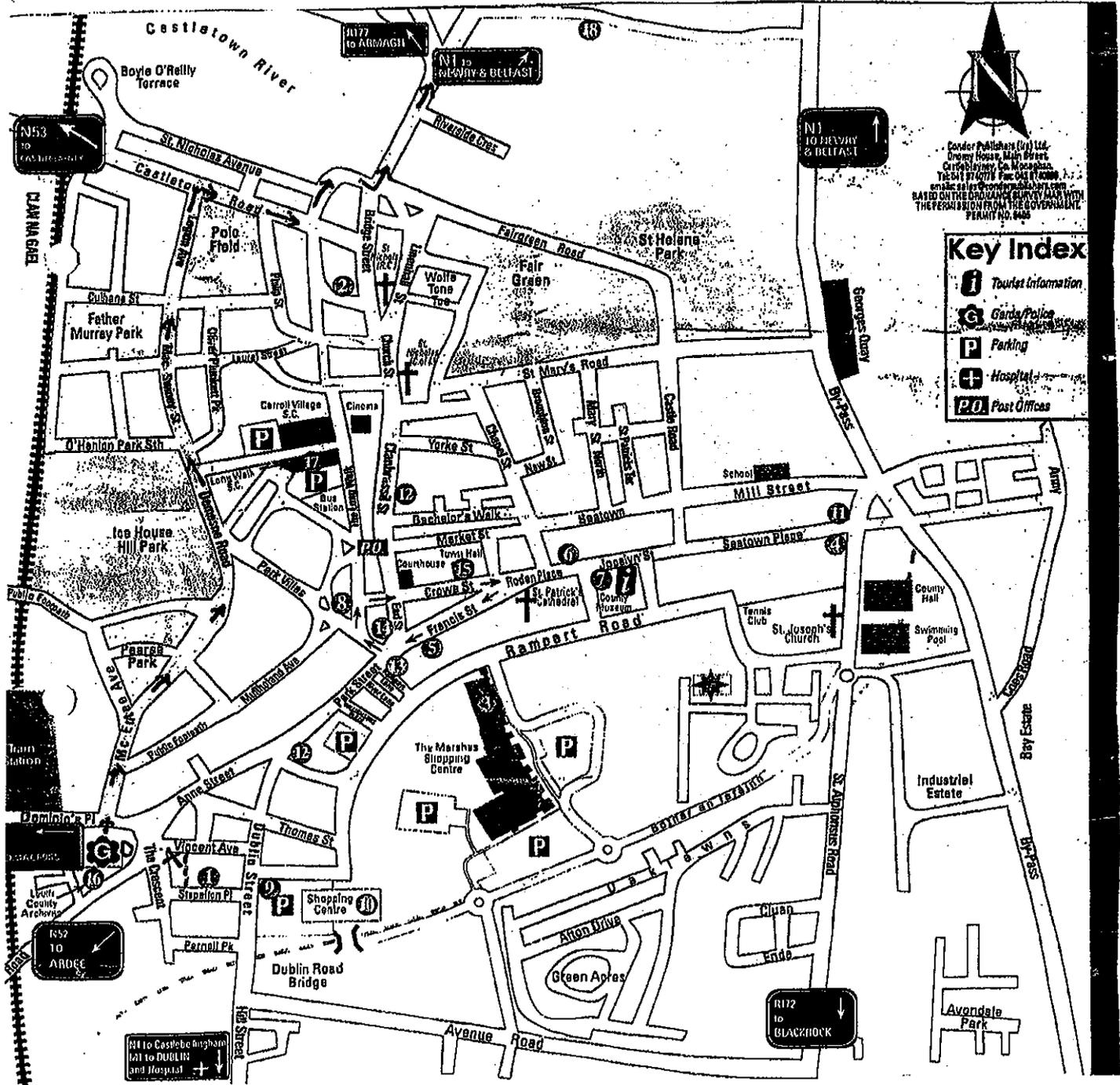
Ms Iseult O'Malley, S.C.

Mr Peter Mullen, Solicitor

## **Appendix 2**

**Map 1 Enclosed With The 'Final Approved Note' Provided By Former  
Personnel Of The Provisional IRA**

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### **Appendix 3**

**Map 2 Enclosed With The 'Final Approved Note' Provided By Former  
Personnel Of The Provisional IRA**





# **THE SMITHWICK TRIBUNAL REPORT**

## **PART II:**

### **WRITTEN SUBMISSIONS OF PARTIES WITH LEGAL REPRESENTATION BEFORE THE TRIBUNAL**

1. Submissions on behalf of An Garda Síochána
2. Submissions on behalf of Mr Patrick Blair
3. Submissions on behalf of Mr. Leo Colton
4. Submissions of Mr Owen Corrigan
5. Submissions on behalf of Mr. Finbarr Hickey
6. Submissions on behalf of Mr Peter Keeley aka Kevin Fulton
7. Submissions on behalf of Mr Freddie Scappaticci
8. Submissions on behalf of the Police Service of Northern Ireland

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## THE SMITHWICK TRIBUNAL

### 1. Terms of Reference

1. The Terms of Reference of the Tribunal are contained in Resolutions passed by Dáil Éireann on the 23 March 2005 and by Seanad Éireann on the 24 March 2005 and on foot of a consequential Order made by the Minister for Justice, Equality and Law Reform, Michael McDowell T.D., on the 31 May 2005. Those Terms of Reference were amended by Resolutions of Dáil Éireann and Seanad Éireann on the 1 June 2011, further Resolutions of Dáil Éireann and Seanad Éireann of the 16 November 2011 and the 17 November 2011 respectively, further Resolutions passed by Dáil Éireann and Seanad Éireann on the 23 May 2012 and further Resolutions of Dáil Éireann and Seanad Éireann of the 24 October, 2012. The Tribunal has delivered four interim reports, the first being on the 29 June 2011, the second being on the 8 March 2012 the third being on the 31 January 2013 and the fourth on the 25 April 2013. The Terms of Reference are as follows;

*“That a Tribunal of Inquiry be established to inquire into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20<sup>th</sup> March, 1989.”*

2. It is unnecessary at this point to recount the murders in detail other than to repeat that the murders were callous, cowardly, unjustified and unjustifiable killings of two unarmed men on a quiet country road in rural south Armagh. The atrocity was and remains a great tragedy for the families of Chief Superintendent Harry Breen and Superintendent Bob Buchanan. No person has to date been charged with the murders or any offence relating to the murders. Superintendent Buchanan had in

fact been awaiting delivery of a new car to replace the red cavalier which he had been driving since December, 1986 and more poignantly had been informed on the previous Thursday, the 16<sup>th</sup> of March, of his impending transfer from his position as border superintendent. News of this impending transfer had been a source of joy to his family and to members of his church and relief to Chief Superintendent Breen. BBC television footage from the day of his funeral records Reverend McCallum recalling the joy that he had felt the previous Thursday when he had been informed of Bob Buchanan's transfer.

3. Undoubtedly, these killings were perpetrated by the South Armagh Provisional IRA. Witness 62, in his statement to the Tribunal, says;

*“South Armagh PIRA were mature, multi skilled and multi disciplined because unlike other units in Northern Ireland they had not been subject to attrition. Very few of their number were ever charged and convicted. Therefore they became more and more experienced as the campaign went on. Their activities included grinding explosives from fertiliser, altering vehicles, carrying out close quarter killings, execution of alleged informers, planting and detonating improvised explosive devices (IED's), car and large vehicle bombs, mortar attacks, sniping, hijacking cigarette and alcohol consignments, smuggling anything with a profit, either into or out of the North. They were also responsible for many of the large bomb attacks in London and elsewhere in Great Britain.” (Day 51)*

Numerous other witnesses also testified to their ruthless capability, organisation and ability to avoid being brought to justice (see Witness 18, Day 6, pages 91 to 96, the evidence of Brigadier Smith and Brigadier Liles and many more). In the minutes of the RUC/Garda Headquarters Command Group meetings of the meeting on the 26<sup>th</sup> of April of 1989 it is recorded;

*“Chief Superintendent H. after two days in post also mentioned the Breen Buchanan murders. He also referred to the arrest of the [ ] brothers which represented the first charging of PIRA personnel in his division since 1983.”*

4. Chief Superintendent Breen and Superintendent Buchanan were the highest ranking Royal Ulster Constabulary (hereinafter referred to as “the RUC”) officers murdered by the Provisional IRA (hereinafter referred to as PIRA) in the course of their terrorist campaign. PIRA was and still is a proscribed organisation, both North and South, and both police services, An Garda Síochána and the RUC, and now its successor, the Police Service of Northern Ireland, (hereinafter referred to as “the PSNI”) were at the time of the murders and since continue to strive together to deal with all forms of unlawful activity emerging from this organisation, its offshoots and splinter groups.
5. A member of An Garda Síochána must make the declaration prescribed by law (as set out in the Second Schedule to the Garda Síochána Act, 1924, as amended, being the applicable law at the relevant time) before he or she can act as a member or officer of An Garda Síochána. The involvement of any State employee, let alone a member of An Garda Síochána of whatever rank, in assisting, enabling or in some other way acting with intent to facilitate the murder of Chief Superintendent Breen or Superintendent Buchanan or conspiring, conniving or collaborating in some other way so as to collude in the murders must be one of the most serious charges to level against an employee of the State, and even more serious against a member of a police service fighting a common terrorist enemy. No graver charge could be laid against a member of An Garda Síochána or an officer of whatever rank of An Garda Síochána than to suggest and conclude that such person had colluded with the IRA in these murders. Similarly, no greater slur could be laid against the service as a whole and those in command at every rank in relation to such alleged colluders.
6. The issue, or more properly speaking two issues, for you Chairman are, can you confidently and properly report to the Houses of the Oireachtas and to the public

that an employee of the State colluded with the PIRA in these murders, or, can you confidently and properly report to the Houses of the Oireachtas and to the public that a member or members of An Garda Síochána colluded with the PIRA in these murders?

## **2. The Legal Framework for Reporting**

7. As Finlay C.J. said in the case of *Goodman International v. Mr. Justice Hamilton* [1992] 2 IR 542 at Page 588

*“It is a simple fact finding operation reporting to the legislature.”*

The decision in the High Court of Mr. Justice Costello in that case, both in his conclusions and in the reasoning by which he came to those conclusions, was approved by the Supreme Court. He said at page 555:

*“The functions of the Tribunal are to inquire, report and if appropriate to make recommendations. When reporting on allegations of wrongdoing it expresses an opinion as to whether the allegations are true or false, but this opinion is of no legal effect. The Tribunal determines no legal rights; it imposes no legal obligations. It expresses conclusions for the guidance of the legislature and the executive.*

8. There are no parties before the Tribunal, although persons accused of wrongdoing in the allegations being investigated will have the same rights as if they were parties against whom a charge had been made. The Tribunal is seised of no lis. Its functions are inquisitorial which means that the Tribunal itself has to make inquiries relevant to its terms of reference. The witnesses produced at its hearings are the Tribunal’s witnesses and are not produced by any party to whom representation has been granted. All witnesses called are subject to being cross-examined as permitted by the Tribunal.

9. The terms of reference in this case required the Tribunal to inquire into the truth or falsity of a number of allegations of wrongdoing including assertions that the criminal law has been breached. But in inquiring into these allegations and in reporting its opinion on them the Tribunal is not imposing any liabilities or affecting any rights. It is not deciding any controversy as to the existence of any legal right. It is not making any Determination of any rights or liabilities. It is not imposing any penalties. It may come to the conclusion that some or all the allegations of wrongdoing are true, but this opinion is devoid of legal consequences. Its functions of inquiring, reporting and recommending cannot therefore be regarded as the “administration of justice”. The Tribunal is not exercising a “judicial function” in the case of allegations of criminal behaviour. It is not trying anyone on a criminal charge. In my judgment Parliament did not direct the establishment of a Tribunal that is to exercise judicial functions.”
  
10. As you, Chairman, indicated in your opening statement, the Tribunal, though having many of the powers of the High Court, is not a Court of law, it is a Tribunal of Inquiry, the purpose of which in the instant case is to examine and, where possible, in the light of the evidence, make findings on the facts and circumstances, if thought appropriate, to make recommendations based on the established facts. As you also recognised, Chairman, the Tribunal’s Inquiry is not a trial of alleged wrongdoing by any particular person or group of persons, it is an exercise designed to establish, if possible, whether there has been such collusion.

### **Finding the Facts**

11. Usually, and as in the circumstances of this Tribunal, there are disputed areas of fact or areas of evidence where a conflict exists between witnesses as to what occurred. Where they occur and are of relevance, these will be identified in the appropriate place throughout the submissions. The resolution of any such conflict in accordance with the appropriate legal principles is, of course, a matter for you,

Chairman, in deciding what the primary facts are. The second level of fact finding which the Tribunal must engage is what has been described as secondary fact finding, i.e. drawing inferences or reaching conclusions from the facts directly established by the primary evidence. This is necessarily separate and distinct from the interpretation or interpretations of the evidence or opinions which have been offered in relation to the evidence by witnesses. Needless to say, these witnesses are not the finders of fact in any sense, and their opinion on any matter of fact can only be taken as a guide or as a suggestion to you, Chairman, as to how you should interpret facts or behaviour or motivation, no more or no less. For example, a witness's opinion does not establish something as a fact, but may assist you in reaching a reasonable conclusion or drawing a reasonable inference from another fact as to whether something occurred or is likely to have occurred or to have existed.

12. In relation to Tribunals of Inquiry, the standard which has been laid down as the basis for fact finding by Tribunals has been long established and approved of by the Courts. E.g. in the case of *Goodman International v. Mr. Justice Hamilton* [1992] 2 IR 542, Hederman J. at page 603 noted that;

*“The Tribunal will doubtless adopt the same approach as the Tribunal of Inquiry into dealings in Great Southern Railway Stock (Prl. 6792; 1943), the members of which were Mr. Justice Overend, Judge Davitt and Judge Barra O’Briain. While it sifted through rumour and hearsay, it relied only on admissible evidence for its findings.”*

Mr. Justice McCarthy also said, at page 607;

*“I do not accept that the Determining of truth or falsity is, necessarily, a judicial act in the sense that it may only validly be performed by Judges. It does require the application of judicial standards, but it is an every day occurrence that a variety of tribunals, collegiate or otherwise, have to decide disputes of fact.”*

13. The former President of the High Court, Mr. Justice Hamilton, in his conduct of the Tribunal of Inquiry into the beef processing industry likewise defended and asserted his right to receive hearsay evidence, but also indicated repeatedly that he would only act on legally admissible evidence when he came to make his findings (see *Attorney General v. Hamilton (No. 2)* [1993] 3 IR at page 289, and see also *Goodman International v. Hamilton (No. 3)* [1993] 3 IR at page 330).

Subject to the above, it is, of course, the Tribunal's sole function to find the primary facts, the secondary facts and to interpret the evidence in the light of opinions or advice offered by witnesses as to relevant facts, or their significance, and to report thereon to the Oireachtas in accordance with its view of those.

### **The Duty of a Chairman**

14. There have been three previous Tribunals of Inquiry into the facts and circumstances surrounding the death of two citizens and the involvement of the police service of the State. The first of these was the Tribunal of Inquiry established on the 15 February 1928 to inquire into the shooting of Timothy Coghlan at Woodpark Lodge, Dartry Road, on the 20 January 1928. Three serving Judges were appointed to inquire into this shooting. The second was the Tribunal of Inquiry established by the House of the Oireachtas on the 18 July 1967 to inquire into the facts and circumstances surrounding the death in Garda custody on the 30 May, 1967 of one Liam O'Mahony. Again, this was presided over by three serving members of the Judiciary. The third one was the Tribunal of Inquiry into the facts and circumstances surrounding the fatal shooting of John Carty at Abbeylara, Co. Longford, on 20 April, 2000.
15. In comparison to the tasks of those Tribunals, you, Chairman, have a much lonelier and a more burdensome task. Whereas I, when I have completed these submissions, will be finished my work at the Tribunal, you, Sir, will be only half

way there. You have, of course, completed all relevant inquiries necessary for the hearing, have taken all relevant evidence and will shortly have heard all the submissions from all the relevant parties in the matter. It will then be necessary for you to consider all the relevant issues, distil all the evidence relevant to those issues, consider the views and opinions of the witnesses in the matter and give full and fair consideration to all of the submissions made by all of the parties on these matters and then, but only then, reach your conclusions.

16. At this stage, Chairman, you should have reached no conclusions on any issue. If you have made up your mind, you should unmake it, and declare yourself open minded on all the issues. You should not have put pen to paper yet, if you have, you should scratch out what you have written. At this final stage of the public proceedings of the Tribunal, anxious though you must be to complete it, you should be equally and genuinely anxious to hear what all parties have to say and not merely desirous of getting it over with. It is, of course, your bounden duty to hear and give full and fair consideration to these submissions as to the submissions of any other party. In that regard I claim no right for my clients that I will not absolutely and freely acknowledge to all others as being their due also.

The Framework of submissions deal with the following issues;

20. Terms of Reference
21. The Legal Framework for Reporting
22. Difficulties Facing the Tribunal
23. Issues not Explored by the Tribunal
24. The Genesis of and the Arrangements for the Meeting on the 20 March 1989 – the Morning of the 20 March 1989

25. PIRA Statements
26. The Response
27. The O’Dea Investigation
28. The Canon Review
29. RUC Intelligence to Cory
30. RUC Opinion
31. Tom Curran
32. Owen Corrigan
33. Fulton
34. The British Army Analysis of the PIRA Operation
35. PIRA Evidence Provided to the Tribunal
36. The Evidence of Collusion
37. “Live and of the Moment Intelligence”
38. Concluding Remarks.

The purpose of submissions is not to either repeat or indeed even summarise the evidence in relation to the relevant issues, save where considered absolutely necessary. Rather the purpose of the Submissions is to focus on each of the

relevant issues having regard to the evidence as a whole and to suggest conclusions which are evidence based. We are also mindful in these Submissions of the fact that the individual former gardaí who are separately represented, Messrs. Colton, Hickey and Corrigan, are making whatever submissions they think appropriate in relation to their own personal position.

### **3. Difficulties Facing the Tribunal**

17. At this stage it is appropriate to acknowledge the many difficulties facing the Tribunal since its establishment and to pay tribute to the Chairman for his patience, persistence and application in attempting to make progress throughout the course of the private investigations and the public sittings of the Tribunal. An investigation and an inquiry held by a Tribunal inevitably starts with nothing apart from the Terms of Reference which have been given to the Tribunal. An Garda Síochána appreciates how difficult it can be to commence an investigation and painstakingly attempt to acquire all possibly relevant evidence, assess its value, follow all possible relevant lines of enquiry and attempt to assemble and marshal witnesses to give evidence on all of the issues concerned. Among the difficulties faced by the Tribunal are the following, which it is respectfully submitted the Tribunal must bear in mind before reaching any final conclusion on any of the issues, these include;

(a) Witnesses unavailable due to death;

Examples of this include Sir John Hermon, Brian Fitzsimons, Frank Murray and Maynard McBurney who died on 5 May 2009. These were all members of the RUC at the relevant time in critical roles. Amongst those from the Garda side, are former Commissioner Eugene Crowley who died on 26 July 2009, Superintendent Brian McCabe, Inspector Frank Murray, and Detective Chief Superintendent Sean Camon. It is particularly unfortunate that the Tribunal from the date of its establishment neither contacted nor interviewed

the late Sean Camon before his death on 1 August 2010 having regard to its focus on his report into the possible basis for the Kevin Myers articles.

(b) The passage of time;

The Tribunal was established in March, 2005, approximately sixteen years after the murders, following which its first public sitting was held in March, 2006 leading to the commencement then of its private investigations. It has since June, 2011 heard evidence in public and in private on a limited number of occasions. However, it is now more than twenty-four years since the date of the murders. This passage of time has without doubt affected the availability of witnesses on crucial factual issues. It must also have affected the ability or willingness of other potential witnesses to attend and give evidence due to old age, illness or diminished interest in the issue at the heart of the Tribunal. It is also highly relevant considering the worth or otherwise or credibility or otherwise of the so called recent “intelligence” said to be “live and of the moment” and assessed to be accurate and reliable (per Assistant Chief Constable Drew Harris and Detective Chief Superintendent Roy McComb).

(c) The effect of the passage of time on witnesses who did give evidence;

It is submitted that the Tribunal ought to take due account of the fact that many of the witnesses called before the Tribunal have in fact been long retired from the positions which they have held, unconnected with the structures and documents with which they were once all too familiar. Failures of memory and errors of recollection are human frailties, naturally tend to occur and must be taken into account.

(d) Unco-operative witnesses and uncalled “cipher” witnesses;

It is respectfully submitted that the Oireachtas ought to be made aware of those witnesses or category of witnesses, bodies or institutions, wherever situate, who have either refused to co-operate or who have promised to co-

operate and/or provide documents, witnesses, evidence, etc., but who have failed to do so. The Tribunal will no doubt, of course, be conscious both of the limitation of its powers outside the jurisdiction and the possibility of completely reasonable personal decisions on the part of witnesses or potential witnesses to decide not to participate. However, it is submitted that the Oireachtas and the public ought to know the extent to which there has been any relevant refusal to cooperate or to attend and provide evidence, whether by way of witnesses, documents, etc. Clear examples of this would appear to be Mr. Toby Harnden, Mr. Sean O’Callaghan, the PIRA or ex PIRA volunteers (some of whom engaged with the Tribunal to the extent publicly detailed but who have refused to make any witness available despite all reasonable precautions and conditions offered by the Tribunal in that regard). The Tribunal identified a considerable number of witnesses that it expected would be able to give relevant evidence and produced a list of such witnesses giving them a cipher number. However, of those on the cipher list the following did not give evidence;

Cipher witnesses not called;

1,3,57,10(Dec’d),11,12,14,15,16,17,19,20,21,22,23,25,26,28,30,32,34,35,37,38,39,40,43,46,48,50,51,52,56,57,58,59,66,67,74,77,

(e) Territorial and jurisdictional limitations.

Counsel for the Tribunal in her opening said *“It must be said that at times we found the process of gathering information extremely frustrating due to delays caused by the bureaucracy with which we had to negotiate. Every request for information from outside the jurisdiction was subject to review not only by the organisation to which the request was made but often by several other authorities as well. The cross border element unquestionably adds a very different dimension to the work of this Tribunal. It has meant that the timeline for making progress and gathering relevant information has been to a considerable extent outside our control.”* That probably represents a gross

understatement of the position having regard to the alleged “intelligence”, summarised in evidence by Detective Chief Superintendent McComb and Assistant Chief Constable Harris in June and September of last year and in respect of which the Tribunal has been denied sight of originals and background documentation. It is, of course, the case that when the Tribunal has reached outside of the jurisdiction in an attempt to persuade witnesses to come and give evidence, it has had to do so by means of persuasion and skilful advocacy by the Chairman and his counsel in order to get witnesses to attend in Dublin voluntarily or to give evidence by way of video link from Northern Ireland. However, the same limitation does not apply to parties within the jurisdiction or parties who have come to the jurisdiction and sought and been granted representation before the Tribunal. It should be noted that unlike the practice in the Whiddy Inquiry, the Buttevant Inquiry, the Stardust Inquiry, the Blood Transfusion Board Inquiry, the Abbeylara Inquiry and indeed the Saville Inquiry, the families of the deceased officers here were not granted full representation before the Tribunal and have therefore not been able to participate directly in the public hearings and/or final Submissions. It is a matter for the Tribunal to decide whether to report to the Oireachtas the basis upon which such decision was made but it is, however, appropriate to note that they have, through their respective solicitors in pursuit of their limited representation, no doubt done everything possible to assist the Tribunal in the discharge of its function. Only the Tribunal, of course, would be aware of the complete extent of this but it would seem appropriate to record that fact in its final report to the Oireachtas.

In relation to witnesses not under the control or direction of the PSNI, it has, of course, proved to be a difficult task for the Tribunal to attempt to elicit such evidence as there may be from such witnesses. It has, on occasion, led to matters which are unprecedented in Irish Tribunals of Inquiry whereby witnesses gave evidence behind screens, identified only by a cipher or whose identity was only made known to some parties and some of whom were called

to give evidence without ever having produced a statement of intended evidence for the Tribunal and on occasions some of whose statements in part or in totality were withheld from some or all of the parties to the Tribunal.

(f) Limited Discovery;

As noted at page 14 of the opening statement of counsel for the Tribunal, An Garda Síochána delivered many hundreds of files to the Tribunal and a consent Order requiring discovery of all documentation was made by the Tribunal and directed to the Commissioner of An Garda Síochána. This Order was complied with by filing on four separate occasions appropriate Affidavits of Discovery, updated as required. Many hundreds, if not thousands of files have been subject to discovery. In addition, possible relevant lines of enquiry have also resulted in requests by the Tribunal to have sight of many other files relating to many issues, events and personnel, all of which requests have been complied with, often resulting in either the delivery of files to the Tribunal at short notice or the inspection of same in Garda Headquarters as required. In particular, all relevant intelligence files have been inspected by the Tribunal in their original and unredacted state, either in the Tribunal's premises or at Garda Headquarters. Some have been the subject of repeated inspections. This has been an unparalleled and unique process of co-operation by An Garda Síochána with the Tribunal. Consistent with the Tribunal's intention, desire and duty to take as much of the evidence in public, the Tribunal agreed with the Commissioner's legal team a procedure for the processing of sensitive documents, full disclosure of which could give rise to risks in terms of our nation's security or the safety and security of individuals. This has resulted in the main in a very substantial number of précis's of the relevant intelligence being put in evidence in public in a format agreed with the Tribunal, benefit of the Tribunal having seen and inspected the actual intelligence documents and files in their raw state and on limited occasions with the document itself being referred to in private session evidence. (See the evidence of Brian Brunton on Days 54, 85, 108 and 112 et alia.)

18. It is, of course, noted that the Tribunal in its opening statement thanked both the PSNI and An Garda Síochána for their co-operation and for the many hours they spent with the Tribunal to ensure that its requests for information and documentation were met, including a review of documentation held at a secure location in Northern Ireland. It was also stated that;

*“The PSNI, MOD (Ministry of Defence) and NIO (Northern Ireland Office) then made voluntary discovery of those documents redacted in certain cases to address the protection of life, privacy and national security. Information recently available to us suggests the British Authorities hold other relevant documents which we have not yet seen. A request for sight of those documents is currently outstanding.”*

Having acknowledged the absence of powers of the Tribunal outside the jurisdiction of the State, it does not follow in any way that the law of the State and in particular the Tribunal of Inquiries Act, 1921, as amended, does not apply within the State or to those who come to the State for the purpose of seeking representation and have been granted representation before the Tribunal and appear in the State by way of participation in the Tribunal. Is it to be said that the Tribunal of Inquiries Act, 1921, as amended, does not apply to a party seeking or granted representation before it and, in particular, would the Tribunal not have been perfectly justified and within its powers making an order for discovery against parties (other than An Garda Síochána, Messrs. Colton, Hickey and Corrigan), and directed to, for example, the PSNI, Mr. Keeley, Mr. Scappaticci and perhaps others? There are those who might say that it would be pointless making any such orders as they are unenforceable. One ought to presume in the first instance that an order made by a Tribunal directed to a party before it would be obeyed, and if not obeyed could be reinforced by application to the High Court for an order directing the party to comply.

Any non-compliance thereafter raises different issues but might expose what has now come to pass in terms of the non-disclosure, withholding of relevant material and failure to cooperate with the Tribunal which has now become apparent on the part of the PSNI, perhaps acting on behalf of the Northern Ireland office and/or the British Security Services.

A decision to make an Order for Discovery as against the PSNI, a party with full representation before the Tribunal would have represented equal treatment as regards An Garda Síochána and the PSNI, but more importantly would have revealed immediately whether the PSNI were prepared to discover on Affidavit (in the same way as An Garda Síochána has done) every relevant file or document relating to the matters at issue. Such Affidavit would, of course, in the normal way, if necessary, contain a schedule of documents over which privilege might be asserted and in respect of which appropriate adjudications may have had to take place.

In the absence of any such Order for discovery against the PSNI and/or any of the other parties represented, the Tribunal could as a matter of necessity only rely upon voluntary co-operation so long as the will existed to provide that and trust in the bona fides of the party to produce everything of relevance to the Tribunal. This, it is submitted, must now be a matter of regret to find that this co-operation and failure of bona fides has necessarily ruptured the trust which the Tribunal has placed in the PSNI. However, it is a matter for the Tribunal, to disclose to the Houses of the Oireachtas what orders for discovery it has or hasn't made and what compliance there has been with such and/or whether or why, it has chosen not to make orders against any particular parties. Leaving aside the technicality of such orders and affidavits of discovery, can the Tribunal confidently report to the Houses that it has had access to and sight of all necessary and relevant documents relating to alleged collusion? It is difficult to see how it can do so. It is clear that it is not the Tribunal, however, which is in any way responsible for this and it is clearly

within the remit and duty of the Tribunal to report where the responsibility for such matter lies.

No doubt the Tribunal will wish to repeat that expression of gratitude earlier referred to and co-operation, however, it is respectfully submitted it must be wholly qualified now;

- (i) By a revelation of intelligence acquired during the currency of the Tribunal which was obviously then not immediately shared with the Tribunal;
- (ii) Secondly and more importantly by the deliberate withholding from the sight of the Tribunal the intelligence which is said to have given rise to the summaries of intelligence (referred to in evidence by Detectives Chief Superintendent Roy McComb and Assistant Chief Constable Drew Harris).

19. Counsel for the Tribunal in her opening said *“The Tribunal has seen in their original form each of the PSNI/MOD intelligence reports referred to by Judge Cory and which I have already summarised. This includes the 1985 intelligence alleging that Mr. Corrigan was passing information to the provisional IRA.”* It must be a matter of profound regret, dismay and perhaps even anger that at this stage, over eight years into your inquiry, you will be in the first place in a worse position than Judge Cory who saw all the intelligence then made available to him, and, secondly, in a worse position than you were at the time of your opening statement when you had seen all the intelligence then available. You will not now be able to report to the Houses of the Oireachtas that you have seen the intelligence in its original form at all, which has been referred to by Detective Chief Superintendent McComb and Assistant Chief Constable Harris.
20. Even more importantly, the nature of the alleged intelligence (which will be referred to in detail later), all of which is deemed to be “accurate and reliable”, relates to the involvement of other members or officers of An Garda Síochána

(other than the ones publicly associated with the Tribunal, i.e. Messrs. Colton, Hickey and Corrigan) as having provided the information to the IRA which facilitated the murders of the officers and in one of the strands of intelligence alleged that this had been paid for.

21. This raises on one view the real possibility of a fourth or fifth or more gardaí alleged to have colluded and not the ones currently represented before the Tribunal. No adequate explanation has been offered or is available, either as to why the summaries of intelligence were not offered earlier and, more importantly, why the Tribunal is being refused access to the intelligence itself for the purpose of making its own assessment of the grading, strength and reliability of the matters alleged.
22. It is difficult to see how the effect of it could be anything other than to impair the ability of the Tribunal to reach any concluded view on the issue of collusion as far as any individual members are concerned. It is possible that the intended effect of these strands of intelligence is an attempt to persuade or convince the Tribunal that if it is not possible to reach a finding of collusion against any individual Garda that it could safely do it as against An Garda Síochána as a whole and reach a view and report to the Houses of the Oireachtas that some member of An Garda Síochána assisted the IRA in the murder of these officers because of everything that has been said in the “intelligence” about members of An Garda Síochána in Dundalk Garda Station, in other words, to secure a general verdict of collusion against the force as a whole.
23. It is clear that a decision must have been taken by someone that these strands of “intelligence” merited being put in evidence (without even being able to identify any particular suspected Garda or Gardaí and without allowing the Tribunal sight of the intelligence) and would be given weight by the Tribunal.
24. What is their intended purpose and effect if it is not designed to blacken in the most unjustified, unchallengeable and objectionable way the good name of An Garda

Síochána as a whole? In the submission of An Garda Síochána, such strands are weightless, worthless and wasted on the Tribunal, incapable of establishing anything, let alone that possible intended effect. The Tribunal ought to reject it and report to the Houses of the Oireachtas in the strongest possible terms the withdrawal of co-operation, the obstruction of the Tribunal and the intended frustration of its inquiry.

#### **4. Issues not Explored by the Tribunal**

##### **25. The First Suggestions of Collusion**

The first suggestions of collusion were made in the period immediately following the murders. The Tribunal has referred repeatedly to one newspaper headline in this regard. The Tribunal produced on Day 54 a small selection of newspaper reports from the Research Centre in Pearse Street Library. However, none of the journalists were spoken to about the basis of their articles with information which led to them (question 9). However, it has not inquired, at least in public, or called any evidence as to the basis for these suggestions. Who was making them? What caused them to be made? Whether there was any contemporaneous evidence or basis at all for making these suggestions in the immediate aftermath of the killings? Included in HMG 203 is a compendious index of open source material published in the media in relation to the murders which prima facie make or repeat these suggestions. No inquiry appears to have been made as to such matters and it is submitted that the Tribunal must conclude, in the absence of any evidence to the contrary, that such journalists, politicians and media representatives had no such basis for making the suggestions at that point in time.

##### **26. Circle of Knowledge**

The origins of the ultimate trip to Dundalk on the 20 March 1989 emerged from discussions and decisions taken on the 6 March 1989 involving the Secretary of State for Northern Ireland, the British Army and the RUC. This related to the possibility of putting in place an operation relating to “Slab” Murphy and his alleged activities. Within a fortnight Chief Superintendent Breen and Buchanan were murdered. The Tribunal has produced very little evidence relating to

- (i) the group and number of people who would have known about the intention to mount this operation;
- (ii) the number of people who would have been aware from the 16 March of the intention of Chief Superintendent Breen to go south to Dundalk to liaise with the Gardaí;
- (iii) when Superintendent Buchanan became aware of or decided that he would travel down to Dundalk with Chief Superintendent Breen;
- (iv) the likely number of people who were or might well have been aware of such intention.

## 27. Signals Intelligence/Records of Radio Activity

As the Tribunal is aware, there were a number of British Army towers (so called watchtowers), three in number, at different locations in South Armagh, North and in South Down which are believed to have significant technical capabilities insofar as communications are concerned. The Tribunal has heard evidence of the reported remarks of the late Inspector Frank Murray (RUC) concerning interception of reports of increased radio activity by suspected paramilitaries in the area concerned from midday onwards on the day of the murders. It would seem inevitable that there must have been some form of military or specialist monitoring of radio wavelengths, *inter alia*, on the day concerned which were analysed resulting in

conclusions which were subsequently communicated in some way, shape or form, either within the Army and/or to the RUC.

On the last sitting day of the Tribunal correspondence was read from Mr. Larmour (but apparently not definitively confirmed by him as promised) that there are no records relating to radio activity on the day of the murder from the relevant signals intelligence section of the army. One would have expected that the Tribunal would be concerned to establish by evidence from directly qualified witnesses the following;

- (i) What records were in fact made at the time in 1989 relating to the monitoring of radio activity related to subversive operations?
- (ii) How these were recorded and who interpreted such monitoring?
- (iii) How and where were such records stored?
- (iv) Who was responsible for their storage?
- (v) If they had been moved/transferred, where they were moved to?
- (vi) What has happened so that Mr. Larmour can now assert that there are no such records available?

The issue of whether there would be an enquiry into these killings was live since the date of the Weston Park negotiations in 2001 and the scrutiny of the possible basis for such an enquiry was, as a political demand, of course referred to Judge Cory for his consideration. As noted above, it is of course since 2005, by reason of the establishment of the Tribunal, still a live issue. In the light of the existence and location of the Towers, the undoubted significant expense connected therewith and the military and technical expertise involved, it seems impossible to believe that

there would not have been some contemporaneous military records relating to these matters. It is wholly unacceptable for the Tribunal to be fobbed off in the last session of its public hearings with untested, unverified assertions contained in letters sent from Mr. Larmour that there are no such records.

28. Interception of the Deceased Superintendent Buchanan's Communications

It was asserted in an article published in The Phoenix in June, 2005 that the RUC pocket phones over which it is alleged Superintendent Buchanan spoke to Newry headquarters several times on the day were intercepted by PIRA. The Tribunal has not heard any evidence as to the likelihood or possibility of this and in particular also whether there is any record of Superintendent Buchanan having done so as a matter of fact.

29. The Security of RUC Communications

The issue of the security of the phone lines between Armagh RUC Station, Newry RUC Station and the respective homes of Chief Superintendent Breen and Superintendent Buchanan, the security or otherwise of the BT network in Armagh and Newry and the capacity of PIRA to intercept telephone and/or radio communications in the area at that particular time would seem to be a necessary and relevant enquiry, particularly in the light of the contents of portion of HMG 50, which, inter alia, states;

*“There is at least one engineer in the Newry area who has strong associations with PIRA in Dundalk.”*

Also relevant in that regard is the allegation made in the Cork Examiner in an article (written by Mr. Jim McDowell on the day following the actual murders) which is referred to in evidence by retired Inspector Chris Kelly on the 25 October, 2011. This alleged the acquisition by the IRA of technology which allowed PIRA

to eavesdrop electronically on security force communications and was used in connection with these murders. No evidence has been put before the Tribunal in relation to any of these matters.

30. Specific Threats to Superintendent Buchanan or Chief Superintendent Breen

The issue of whether specific threats were made or reported upon or came to the notice of the intelligence or police services in Northern Ireland is one of importance. It is apparently dealt with by way of the existence of a Threat book relating to RUC officers. This has been described in the report of the Patrick Finucane Review by the Right Honourable Sir Desmond de Silva Q.C. in December, 2012 and in particular chapter 9, paragraphs 9.5, 9.15 and 9.27 outlining the RUC policy in relation to threat intelligence as set out in Force Order 33/86 entitled “Threats Against the Lives of Members of the Security Forces, VIP’s or Other Individuals”. This report further outlines that;

*“the RUC source unit collated a threat book recording specific threats to individuals in the greater Belfast area covering the period April, 1987 to October, 1991”*. In paragraph 9.27 it is reported that *“an additional document similar in structure to the threat book covering the threat intelligence received across the whole of Northern Ireland between January, 1988 and December, 1989 existed.”*

No evidence has been led by the Tribunal in relation to whether any specific threats were made in relation to either officer and are recorded in relation to Breen and Buchanan and what steps were taken in relation to those.

31. Prior Surveillance of RUC

The Tribunal has had produced to it an SB57 report headed “Message Form” dated the 27 July 1988, time 2.05 p.m., with the following message;

*“PIRA are monitoring the movements of plainclothes RUC officers who since the triple fatal explosion at Killeen border crossing on 24.7.88 are travelling on a regular basis to Dundalk Garda Station.”*

There are seven redactions in black on this in the public version made available by the Tribunal. It was described by David McConville as a “while you were out” message form (Day 104, Page 12). He was unable to give any evidence as to who this was from; by whom it was received; who dealt with it; and indeed what some of the entries meant. In the bottom left hand corner under the heading “action taken” it says *“all involved have been informed per info”*. It is evident from the face of this document that it emanated from someone connected with Special Branch in Newry and was being sent to the republican desk in headquarters, Knock Road, Belfast. However, this document had not previously been made available as part of the documents provided by the PSNI (hereinafter referred to as HMG documents) to the Tribunal. Neither does it appear to have been discovered to Judge Cory despite it being on its face clear evidence of surveillance of RUC officers, including Superintendent Buchanan dating as far back as July of 1988. No witness has been called in relation to this. One would expect that this SB57 would be available in unredacted form to the Tribunal. No evidence has been called as to how this allegedly came to be “misfiled”. It seems apparent that it went not just to RUC Headquarters but also registry copies would appear to have been supplied to a number of possible parties as per the heading marked “result” in the bottom right hand corner of the SB57. In relation a document of such significance one would expect to have evidence, or at the very least information as to;

- (i) who this information was received from?
- (ii) who compiled the SB57?
- (iii) precisely who was informed of it?

- (iv) who received copies of it and when?
- (v) what further action, if any, was taken?
- (vi) why it was not shared with An Garda Síochána?
- (vii) why it does not appear to have been shared with Judge Cory?
- (viii) how it was allegedly misfiled?
- (ix) what search has been made for the other copies made of this?
- (x) why it was not previously made available to the Tribunal before June 2012?

These issues are, it is submitted, of even greater importance in the light of the evidence that Inspector Day had given that if there was a specific threat he would have expected to have been told about it. See also pages 148 to 150 of the Transcript of the 9<sup>th</sup> of June, 2011 wherein Inspector Day indicates that he did not receive a specific security warning.

### 32. Illegal VCP's

Part of the planning for the murders involved the creation of an illegal vehicle checkpoint on the Edenappa Road which facilitated the murder. Having regard to the different pieces of intelligence suggesting that the IRA had four roads covered and/or both the variety of opinions expressed in relation to the possibility that they had attempted on previous occasions to carry out the murders and/or rehearsed them and having regard to the claims in the IRA statements to similar effect, the Tribunal has not conducted any enquiry into the possibility or probability that such previous attempts/rehearsals in fact occurred. There are suggestions of such illegal vehicle checkpoint on the Edenappa Road on the morning in question. (See HMG 9)

33. The Formal RUC Report of the Investigation in the Murders

The Tribunal has called no witness who can give evidence in relation to the conclusions reached by the investigation into the murders and, in particular, as to whether any conclusion was reached as to whether there was or was not collusion by a member of An Garda Síochána with PIRA in relation to the killings. It is reasonable to expect that the Tribunal would have sought to establish what the contemporaneous view was at the time of the murders as to whether there was any evidence of Garda collusion found by the RUC at the time of the investigation. In the absence of any such evidence, it must be assumed by the Tribunal that there is no such evidence emerging from the RUC's own investigation into the murders of Chief Superintendent Breen and Superintendent Buchanan that the deaths were facilitated by way of some criminal collusion on the part of a member of An Garda Síochána.

34. The Murders of Lord Justice and Lady Gibson

Judge Cory did not recommend an inquiry into the death of Lord Justice and Lady Gibson. The Tribunal has, of course, referred to it in its opening statement at paragraph 3.2 and has repeatedly made reference to it on numerous occasions throughout the course of the Tribunal. It is not, of course, unreasonable for the Tribunal to have considered whether, as a spring board or as a possible link, to establishing collusion in relation to the Breen and Buchanan murders, whether there might be some basis for linking a member of An Garda Síochána in collusion connected to the Gibson Murders. However, the Tribunal has called no witness to give evidence in relation to the conclusions reached by the RUC investigation into the murders and, in particular, as to whether any conclusion was reached as to whether there was or was not collusion by a member of An Garda Síochána with PIRA in relation to the killings. It is reasonable to expect that the Tribunal would have sought to establish what the contemporaneous opinion or conclusion was at

the time of the murders as to whether there was any evidence at all of collusion found by the RUC at the time of the investigation. In the absence of any such evidence that there was, or of the basis for it, it must be assumed by the Tribunal that there is no such evidence emerging from the RUC's own investigation into the murders of Lord and Lady Gibson that the deaths were facilitated by way of some criminal collusion on the part of a member of An Garda Síochána.

35. RUC Officers Colluding with PIRA

On Day 67 (page 93) Mr. Fulton wrote down the names of RUC men who he alleged were colluding with the IRA. One of them was arrested over the mortar attack on Newry Police Station and also matters relating to Warrenpoint. He also said that this man associated with a man in Dundalk who was closely linked to Slab Murphy. The extent to which this has been investigated by the Tribunal is unknown, however, it seems reasonable to expect that this ought to have been addressed by evidence in the Tribunal so as at the very least to exclude or otherwise deal with the possibility that the Superintendents were betrayed by a rogue RUC officer.

36. Sir John Hermon

The Tribunal has obtained the written record of the public interviews of Sir John Hermon and has recently viewed television footage from one such media interview at which, when pressed, Sir John Hermon is able to definitively rule out Garda collusion based on evidence that he has but which he refused obviously to disclose to reporters. Such utterances are queried, whether under the heading of "*How could he say that?*" or "*Well he would say that in public, wouldn't he?*" However, in that regard of singular significance is the evidence of Detective Sergeant Alan Mains who gave evidence to the Tribunal that in a private meeting with Sir John Hermon, when he confronted him and disclosed what he said were Chief Superintendent Harry Breen's concerns in relation to Dundalk and Sergeant Owen Corrigan,

testified that Sir John Hermon had dismissed the concerns about Owen Corrigan on the basis that he had been investigated and had been cleared of any suspicion. It obviously, therefore, is a matter of signal importance for the Tribunal to seek to discover on what basis Sir John Hermon was able to both publicly rule out Garda collusion and, as importantly, privately exonerate Sergeant Corrigan from suspicion at that point in time. It would seem that the Tribunal have not been able to produce any evidence or witness relating to the basis of same, whether documentary or otherwise, or produce anything which would cast doubt upon the Chief Constable's assertions, both public and private.

37. John McAnulty Issues

John McAnulty was abducted by PIRA and murdered by them in July of 1989. In a PIRA statement issued at the time they alleged that he had been an informant for the RUC and that they had discovered his identity having regard to the notebooks and diaries which they had seized from Chief Superintendent Breen and Superintendent Buchanan at the time of their murders. It was further claimed that he had confessed to working for the RUC for seventeen years and that he had given information which had led to the arrest of Raymond McCreesh, a PIRA man who died on hunger strike in the Maze Prison.

Is it possible or likely that either Chief Superintendent Breen and/or Superintendent Buchanan knew that Mr. McAnulty was an informant and, if so, whether they would have his name and/or phone number or a code name for him in one of their diaries or notebooks in their possession when killed?

Until the revelation from **Witness Z** it was not publicly known that not only was Mr. McAnulty an informant but he was the informant who had provided the intelligence which led to the 1985 SB50 naming Owen Corrigan as helping out the PIRA. In the context of the importance of the issues surrounding the SB50, Mr. McAnulty's position and having regard to Owen Corrigan's account of his duties in

relation to Mr. McAnulty and the filing of a number of C77's by him in and around July, 1989, it is submitted, of some relevance to seek to establish the facts in relation to Mr. McAnulty's death insofar as possible. In that regard it should be noted that the attention of the Tribunal has been drawn to the book entitled "Stakeknife Britain's Secret Agents in Ireland" written by Martin Ingram and Greg Harkin (The O'Brien Press 2004). In that the authors allege that amongst the victims of "Scappaticci, John Joe Magee and the Nutting Squad" was John McAnulty who is alleged to be one of thirty-five victims while Scappaticci worked in the internal security unit of PIRA (aka "The Nutting Squad"). (See details in relation to Mr. McAnulty on page 90.) Such open source material would be of no concern generally to the Tribunal but for the fact that the claim made by the authors that Mr. Scappaticci was indeed Stakeknife, a British agent operating within the PIRA as part of their internal discipline unit, charged with the task of kidnapping, torturing and killing alleged informers in the PIRA or informers to the RUC. The relevance to the Tribunal is that Mr. Martin Ingram is the witness, Mr. Ian Hurst, who had already given evidence to the Tribunal before the revelation of the identity of the informant behind the SB50. The other significance is that the allegation in the book is written in relation to a party who has representation before the Tribunal. It is submitted that the Tribunal ought to have, as requested, recalled Mr. Hurst and seek to enquire what evidential or other basis he had for making the allegation concerning the involvement of Mr. Scappaticci in the murder of Mr. John McAnulty and of the reasons for it and any alleged knowledge of such within the Forces Research Unit of the British Army (hereinafter referred to as "the FRU") and/or British Army.

### 38. Fulton's Movements

The issue of Kevin Fulton's movements in July, 1991 has become a significant issue of credibility. He has claimed he was out of the jurisdiction and in France at the time that Tom Oliver was kidnapped and murdered. However he claims to have been in the country a couple of months beforehand when he clearly admitted that

he participated in what has been described as the “first kidnapping” of Tom Oliver. There is no other evidence at all to support an allegation or suggestion that Tom Oliver was kidnapped twice by the PIRA, once a number of months before his death and the second occasion when he was murdered. This in circumstances where allegedly Mr. Fulton was acting as an agent for the British Army, it would seem reasonable to expect that they were paying his expenses, travel, redeployment, and living expenses while he was in Disneyland Paris. Accordingly, it is reasonable to suggest that further evidence/information might be available and could have been sought by the Tribunal to substantiate or otherwise the dates of Mr. Fulton’s travel to and from France from a possible variety of sources.

39. The Overall Assessment of the Credibility of Kevin Fulton by the PSNI

This issue was raised with Assistant Chief Constable Drew Harris on Day 124, inter alia, when he was asked by the Tribunal if he had reports relating to Mr. Fulton which the Tribunal had not seen and that he might make available. He indicated he would need to actually prepare “a position report in respect of Mr. Fulton and then if needs be that could be further elaborated upon”. See also his evidence in relation to Mr. Fulton. Day 92, Page 93;

*“But if I wanted to give a PSNI position I would need to do some further analysis of our view now.”*

When then asked did he, as Assistant Chief Constable, regard Mr. Fulton as being a source of reliable information, said;

*“There is an issue with Mr. Fulton in terms of whatever point in time one wants to make that assessment but at this moment in time one would view any information from Mr. Fulton with some degree of scepticism and you would wish to seek a great deal of further clarification.”*

It seems reasonable to point out that the Tribunal has not put into evidence any further analysis, clarification or position report in respect of Mr. Fulton that Assistant Chief Constable Harris envisaged in his answer, question 590, page 154.

40. Owen Corrigan and Stakeknife

The witness Ian Hurst alleged that Owen Corrigan's handler in the PIRA was the agent named as Stakeknife who he sought to identify as Mr. Freddie Scappaticci. He alleged that Mr. Scappaticci had reported that the information which had been passed to the PIRA to facilitate the attack upon Chief Superintendent Breen and Superintendent Buchanan came from Owen Corrigan. According to what he, Ian Hurst, claimed, he had been told that by Witness 82 (See Day 92, Question 439 to 441). In that context one would have expected the Tribunal to examine in public any record of any official contact between Owen Corrigan and Mr. Scappaticci at any stage during his career and to examine the intelligence reports or a précis of them submitted by Mr. Corrigan in relation to Mr. Scappaticci.

(a) Official RUC/PSNI Position

It is striking, perhaps, that the Tribunal has not received any evidence over the course of its hearings of what the official position of the RUC/PSNI was or is in relation to the allegations. I would have thought it would be most relevant to the Tribunal of Inquiry for the institution to have considered whether it had reached a conclusion as to whether there was alleged collusion on the part of any Garda or not and, if so, to expand the basis upon which it had reached that conclusion so that the Tribunal might, in pursuance of its own analysis of the issue, decide whether some or all of that position had anything to commend itself to the Tribunal for the purposes of reporting to the Houses of the Oireachtas.

## 5. The Genesis of and the Arrangements for the Meeting of 20 March 1989

On 6 March 1989, at a dinner in Stormont Castle attended by the Secretary of State for Northern Ireland Mr Tom King, Chief Superintendent Breen, Deputy Assistant Chief Constable (hereinafter referred to as “ACC”) Border, Witness 27 and a number of British Military personnel, discussion turned to the question of smuggling. One of the Army quoted a report”- 28 Tankers over a 60 hour period netting an alleged profit of 14k per vehicle “had been seen leaving the yard of Slab Murphy, - probably towards the funding of PIRA. (See HMG 58). In fact, there appears to be no basis for the number suggested. The Secretary of State becomes highly agitated by this and demands that something be done to counteract it.

Mr Breen drove Witness 27 home from the dinner. They discussed the direction of the Secretary of State and were disappointed and unhappy considering the proposed move ill advised. Their thinking appears to have been shared by the author of the note to the Under Secretary Law and Order Division on Murphy’s Farm from the PSNI (See HMG 58.)

ACC David Cushley received a written direction from the Chief Constable dated 15 March 1989 seeking a full report on cross-border smuggling including the Garda view via Divisional Commander H (Mr Breen). He passed the order onto ACC Rural East, Witness 18.

On 16 March 1989, Witness 18 (ACC Rural East) attended a meeting at RUC headquarters In Knock Road, Belfast with the Chief Constable at which the smuggling operation on Murphy’s farm was discussed. At that meeting he was told there was no rush in getting the information and that there was no need to cross the border. This is contradicted by a statement of Alan Mains of 22 March 1989 in which he confirmed Mr Breen told him “... *he had to have the report submitted to headquarters the following day at lunchtime...*” (See HMG 27)

Witness 36 says that Witness 18 (ACC Rural East) told Superintendent Buchanan of his transfer (planned for 17 April 1989) and to arrange a meeting with An Garda Síochána for Monday 20 March and bring Chief Superintendent Breen along.

It is worth commenting that there does not appear to have been any particular secrecy about the proposed transfer. The Tribunal has seen the TV interview with Mr Buchanan's Pastor on the day of the murders where he remarks that the proposed transfer was well known the previous week. As can be seen Mrs Breen's statement below, the decision had been made by "around 10 March".

At about 5pm on 16 March 1989, there was a meeting in Armagh RUC station. This was attended by Witness 18, (ACC Rural East), Deputy Assistant Chief Constable Border, staff officer Witness 6, Chief Superintendent of Special Branch, Mr Buchanan (his journal confirms a meeting with ACC Archie Hayes), Witness 39 Deputy Divisional Commander, with Alan Mains in attendance. There is a dispute as to who else was there. Witness 6, Witness 27 and Witness 18 contend that Mr Breen was present, (though his wife insists they were shopping in Belfast) and his Journal records that he was on leave from 13 to 16 March 1989, inclusive. (His leave is confirmed by Alan Mains). On balance, Mr Breen was probably not there. Witness 36 contends that **he** was there whereas Witness 6 says he was not. Witness 18 insists that he did not tell Superintendent Buchanan at the meeting that he was being transferred and to say so is "nonsense". Witness 39 (Harry Breen's Deputy) attended the meeting and confirms that Mr Breen was not there. It was decided that the visit to Dundalk would be on Monday and Witness 27 would accompany Breen and Buchanan. In the event, Witness 27 was obliged to attend a monthly Brigade Conference in place of the Assistant Chief Constable and did not travel.

On Day 22, Mr Dillon SC read the *"Note of Intended Evidence to the Smithwick Tribunal of Inquiry. Provided by: June Breen. On: 3rd May, 2007."*

The statement is in the third person and it's in the form of a note of what Mrs. Breen said to Tribunal Counsel.

*"Mrs. Breen was asked to take the Tribunal members through the days leading up to the murder of her husband. Around 10 March 1989 Harry Breen stated that he had a phone call to make shortly after arriving home from work. He came back into the kitchen and said that he had just received good news. He'd been trying to get Bob Buchanan transferred and he had just received information that Bob was to be posted to Newtownards. Harry was delighted for Bob Buchanan.*

*.....On Thursday 16 March, Mr. Breen cut the lawn in the morning. Mrs. Breen then recalls having gone to the Sprucefield Shopping Centre at Lisburn with her husband the shopping centre had only opened two days previously. From Sprucefield, the couple went on to Belfast and did not return until Thursday evening. Mrs. Breen was quite certain that her husband could not have been in the office on that day and was categorical that her husband did not attend any meeting on that day."*

*"On Friday 17 March, Harry Breen was at work. As a result of a Chief Inspector being on holidays, duty had to be re-organised and Harry had agreed to police 17 March parade in Newry.*

*..... (On 20 March)...Harry would have left the house as usual at about 8:10 a.m. This would leave him in the office at about 8:50 a.m. At approximately 9:10 or 9:20 a.m., Harry called Mrs. Breen to see if she was OK. He said he would give her a call at about midday. She replied OK, but asked him to leave it until lunchtime or 2 o'clock. Harry rang his wife back at approximately 12:20 p.m."*

This would appear that, on balance, Mr Breen was probably not there. Witness 36 contends that **he** (Witness 36) was there whereas Witness 6 says he was not. Witness 18 insists that he did not tell Buchanan at the meeting that he was being transferred and to say so is "nonsense". Witness 39 (Breen's Deputy) attended the meeting and confirms

that Breen was not there. It was decided that the visit to Dundalk would be on Monday and Witness 27 would go along. In the event, Witness 27 was obliged to attend a monthly Brigade Conference in place of the Assistant Chief Constable and did not travel.

On 17 March 1989, Mr Breen and Witness 39 went to Newry for the St Patrick's Day Parade. Chief Superintendent Breen discussed the meeting planned for the Monday 20 March 1989 and did not appear happy about it. This may reflect the conversation with Witness 27 in the car on 6 March 1989 after the Stormont dinner. Witness 39 offered to accompany him but Chief Superintendent Breen declined his offer as he was due to go on leave.

It would appear therefore that the intended trip to Dundalk on Monday (though not the time) was common knowledge amongst a wide circle of RUC personnel from 16 March 1989.

### **The Environs of Dundalk Station**

Dundalk Garda Station is situated between the Ardee and Carrickmacross Roads on the western side of the town. The Italian style building is on its own elevated site above a sloping green. It was built in 1853 and forms part of the old Dundalk Gaol. The part of the building which was the Governor's Residence was converted for use as a Garda Station in 1931.

The front door of the Station looks out on to the Crescent, a terrace of large houses. This door is used by the general public and the majority of visitors to the Station as the reception area is located directly inside. To the rear there are two yards on either side of the Station which are located behind a stone wall of approximately twenty feet in height. It is possible to enter these yards through double wooden gates and to enter the Station building through a side door from both of these yards.

At the time of the murders in 1989 this was the case and continues to be so today. Since 1989 some construction work has taken place at the Station but it has not altered the layout as described above.

If you were standing at the front door of the Station the Carrickmacross Road (R178) is on your left and the Ardee Road (N52) is on your right. In 1989 and even today it is possible to access the front of the area of the Station from either road or drive directly through the forecourt area out the other gate. For security reasons over the years the gate

on the Carrickmacross side has been closed for protracted periods of time to prevent through traffic using the forecourt area.

As you look out the front door of the station the Crescent is directly in front of you and Vincent Avenue which leads from the Crescent to Dublin Street looking towards the Crescent and to your left is Anne Street which leads from the Crescent to the junction of Dublin Street and Park Street. Stapleton Place is also located to the right which leads from the Crescent to Dublin Street. There is a low wall in the front area of the Station where Garda vehicles, Station party member's cars and visitors to the Station would park. This is bordered by a low wall and in front of that is a small half moon shaped sloping green which borders the roadway between the station and the Crescent.

Included in this part of the submission are the photographs taken in 1989 as part of the O'Dea Investigation;

Photograph 1 - the view of Dundalk Garda Station from the Ardee Road.

Photograph 2 - the view from the Crescent.

Photograph 3 - the view from the Carrickmacross Road.

Photograph 4 - the view of Dundalk Station from the Ardee Road.









### **The Morning of 20 March 1989**

At about 9am, two (2) faxes, unconnected with the intended meeting, were sent in Mr Buchanan's name from Armagh to Dundalk and Monaghan Garda stations. There is no evidence as to whether Mr Buchanan was actually there, himself, at the time or whether he went directly to Newry from his home in Moira, County Down.

At about 9.20 am, Mr Breen was in his office in Armagh, being briefed by Sgt Mains on his return from a few days leave. He is said to have told him that he was going to Dundalk to talk about smuggling and that he was concerned about Sgt Corrigan there. He asked Sgt Mains to arrange a meeting with Customs for first thing on Tuesday morning as he had to Report to headquarters by lunchtime on Wednesday. That meeting ended at 11am. Sgt Mains last saw him at 12.25pm. There is an issue as to whether Sgt Mains made telephone calls to Dundalk in an attempt to fix a time for the meeting that afternoon. There is no evidence of him speaking to anyone in Dundalk station. Superintendent Tierney's evidence that Mr Buchanan was the instigator would appear more likely. Mr Breen appears to have left Armagh station shortly before lunchtime. (See HMG 205)

At Dundalk, Superintendent Tierney received a message at 9.30am from Garda Flynn that Mr Buchanan had phoned. He rang Armagh and left a message. Minutes later his call was returned. Mr Buchanan wanted to arrange a meeting between Chief Superintendent Breen and Chief Superintendent Nolan. Superintendent Tierney suggested that he ring Mr Nolan directly. He did not know of the proposed timing or subject matter of the meeting. He first learned of the intended visit at 1.40pm when told by Inspector Frank Murray when they were out on patrol. He spoke with Mr Buchanan in Dundalk Garda station for a few minutes around 3pm.

Chief Superintendent Nolan was in his office at 10.15am when he received a call from Superintendent Buchanan. It was at that stage that a time for the meeting was first agreed for 2pm on that day. It was then only known to the two parties to the phone call.

The calls were made on an open phone line which could possibly have been intercepted either North or South. The Tribunal has examined the issue in depth and has heard evidence over many days about the telephone system in the Garda Station and the telephone exchange in Dundalk. Despite extensive press speculation to the contrary, it appears highly unlikely that this could have been the source of a leak.

There was intelligence that there was a least one PIRA sympathiser working for BT in Newry (See HMG 50)

“There is at least one engineer in the Newry area who has strong associations with PIRA in Dundalk”.

No evidence has been heard in respect of this allegation although it is supported by the concern of senior Officers that ex-directory numbers contained in the diaries of the deceased had been accessed.

It appears that Mr Breen met with Mr Buchanan at Newry Station at about 1.40pm (HMG 39) and set out for Dundalk in Mr Buchanan’s Vauxhall Cavalier registration number KIB 1204 at about 1.50pm, arriving there to meet Chief Superintendent Nolan at about 2.15pm. The meeting ended at 3.15pm. The shooting occurred at about 3.50pm. HMG 39 records the first report as follows;

*“At 1554 hours on Monday 20 March 1989, [ ] reported from Tel. No. [ ], per “999” that he observed what appeared to be two dead males in a red car parked on the Edenappa road between Number 54 Edenappa Road [ ] and [ ] garage .”*

### **PIRA Activity**

An “Out-of-Bound” order in the Edenappa Road area was lifted at about 11am on the morning. (See HMG 99) Inspector Frank Murray of the RUC spoke of increased radio activity from about 10.30am which was attributed to subversives. The British Army is said to have no records regarding this.

At about 2.20pm, five (5) men were delivered by van to Jordan's empty house on the Edenappa Road. At 3.30pm, the van returned to collect them. A short time later, two (2) armed men emerged from the van and took up positions on the road, stopping a number of cars. The red Cavalier arrived at the scene; the driver perceiving the danger attempts to reverse. Four (4) men emerge from the van and open fire on the occupants releasing some twenty five (25) rounds with both men being shot in the head at close range to the head. The armed men then retreated back to their van and headed North. A similar Van had been stolen the previous Saturday (18<sup>th</sup> March) and was found burnt out at Tullydonnel Filling Station, Forkhill on the Northern side of the border on 23rd March 1989.

## **6. PIRA Statements**

On 22<sup>nd</sup> March 1989, at 11pm, Downtown radio news reported PIRA as saying that the two officers were shot dead after they came upon one of a number of roadblocks they were operating. They attempted to drive off and pre-emptive action was taken to prevent their escape. (See HMG 170)

A later statement said that the intention was to abduct the two men for the purpose of questioning them about PIRA leaks to the RUC, with particular reference to Loughgall. This does not tie in with the information from witnesses at the scene. They describe the assassins jumping out of the van and immediately opening fire. Mr Breen got out of the car, waving a white handkerchief. There followed two bursts of fire from four (4) gunmen from four (4) rifles followed by two (2) single shots. 25 cartridge cases were found at the scene. The firing was described as controlled and deliberate. An RUC report of 30 May 1989 (See HMG 167) quotes intelligence that over twenty (20) were involved in the attack.

Mr Tom King, the Secretary of State for Northern Ireland, the Chief Constable Sir Jack Hermon and the Commissioner of An Garda Síochána Mr Eugene Crowley publicly rejected any suggestion of a mole or collusion in Dundalk in statements to the media. The Chief Constable, as reported in the Irish Times of 22 March 1989 is reported to have;

*“talked at length with the Garda Commissioner yesterday and that they had both consulted their investigating officers.*

Then it quotes Sir John;

*“I can say now, categorically that the evidence which we have firmly confirms that there was no mole, and we ask that this should be discounted very firmly and very clearly.”*

Garda Commissioner Crowley said;

*“I absolutely reject any allegation of a mole within the Gardaí”*

He expressed his sincere condolences to the relatives and friends of the two senior RUC officers murdered by the PIRA.

Gerard Collins, the Minister for Justice;

dismissed as ‘political motivation’ claims by unionist politicians that the latest killings were further hard evidence that the Anglo-Irish Agreement was not working.

The Minister expressed satisfaction, however, over the fact that;

*“there had been no hint or suggestion from the Northern Ireland Police Authority or from the Chief Constable of the RUC, Sir John Hermon, that the Gardaí had been in any way culpable for what had happened.”*

That public reaction might well be expected in order to keep up morale and ensure continuing co-operation between the RUC and the Gardaí. However, it is worth noting what the main participants had to say in private. At an Inter- Governmental Meeting was held on 5 April 1989 where minutes were kept by a Civil Servant. They reveal a private conversation involving full and frank exchanges between the parties regarding issues of mutual concern. All present, including the Chief Constable, the Commissioner, the Secretary of State and the Minister firmly express the view that there is no issue of a mole or a lapse in security in Dundalk Garda Station other than that being created on a political or sectarian basis. It is significant that this face-to-face meeting occurred prior to Commissioner Crowley's Report to the Minister of 17 April.

In regard to the allegations of moles for political advantage, on 28 April 1987, the late Mr Brian Lenihan T.D. standing in for the then Minister for Justice in reply to a question on the Gibson murders said in the Dáil;

*“Allegations of a leak to the IRA from within the ranks of the Garda Síochána by those who could have no evidence to support them are regrettable for several reasons, one of them being that they play directly into the hands of those, like the IRA, who would wish to reduce the level of security co-operation between the two forces.”*

Nobody, of course, can fully disprove an allegation of this kind unless the people actually responsible are detected. What is quite clear, as I have said, is that the allegations were made without a shred of evidence. Accordingly, the least that can be said about them is that they reflect seriously on the judgment of those who made them.

## **7. The Response**

Following a Government meeting on 21 March 1989, the Commissioner was asked to conduct an immediate and thorough investigation of

*“all the circumstances and arrangements”*

relating to the attendance of the deceased officers in Dundalk and to report urgently to the Minister for Justice on the matter.

The task was assigned to Mr Ned O’Dea, Assistant Commissioner at Crime & Security.

Mr O’Dea had been the Commissioner in charge of Crime and Security from 5 May 1988 and was (inter alia) responsible for the gathering of intelligence from border regions and in daily contact with his counterparts in the RUC.

In his interview with the Tribunal of 12 February 2008, Eugene Crowley, the then Commissioner, said that he

*“did not have any suspicion of anybody at that time”*

but was concerned to look at

*“all aspects of it, including whether or not there was any connivance between the Gardaí and the IRA”.*

He told of his conversation with the Chief Constable the day after the murders;

....”there was no question of any leakage by the Gardaí about their movements. And that was always the case, all the intelligence coming into him was to that effect.”

## 8. The O’Dea Investigation

Mr O’Dea went to Dundalk on the 21 and 22 March where, with the assistance of Detective Inspector Kevin Carty, he interviewed those involved in arranging the meeting and those on duty after the Officers arrived at Dundalk Garda station.

The Tribunal questioning of Mr O’Dea appears to have been focussed on the suggestions that his enquiry was superficial and that his real purpose was to investigate the existence of a leak. He insisted;

*“A. Well, no, my instructions, it wasn’t about a leak. My instructions were as regards the meeting. There was no mention of anything else as regards leaks or moles or...”*

Though a leak was not the focus of his enquiry, he confirmed that his regular contacts within the RUC, Assistant Chief Constable Brian Fitzsimons of the Special Branch and Chief Superintendent Jimmy McClure never made any mention of any leaks to the PIRA from Dundalk Gardaí.

Much was made of Garda Rowan’s statement that he had congratulated Mr Buchanan on his transfer and how he could have known about it.

*“Someone had mentioned his transfer to me that morning in the station but I cannot recall who it was.”* (Garda Rowan)

Mr Dillon SC in the course of his examination said;

*“Bob Buchanan coming to the station ... and his transfer were two bits of the one message”*

This was based on the belief that Mr Buchanan had only learned of his proposed transfer on that day, 20 March 1989. This is to ignore the evidence of Witness 36 who said that

Mr Buchanan had been told of his transfer by Witness 18 at a meeting in Armagh on 16 March 1989 and Mrs Breen's statement that her husband knew on 10 March. The transfer does not appear to have been regarded as a secret. His Church Pastor refers to having known about it the previous week in the TV interview seen by the Tribunal.

The administration staff in the Garda Station would have been in regular contact with the RUC and it could have been mentioned in a telephone call anytime from 16 March 1989 onwards. It does not follow that as Mr Dillon suggested;

*“He was aware that the two officers were coming down because he was aware of the transfer”.*

Much time was spent on the apparent contradictions contained in the statements of Sergeant Brady and Sergeant Colton. Each said that they detailed the unit coming on duty. The Tribunal has since heard evidence from senior officers, including retired Commissioner Conroy, that it was not unusual for the Sergeant -in- Charge and the unit Sergeant to share the task, with each dealing with different aspects.

The Tribunal has raised the issue that the investigation was inadequate and the question of a mole was not addressed in the interviews which took place over the two days. Reference is made in the Opening Statement of counsel to the Tribunal to it not being;

*“carried out rigorously using the extensive powers given to the Gardaí for the protection of our citizens”.*

Given the absence of a specific allegation it is not understood what extensive powers are being referred to or how it is suggested they should have been used. It is quite clear, however, that the O’Dea Report, described by Judge Cory as detailed and careful, was mainly concerned with the security of cross-border meetings and how it could be improved.

The report was not limited to the interviews with those in Dundalk on the day and completed in two days as suggested in the Opening Statement. It is clear that the report draws on information from the RUC about the personal circumstances of the officers, the car, the number of times it crossed the border and where. It deals with the level of security of the telephone link between An Garda Síochána and the RUC and the opportunity for surveillance of the car park in Dundalk. It also covers the nature and regularity of the cross-border meetings of both services and suggests there is unnecessary duplication.

Mr. O’Dea confirmed in the course of his evidence that as Assistant Commissioner in Crime and Security, his branch, was in daily contact with the RUC and the security services in the North. It is clear that this is how he became aware of the level of PIRA knowledge of the officers’ movements. It is also clear that the issue of a mole in Dundalk was not raised by the RUC.

The Tribunal has not had evidence of the final Report of the senior investigating officer of the RUC investigation into the murders. This might be expected to contain a detailed analysis of all the available evidence and intelligence, setting out how the crime was planned and committed, identifying the suspects and revealing the suspicions of the investigators as to how the Officers were targeted.

It is worth noting that the progress reports, which the Tribunal has seen, regarding the RUC investigation ultimately list suspects but make no reference to leaks from Dundalk Garda station or elsewhere. (See HMG 169 19 May 1989 and HMG 167 30 May 1989). A progress Report dated 4<sup>th</sup> April 1989 from Detective Chief Superintendent South Region to ACC Crime sets out in detail the up-to-date position in the murder investigation. It includes intelligence but contains no suggestion of suspected collusion. (See HMG 20).

Mr O’Dea reported to Commissioner Crowley on 13 April 1989.

The Commissioner in turn reported to the Secretary of the Department of Justice on 18 April 1989 (after the Inter – governmental conference on 5 April 1989);

*“There is a consensus in both forces that the RUC officers were targeted when leaving Armagh or en route and followed to Dundalk. It is stated that on one occasion Bob Buchanan mentioned to a colleague in the car, on returning from Dundalk, that he thought they were being followed.”*

The Commissioner concludes at paragraph 60;

*“I am satisfied there was no leakage of information by the Gardaí on the proposed visit to Dundalk by the two Officers.”*

It is significant that this is after the face-to-face meeting of the Commissioner and the Chief Constable on 5 April referred to above. This would suggest that the Commissioner’s report and opinion was based on other information that had been provided in the intervening weeks by either Garda sources or the RUC, including an eyewitness description of the incident, the identification of the van used and the ballistics information since analysed.

The Tribunal has heard no sustainable evidence of the existence of a leak from the Gardaí. Neither the murder investigation in the North nor the inquiries carried out in the South in support of it appear to have found any basis for a leak.

Indeed, there is ample evidence which suggests that Mr Buchanan’s car was subject to surveillance. Document HMG 200 refers to a vehicle driven by a PIRA sympathiser being sighted close to Mr Buchanan’s car on three (3) occasions and then not been seen since the day of the murders. HMG 63 May 1989, though heavily redacted, states that Mr Buchanan’s car was under surveillance from early January 1989.

The evidence of Brigadier Liles who studied all of the intelligence and reports and who had extensive experience in Northern Ireland would appear to support the view that PIRA neither needed nor received any information from Dundalk Garda station. It was his opinion that the operation had been pre-planned and had swung into action sometime around 10 o'clock. His conclusions support those of Mr. O'Dea. (Days 57 and 72)

### **Bandit Country**

By letter of 10 February 1998, Toby Harnden, a journalist with the Daily Telegraph, wrote to the head of information of the RUC advising of his intention to write a book about the IRA in South Armagh and seeking assistance

*".....I appreciate that there will be constraints on what you can reveal and on what I can write. You can rest assured that any information given to me by the RUC would be treated responsibly. A manuscript of the book will be passed to the D Notice Committee at the Ministry of Defence before publication and I understand that it will be passed to you for comment so that any inadvertent breaches of security could be sorted out then. The Army might be better placed to help me with some of this but they have asked me to respect police primacy and direct requests through you. "(See HMG 92)*

He then goes on to request interviews with the head of Special Branch in Southern Region and the Chief Constable. He seeks to be pointed in the direction of any retired members who might be of assistance. He asked for access to files on some twenty (20) incidents, including those relating to the Breen and Buchanan murders.

There has been no evidence of the level of assistance he was granted. It is clear from a letter of 19 May 1998 from Chief Information Officer to the ACC Crime, that he was;

*"keen to help him as I am confident that resulting book would be a powerful indictment of the IRA." (See HMG 93)*

There has been no evidence as to whether the manuscript was in fact approved by the British Army/RUC though Mr Harnden would have been well aware of the dangers of publishing a book on such a controversial subject.

A Report from Detective Chief Inspector H Division of 29 November 1999 states;

*...”..the author received many “off record” briefings by senior Police including SB/CID and Press Office and was also in receipt of same by various military units and agencies. Therefore much of the detail will have been sanctioned and provided with due authority.”*  
(See HMG 34)

The Regional Head of CID reports to the ACC Crime on 20 November 1999;

*“It is blatantly obvious that the material .....emanated from official sources. If I remember correctly I was advised (he) had the blessing of Headquarters and should be briefed by CID on specific investigations. This being the case it is also reasonable to assume that he was briefed by both Special Branch and Military. Indeed the material content could only be sourced via the security network.”* (See HMG 95)

In early 1999, the book *Bandit Country* was published in which it was alleged the RUC and the Gardaí were certain that there had been a leak from Dundalk Garda station which had lead to the deaths of Chief Superintendent Breen and Superintendent Buchanan.

On 10 March 2000, an article by Kevin Myers was published in the Irish Times. He attributed 5 incidents to Garda leaks from Dundalk;-

- 20 May 1985 - Four (4) RUC officers killed by a bomb at Killeen
- 25 April 1987 - Lord and Lady Gibson killed by a bomb at Killeen
- 27 July 1988 - The Hanna family killed by a bomb at Killeen
- 20 March 1989 - The shooting of Breen and Buchanan at Edenappa
- 19 July 1991 - The shooting of Tom Oliver

Spurred on by the article, Jeffrey Donaldson wrote to An Taoiseach Bertie Ahern TD seeking an inquiry.

On 13 April 2000, Jeffrey Donaldson named Sergeant Corrigan in the House of Commons as being the source of the leak and is told to bring whatever evidence he has to the RUC. He does not.

In response to a Parliamentary Question, Detective Superintendent Tim Maher provided a written report into the five incidents where collusion was suggested and he reported that there was “no tangible evidence” of a leak. He was sure Detective Inspector Kirwan was aware of documents 131; 236; 542; and 567. (See evidence of Detective Chief Superintendent Peter Kirwan who confirms this Day 61 Page 40)

## **9. The Camon Review**

On 11 April 2000, the Commissioner appointed Sean Camon, head of National Bureau of Criminal Investigation, to look into the allegations, assisted by Detective Inspector Peter Kirwan.

On 13 April 2000, Jim Higgins T.D. and Charles Flanagan T.D. raised questions in the Dáil and John O’Donoghue T.D.; The Minister for Justice, announced the Camon investigation. Mr Higgins claims that he has other information and is told to bring it to the Garda Commissioner. He does not.

At Paragraph 15.13 of his Report, Mr Camon stated that the politician’s allegations did not appear to him to be “stand alone” but rather based on the publications and therefore he did not interview them but appended their various comments. This decision was commented upon adversely by Tribunal lawyers during the course of the examination of witnesses. It does, however, appear to have been a correct analysis. When called as

witnesses before the Tribunal, all were relying on hearsay and none had any useful evidence and other than to repeat what they had read and heard.

Detective Chief Superintendent Dermot Jennings was in charge of Crime & Security section in 1998/2001. He was in daily contact with senior Gardaí, the RUC and other agencies. He discussed progress with Camon from time to time and was in a position to tell him that he was not in possession of any information suggesting collusion. Peter Kirwan was to make all relevant intelligence files available to Mr Camon.

Sean Camon interviewed Toby Harnden on 12 May 2000. He was not prepared to reveal his sources and was not in possession of any evidence. Rather his book was based on “conjecture and hypothesis”. He revealed the name of Owen Corrigan as a suspect Garda and Alan Mains as a source of the allegation.

Dan Prenty was the only other source identified and *“I’m afraid the leak came from a Guard” was attributed to him as Inspector “L”*. Prenty has agreed in evidence that he met Harnden but denies that he said that. This may be taken as an example of the accuracy of the contents of the book.

Despite initially agreeing to give evidence to the Tribunal, Toby Harnden ultimately refused. In view of this refusal what he wrote should be disregarded.

Kevin Myers was interviewed on 10 and 24 May 2000. He had information but no evidence. He believed there was a cell operating in Dundalk Garda station. He accepted that his information was based on his time in Northern Ireland together with Mr Harnden’s book and perhaps the addition of a phone call to a contact in the North. He was asked to provide any information or evidence in his possession that provided the basis for his statement that a member of the Garda was directly responsible for the murders referred to in his article. These murders included those of Chief Superintendent Breen and Superintendent Buchanan and Lord Justice Gibson and Lady Gibson.

Myers responded that he had information but no evidence. When he was asked to identify the retired member of the Garda that he referred to in his article, Myers stated that he did not wish to name the retired officer. He went on to say that since writing the article he had learned that more than one Garda was involved in leaking information to the IRA. He referred to an *“active cell operating in the Dundalk Garda Station”*.

He used the word “cell” because he believed that there was more than one Garda involved and the Gardaí were not working alone. When he was pressed with regard to this, he stated that it was his belief that there were *“a very tiny number of Gardaí inside Dundalk Garda Station who were leaking information to the IRA and that they may or may not have been working together”*.

With regard to his allegation in the article that a Garda Officer *“passed vast amounts of intelligence to the IRA and even recruited for the IRA from within the force”* Myers stated that he based this statement on the “Bandit Country” book and then made further inquiries of other journalists, RUC officers and Gardaí.

When he was asked to identify the intelligence referred to, Myers stated that the entire Narrow Water investigation had been compromised by an individual or individuals within the Dundalk Station. This was a reference to an IRA bomb attack in 1979 which killed 18 British soldiers. Two men were arrested by the Gardaí but released and the items seized during their arrest could not be located when the RUC asked for them. While Myers attributed a sinister motive to the disposal of the items, the Garda investigation report observed that all indications were that they had been in advertently disposed of by the Gardaí.

In his second interview Myers acknowledged that there was a long time span between Narrow Water and the other incidents and that there may be no connection between them. He acknowledged in his interview that his instinct then was that it was not a conspiracy to destroy forensic evidence; rather that it may be more in the line of incompetence and he did not have any reason to suspect a Garda mole.

Myers was asked to provide the Gardaí with any evidence he had to support his statement that ex-Gardaí passed on precise information to the IRA regarding the movements of a Brinks Mat security van in May 1985 and the handover of the escort of that vehicle from the Garda to the RUC. Myers responded with a very general statement that he had been told by his informant that all border transactions which had gone wrong had been compromised.

The same response was given when he was asked for evidence to support the claim that there had been a Garda mole who was active in connection with the murder of the Gibson's. The statement Myers made that "but, as was revealed within a year, the Garda mole was vital" was simply his hypothesis that it was not a mole within the travel agents that brought about the murders, but information that came from elsewhere.

With regard to Myers' statement that ex-Gardaí had told the IRA of the precise handover point from the Garda to the RUC of an escort for Lord Justice Higgins resulting in the murder of the Hanna family, he once again responded with the general statement that he had been told that all hand over's to the RUC had been compromised.

In his second interview he stated that *"nobody spoke to him in relation to all of the incidents referred to in the article, that each one was compiled in a particular way"*.

Myers stated that there were elements of *"conjecture, hypothesis, etc. and that he wrote about the pattern"*.

When further pressed with regard to this, he confirmed that he had no specific information in relation to each incident referred to. He added: *"I wrote from my overview. I may have stated it in a more authoritative way than I should. I probably wrote it as a fact, where if I wrote the article now I probably would not write it as fact"*.

When he was asked about his references to a mole in the Dundalk Station and if this was a matter of conjecture, Myers stated that sources had stated it to him. He said he did not

question or interrogate them about this, but they knew things. He did not question them about the details of their knowledge. He stated: *“I was told that handovers at the border were compromised but did not question this – perhaps I should have. I presumed that these persons were telling the truth and that they had no reason to lie. I would have asked if they were sure about what they were saying.”*

The investigators took careful notes of his interviews, which have been provided to the Tribunal. They were signed by Mr Myers on each page and at the end, to confirm their accuracy.

On 20 February 2011, Commissioner Byrne reported to the Secretary General of the Department of Justice, Equality and Law Reform setting out the details of Sean Camon’s Report.

### **The RUC investigation**

The publication of the book caused similar political reaction in the North as in the Republic. The RUC were obliged to carry out their own investigation which ran parallel to that of Sean Camon.

By letter of 19 June 2000, the Deputy Commissioner set out the allegations made by Harnden and Myers which required investigation in the North and sought the assistance of the RUC.

The RUC inquiry into the allegations was conducted by the late detective Chief Superintendent Maynard McBurney. He interviewed Mr Harnden on 6 April 2000 in Washington DC. Essentially, he refused to identify his sources other than to say that they were RUC/British Army with virtually no Garda. Statements purporting to be facts were written without confirmation, corroboration or checking. (See HMG30)

In the notes of the RUC interview of Mr Harnden of 6 April 2000, it appears that any information he had about the Breen & Buchanan murders was from a single source and

uncorroborated. He had few Garda sources – most of his information came from RUC/ British Army.

Mr Harnden alleged that the RUC had intelligence that a specific Garda officer had leaked. The information about Garda “X” came from an RUC Special Branch officer who he would not name and he did not check its veracity.

Harnden alleged that the RUC had intelligence that a specific Garda officer had phoned the PIRA to tell them of the Gibson’s arrival and that there was technical corroboration of this. He took it at face value. The note taker exclaims “*WITHOUT ANY CONFIRMATION OR CORROBORATION OR CHECKING!!!*”(sic) (See HMG 30)

The minute of 15 September 2000 from Mr McBurney sets out the results of his investigation - “*no evidence exists nor can any documentation be located...which evidences Garda collusion with subversives*”.

### **The Other Incidents**

From the evidence and information provided to the Tribunal, it is now clear that there is no basis for the allegation that there was any collusion in the other incidents which gave rise to media and political suggestions that there was a mole providing information to PIRA.

### **20 May 1985 - The murder of four RUC officers;**

A Brinks Mat van left Dublin under Garda escort at 7.30am. At the Border, two RUC vehicles took over the escort. A hundred (100) metres into the North, a 1000lb bomb in a trailer exploded by remote control killing all four officers. It transpired that it was a regular delivery which followed the same route and was usually escorted by the RUC. PIRA claimed to have monitored it for a time. There was no intelligence or information suggesting the involvement of any Garda providing any information or any involvement by the Gardaí in the border stations.

### **25 April 1987 -The murder of Lord & Lady Gibson**

The Gibson's were regular visitors to the Republic and monitored by PIRA. Their house in Donegal had been attacked by the PIRA in May 1981 and July 1984. On the day in question, they were returning from a holiday in England, having been provided with an escort from Dublin Port. The Tribunal will be aware that Judge Cory in his review held that a Garda leak was unnecessary to facilitate their murder by a vehicle bomb. The holiday had been booked in their own names the previous December through a Belfast Travel Agency with particulars of their vehicle provided. They had made no secret of their identity at the various places they stayed during their travels. They made themselves known to persons on board the ferry in seeking to be allowed priority to disembark.

Garda Gary Witherow of Dromad gave evidence on Day 25 of the procedure followed when providing escorts. The Gardaí would go to the actual border whereas the RUC tended to wait one (1) mile up the road leaving the vehicle unescorted for that distance. The border was regarded as much too dangerous.

### **27 July 1988 - The Murders of the Hanna family**

Judge Higgins and the Hanna's were not on the same flight from the US to Dublin as stated in the opening statement. They were on flights arriving an hour apart. The Hanna group were two (2) adults in their 40's with a son aged 7. The Higgins were older and had been in the US accompanied by their teenage daughter. They were collected by their adult son in a Datsun Sunny saloon car. The Hanna's were driving a Shogun navy jeep. In a statement immediately afterwards, PIRA stated that the jeep was mistaken for a vehicle used by Security forces operating in the area at the time.

It is confirmed in the evidence of detective chief Superintendent Peter Kirwan that neither An Garda Síochána or the RUC had evidence or intelligence suggesting that the bomb was intended for Judge Higgins, though there was media speculation to that effect. Given the difference in vehicle and group composition, it is hard to see how one could be mistaken for the other.

### **20 March 1989- The Murders of Breen & Buchanan**

The Tribunal has not heard from any senior RUC officer involved in the Breen & Buchanan murder investigation as to what was their view as to collusion. It is submitted that the investigators at the time are more likely to have a valid opinion than those looking back over 20 years. It appears to have been overlooked that the murders were committed in the North and that the suspects lived in the North. Those that were arrested were questioned in the North. The investigation in the South was in aid of that in the North.

### **19 July 1991 - The Murder of Tom Oliver**

Mr Oliver was abducted and killed on 19 July 1991. Kevin Fulton alleges that he had been abducted previously and warned about giving information to the Gardaí. There is no supporting evidence or information available to the Tribunal. He further alleges that Sergeant Corrigan was the source of the information that he was an informant. This is notwithstanding that Mr Corrigan had been on sick leave since the previous December.

### **27 August 1979 - Narrow Water Explosions**

The allegations by Jeffrey Donaldson made in The House of Commons on 13 April 2000 included reference to the killing of 18 soldiers by two bombs at Narrow Water on 27 August 1979. The allegation by Detective Chief Inspector Anderson that the Gardaí would not provide a forensic report, destroyed evidence and refused to meet with him to discuss access to the southern site of the alleged detonation point is contradicted by the RUC's own diary of the events which records a number of visits by the RUC to Dundalk and the scene commencing at 11.30am the following day.

The Tribunal has heard evidence that a proper investigation was carried out on the Southern side, the site had been forensically examined and two suspects had been arrested. The site had not been destroyed as alleged by Witness 72 Dr Hall. Detective Sergeant Patrick Ennis gave evidence of an extensive list of exhibits collected by him and forwarded to the forensic Laboratory. On Day 77, Dr Hall agreed that he had not been told of the extent of the Garda investigation.

Dr Donovan, Head of the Forensic Science Laboratory in Dublin, was never contacted by Dr Hall even though he knew him personally. Mr Corrigan was not involved.

## **10. RUC Intelligence Provided to Judge Cory**

1. Judge Cory in his report refers to two pieces of intelligence received from the RUC which indicate there was collusion. The first one is referred to in paragraph 2.121 in the following terms;

*“It was received a few years after the murders of Chief Superintendent Breen and Superintendent Buchanan. It states that, according to a source whose reliability could not be assessed, an identifiable contact in the garda office at Dundalk was a PIRA contact who passed on information that facilitated the murder of the two officers.”*

This is referred to in the opening statement of the Tribunal (para. 4.2(i) at page 45). This intelligence was subsequently précised and given in evidence by David McConville (Day 99).

*““Intelligence Dated January 1991”;*

*“Intelligence indicated that an unknown female who works in Dundalk Garda Station made a phone call to an unknown member of PIRA when Chief Superintendent Breen and Superintendent Buchanan were leaving the barracks. This phone call enabled the two officers to be triggered into an ambush on the Edenappa Road, Jonesboro on 20 March 1989. Inquiries continue to identify the female concerned.”*

2. The second intelligence report emanating from the North is referred to by Judge Cory in paragraph 2.123 (In that paragraph he refers to it as the third report but that is because he has referred to, in the paragraph immediately preceding, a second report received by the Gardaí. This, however, is the second one received by him from the PSNI (formerly the RUC);

*“The third report was received by the Police Service of Northern Ireland (formerly the RUC) more than a decade after the murders. It was given a high grade indicating that the source was considered reliable and had provided accurate information in the past. The source reported that an administrator based in an unknown location in Ireland who organised meetings between the Gardaí and the RUC in 1989 was responsible for the leak to PIRA that led to the deaths of Breen and Buchanan. Because of the brevity of the information provided and the passage of time it is impossible to properly assess the value or reliability of this information.”*

This is referred to in the opening statement (paragraph 4.2(iii) at page 46). A précis of this intelligence was given in evidence, again on Day 99 by David McConville. Question 89, page 40;

*“A civilian administrator based at an unknown location in the Republic of Ireland who organised meetings between the Gardaí and RUC in 1989 was responsible for the leak to PIRA that led to the deaths of Chief Superintendent Harry Breen and Superintendent Robert James Buchanan. No further details known.”*

3. Mr. McConville also referred to a letter from Assistant Commissioner Egan dated the 19<sup>th</sup> of September, 2008 to the Assistant Chief Constable in Police Headquarters, PSNI, in which it is stated;

*“... It has been firmly established that no garda civilian administrator had any involvement or was aware of meetings between the Gardaí and RUC and in*

*particular the meeting involving Officers Breen and Buchanan. That being the case the information appears to be incorrect and cannot be taken further.....”*

4. Mr. McConville also gave evidence of two other pieces of intelligence that came in which were contemporaneous with the murders. These were as follows;

*“Intelligence dated March, 1989*

*Detail*

*Reference the double murder of Superintendent Buchanan and Chief Superintendent Breen. Intelligence indicated that a “Hard Bap” Hardy and a male known as Mooch from the Dundalk area would have been deeply involved in the murder.”*

And, secondly;

*“Intelligence dated March, 1989*

*Detail*

*Intelligence received indicated that the information obtained by PIRA in respect of the movements of Chief Superintendent Breen and Superintendent Buchanan was obtained by a person visiting Dundalk Garda Station on legitimate business at the same time as the arrival of Mr. Breen and Buchanan and recognised them.”*

5. Mr. McConville agreed that there was no record or documentation to show that any of these had ever been passed to An Garda Síochána and he could not dispute the assertion on behalf of the Commissioner that these had not been shared. A number of important points may be made about these pieces of intelligence;

1. The Tribunal has heard no evidence from any witness in relation to these at all.
2. Secondly, there is no evidence which has been called by the Tribunal which proves or tends to prove the truth of any part of them.

3. Thirdly, the Tribunal has no other evidence at all in support of these pieces of intelligence.
  
6. On the 9<sup>th</sup> of September, 2003 Kevin Fulton provided a statement to Judge Cory which is quoted in paragraph 2.149 of his report. As has been noted in the section of these submissions relating to Kevin Fulton, Judge Cory understood that this agent had provided various reports to his handlers regarding a Special Branch Garda Officer named Owen Corrigan who was stationed at Dundalk. He subsequently received an intelligence report not relating to anything that Kevin Fulton had provided to his handlers (or relating to Corrigan) but in fact the SB50 from 1985. Judge Cory refers to this in paragraph 2.151 in the following terms;

*“An intelligence report very recently provided to me by the PSNI could be taken as providing some independent confirmation of Kevin Fulton’s statement. This document contains information from an agent other than Kevin Fulton who is graded as “fairly reliable”. In 1985 this agent reported that Owen Corrigan, a Sergeant in Garda Special Branch in Dundalk, was passing information to PIRA. While this report does not mention any specific PIRA operations, it could be taken to confirm Kevin Fulton’s statement that prior to the murder of Chief Superintendent Breen and Superintendent Buchanan Sergeant Corrigan was passing information to the Provisional IRA.”*

At paragraph 2.161 he refers to this intelligence report as having been received from the PSNI on the 22<sup>nd</sup> of September, 2003 and said this might be found to constitute support for or confirmation of the statement of Kevin Fulton and having considered all matters concluded there must be a public inquiry. Though this report was undoubtedly seen by Judge Cory, the PSNI fought tooth and nail in the Tribunal to try and stop the grading (C6) attaching to this document becoming publicly known. This only changed in the dying days of the Tribunal on Day 124. “C” apparently

means fairly reliable in relation to the source and “6” means impossible to assess its accuracy.

### **Garda Intelligence Provided to Judge Cory**

7. This is referred to in paragraph 2.122 and indicates “by way of double hearsay that there was a contact in the Garda who had passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station. This report was received many years after the shooting. What is of greater concern is that it was based on double hearsay.” Judge Cory twice separately notes this double hearsay aspect of the report at paragraphs 2.156 and 2.158. He was also provided with this intelligence in the context of his consideration of whether there should be a public inquiry recommended into the murders of Lord Justice and Lady Gibson. He expands slightly more in his description of this in paragraph 1.148 of his Gibson Report than he does in his Breen/Buchanan Report. In that paragraph, inter alia, he says;

*“Second, the report was based on double hearsay without any suggestion of direct or personal knowledge of the issue. Third, the circumstances of the report leave it open to a possible inference that the speaker was merely boasting or attempting to elevate his status. Finally and most importantly, I have not seen any documents or evidence that would support it in any way or that even refers to the information contained in this third hand report. While it cannot be ignored, in the absence of any other evidence I find that this intelligence report, the reliability of which cannot be properly assessed, is insufficient to establish or constitute evidence of State collusion in the murder of Lord Justice and Lady Gibson. Every effort has been made to follow up on the report and to discover whether other relevant files or documents exist. However, no further references of any kind have been discovered.”*

8. It is important to state that Judge Cory was given complete access to the original Garda intelligence. A contemporaneous written record exists of this and it has been confirmed on behalf of the Commissioner to the Tribunal and by the evidence of Detective Chief superintendent Peter Kirwan (Day 127 16 April 2013) that this is the case. The phrase “double hearsay” and “a contact that passed on information that facilitated the murder” are phrases in fact which appear in the two documents that are now described as the précis documents 236 and 542. The intelligence also contained in what is now précis document 567 is in essence a repeat of the intelligence made available to Judge Cory. It may be helpful for ease of reference to set out these précis documents;

**Document 236**

*“Information which is based on double hearsay and received subsequent to the killings indicated that there was a contact that passed on information that facilitated the murder of the Gibson family.”*

**Document 542**

*“Garda information indicated by way of double hearsay there was a contact in the Gardai who passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station.”*

**Document 567**

*“Garda information received some time proximate to the murders of Buchanan and Breen suggested that a named IRA member had a Garda contact who only gave short notice of the visit of Breen and Buchanan to Dundalk Station. Reports suggest that the PIRA knew that the officers would have to take one of the four roads on their way home and the PIRA sent out four units to cover each of these roads.”*

These documents have been put into evidence, both in the public and private hearings of the Tribunal. It is important to note also that the Tribunal legal team and the Tribunal itself have had access to these original intelligence reports in their raw and unredacted form on many occasions, as and when required.

**Information is not Intelligence is not Evidence;**

9. Information that has passed to or been acquired by An Garda Síochána from human sources may be credible and reliable. However, it could also be loose gossip, malicious, self serving, frivolous or misinformation. It may also be simply ill informed and inaccurate or inaccurately passed on. Even information from a highly regarded source may be hearsay or multiple hearsay that is passed on in good faith and believed to be true by the source. Any item of information may indeed and should be regarded as having potential intelligence value but does not become intelligence itself simply because it has been received. Any item of information only becomes intelligence when it is analysed to best practice standards. The analytical system tests the information against, inter alia, known facts, accepted intelligence, credibility of sources, reliability of sources and shared knowledge surrounding a subject matter and, following such, may or may not be graded as being intelligence or intelligence of a particular value. (The Tribunal is referred to the detailed statement of Chief Superintendent Peter Kirwan and his evidence on Days 127, 128 and 129 for a more comprehensive explanation of this process.)
10. Here, in relation to these documents, such consideration of this reporting necessarily includes an analysis of the source and the information separately. The source in this case had proved reliable in a particularly confined area of personal knowledge and area of activity and not contiguous with the Dundalk area. An Garda Síochána is satisfied and was satisfied at the time and, more importantly, the Tribunal can be satisfied that the source in this case had no personal knowledge of the planning or execution of the PIRA operation which culminated in the murders of Chief Superintendent Breen and Superintendent Buchanan. Neither had he/she

any knowledge of the persons involved. It is important to note that the source was not operating on the basis of first hand knowledge and consequently not reporting on something he/she had personally observed or even heard as a first account. Normally the more remote the provenance of the information is from the reporting source then the less reliability can be placed on it. In this case under discussion here, not alone did the source not have personal knowledge of the information but the person whom the source had heard it from likewise had no personal knowledge and had heard it from someone else. Hence the accurate reference by Judge Cory to the information being based on double hearsay or a third hand report. Thus H (the Garda handler) is reporting that S (the Garda source) heard X say that Z said that there was a contact in the Gardaí which had facilitated the murders.

11. Obviously any information touching on an area of significance is worthy of careful analysis and consideration in conjunction with other related material. Any action to be taken in relation to any information received is generally decided on a case by case basis and influenced by a number of factors, including the following;
  - Is the information within the personal knowledge of the source? –
  - Is it single source reporting? –
  - What is the assessment of reliability of both the source and information? –
  - Is the reporting corroborated or contradicted by other reporting? –
  - Is it in accordance with or contrary to known or established facts? –
  - Is there any unique aspect of the reporting which has not been in the public domain and is likely to be known only to persons involved in or associated with the subject matter of the reporting? –
  - Is there any identifiable foothold or platform from which an intelligence led operation could be launched? –
  - What component parts of the information are actionable while at the same time taking account of all of the sensitivities involved?

12. The Tribunal spent some considerable time enquiring of former officers about the extent of their awareness of these documents and what had been done on foot of them to identify a Garda mole. For example, former Assistant Commissioner Dermot Jennings gave evidence (Day 70) in relation to this;

*“57 Q. Yes. And I think, without going further, that you would be satisfied that it's high grade intelligence?”*

*A. Yeah, without doubt, Chairman, and I think it's important, maybe, that I should explain this. Without a doubt, something like that has the potential to be very, very high grade intelligence. But intelligence, and I think I remember briefly explaining this to the lawyers at the time, intelligence of this nature, you must analyse it very, very thoroughly, and even so much so that would you actually separate even the source and the intelligence, and there are a number of questions, then, that you would ask yourself, and a number of things that you would do. If you'll bear with me. Like, first of all, can you in any way qualify the intelligence? Is it possible to establish if the source would have access or was he on-the-job, shall we say? Is there any other intelligence that would corroborate it? And the other thing is, like, is there anything whatsoever that backs it up or contradicts it? Now, as well as that, I would be tasking, shall we say, the source handler or whoever got this information, that can he go back and talk to the source, even -- and I know there is dangers in that sometimes -- but go back to see can you find out anything more about it, or, where is this coming from, or identify it. And perhaps -- well I know there is a reference to it being double hearsay but the first bit I don't think did say that. Like, the other thing is, is it possible that it could be misinformation, because terrorist organisations all over the world do that occasionally, and I am not for a moment dismissing this now. Without a doubt, this is a document you would have to consider very, very seriously and you'd interrogate the full system to see what can I do with this? Is there some place where I can task my people to make a start to further the document that you have got in the sense of, like, with a serious allegation like that, where can we start from to*

*try and develop it to put, to coin the phrase, to put the meat on the bones and see can we get more from this? If I am explaining myself OK to you, Chairman?*

58 *Q. You are indeed. And I understand that the gardaí, the Garda Síochána, as a force, is sort of a hierarchical organisation in that people at different levels have different jobs and information is passed up and decisions have to be made –*

*A. Yes.*

59 *Q. -- in relation to what is done with it. Now, the person involved in passing on this information to Headquarters was not, has confirmed to the Tribunal that he was not tasked with investigating the matter any further; he supplied the information but was not tasked to carry out any further investigation into it, so on his own but he is not able to do that?*

*A. Now, Chairman, as -- sorry, when I say tasked, I meant as the member, shall we say, that was dealing with the source, that I would be saying to him to go back and talk to your source again. If an investigation was to ensue, it would not be normal for the source handler to actually deal with the investigation, and that is -- there are very good reasons for that, Chairman, in the sense that building a picture of any case, the person who gets this information, we'll call him the source handler, it's like a piece of a jigsaw that he has, it's like any case I suppose, Judge, or Chairman, and you build the pieces together. But more often than not, we would keep the source handler away from an actual investigation. Now, certainly, the head of the investigation team may go back to him, or the head of the intelligence section may go back and say look, can you get us anything more? Can you develop this for us? Because, as I said, looking at it straightaway, it has the potential. But you'd have to, to be fair to him, you wouldn't drag him in to actually doing the investigation.*

60 *Q. So he has done his job; the information is supplied. But looking at that as a retired ACC, does that information warrant an investigation?*

A. Well, again, Chairman, without doubt, you'd -- when I say "investigate" I mean up in the intelligence section I mean that you'd interrogate the system, as I outlined earlier, and then after that, like, you may have to call it to say where do I start? And if there is a starting point, yes, you would. But, now I can't say, but I'd be of no doubt that there was work done on that at the time.

61 Q. So far, it doesn't appear that it went any further than just this information; there certainly wasn't an investigation directed into it?

MR. O'CALLAGHAN: Sorry, Chairman, to interrupt. Just to assist Mrs. Lavery. On Day 54, Mr. Ned O'Dea gave evidence in respect of the intelligence documents that the witness is being questioned about, and he gave the following evidence in respect of them, he says: "Yes, I recall seeing some of those and I remember as a result of one, that Superintendent Byrne, as a result of who was named, there was a particular person named in the document, mounted a surveillance programme on him for quite a while and, as well as that, they had technical support as well but nothing came from it and they had to transfer to other areas of activity and nothing came out of their period in that area." So I think there was some investigation done on foot of one of the intelligence documents that the witness has been referred to.

MRS. LAFFERTY: If I could just, I think, Mr. O'Callaghan, that was in relation to the person, one of the participants who was mentioned in it, I am not sure it was an investigation into the gardaí.

MR. O'CALLAGHAN: No, sorry, he goes on and says: "Yes, I take it when you talk about surveillance being carried out, I wasn't on a member of the Garda Síochána?"

Answer: No, one of the opposition. But there was an investigation conducted on foot of one of the intelligence reports".

MRS. LAVERTY: Thank you, Mr. O'Callaghan.

A. Chairman, and I don't want to mention the person, I actually know the person's name now, that's a little bit small but I know from the document there was one person's name mentioned in that, and I wasn't there at that particular time but he has been the subject of work for many, many years and major

*coverage by the Garda Siochana. Now, certainly the people at that time will answer for that time, but I have no doubt –*

62 *Q. Isn't that all the more reason, Mr. Jennings, for that information to be investigated if there is somebody high profile and a link to a member of the Force, it's a very serious reflection on the Force, I would have thought, that should be investigated?*

*A. Chairman, without a doubt, and it is one of the things that would always trouble somebody in my position, as I was at the time, and even still, is that a member of the Force would do anything like this, and we have had some cases of that which we dealt with, but I think it's fair to say, and I refer back to my earlier evidence about the analysis of something like this: you must have a starting point. And I think that other gentleman said that if the evidence has been given, that the starting point in this case was, there was a named individual, which I'd rather not mention. And I think that was the only place you could actually start, because actually the reference to a member of the Garda Siochana, I think, went no further than a member of the Garda Siochana which one can assume but one doesn't know where or who this person was, so from my experience, if you will bear with me, of dealing with incidences similar to this, maybe not just where a member of the Garda Siochana would mention it, but any strategic tasking of an operation, if you have somebody named like there was in this instance, you go for help, and if, with enough coverage over time, or the longer you can, and of course sometimes you are limited to the amount of coverage because these people are very aware of coverage as well, but you will eventually come to seeing some of the contacts that he has, and without a doubt, with this particular individual there was coverage for many, many years, and I think you would be aware of that yourself, Chairman, what the end result of some of that coverage was eventually, if I am making myself clear.”*

13. He was again pressed (Day 70, at question 72) whether this was intelligence suggesting collusion:

*“A. Chairman, at the risk of repeating, and I have no problem repeating it, I think something like that, it has the potential, without a shadow of a doubt, and -- but you must dig very deep into something like this and see where it, as I outlined earlier, where did it come from? Has it anything -- is there anything to contradict it or anything to support it? And what can you do to further it? And, like, a very critical analysis would and should be carried out on a document like this, and I don't dismiss it in any way. It's, without a shadow of a doubt, it's an important document, but you would have to put it through a very, very stern process before you could take it any further.*

73 *Q. It seems that this wasn't done, the investigation into the allegation against the Gardaí wasn't carried out, a member of the Garda? I mean, surely it would be very simple. It's a slur on the Force. It would have been simple to say: We have to investigate this, it's bad for the Force, there is a suggestion that a garda was colluding in the murders of Gibson and the murders of Breen and Buchanan.*

*MR. McGUINNESS: With respect, Chairman, that is an unfair way of putting it, because the Tribunal has evidence on this topic which is consistent with what Mr. Jennings is saying, that one would expect the handler to go back to the source and try and develop the information, and it's quite evident that that occurred, because it generated successively these documents from the same place and the same person, and then the operations were put in place against the target to try and see what could be developed. And, as Mr. Jennings has said, there was no named member of An Garda Síochána, lest anyone viewing that think otherwise, there wasn't any named member.”*

14. At question 170 he confirmed that the pieces of intelligence all came from the same source and they all came via the same handler.

*“172 Q. And as you say yourself, that one of the things that you had -- you would ask a handler to do, would be to see if they can dig any deeper, get any more information, provide anything that might go to corroborating what is being said?”*

*A. Yes, yes, absolutely, Chairman, yes.*

*173 Q. And it does appear that the handler did, in fact, have three different contacts with the source, and that is why there are three different pieces of information?”*

*A. Yes, yes, yes, I presume so, yes.”*

15. He continued, in answer to Mr. Durack;

*“176 Q. MR. DURACK: Yes, just to get back to those three items of intelligence that were referred to. I think we know that they all came in over a period of a year?”*

*A. Yes, Chairman, yes.*

*177 Q. The Tribunal will have the originals in relation to it, but -- and I think that would suggest that the handler had gone back on two occasions, at least, to see if he could firm up the evidence any better, or the information any better?”*

*A. Well, I presume so, Chairman. I don't have the documents in front of me now, but, yes, without doubt, the handler would have -- that would be the instruction, to go back and see could he develop it further.*

*178 Q. And I think that, in this case, the handler was not based in the Louth-Meath division?”*

*A. No, he wasn't, Chairman, no.*

*179 Q. And the division in which he was based would have nothing to do with investigating anything in Louth, Meath, or particularly in Dundalk?”*

*A. That is correct, Chairman, yes.*

*180 Q. And if it was -- and if it was to be looked into, it would have to be looked into by somebody else other than him?”*

*A. Well, it would, Chairman, and there was another reason for that, as well, is that it distanced the actual source handler, which was only right, to keep him away from the investigation. He was bringing the intelligence to the table, shall we say, and -- or into the process where it was analysed, but it would be very unusual to involve him in the investigation as such.*

*181 Q. And you have mentioned that the subversive that was alleged to have had this Garda contact was a person who was under regular surveillance?*

*A. Indeed he was Chairman, yes.*

*182 Q. And that even if this information, I take it, had not been received, any unusual contact that he had with members of An Garda Siochana would have come to notice?*

*A. Yes, and I would hope so, yes, Chairman, because very, very regular and constant surveillance on this particular man.*

*183 Q. And I think at no stage did you have any -- was there any named member in either of these three reports?*

*A. No, there wasn't any member ever named, Chairman, no.*

*184 Q. And, on that basis, I suppose that the whole force is potentially a suspect. You can't really start from that end?*

*A. Yes, in the broad sense, yes, Chairman, because there was no individual, or there was no actual location mentioned in the actual reporting.*

*185 Q. And because there was a named subversive, that that was the only place you could start to look?*

*A. Absolutely, Chairman, absolutely, yes.*

*186 Q. Now, in relation just to the quality of the information, I think you suggested that it may well be that the person who originally made the statement claiming that there was a contact, may well have said that for his own reasons, such as to let his underlings, if you like, know, that if they at any stage became Garda informers, that he would be in a position to know?*

*A. Chairman, and that -- generally, that is a tactic that was regularly used by people, particularly people in positions of command within the organisation, and it instilled fear into their own volunteers, as they were known as, to say*

*that "I can check this with my own contacts" or "I have my own contacts to check it out." And that was very much a deterring factor to keep people from talking to the forces of the State, talking to the guards, or anything like that, and it instilled a fear into them."*

16. Retired Commissioner Pat O'Toole also gave evidence (Day 73). Firstly, he gave evidence that the intelligence they had from agents in the area did not mention or indicate in the remotest that there was any collusion whatsoever and that came in the days and weeks following the murders in distinction to the three pieces of intelligence referred to above. In relation to these pieces of intelligence he said, in answer to question 141;

*"A. The Detective Superintendent, Detective Inspector and that from the Intelligence Section, with myself. These were, actually, brought to the notice of the Assistant Commissioner, I was the Chief Superintendent, they were brought to the notice of the Assistant Commissioner at the time, Ned O'Dea, and when these were put beside what was there already, it was noted that what was there already, there was quite a lot of overlap, if you like, between the different pieces of intelligence, but this was single source reporting with no collateral whatsoever. That was the first thing.*

*The second thing that would have been noted was, that the source was reliable but in a particular line of reporting, nothing to do with what is of interest to the Tribunal, good, bad or indifferent; that in those reports there was no person, a guard or civilian, named, whatsoever, as being the source. There was no Garda station mentioned in those reports as where the contact was. There was no nothing, still, you know, even after this period of time, from any of the agencies that we dealt with from outside the State, to indicate that there was a mole in the guards, good, bad or indifferent, nothing at all. And you know, it was -- those are certainly points that come to my mind in relation to the discussions. The one name that we had was the subversive who allegedly had the contact, and an intensity of operations against*

*that individual and his associates, were decided on, and because there has been policing experience that while nothing had appeared in any matter, in any form before this, about collusion, as such, maybe this intense operation would reveal if there was anything there. Nothing came to light. This was also brought to the attention of Mr. O'Dea at the time. And that would have lasted -- now I don't know what happened after June '91, then."*

17. He also gave evidence in relation to document number 514;

*"Garda information received in the final quarter of 1989 suggested that the two RUC officers who were killed were accidentally sighted on the southern side of the border by a named PIRA member. The PIRA member recognised one of the officers and then passed details of sighting onto PIRA. PIRA checked Dundalk Garda Station and confirmed that the officers were there."*

He described this as "*impeccable intelligence*", knowing the handler and knowing the named PIRA member (whom he did not identify) (Day 73 Pages 57 - 60). He also confirmed he never saw any RUC intelligence which suggested that the RUC had a concern about a member of the Gardaí being a mole for PIRA (Day 75 Page 29) and said that he was never aware of any intelligence that he saw that there was a problem in relation to collusion in Dundalk (Day 75 Page 32) and said that if they had actionable intelligence they would have dealt with it (Day 75 Page 32)

### **Known Suspect but Unknown Garda**

18. In this instance, as the Tribunal knows, the person from whom the comments are alleged to have originally emanated was identified in the reporting. The individual concerned was already the subject of intense covert coverage and regular reporting from a number of sources and was of interest to a number of agencies. On the basis that this person was not a "new" suspect with no previous coverage, it was possible to research previous reporting seeking to ascertain any indication which would tend

to support or negate the current information. No material was or has even now been discovered which supported or corroborated the information. The Garda view as given in evidence obviously was that the only reasonable and practicable foothold to test the information and review it on an ongoing basis was in the light of continuing and/or perhaps enforced covert monitoring of the suspect.

### **Evidence of the Handler**

19. As referred to above, it is common practice for a Garda officer handling a source to task/ask him or her, i.e. the source, to endeavour to gain more specific details which would facilitate more detailed analysis and which would enable the information to be graded as intelligence (which it was not). Such a course of action always has to be approached with extreme caution and is made more challenging in this instance by the fact that there are at least two “cut outs” between the Garda source and the person from whom the references are alleged to have originated from. In that regard the Tribunal heard evidence in private session from the Garda handler of the source of the information précised in documents 236, 542 and 567. Due to the sensitivity and safety of source protection, neither the source nor the handler have been publicly identified and no reference is being made to the identity of the handler here.
  
20. It is, however, considered appropriate that it be noted that the direct evidence of the handler received in private is consistent with the public evidence referred to above to the effect
  - (a) that there were not multiple sources for the information;
  - (b) there was a single source;
  - (c) the source did not originate from the area in question and was removed in terms of knowledge, area of activity and geographical location from the events he was reporting on;

- (d) the report is indeed hearsay upon hearsay and, more importantly, the handler obviously did return to the source to try and see could any further information details be fleshed out but was unsuccessful in that regard.

The evidence of the handler will be referred to in very short private submission.

21. It was, of course, entirely appropriate for the handler to seek to probe his source to see if any further information or intelligence would emerge but none such did. It was therefore entirely appropriate for the Garda authorities to decide what they ought to do in relation to progressing the matter and focusing on the suspect. (See again the evidence of Dermot Jennings, Day 70 Page 45.)

*“116 Q. MR. O’CALLAGHAN: I appear for retired Detective Sergeant Owen Corrigan and I just have a couple of questions for you. I mentioned, when you were giving evidence, evidence that had been given by Mr. O’Dea when he gave evidence here on Day 54. Mr. O’Dea was asked questions about the intelligence documents that you looked at a few moments ago, sir, and he said to the Chairman in his evidence that he recalled seeing some of those documents. He also stated that as a result of seeing those documents, that surveillance was placed on an individual, not a garda, who was named in them. What do you think would have been the purpose of that surveillance operation from the point of view of An Garda Siochana?”*

*A. Well, Chair, from my experience, the purpose would be to identify or could we identify this so-called contact that the particular man had, or to identify other contacts that you would have, and then by working on those contacts maybe eventually lead on to identifying the member of the Garda that was referred to earlier. And then there was technical surveillance as well, Chairman, interception would have been in place at that time as well.*

*117 Q. So, would you agree with me that the primary purpose was to weed out any mole that may have existed in An Garda Siochana?”*

*A. Oh, yes, of course, Chairman, that would have been the goal, to see could we identify who this alleged mole was.*

*118 Q. And from your knowledge and experience in An Garda Síochána, Mr. Jennings, were the Garda Síochána and the senior officers of An Garda Síochána, would they have been in any way tolerant of a member of the Force who was acting as a mole for the IRA?*

*A. No, Chairman, absolutely no way would it be tolerated. And indeed, Chairman, I would go as far as to say is that most members of the Force that I know, and indeed around Dundalk, if they had any knowledge of any mole, they would be the first to report it and have something done about it because, as I explained, Chairman, earlier, it's your own life that's at risk if there is somebody around there, and you will be aware, Chairman, many, many very successful operations have been ran in that part of the country, up around Dundalk, if I am answering the question?*

*119 Q. And from your experience, Mr. Jennings, if there was intelligence suggesting that a member of An Garda Síochána was a mole acting for the IRA, would that intelligence be scrutinised and investigated thoroughly?*

*A. Yes, Chairman, without doubt."*

### **No Further Intelligence of Collusion at the Time**

22. No further or other Garda intelligence relating to either sets of murders emerged insofar as collusion is concerned. An Garda Síochána received intelligence regarding the identities of all culprits and the modus operandi in relation to the murders of Breen and Buchanan. Some of this intelligence was received from Owen Corrigan. All of the intelligence was shared with the RUC and a series of cross border arrests were carried out. Garda intelligence tallied with RUC intelligence regarding the Operations Commander and the other killers. No collusion intelligence was shared, either from British Security Services or from the RUC in relation to the matter at that time or indeed until the Tribunal. In fact the next substantial development in relation to allegations of collusion arose following

the publication of “Bandit Country” by Toby Harndon, Kevin Myers’ articles relating to that and the subsequent involvement of politicians leading to the emergence of Kevin Fulton.

## **Summary**

- (1) The only two pieces of intelligence produced by the RUC to Judge Cory in relation to collusion in the murders appear to be unfounded and no evidence has been produced in support of them to any extent.
- (2) Judge Cory appears to have been led to believe Fulton was a Special Branch informer at the time that had provided reports to his handlers in relation to Corrigan.
- (3) He was given no such report.
- (4) He was then presented with a statement from Mr. Fulton.
- (5) He was then given the 1985 SB50 not directly relating to collusion in the murders, whose grading itself meant that it was impossible to assess its accuracy.
- (6) The Garda intelligence suggesting collusion was received and actioned in the best possible and appropriate way having regard to the limited intelligence footholds available from the intelligence.

## **11. RUC Opinion Evidence Concerning the Murders**

During the course of the Tribunal's hearings, a myriad of mostly (by now) retired RUC/PSNI officers have provided evidence to the Chairman. That evidence has been furnished on a voluntary basis and has proven to be both useful and illuminating in terms of lending the Tribunal a Northern perspective regarding the core issue it has been

mandated to inquire into and providing valuable insight into the conditions and circumstances RUC officers faced, predominantly in or around the mid to late 1980's.

Central to those conditions was the considerable threat posed by PIRA to both the security of Northern Ireland and to the health and safety of the officers themselves. It is by no means overstating matters to characterise the risk to their lives as very real to the point where it quite simply became a constant feature of daily life during that troubled period of this island's history. This is reflected in the fact that even during the hearings, years after peace has prevailed, the majority of the aforesaid witnesses when giving their evidence availed of anonymity and/or screening facilities which the Tribunal provided. A successful ciphering system was put in place whereby the bulk of the witnesses were referred to simply by means of a predesignated number during the course of their testimony. Their evidence also allowed the Tribunal to hear valuable observations regarding a number of relevant topics including the security practices of both themselves and those of the late Chief Superintendent Breen and Superintendent Buchanan; the techniques and methodology employed by PIRA in the commission of subversive crime including numerous atrocities, and their opinion as to how the operation to murder the two officers would have been both planned and executed. In addition, many were able to detail their professional relationship with members of An Garda Síochána and often periodically came into contact with certain members who have been afforded individual representation at the Tribunal.

**Witness 6** was the very first witness to give sworn evidence to the Tribunal (Day 2, 9<sup>th</sup> June 2011). He was the staff officer to witness 18. His evidence included commentary on the South Armagh PIRA and was typical of many subsequent witnesses who would offer a similar viewpoint in this area. It was his opinion that PIRA were a very effective force, extremely cautious and would readily walk away from an operation if they believed the risks had become too great. "...even a police car going by that they weren't expecting, was enough to make them abort an operation" (Day 2, p16, line30-page 17, line 1). He also added that South Armagh PIRA were noting the movements of both marked and unmarked RUC vehicles. It was well within their capability to keep track of senior RUC

officers and keep them under observation and he was aware they were noting the movements of police vehicles, both marked and unmarked (Page 31). Their surveillance was engaged in with meticulous care with the aim of establishing patterns in routes taken etc. This opinion evidence, though general in nature, clearly has significance in terms of the central issue that the Tribunal is concerned with. The picture that emerges, even from as early as the first public day of hearing evidence, is that PIRA were a professionally organised and sophisticated outfit that were capable of scrupulously preparing and mounting operations on their own and therefore by implication, without the assistance of others.

Witness 6 also commented upon the frequency that Superintendent Buchanan had been crossing the border and went as far as to express amazement in relation to the fact that the Superintendent had been making cross border trips as often as 10 times a month around that period. He could not see the necessity for such frequent trips and even found it unreasonable, whilst at the same time acknowledging it was entirely a matter for the late Superintendent Buchanan himself. While there would be differing views expressed from other witnesses as to whether or not the frequency of physically making the trips was necessary, the frequency itself was not in dispute. As a logical inference, the greater the frequency of trips, the greater PIRA's opportunity to research, observe, follow and ultimately execute their targets without external assistance.

It was also revealed that senior RUC officers used their own vehicles most of the time and this would accord with what we would later learn regarding Superintendent Buchanan's use of his vehicle. Concerning the question of Dundalk Garda Station, he recalled rumours circulating to the effect that there was a mole but could not recall where or when he had first heard them. However, he was quick to point out that he wouldn't have acted on rumours and in conjunction with many other northern witnesses, displayed a professional and commendable ability to clearly distinguish between rumour and actual evidence. It is also noteworthy that in general terms Witness 6 enjoyed good personal and excellent working relations with members of An Garda Síochána, agreeing with an assessment that they were professional, experienced and competent in their duties.

**Witness 18** (Day 6, 9 June 2011) proved to be a somewhat controversial witness in terms of the evidence he offered concerning the alleged making of a direct order to the two deceased officers not to cross the border but that aspect of his evidence is not directly relevant to this section of these submissions. Witness 18 was a high ranking officer, namely Assistant Chief Constable for Rural East. He was also amazed at the frequency of the Superintendent Buchanan's cross border visits and went as far as to suggest that had he been so aware, he would have requested the superintendent's transfer. He also asserted that the IRA had excellent intelligence on RUC officers including details of their movements, families and personal lives. Regarding his own security, he stated that when travelling to and from work and to other destinations, he would adopt the practice of always using different routes. He would also periodically change his car and the licence plates of his vehicle as a security safeguard- "Normally I would have changed them every couple of months, maybe a month, change the car every year maybe...I wouldn't let it run on the same plates for more than two months, three months." (Page 95). There would be further evidence on this topic later in the Tribunal's hearings (witness 64, Day 53, 11 November 2011) that changing registration plates could be both expensive and bureaucratically difficult. It was also put by Counsel for the PSNI to various witnesses that from a security standpoint, using one's own vehicle had the advantage of the driver knowing exactly what that particular vehicle was capable of were a life threatening situation to materialise. It was further periodically suggested to a number of witnesses that having a formal escort for cross border trips did carry with it the disadvantage of potentially drawing attention to oneself. However, notwithstanding this proposition as advanced by the PSNI through its legal representative, it is nonetheless respectfully submitted that on the balance of probability, Superintendent Buchanan driving the same vehicle with the same registration number over a prolonged period of time could only have helped rather than hindered PIRA's ability to monitor his movements.

Returning to witness 18, he stated there were no specific instructions circulated in relation to personal security within the RUC. He elected never to use the Edenappa Road as it was "too easy to be observed on it" (Page 97). He also talked about Dundalk Garda

Station and would only travel there when absolutely necessary. There was always an element of risk about it in his view and it was referred to as “cowboy town” (Page 41). RUC officers could be easily identified. This reflects well established evidence from multiple Garda witnesses to the effect that Dundalk Garda Station was geographically very exposed and people coming and going were highly visible from multiple vantage points, all of which would logically make it easier for PIRA to have observed the two officers arrive and leave on the fatal day that the two officers were murdered. In terms of PIRA's intelligence capabilities, Witness 18 stated they knew most of the RUC officers in the border area (P99) and Superintendent Buchanan would definitely have been known to them. He also suggested that the frequency with which he had crossed the border effectively meant he couldn't help but be noticed. Like witness 6, he was amazed to hear of the frequency of Superintendent Buchanan's visits. Again, as in the case of Witness 6 (his staff officer), he had heard of rumours regarding a mole in Dundalk Station but quite properly admitted he could not in any way substantiate those rumours or add anything that would constitute evidence upon which The Tribunal could act.

**Charles Day**, in 1989 an Inspector in the RUC based in Bessbrook, gave evidence on day 6 (9 June 2011). Of particular relevance was the fact that he had travelled with Superintendent Buchanan to Dundalk just days prior to the assassinations and in the same vehicle that was ultimately ambushed on the Edenappa Road on the 20 March, 1989. On the return journey Inspector Day formed the view that Superintendent Buchanan's vehicle was being followed by a Hiace van up to the border checkpoint without crossing into Northern Ireland. Evidence suggests Hiace vans were used by many IRA subversives. There can be no definitive proof but it is submitted that the opinion of Inspector Day- an officer of considerable experience- that Superintendent Buchanan's vehicle was being followed just days prior to the ambush is relevant and corroborates the argument that the murders were extensively planned over a period of time that significantly predates the date of the killings themselves.

This witness also asserted had there been actual intelligence concerning a security risk, he would have expected to be told about it (Page 150). This is something that is echoed in

the evidence of a number of other RUC witnesses and it is respectfully submitted is of material significance. Had there been any or any *reliable, credible* intelligence (from 1985 or indeed any other relevant period) emanating from the RUC pertaining to Detective Sergeant Corrigan – or indeed any other member of An Garda Síochána – actively colluding with the IRA, would the RUC have allowed its members to have visited the station with such regularity? Would they in effect have compromised the safety of their own members by not warning them of the inherent risk apparently attaching to such visits? It is difficult to conclude they would.

Finally, Inspector Day averred to the dangers of forming patterns in terms of repeating the same movements/routes etc. He put it very succinctly by asserting that patterns create a form of “predictive intelligence” for subversives and ultimately that “patterns kill” (Page 148, line 11). This analysis was agreed with by Witness 36 who was the Collator in Bessbrook from 1982-1991. The import of evidence in this regard is essentially that the more defined the pattern, the easier it is to amass the required intelligence to implement the operation and by inference, the greater the ease with which such an operation could be carried out from inception to execution without the necessity for Garda collusion.

The evidence of **Alan Mains** (Day 9 & 10, 21 and 22 June, 2011), Chief Staff Officer to the late Chief Superintendent Breen, is important to the Tribunal on a number of levels. The issue of how the meeting arrangements in Dundalk Garda Station on the 20 March 1989 came about will be focused on elsewhere in these submissions. Of relevance to this section, Mr. Mains indicated that Superintendent Buchanan had built up a rapport and trust with the Gardaí which was essential at that time. Having said that, Mr. Mains claims that Chief Superintendent Breen mentioned the name of Owen Corrigan on the day of the murders and stated he didn't trust him. It should be noted that Mr. Mains alleges Chief Superintendent Breen stated to him that Corrigan had been previously investigated concerning a suspected connection to PIRA. Mains at no stage questioned the late Chief Superintendent as to the basis of this knowledge and he had never met Mr. Corrigan himself. It is also curious that the statement of Mr. Mains, dating from just two days after the killings, refers to the alleged conversation but fails to mention Owen Corrigan by

name. The explanation tendered for this omission was that he was advised by a C.I.D. officer - whose identity he could not recall - not to name him. That officer, just like Mr. Breen himself, is now deceased so there are crucial parts of his evidence that cannot be either corroborated or refuted by independent testimony. His statement also alleged Chief Superintendent Breen had informed him on the morning of the murders that he had to go to Dundalk that afternoon with Superintendent Buchanan. However, in cross examination, he accepted this was not the case (Page 157). He also averred in his evidence to making a phone call to Superintendent Buchanan that morning to ask him to travel to Dundalk with Chief Superintendent Breen. This fact was never mentioned in his statement of the 22 March 1989. Under cross examination, he further asserted that Chief Superintendent Breen had instructed him to phone Dundalk Garda Station to make the appointment. This was not contained in any of his statements and was an entirely new detail. The fact that it was only revealed during the course of a Tribunal hearing in excess of 22 years after the event is astonishing.

In the immediate aftermath of the killings, Mr. Mains again found praise for the professionalism of An Garda Síochána. They were described as being “excellent in terms of what they did that night in terms of...being proactive” (Page 139). Like so many other witnesses, he was of the opinion that the IRA were “quite meticulous” in terms of their ability to carry out any operation. He never knew them to do anything quickly or on an “ad hoc” basis. Interestingly, he did not think that they would be able to “scramble” together an operation like that given the time frames involved (Page 66).

Mr. Mains attended a meeting on the morning of March 21 in Newry to brief the Chief Constable, Sir John Hermon, about what he alleged Chief Superintendent Breen conveyed to him regarding Corrigan. The response of the Chief Constable was highly noteworthy. He was “very dismissive”, told him it was “rubbish or he disagreed” and he quickly said that Corrigan had been investigated and cleared. This revelation is significant. It has effectively been suggested on a number of occasions during the Tribunal's hearings that a joint statement ruling out collusion, issued by the Garda Commissioner of the day and Sir Jack Hermon shortly after the murders, was more of a

political exercise than a reflection of an exacting investigation. The implication has been that the content of the statement cannot be relied upon because there simply wasn't enough time between the murders being perpetrated on the one hand and the declaration ruling out collusion on the other, for it to be safely relied upon. However, it is surely significant that the Chief Constable made his comments to Alan Mains at the meeting in Newry on the 21 March, 1989 in a private setting where there can be no question of political motivation influencing the narrative. The evidence is that the RUC had run the rule over Mr. Corrigan- an individual the Tribunal has had under its own intense microscope since its inception- and cleared him.

**David McConville** (initially Day 13, 28 June 2011 although he returned on subsequent dates in a similar capacity) is a retired PSNI Superintendent and the purpose of his testimony was primarily to put certain documents held by the PSNI into evidence. Included in the documentation was a statement detailing the theft of the van which was used by the PIRA shooters to murder the officers. It was stolen on the 18 March 1989, two days prior to the murders themselves. Again, this is suggestive of an operation that had its genesis prior to the officers ever arriving at Dundalk Station on the fateful day. Mr. McConville was also in a position to confirm that on virtually every occasion Superintendent Buchanan travelled to Dundalk, he did so in his own vehicle- a red Vauxhall Cavalier (registration no. KIB1204). He had owned the vehicle since December 1986 and thus it had been in his possession for well over two years prior to him being murdered. During this time, he did not avail of a service open to him to change his licence plates. It is submitted that these factors could only have enhanced the ease with which the IRA could collect intelligence and observe him coming and going without the need for assistance from elsewhere.

**Witness 27** (Day 30, 6 September, 2011) gave evidence very much in favour of Detective Sergeant Corrigan, to the extent that he detailed an incident where Mr. Corrigan ultimately saved his life on the 27 April, 1981. This is particularly significant given that Witness 27 worked for Special Branch in Belfast HQ at the time and indeed would climb through the ranks over the following years to the point where by March, 1989, he was

Chief Superintendent and Deputy to the Assistant Chief Constable of the border zone. In that capacity, his function was to liaise with An Garda Síochána and he wasn't remotely surprised to hear that Superintendent Buchanan crossed the border on a weekly basis. He revealed that an anonymous source indicated to him that there may have been up to 32 people involved in the operation. This again suggests a high level of organisation. In fact, there would be evidence given later in the Tribunal's hearings from the British military, in the form of Brigadier Ian Liles that the number was significantly more than this- in excess of 70. Witness 27 also made reference to being told by Frank Murray of noticeable amounts of air trafficking and radio signals which were known to belong to terrorists in the early afternoon of the day the officers lost their lives. That aspect was also revisited by Brigadier Liles and the significance of that evidence will be discussed elsewhere.

It is clear that witness 27 held Mr. Corrigan in a very high regard despite acknowledging that there were plenty of rumours about him along the border area. He claimed this was not unusual and went as far as to say he trusted Owen Corrigan with his life. It is also perhaps noteworthy that Superintendent Buchanan never raised any concerns with him along the lines that Tom Curran alleges were shared with him. In addition, he indicated his superiors were aware that he had been meeting Mr. Corrigan and his last meeting had been on the 28 February, 1989. This is less than one month prior to the murders. His statement confirmed the “total confidence in the Garda Officers we tended to meet.”

**Henry Gerard McCann** (formerly Witness 8, Day 79, 29 February, 2012) was another officer of vast experience, having served in Bessbrook, Newry and Armagh, and spending most of his career in C.I.D. Mr. McCann effectively acted as a liaison between the RUC and Garda investigations into the Narrow Water atrocity. He was also in a position to observe PIRA's growing sophistication during the course of the 1980's. When asked about the murders of Chief Superintendent Breen and Superintendent Buchanan, he could not offer any reason why PIRA would want to kill those specific officers over others but did note that they were adept at murdering police officers, having done so all too frequently before. Concerning cooperation and relations between the RUC and AGS, his contributions were notably positive, describing AGS members as being “excellent

colleagues” and “people you could relate to” (Page 14, lines 11-12), the latter description arising from an acknowledgement that AGS officers experienced somewhat similar difficulties in north Louth which resulted in there being a great deal of cooperation “at all levels on the ground at that stage” (Page 14, line 17). While he wasn’t in a position to speak as to relations between headquarters or at regional level, he was of the view that relationships between Newry and Dundalk were excellent, and he had nothing but admiration for the officers he knew from Dundalk over the years.

One such officer was Owen Corrigan whom he regarded as;

- “A fine police officer and a real gentleman who was as straight as a die.” (Page 10, Q54)
- Agreed was at the “forefront” of the fight against PIRA at a very difficult time during the Troubles “at no small risk to himself.” (Page 25, Q128)
- Someone he trusted with his life (Page 26, Q132).

He had never hear of any concerns regarding Mr. Corrigan being untrustworthy and observed that there were numerous opportunities for Mr. Corrigan to set him up had he wished to do so but this never arose. He was further aware that Mr. Corrigan had an excellent relationship “with a number of senior RUC officers, including the Chief Constable.” (Page 36, Q189) He also averred to the head of Special Branch, the late Brian Fitzsimons, enjoying good relations with Mr. Corrigan. On a professional level this extended to Owen Corrigan being permitted to organise escorts at various stages for high ranking officers such as Mr. Fitzsimons and the Chief Constable himself. By inference, these surely would have presented an ideal opportunity to facilitate PIRA operations had Mr. Corrigan been so minded. Certainly, based on this evidence, it is open to the Chairman to infer that distrust was not an issue at the highest level when it came to Mr. Corrigan.

One final piece of significant opinion evidence provided by Mr. McCann relates to the common sense proposition that the RUC would not knowingly put its members at risk if they were aware Owen Corrigan, or any other member of AGS, was acting as a PIRA mole in Dundalk. He found it simply “incredulous” and “inconceivable” that a superior would have information about a matter which would have affected his own (Mr. McCann’s) personal safety and that of his colleagues without bringing it to his attention (Page 23/24, Q122).

Mr. McCann (formerly Witness 8) and 27 weren't the only Northern witness to speak favourably of Mr. Corrigan and their contributions will presumably be gone into detail in the submissions as filed by Mr. Corrigan's legal representatives and they are something which the Chairman will doubtless consider carefully in his overall assessment of Owen Corrigan’s involvement in this enterprise or otherwise.

**Raymond White** (Day 71, 7 February, 2012) was a former RUC Assistant Chief Constable, joining the Force as far back as 1965 and having gained substantial experience of intelligence gathering from serving in Special Branch under the command of the late Brian Fitzsimons. He was able to give a useful broad historical overview of matters going back some decades. He averred to training camps which PIRA would employ. Any information flow during the 1970’s with AGS was reasonably controlled but he did not mean this in any derogatory sense as against the personnel of Dundalk Garda Station and agreed that overall relations at that point were somewhat affected by relations at a more macro level as between the two governments. He estimated at that time Dundalk may have had up to 200 people with subversive links and this was during a period where Dundalk Garda Station lacked the manpower it would subsequently be provided with. It was only with the 1985 Anglo Irish Agreement that matters became more structured and there would be a requirement for formal meetings between the Chief Constable and Commissioner from that point. He acknowledged that AGS around 1985 had made tremendous strides to improve their intelligence picture. Prior to this, he was of the view that the political language of the time inhibited the Gardaí to a degree as the impression

up to then politically was that the Troubles were purely a Northern problem with little or no focus on any potential roots in the south.

Mr. White had no recall of the 1985 intelligence purporting to link Owen Corrigan to PIRA but did state he would have expected such information to have crossed his desk although the fact that he couldn't remember it at this remove didn't necessarily mean he hadn't come into contact with it, his focus having been primarily on Belfast related intelligence. He surmised from the lack of any follow up records connecting to the 1985 SB50 that it may have been a one off from the source in question. In terms of Owen Corrigan, Mr. McCann first heard of him in the late 1970's. His name was mentioned in a "precautionary" way (Page 83, Q283) but such reference was derived from "simple gossip."

Being involved with the northern intelligence network, Mr. McCann was familiar with Kevin Fulton and averred to the fact that he was regarded as an "intelligent nuisance" (Q312) notwithstanding the fact that he was used by the Northern authorities and occasionally results were yielded. The subversive intelligence emanating from him was described as "mixed" (Q317) and he had no recollection of Fulton working as a PIRA gofer as he has alleged in his evidence.

In terms of his intelligence gathering over the years, Mr. White (based in Belfast) received none in connection with the murders the Tribunal is investigating, including any report by Kevin Fulton that a Garda contact had passed on information. He had no evidence which would suggest Garda collusion occurred relating to any of the murders the Chairman's Inquiry has touched upon.

**Witness 47**, Mr. Brian Lally (Day 35, 16 September, 2011), was Chief Superintendent Breen's predecessor as Divisional Commander of Division H. The late Chief Superintendent Breen in fact served as his deputy from 1986-88 and yet despite this close working contact, Chief Superintendent Breen never expressed any concern whatsoever to him regarding any Garda officer. He also said that he had been advised by a Garda

(whose name he could not recall) to tell Superintendent Buchanan to reduce the frequency of his visits. Mr. Lally had never heard of any adverse rumours concerning Gardaí in Dundalk and was always met with courtesy and excellent cooperation.

**Witness 33** (Day 35, 16 September, 2011) was a Border Superintendent himself. He too averred to discussions in the wake of the murders that a significant number of people were involved in the operation (between 20 and 30). Interestingly, he spoke to Alan Mains on the 20 March, 1989 after the murders had occurred and indicated Mr. Mains had never relayed any concern regarding Dundalk that had allegedly been expressed to him by Chief Superintendent Breen earlier that very day. Witness 33 had been warned by Inspector Dan Prenty to be careful who he talked to in Dundalk Garda Station. It became a well documented feature of Mr. Prenty's evidence to the Tribunal on repeated occasions that he enjoyed very poor relations with Mr. Corrigan in particular. Witness 27 had also told Witness 33 to be careful in relation to Owen Corrigan. This initially seems somewhat difficult to reconcile with the thrust of Witness 27's own evidence which was highly supportive of Mr. Corrigan. However, witness 27 had in fact mentioned in his statement to the Tribunal that he treated Mr. Corrigan with "circumspection" but went on to put this in context when giving evidence that in circumstances where there had been 6 previous attempts on his life, he simply adopted a policy of treating everyone with circumspection.

**Witness 60** (Day 40, 5 October, 2011) worked in C.I.D. and was based in Gough Barracks as a Detective Inspector. He was unaware of any 1985 intelligence suggesting the existence of a mole in Dundalk and nor was he told by colleagues, whether they be northern or southern, of a mole in Dundalk Garda Station. Further, he was never advised to be in any way careful with regard to any member of AGS and in fact developed a close and lasting relationship with many who worked in Dundalk. He again distinguished between gossip and material with substance to it. Witness 61 (similarly heard on Day 40) also worked in Gough Barracks and was a chief superintendent in Special Branch. As is the case with Witness 60, he too was unaware of the aforementioned 1985 intelligence. Witness 61 confirmed that Owen Corrigan had a very close relationship with the late ACC Brian Fitzsimons and was of the opinion that Mr. Corrigan "tormented" PIRA

(Q161). He further agreed with the suggestion at that time that there was no substance ever found to bear out the theory there was intelligence coming from Dundalk Garda Station to facilitate the operation.

**Witness 62** (Day 51, 8 November 2011) had during his career amassed 20 years in Special Branch followed by a spell in CID Intelligence. He felt that the choice of using the Edenappa road possibly reflected a degree of complacency on the part of the deceased officers. However, he did point out that the make and colour of car used by Superintendent Buchanan was at the time very popular and innocuous. It should again be pointed out that despite this evidence, the license plate had remained the same for a considerable period of time and it seems reasonable to suggest that the presence of a vehicle bearing a (presumably known) northern registration number in open view and broad daylight at an exposed Garda Station in the Republic - even if the make and colour of the car were common- are factors that would regrettably play into the hands of an organised terrorist group.

In keeping with the evidence of many other witnesses, 62 was of the view that the operation conducted on the 20 March 1989 had a considerable degree of pre-planning attached to it. This group of elite PIRA members would not have participated in the operation unless the intelligence upon which they were acting was reliable. There was evidence of care and preparation being invested in the operation such as a detail like the killings occurring at a location on the Edenappa Road which was effectively a blind spot to the nearby observation towers then employed by the British military.

While subsequent to the murders witness 62 had heard of a connection between Mr. Corrigan and the IRA, he freely acknowledged he had no knowledge of any factual basis to these rumours. In cross examination by Mr. O'Callaghan on behalf of Mr. Corrigan, he accepted that he generally had formed a negative assessment of Mr. Corrigan but again accepted this was essentially derived from gossip and rumours which he had heard during his career in the RUC. He also heard on one occasion that there may have been another officer involved in passing on information although this was not case specific and once

more, no evidential basis could be advanced. This type of evidence was reflected in a number of other former RUC officers who readily accepted that any information they were providing to the Tribunal was very much in the category of rumour and/or hearsay evidence and was not specific to the central issue of collusion in the murders of Chief Superintendent Breen and Superintendent Buchanan.

**Witness 64** (Day 53, 11 November, 2011) served for 29 years in the RUC, 23 of which were in Newry Special Branch. His principal contact in Dundalk was Inspector Dan Prenty. He acknowledged that there were a number of theories at the time regarding the murders and one of those was some knowledge had been passed on by someone in Dundalk Garda Station but he couldn't put it any further than this. Regarding Owen Corrigan specifically, while he had heard sometime between 1989 and 1994 that Alan Mains had named him as someone Chief Superintendent Breen did not trust, he was not aware of any suggestion that Owen Corrigan was an IRA mole. Nor was he aware of Kevin Fulton ever passing on intelligence concerning Owen Corrigan despite his team being responsible for Fulton.

**Witness 65** (also Day 53), was a Detective Inspector based in Newry in the late 1980's. He had struck up a professional relationship with Dan Prenty who had warned him in Dundalk Garda Station not to talk in front of Corrigan. When he first served in Bessbrook, A senior officer had informed him of a general view that Corrigan had improper connections with PIRA and he should be wary. Notwithstanding this general information, Witness 65 had no evidence that Mr. Corrigan or any other member of AGS was a mole or any involvement in the murders.

**David Cushley** (Day 7, 10 June, 2011) held a total of 6 positions, three at the rank of Assistant Chief Constable and three at the rank of Senior Assistant Chief Constable, including Crime and Special Branch. As such he was the immediate superior of the head of Special Branch. Of significance, despite this lofty position within the RUC/PSNI hierarchy, he was not aware of any specific intelligence in relation to a mole or any

specific security concerns about Dundalk Garda Station. Had they been raised at the time of the murders, such concerns would have been etched on his memory.

Finally, it is worth considering a small but relevant portion of the highest ranking currently serving officer of the PSNI to give evidence; **Assistant Chief Constable Drew Harris**. His evidence primarily dealt with the introduction into evidence of recent and highly controversial items of purported intelligence which is addressed under a separate heading in these submissions. However, when cross examined on behalf of the Commissioner, he was asked generally about PIRA's tactical acumen and methodology in the past and agreed it wasn't impossible that PIRA members may have attempted to dissuade anyone from going to Garda stations by letting it be known that they had agents in those stations who would be able to report on any informing. He further agreed they could and did engage in misinformation and disinformation, citing what they claimed in the aftermath of the murders of Chief Superintendent Breen and Superintendent Buchanan as proof of this (Day 124, Q341).

Assistant Chief Constable Harris further offered opinion evidence on one aspect of the operation that is of particular interest. He stated;

“Well, look at the events of the day in totality. The fact that two officers were travelling. The fact then that the preparation that the Provisional IRA put in place then to actually kidnap two officers, and the number of, the number of terrorists then that would be required to engage in that scale of operation. And also then, I think, other information that had not been before the Inquiry in respect of suspected radio transmissions earlier in the day. And the fact that Mr. Buchanan, invariably, was travelling on his own and it was, it was not normal for Mr. Breen to travel. All those things indicate that it would have been exceptionally difficult to mount this scale of operation within the time scale of a meeting being conducted and then concluded and the officers immediately leaving Dundalk.” (Day 124, Page 68/69, Q233)

Arising from the foregoing, Assistant Chief Constable Harris was then asked to confirm it was his position that in light of the extensive preparation cited above, a tip off based on the officers arrival at Dundalk Garda Station or being seen at said station, would not have allowed sufficient time for PIRA to mount the operation. His response was as follows;

*“I think it would have been difficult for the logistics of that scale of an operation to have been gathered together within the timescale of a meeting being conducted and then concluded.”* (Day 124, Page 69, Q 234)

In his considered view it was “highly unlikely” (Day 124, Page 70, line 1) that a tip off around that point in time at Dundalk Garda Station was the trigger for the operation. It is respectfully submitted this opinion evidence, coming as it does from the highest ranking northern officer to give evidence, is highly pertinent and lends great weight to the evidentially already well formed picture that PIRA had prepared the operation with exacting detail, leaning heavily on its own personnel and resources to a point where it could reasonably be concluded it was not contingent upon any Garda or other would be mole at the station to act as its trigger. Indeed, it was not on balance practically viable for any such hypothetical mole to act in that capacity.

## **Conclusions**

In broad terms, the bulk of the opinion evidence offered by former RUC and serving PSNI officers concerning the murders suggests the following;

1. The PIRA were a sophisticated intelligence gathering organisation, who were more than capable of monitoring the movements of RUC officers and mounting extensively preplanned operations around such intelligence.
2. Patterns ultimately facilitate the intelligence gathering process. In this regard, using the same vehicle with the same registration plate over a protracted period and parking in an exposed area at the front of Dundalk Garda Station

enhanced the PIRA's ability to conceive, plan and execute the operation without the need for any external assistance, be it from a Garda mole or any other would be source.

3. While multiple witnesses gave evidence as to gossip, rumours and specific concerns over Dundalk Garda Station- going so far as to name Owen Corrigan for example on some occasions- the vast majority freely and commendably distinguished between this and concrete evidence, making clear that they were not in a position to offer the latter in terms of any member of An Garda Síochána colluding with the PIRA in the murders of the two officers.
4. The current Assistant Chief Constable to the PSNI, Drew Harris is himself of the view that due to there not being sufficient time to mount the operation thereafter it is “highly unlikely” the trigger for the operation came in the form of a tip off reporting the presence of the officers at Dundalk Garda Station.

## **12. Issues Arising from the Evidence of Tom Curran**

This section of these submissions shall focus on the evidence of Tom Curran and in particular, relevant intelligence he purports to have both received and conveyed to his superiors in Dublin during the late 1980's.

As the evidence of Tom Curran was referred to at regular intervals during the course of the Tribunal's hearings, it should not be necessary at this juncture to rehearse it in its entirety. However, in broad summary;

- Sometime during the first half of 1987, Superintendent Buchanan visited Superintendent Curran in Monaghan Garda Station without any prior notification. This of itself was not unusual as Superintendent Buchanan used to call regularly to the station in this fashion and was described by Mr. Curran

in evidence as “...the kind of man that wasn't anyway concerned about his security or didn't appear to be. Anytime I mentioned security to him, he didn't seem to be worried about it.” (Day 14, Page 6)

- Mr. Curran asserts that Superintendent Buchanan conveyed to him a concern the RUC had relayed to him that “*Detective Sergeant Owen Corrigan in Dundalk was associating, unnecessarily associating with the IRA.*” (Day 14 Page 8)
- Very soon, Superintendent Curran formed the impression that Superintendent Buchanan was simply the messenger. “*..I knew that he had a specific direction to do it because he told me that.*” (Day 14 Page 9)
- As a result of the conversation, Superintendent Curran went to Dublin and visited Eugene Crowley, then Assistant Commissioner and head of Crime and Security. He neither spoke to nor passed anyone on the way into his office (Day 14, Page 10, question 51). Upon entering, he conveyed what Superintendent Buchanan had told him while Assistant Commissioner Crowley continued to read a file. Upon finishing, the Assistant Commissioner is alleged to have said “How are things in Monaghan?” and a conversation ensued relating to activities in Monaghan without returning to the information Superintendent Curran had imparted.
- Superintendent Curran gave evidence that approximately nine months prior to the murders of Chief Superintendent Breen and Superintendent Buchanan on the 20 March 1989, he received intelligence from an informant that “*there's a fella crossing the border there to see you, and he's going to be shot; he's on the list to be shot*” (Day 14, Page 17). Mr. Curran believed the aforesaid “fella” to be a reference to Superintendent Buchanan and claimed to have written directly to Crime and Security conveying that information.

- Also in 1987, Superintendent Curran made certain recommendations in writing regarding the possibility of increased security measures pertaining to cross border meetings.

### **The Receipt of Intelligence from Superintendent Buchanan and the Subsequent Visit to Assistant Commissioner Crowley**

The evidence of Tom Curran in this regard is undoubtedly significant to the Tribunal's terms of reference and as such, warrants close scrutiny. While Mr. Curran's assertions have not been directly contradicted by any oral evidence and his good character and bona fides have not generally been in dispute, it is nonetheless submitted that the accuracy of his evidence deserves to be probed and subjected to close examination given its potential importance and particularly so in the notable absence of any witnesses to expressly confirm its substance.

On Mr. Curran's own evidence there were only two people present in Monaghan Garda Station in 1987 that were privy to the conversation he recalled; himself and Superintendent Buchanan. Clearly, resulting from the atrocity that befell him in March 1989, the late Superintendent Buchanan cannot give evidence to this Tribunal concerning the accuracy or otherwise of Mr. Curran's recollection. There has been no Northern/RUC/PSNI witness produced to confirm the late Superintendent's visit or to attest as to the intent of any such meeting i.e. to convey a message from his Northern superiors along the lines suggested. Nor has there been any Northern document produced that records the alleged meeting and its contents

Similarly on the Southern side of the border, there is no witness who was present and can testify as to the content of the alleged meeting. Superintendent Curran did not take any note of the meeting despite there being no suggestion in the evidence that Superintendent Buchanan requested that no record be made. To the best recollection of Mr. Curran, the meeting took place sometime during the first half of 1987 and he offers that timeframe by way of reference to a 1987 Toyota Corolla he had recently purchased. However, no

supporting documentation pertaining to that vehicle has been produced in evidence which would tend to support the proposition that the alleged meeting did in fact take place during that year as asserted by Mr. Curran. If any such meeting did take place in 1987, Mr. Curran is attempting to recall the time and provide detail relating to the occasion while giving evidence in 2011, almost a quarter of a century removed from the event itself and in the complete absence of any supporting documentation - whether contemporaneous or otherwise - that may aid his recollection and help put his evidence on a firmer footing.

This absence of documentation therefore extends in summary form to;

1. Any Garda record of the meeting in Monaghan, whether generated by Superintendent Curran or generated/received by any other member of An Garda Síochána.
2. Any equivalent record from the Northern authorities.
3. Any Garda record relating to the alleged meeting in Dublin between the late Mr. Crowley and Superintendent Curran, whether generated by either party allegedly present at the meeting or generated/received by any other member of An Garda Síochána.

From a wider Garda perspective, the above should perhaps be viewed against the backdrop of the evidence of Peter Maguire, a former member with vast experience, having served in the Special Detective Unit for approximately 25 years and ascending through the ranks before retiring at the rank of Chief Superintendent. When Mr. Curran's evidence was put to him, Mr. Maguire made the following observations which it is submitted are relevant and worthy of consideration;

## **Evidence of Retired Chief Superintendent Peter Maguire**

*“I presume Mr. Curran has a record himself of a matter of such critical importance that was conveyed to him by a senior officer from a foreign police force. Mr. Curran should have a record of it, for a start. The second person who should have a record of it is Mr. Curran's Chief Superintendent whom he was working directly to. Any report he made, there should be a copy of his report with his Chief Superintendent to whom he was reporting directly. The second point is that if Mr. Curran made a report to the Garda Commissioner, that report should be available.”* (Day 34 Page 90-91)

“I am not dismissive of Mr. Curran, by any means. I believe Mr. Curran is an honest, decent man who is a good police officer, who certainly must have been very efficient to rise to the rank he did. But I will say this; that I have dealt with members of An Garda Síochána at all levels, and the last time –the last management role I had in the Garda Síochána had over 500 people working for me, and all communications to me and to my office and to those who were working under me as line managers, all communications of critical material was in writing. It has to be, Chairman, that's the way we work, because if we don't keep records of these changes, we know that there is nothing for posterity to look at, and any of us could die tomorrow and bring this information to the grave with us. **Records are absolutely essential and they are the life blood of a police force and they are the way we do things** (emphasis added). Chairman, it's important, I think, for me to emphasise that point, Chairman. **We do things in writing in the Garda Síochána**” (emphasis added) (Day 34 Page 91-92)

*“And we do things in record, and particularly superintendents and chief superintendents, we are sticklers for records, and I have found that peculiar to the Force because in other places and in other experiences I have, I didn't find that there was such a focus on record-keeping”* (Day 34 Page 92)

*“I find that astonishing”* (Day 34 Page 91, in response to Q415 after being told of the oral conveyance of the information and the failure to reduce it to writing)

*“...I am not , under any circumstances, saying that Mr. Curran misled this Tribunal- far be it for me to say that; I still believe he is an honest man- but it is quite unusual for that type of information to pass in that haphazard, unstructured and informal way. I mean if we are talking about a member of An Garda Síochana giving information to the IRA, it's a very serious matter indeed and would be looked at in a very serious way by an officer in the Garda Síochana” (Day 34 Page 93)*

These views were echoed by a number of other Garda witnesses who either served or continue to serve at the highest levels of An Garda Síochána and whose views were informed by a wealth of professional experience accumulated over the years.

It is further respectfully submitted that regard ought to be had to the highly circuitous route through which the information was allegedly conveyed upon its purported journey from Belfast to Dublin via Monaghan. This is something that was put to a number of high ranking members of An Garda Síochána and their comments revealed surprise bordering upon bewilderment at the notion of such a method of conveying intelligence. To take two high profile examples;

#### **1. Retired Commissioner Noel Conroy**

*“I am utterly shocked to think that, through the chain of command, if somebody is saying that Special Branch in the RUC or PSNI would go to an officer saying what is alleged. Very surprised. That would surely be a matter for command meetings and that is where things, if there is anything like that discussed, anything to be discussed of that nature, it definitely would be discussed there and would not, in my view, ever be discussed at a local level” (Day 34 Page 37, 38)*

*“I cannot understand how a thing like that could happen” (Day 34 Page 49)*

## 2. The Commissioner Martin Callinan

*“Indeed, I was very surprised in the first instance to hear that the particular aspect wasn't raised through the proper channels, in other words that it would have gone to the RUC HQ and be conveyed at the very highest level. A matter of this importance, that it wasn't raised at the very highest level, at very senior level across to Garda Headquarters directly rather than relying on a parallel line of communication. That surprised me, I must say.”* (Day 36 Page 50, 51)

It also seems somewhat curious that Superintendent Curran, on his own evidence given decades after the event, did not seek to make at least one further attempt to raise the subject during the course of the alleged meeting itself after it had apparently been ignored. An impression was formed in a very short period of time by Superintendent Curran that *“he (the late Mr. Crowley) didn't want to hear it, so I left.”* (Day 14, Page 11). That impression was based on Assistant Commissioner Crowley continuing to read a file while the information was allegedly being imparted to him. It appears that Assistant Commissioner Crowley was already in the process of reading the aforesaid (unidentified) file when Superintendent Curran first entered the room. While Superintendent Curran was of the view that he was physically too close to the Assistant Commissioner for him not to have heard, there does not appear to have been any consideration given to the possibility that the Assistant Commissioner was so engrossed in the file he was already reading upon Superintendent Curran's arrival as to therefore not be focusing on what was being said to him? Given the seriousness of the information he was apparently conveying and the fact he had gone to the trouble of physically visiting Garda Headquarters, it does seem somewhat curious that either no further effort was made at the time to broach the subject or any subsequent follow up made in order to ensure the information had in fact been received.

While the Tribunal has no living witness to whom it can turn in order to seek to corroborate the accuracy of Mr. Curran's evidence, it does have the benefit of numerous Garda witnesses - some retired and some still serving - that worked with and under the

late Mr. Crowley for lengthy periods of time. The list is a hugely impressive one, being drawn from the upper echelons of the service and consisting of an array of Chief Superintendents, Assistant Commissioners, heads of Crime & Security and Garda Commissioners both past and present. The substance of what these witnesses had to say in respect of Mr. Crowley is equally impressive and a picture emerges of a hugely accomplished man, who was completely dedicated to his job and a task master who demanded the very highest standards from those who worked under him. Various witnesses were asked about Mr. Crowley in the context of being told of Mr. Curran's evidence;

The Commissioner Martin Callinan (Day 36)

*“Well, Mr. Crowley was a very thorough man in all aspects of his work, a man of the greatest integrity, rose to the highest rank in the Garda Siochana, Chairman. And certainly I was very surprised to read about that aspect of this matter that you are investigating. It certainly wouldn't be my experience that Mr. Crowley would ignore something like that.”*

Retired Commissioner Noel Conroy (Day 34 Page 38)

*“He was one of those officers of the highest integrity. I am shocked to think that he would be - he would have did what is alleged, because that is not the Mr. Crowley that I knew”*  
*“..he was very particular on every task that he would get or give to you and he would remind you on a regular basis to bring it to finality.”*

*“Well, as I said in my evidence already, I am shocked to think that the reception that Tom Curran got from Eugene, the retired or deceased member who ended up as Commissioner of the Garda Siochana, knowing the individual and having worked with him, and I am sure you probably meet other people that would have worked to Commissioner Crowley, and I will be very surprised if they do not echo what I am saying here today about the man.”*

Retired Commissioner Pat Byrne, (Day 80 Page 80)

*“...knowing both persons I find it an extraordinary statement to make.../ I am not suggesting anything but I find it an extraordinary sequence of events.”*

Retired Chief Superintendent Peter Maguire (Day 34 Page 98)

*“Mr. Crowley was somebody I knew very well and Mr. Crowley was a most dedicated, honest and thorough Garda Officer...And certainly would not have left matters resting for two years”*

*“The most efficient note-taker I ever knew of...”*

Retired Assistant Commissioner James McHugh (Day 29 Page 96)

*“Chairman, I could not for the life of me accept that Mr. Crowley would behave in such a manner. As I say, he was an absolute professional; a wonderful man. As I say, I’m very proud to say I served under him and reported to him. I would never accept that information such as counsel is suggesting, that a member of the Force was involved in subversive activity and he would turn a blind eye to it. I wouldn’t and couldn’t and I don’t believe it happened. I would reject it completely out of hand.”*

It should be stressed that any commentary within these submissions touching upon this topic is not intended in anyway to be disparaging towards Mr. Curran. Indeed, several of the evidential passages previously cited speak directly to his qualities as a police officer and to his integrity. Put simply, there is no suggestion - either in the evidence or in these submissions - that Mr. Curran has not given his evidence in good faith. However, it must be submitted that the position of the late Mr. Crowley is put at a fundamental disadvantage owing to his inability to provide oral evidence on this issue and by extension, the Tribunal itself is equally put to considerable disadvantage in seeking to

establish the truth. This, it should be emphasised, is through the fault of no one but is simply a regrettable fact of life and reflects the inevitability that any Tribunal inquiring into events that allegedly took place as far back as 1987 (in the case of this particular issue) is going from time to time be faced with essential witnesses who cannot provide evidence owing to their passing. In some cases, these challenges can be overcome through reliance on evidence from a variety of other sources and the existence of supporting documentation which would allow an Inquiry to navigate around the problem posed and be in a position to safely make a determination, one way or the other, even in their absence. However, the present circumstances - through the lack of other witnesses to the alleged event and any supporting documentation recording its occurrence - place the Tribunal in an invidious position in terms of resolving this issue.

### **The Tribunal's 2008 Interview with the Late Eugene Crowley**

During its private investigative phase, the Tribunal did in fact meet with the late Mr. Crowley and interview was conducted on the 12 February, 2008 (which was subsequently read into the record on Day 85). Critically, this was prior to the Tribunal being aware of the evidence that Tom Curran would subsequently provide. Mr. Crowley passed away on the 26 July 2009, without ever having an opportunity to address the intended evidence of Mr. Curran.

The transcript of the interview reveals a variety of topics related to the murders were covered with a focus being placed on the immediate aftermath and the Garda investigation which followed. The question and answer session did turn to the subject of Owen Corrigan;

- The late Mr. Crowley was asked, initially in the context of Alan Mains alleging John Hermon had declared that Owen Corrigan had been investigated and cleared, whether he was aware of any investigation into any Garda member in Dundalk around that time? He was not aware of any investigation.

- He was then asked (Q82 of the original interview transcript) was he “*ever asked or were aware of any inquiries into Owen Corrigan prior to that?*” to which his response was “*No, I didn’t know anything about Corrigan until I think I might have been in the hospital at the time and somebody told me that this was Corrigan.*”
- This segment of the interview reveals Mr. Crowley’s knowledge (certainly at the time of interview) was quite limited with him, for example, having no memory of disciplinary proceedings being instituted against Owen Corrigan and on a number of occasions asking the Tribunal’s legal team for further details in respect of Mr. Corrigan that he clearly wasn’t aware of.
- He was emphatic the intelligence contained in the RUC SB50 dating from 1985 concerning Owen Corrigan had never been conveyed to him.
- Although he was never questioned directly in relation to the (then unknown) evidence of Tom Curran, there is no suggestion from the interview at any stage that a meeting along the lines suggested by Mr. Curran ever occurred.

The interview also dealt generally with what would happen in the event of information being furnished by another security agency that a member of An Garda Síochána was involved in illegal activity. Mr. Crowley’s clear response was that any such member “would have been investigated and brought in and interrogated by our own force.” (Response to Q128) There would be an intelligence exchange, Mr. Crowley would then carry out his own intelligence and if evidence was gleaned, the suspect would be brought in for questioning (response to Q168).

While on one reading the interview may be regarded as hearsay evidence as it represents an unsworn, out of court/tribunal account, nonetheless, it is respectfully submitted that it warrants greater weight being attached to it than certain other hearsay material which has been introduced or referred to during the Tribunal’s currency. The interview covered

significant terrain and involved no less than the entire Tribunal legal team of the day (two senior counsel, one junior counsel and one solicitor) being present, with all three counsel contributing to what amounted to a lengthy cross- examination of the late Mr. Crowley. It was recorded courtesy of a professional stenography company over the course of a substantial forty two (42) pages and remains a significant reference point, capable of supporting Mr. Crowley's position.

### **Lost Evidence through the Death of Eugene Crowley**

While findings should not be derived from speculation, it is perhaps useful to briefly consider what Mr. Crowley could have said in oral evidence, had he lived long enough to have the issue specifically put to him. It would seem as a matter of logic that in broad terms, the late Mr. Crowley may either have;

1. Refuted the evidence of Mr. Curran entirely.
2. Accepted his evidence in its totality.
3. Accepted his evidence to a degree but offered something new that could justify what allegedly occurred.

There is clearly no way of knowing what evidence would have been given but in light of the contents of the interview of Mr. Crowley in 2008, it is respectfully submitted that the first potential outcome cited above, would have been the most likely on the balance of probability. This is particularly so when it is borne in mind that Mr. Crowley was asked during the course of the interview;

*“Now, are you aware of any investigation into any member of the Gardai in Dundalk around this time, and in particular Owen Corrigan?”* (Page 21 of transcript, response to Q 79)

*“No, I am not aware of any –“ (Page 21 of transcript, response to Q79)*

*“Were you ever asked or are you aware of any inquiries into Owen Corrigan prior to that?” (Page 21 of transcript, Q82)*

*“No, I didn’t know anything about Corrigan until I think I might have been in the hospital at the time and somebody told me that this was Corrigan” (Page 21 of transcript, response to Q82)*

While the specific meeting alleged by Tom Curran could never be put to Mr. Crowley, the above cited questioning was, as a matter of probability, capable of triggering the relevant memory had such a meeting in fact taken place. It plainly did not do so.

The potential in relation to the third category cited above is also worth briefly considering if only once more to highlight the loss of potentially significant evidence his death has resulted in. Mr. Crowley could, for example, have conceivably agreed the information was imparted but offered evidence that would lend an entirely different complexion to Mr. Curran's interpretation of events. It is not beyond the bounds of possibility that evidence may have been forthcoming that would cast Mr. Curran's evidence in an entirely different light and offer a context that removed the somewhat sinister interpretation that Mr. Curran (in good faith) adopted from the encounter as he recalled it. If the information was received, it is simply unknown if anything was done with it.

While the practice of internal communications within An Garda Síochána was to document such communication by reducing it to writing and generating a record, as can be seen from the late Mr. Crowley's interview with the Tribunal, communication between North and South at the highest policing levels and relating to sensitive matters was regularly an oral exercise. Could it be possible that the information was received and that discussions of an oral nature took place with the Northern authorities on foot of same? Bear in mind the evidence of Mr. Alan Mains that he was expressly told by the Chief Constable, Sir John Hermon in the aftermath of the murders that Mr. Corrigan had been

investigated and cleared... Could it be possible that the information had been acted upon when received in 1987, culminating in the clearing of Mr. Corrigan as averred to by the late Sir John Hermon? Alternatively, could it have been ignored as described by Mr. Curran because the late Mr. Crowley already knew in 1987 what the Chief Constable revealed to Mr. Mains in 1989? It is an intriguing possibility and not necessarily precluded by Mr. Crowley's interview to the Tribunal in 2008 where he appeared to have no knowledge of any information alleging collusion in respect of Owen Corrigan. Had Tom Curran's intended evidence been put to Mr. Crowley in specific terms, it is entirely possible that it may have triggered memories and provided the Tribunal with valuable evidence. Unfortunately, the cold reality is that nobody will ever know what Mr. Crowley's response to the evidence of Tom Curran would have been and the Tribunal has lost potentially crucial evidence as a result.

## **Conclusion**

Taking all of the above into account, it is submitted that in the absence of hearing from the late Mr. Crowley, the Tribunal is effectively hamstrung in its ability to safely make a determination concerning this particular issue. The only engagement the Tribunal has had with Mr. Crowley was via an interview conducted before this specific issue came to the fore. Mr. Crowley was never afforded an opportunity to specifically deal with the issue raised by Tom Curran's intended evidence and clearly there is nothing in the interview as framed that could be taken as in anyway corroborating Mr. Curran's version of events. Indeed, the interview can only be construed as being supportive of Mr. Crowley as he expressly stated he wasn't aware of any investigation or inquiries into Owen Corrigan.

The gulf left through the absence of Mr. Crowley's oral evidence is simply too wide and without having the benefit of such central testimony available to it, the Tribunal is regrettably left operating in something of an evidential vacuum. To proceed to make a finding consistent with Tom Curran's evidence would be to do so without having access to a fundamental piece of the jigsaw that this issue has undoubtedly created.

It is therefore respectfully submitted that any finding on foot of and in line with Tom Curran's evidence in respect of this particular issue would;

- Be speculative in nature;
- Be wholly inconsistent with the contents of Mr. Crowley's interview in 2008;
- Fly entirely in the face of the voluminous and impressive character evidence detailing both Mr. Crowley's professionalism and dedication to duty that the Tribunal has heard from a variety of impeccable sources at the heart of the policing system in this jurisdiction. It is therefore submitted that the issue cannot safely be resolved on the state of the evidence and no finding should be made.

There are two further aspects of Tom Curran's evidence that should be briefly commented upon

### **Intelligence Allegedly Received by Tom Curran Approximately Nine Months Prior to the Murders**

As is the case with the alleged encounter between Assistant Commissioner Crowley and Superintendent Curran, this evidence simply cannot be independently verified as;

- While Mr. Curran gave evidence that a report was generated by him and sent to Garda headquarters detailing the intelligence received, there is no record whatsoever that can be found to confirm its receipt and the document was accordingly never produced in evidence.
- No follow up was undertaken to see if the report had been received or in any way acted upon. Mr. Curran felt this was normal practice and his function in

relation to the report effectively ceased after he had sent it. He believed in respect of the report there was nothing more he could have done.

- No follow up was instigated in the aftermath of the killing of Superintendent Buchanan (a matter Mr. Curran regrets in hindsight).
- Contrary to regular practice, no copy was made and kept by Superintendent Curran.
- Mr. Curran could not recall if he had recorded any reference to generating the report in his journals and even if he had, he no longer retains them and the Tribunal is accordingly deprived of any contemporaneous, documentary evidence in this regard.
- Mr. Curran would not (for legitimate reasons which are not in doubt) reveal the identity of his source, going as far as to refuse to write the name down rather than speak it and accordingly, the source could not be called on by the Tribunal to provide confirmation or otherwise of supplying the intelligence.
- The intelligence was not relayed to Superintendent Buchanan himself and there is therefore no RUC/PSNI document that could offer independent corroboration as to the accuracy of Mr. Curran's recollection.

It should also be noted that the intelligence did not refer to Superintendent Buchanan by name but was instead interpreted by Superintendent Curran as applying to him. The reason cited by Mr. Curran as to why he did not replicate the report in Monaghan was based upon a perception that his own Chief Superintendent (Bernard King) had something of a casual attitude to security documents, having seen intelligence reports in his office that Mr. Curran felt were carelessly handled and not suitable for common reading. The Tribunal heard other evidence which indicated this view was not

universally shared and Chief Superintendent King himself when confronted with the suggestion had this to say;

*“I don’t know what reports he’s referring to because Tom Curran was rarely in my office to see any reports because he was in the building, but he wouldn’t be in my office too often. If we were travelling together to meetings we would meet down some place else. The only intelligence reports, we have these special report forms that were kept in the clerks office when I went there and I changed that system under my personal control in the office”*

(Day 22, Page 28)

He further stated that had Mr. Curran received information that Superintendent Buchanan was on a PIRA hit list, in the ordinary course he would have expected it to be brought to his attention. It “definitely” was not (Page 28, lines 25-30).

### **Recommendations Made by Superintendent Curran**

Finally, Mr. Curran's evidence also included references to suggestions he forwarded concerning the prospect of increased security around cross border meetings. The evidence initially refers to a report dated the 30 April 1987 to the Chief Superintendent in Monaghan from Detective Superintendent Curran requesting security procedures be put in place for RUC/Garda meetings in the south. The document was opened at a later stage and Counsel for the Tribunal on that occasion indicated it was in fact undated (page 60, line 18). The document sets out a number of recommendations. These were then forwarded by the Chief Superintendent to Assistant Commissioner Fanning. A direction was subsequently issued on the 8 May 1987 to the Chief Superintendents of Drogheda, Letterkenny and Sligo indicating that future personnel attending cross- border meetings should have arrangements made for an armed Garda escort.

Mr. Curran asserted that the recommendations he made were precipitated by the above discussed intelligence allegedly received approximately nine months prior to the murders

(Day 14, Page 20). However, that would appear not to be possible as if the recommendations stem from 1987 as the evidence suggests, which in fact predates the timeframe Mr. Curran puts upon receipt of the intelligence specifically relating to (as he interpreted it) Superintendent Buchanan's life. As the murders occurred in March 1989, nine months prior to that would date to in or around June 1988. Further, the report detailing the recommendations does not mention Superintendent Buchanan at all which could be regarded as being somewhat curious given Mr. Curran's initial stated belief that one arose out of the other. The evidence is somewhat confusing on this point as at page 21, Mr. Curran asserts that the genesis of the recommendations came from confidential information furnished to him by his Chief Superintendent that as a result of the Anglo Irish Agreement there was going to be attacks on the RUC coming across the border into the Republic.

Leaving aside the origin of the recommendations, the fact remains that there was no Garda escort in respect of the trip the two officers made on the 20 March 1989 to Dundalk Garda Station and back to the border. Several points should be noted in this regard;

1. An escort was never requested.
2. Mr. Curran accepted that “*there was a general view that the RUC crossing the border were targets*” and “*they (referring to RUC members) were all warned in relation to that*” (Day 14 Page 37)
3. The PSNI, through its Counsel, have periodically during the course of the Tribunal's hearings put to various witnesses the proposition that the presence of an escort has the disadvantage of drawing attention to a potential target. The implication is that the absence of such an escort enhances the prospect of discreetly slipping in and out of the Republic. A reasonable inference to be drawn from this line of questioning is that the PSNI - notwithstanding they

lost two of their most decorated officers - are not in broad terms critical of the decision to travel to Dundalk during that era without an escort .

And in a broader sense;

1. Superintendent Buchanan had a history of calling into Monaghan Garda Station unannounced on a regular basis. Clearly, organising escorts in advance is not practical when the receiving Garda Station is not aware that a visit is imminent in the first place.
2. Mr. Curran specifically recalled discussing security with Superintendent Buchanan and asking him “was he happy with coming up without an escort? If you want an escort, we’ll give you an escort. He said he was all right, and that was it”. (Day 14 Page 33)
3. There was further Garda concern as reflected in a letter written by Chief Superintendent King of Monaghan to the Assistant Commissioner of Crime and Security in May 1988 and opened by Counsel for the Tribunal on Day 14 Page 63-66). It included the following;

*“On at least one occasion I discussed the matter of Superintendent Buchanan's visits to Monaghan with Superintendent Curran, who was then Border Superintendent. We were concerned about his unannounced calls at the station, the parking of his private car in the station and the difficulty of a station orderly had in having an RUC officer in the Public Office Area when members of the public from Monaghan would call. At that time Superintendent Buchanan was advised not to visit Monaghan unless he had previously telephoned Superintendent Curran and met him by appointment. He complied with this and reduced the frequency of his calls.”*

The above demonstrates in general terms an awareness on the part of Gardaí relating to security issues surrounding Superintendent Buchanan and the fact that security concerns were shared with him prior to his murder. Advice was given, steps were taken and escorts were offered.

### **13. Owen Corrigan**

The Tribunal has heard an extraordinary amount of evidence in relation to Owen Corrigan and from Owen Corrigan. This is fresh in the mind of the Tribunal and the parties. Not unexpectedly it covers a very wide range of issues, topics and categories of witnesses. It includes;

- (a) RUC witnesses who had never met or worked with him but who had heard of him and/or were warned about him.
- (b) RUC witnesses who knew him and had worked with him and who in several instances gave very positive evidence in his favour.
- (c) Witnesses who gave evidence of his general reputation which, in reality, does not appear to have been based on any specific instances or events but appear to have been based upon rumour and gossip.
- (d) Evidence in relation to his career, including disciplinary matters.
- (e) Evidence in relation to the incident involving Mr. Patrick Gallagher, the subsequent court prosecution taken against Owen Corrigan and the intimidation of Mr. Gallagher.
- (f) Evidence relating to his intelligence contribution, particularly in the years 1985 and 1989.

- (g) Evidence relating to his duty on the day of the shootings and thereafter.
- (h) Evidence specifically focusing on his C77's relating to John McAnulty's abduction and murder and knowledge of surrounding events.
- (i) Evidence relating to his involvement in the Narrow Water investigation.
- (j) Evidence relating to his abduction with Francis Tiernan and his beating and interrogation by the IRA (and the several pieces of intelligence relating thereto).
- (k) Evidence relating to the report prepared by Superintendent Finnegan concerning the possible claim by Owen Corrigan pursuant to the Garda Síochána Compensation Acts, as amended.
- (l) Evidence from very many high ranking former officers of An Garda Síochána of their view of his contribution to the struggle against the IRA and who had no doubt of his integrity in that regard.

The attention of the Tribunal is drawn specifically to the following matters;

1. Reference has been made in the Tribunal on a number of occasions to a listed member of PIRA with the same name as former Sergeant Owen Corrigan.
2. In relation to Superintendent Finnegan's report and the reference to intelligence therein, it is correct to point out that there is no intelligence document, whether C77 or otherwise, which documents any such matters. Mr. Finnegan himself conceded that this was based upon soft intelligence and was in reality no more than rumour and gossip.

3. Of the précis documents put in evidence relating to the murders of the Superintendents, information in documents 121 and 122 originated from Owen Corrigan.
4. Written correspondence from an external agency to An Garda Síochána purported to identify Owen Corrigan as a prominent Dundalk PIRA member who had been involved in a terrorist atrocity in which nine people had lost their lives. This claim relating to identifying Owen Corrigan was withdrawn and a new and different name identifying a PIRA member from Dundalk was substituted for that of Owen Corrigan. This is précised in document 585 which has been put before the Tribunal.
5. Since the establishment of the Tribunal Gardaí received information from a reliable source that when Owen Corrigan was abducted he was questioned about who had been supplying information to the Gardaí about PIRA activity in the Louth/Meath area. This is referred to in précis document 132.
6. Again since the establishment of the Tribunal the Gardaí have received information from a reliable source confirming that information on the movements of Superintendent Buchanan and Breen prior to their movements was not given to PIRA by Owen Corrigan. This was shared with the Tribunal and is précised in document 133. It may be noted in passing that this is consistent with some of the recent intelligence put before the Tribunal by PSNI, though neither shared with the Gardaí nor seen by the Tribunal.
7. It is, of course, the sole function of the Tribunal to find facts in relation to every relevant issue.

#### 14. The Evidence of Kevin Fulton

1. How did Kevin Fulton come to Judge Cory? In his evidence he claimed to be unaware of Judge Cory's inquiry until a very late stage. An email HMG160 seems to suggest that he was introduced or made known to Judge Cory at a very late stage of his inquiry. Judge Cory wrote a letter on the 9 September, 2003 to an Assistant Chief Constable of the PSNI;

*“Re; Inquiry into the murders of Superintendent Buchanan and Chief Superintendent Breen.*

*I am writing to inquire about intelligence material which you have not yet seen in connection with the above noted inquiry. I understand that an individual who refers to himself as Kevin Fulton may have been working as an agent for the RUC Special Branch during the late 1980's and 1990's. I also understand that this particular agent provided various reports to his handlers regarding Special Branch Garda Officer named Owen Corrigan who is stationed at Dundalk.”*

There follows a redacted portion of the letter. It then continues on to make the following request;

*“...and if so whether your agency is in possession of any intelligence material pertaining to officer Owen Corrigan.”*

2. It would seem that Judge Cory was led to believe that Kevin Fulton was a Special Branch agent and had provided his handler with various reports regarding a Special Branch Garda Officer named Owen Corrigan. This appears to be entirely in conflict with Mr. Fulton's evidence. Secondly, he appears to have been introduced or pushed towards Judge Cory for which gratitude was expressed in an email dated the 8 December, 2003.

3. Coincidentally or otherwise Kevin Fulton's statement dated the 9 September, 2003 was provided to Judge Cory who, having considered everything made available to him, clearly decided in the light of such statement that he would recommend the holding of a public inquiry. It would appear that he did so without any further intelligence material being supplied to him and, in particular, the alleged various reports to his handlers regarding a Special Branch Garda Officer named Owen Corrigan as referred to in his letter of the 9 September, 2003. It appears, therefore, that Judge Cory was persuaded to recommend the holding of this Inquiry without any such corroboration and notwithstanding the change relating to the alleged role of Mr. Fulton as a British Army agent. He, Judge Cory, does not appear to have been supplied with any documentation which would substantiate
  - (a) the recruitment of Kevin Fulton as an Army or so called FRU agent;
  - (b) any contact document, MOD 24, RUCIRAC or MISR relating to Kevin Fulton;
  - (c) any other document purporting to show that he had in fact reported in any way on a member of An Garda Síochána allegedly colluding with the PIRA.

### **The Position Now**

4. It is now virtually ten years since Judge Cory recommended the holding of an Inquiry, eight years since the establishment of the Tribunal and two years since the Tribunal commenced hearing evidence in public. The position outlined above remains the same, i.e. no documentary evidence has been produced to substantiate Kevin Fulton's claim in the following respect;
  - (a) That he was an FRU agent who had reported to his handlers that a member of An Garda Síochána was assisting the PIRA;

- (b) Identifying any member of An Garda Síochána in connection with the murders of Breen and Buchanan;
  - (c) Identifying any member of An Garda Síochána with any other act of collusion.
5. In contrast the Tribunal called Witness 82 who said he was the FRU handler of the agent known as Stakeknife (whom he could not confirm and would not confirm was Mr. Scappaticci). He, however, made it clear in his evidence on Day 93 that he had not seen any such documents suggesting that Mr. Corrigan was leaking information to the IRA and that he had seen no SB50's or MISRs or reports with the word "rogue" and Owen Corrigan together and in fact also denied having conversations with Mr. Ian Hurst (who had given evidence on Days 92 and 93 also) about Owen Corrigan or that he had told him that Owen Corrigan was being handled by Scappaticci or Stakeknife.
  6. It seems utterly incredible to believe in the context of what then was a proposed Tribunal, in the context of the actual life of this Tribunal, that if the British authorities, whether military, civilian or security services, had such information either as was claimed by Kevin Fulton or by Ian Hurst in whatever form, whether they be contact forms, tape recordings of debriefings, SB50's, RUCIRACs or MISRs, which contemporaneously documented reports of Owen Corrigan and/or any other member of An Garda Síochána colluding with the PIRA, passing information or reported as having assisted the PIRA in the murders of Chief Superintendent Breen and Superintendent Buchanan, that they would not have made such available to Judge Cory and, more importantly, to you, Chairman, over the course of the Tribunal.
  7. No evidence has been forthcoming to substantiate the claim of Kevin Fulton that any matters connected with Owen Corrigan or any member of An Garda Síochána was reported to his handlers at any stage, whether

- (a) relating to the alleged “open secret” within the IRA that “our friend” was a member of An Garda Síochána,
- (b) that he had met Owen Corrigan in the company of Mooch Blair outside Fintan Callan’s Céilí House some time in 1991, that Owen Corrigan had informed Mooch Blair that Tom Oliver was an informant.

### **Conflict of Fulton and Hurst**

This last allegation, it should be noted in passing, is in direct conflict with Ian Hurst’s version of how the PIRA learnt of Tom Oliver’s alleged involvement as an informer. He alleged that it was Mr. Scappaticci who had facilitated the acquisition of knowledge by the PIRA of Mr. Oliver’s alleged contacts with the Gardaí. This he said was done by means of placing of a tape recorder in the phone booth where Mr. Oliver was alleged to have been in the habit of contacting his Garda contact. Mr. Hurst confirmed these details which are in fact earlier published in his book at pages 112 to 114. (See Day 93, questions 257 to 267.)

- 8. Also Mr. Hurst (Day 92 Pages 132 to 135) asserted that Kevin Fulton did not link Corrigan to the Breen and Buchanan murders. At Day 93, question 248, he said he was not in a position to say he had ever seen a document showing how the PIRA learnt of the presence of the RUC in Dundalk. At question 416 he agreed that he had no evidence in any legal sense of any Garda colluding in the murders. He promised at question 418 to see whether he could acquire and produce any of the MISRs which he alleged would document the reporting upon Owen Corrigan as being a rogue Garda collaborating with the PIRA. No such misers, or any other documents, have since been produced.
- 9. Mr. Hurst also agreed that he had never given any account in his published book that any Garda was involved in the murders of Superintendent Breen and Buchanan. It is also highly relevant that when Ian Hurst sought to invoke reliance upon the

telephone note made by Jane Winters of British Irish Rights Watch relating to his contacts with Gardai, he then sought to distance himself from her note where it was recorded that “Keely (Fulton) was there when Corrigan met Scappaticci” (see Day 92, pages 147 to 152). Such contemporaneous note of the phone call recording the information from Mr. Hurst could logically only have been based upon what Mr. Hurst was telling Ms. Winters as to what he had learnt from Mr. Keely and is, of course, consistent with Mr. Hurst’s allegation that Mr. Scappaticci, aka Stakeknife, was Owen Corrigan’s handler within the IRA. (But inconsistent with Fulton’s evidence.) This latter assertion by Hurst was, of course, one of the most important conflicts of evidence that Mr. Hurst had with his former fellow FRU handler, Witness 82, who clearly rubbished the notion that Stakeknife was handling Owen Corrigan as a PIRA mole within An Garda Síochána.

- 10.** It should also, of course, be noted for the purposes of completeness, that Ian Hurst’s account of his meetings with An Garda Síochána was contradicted by former Detective Chief Superintendent Basil Walsh, Chief Superintendent Peter Maguire and Detective Superintendent Diarmuid O’Sullivan who also specifically denied that they had sought to question Mr. Hurst enquiring about Owen Corrigan. On the contrary, he, Mr. Hurst, agreed that he had, when confronted with the enquiries of the Gardai into the murders committed within the Republic described in his book, declined to assist them in any way. (See the evidence of Basil Walsh, Day 93, Pages 2 to 11, the evidence of Peter Maguire, Day 94, pages 2 to 17, and the evidence of Detective Chief Superintendent Diarmuid O’Sullivan Pages 49 to 60.)

It may be noted that in Lord Saville’s Inquiry into Bloody Sunday he commented in relation to Mr. Hurst, at paragraph 1.48.480 that he was satisfied that Mr. Hurst had an imperfect recollection of events and it would be unwise to rely on his evidence.

## Claims Made by Kevin Fulton

11. The essential elements of Kevin Fulton's evidence and claims in relation to collusion are;

- (a) That it was an open secret within the PIRA that "our friend" who was assisting the PIRA was Owen Corrigan;
- (b) He was told in Mooch Blair's house that "our friend" had helped the PIRA in relation to Chief Superintendent Breen and Buchanan;
- (c) That he met Owen Corrigan with Mooch Blair out at Fintan Callan's Ceili House some time in 1991;
- (d) That he had been told by the PIRA that Corrigan had in some way compromised the investigation and scene into Narrow Water atrocity and disposed of the evidence;
- (e) That he was told by Patsy O'Callaghan that after the Omeath bomb find that "our friend" (Corrigan) had cleaned up the scene and got rid of fingerprints of the bomb makers.

Is it not quite extraordinary that there is not a single witness or document which in any way tends to corroborate or substantiate any of these claims? How could it possibly be that if Fulton reported any of these matters to his Army handlers as alleged that the Army wouldn't have produced some witness or record in relation to this? How is it that there is not a single RUC/PSNI witness who can give evidence of having received any report or information relating to any of the claims made by Fulton in this regard? No element of these claims appear to have been within the knowledge of the RUC/PSNI until at or after the time when Mr. Fulton started going public with his claims and meeting politicians such as Mr. Willie Frazer and

Mr. Jeffrey Donaldson M.P. He wrote a book, in fact, in which none of these claims feature. Ian Hurst, writing as Martin Ingram, wrote the foreword to the book in which, inter alia, he said;

*“When you read this book be under no illusion that Fulton took part in operations that resulted in murders with the full knowledge of FRU. His police handlers knew it, his military handlers knew it, the British State knew it, and later so did the victims of his families.”*

12. Fulton admitted being a runner and a driver for the PIRA, preparing and making bombs with Mooch Blair, but denied that he was involved in any interrogation, notwithstanding his participation in the allegedly “first” kidnapping of Tom Oliver.
13. Before considering his evidence it seems appropriate to draw attention to evidence which has been given about Kevin Fulton. Witness 62 gave evidence on Day 51, was a Detective Inspector in Gough Barracks, Co. Armagh. He said the following in relation to Kevin Fulton;

*“Q. Now, I think that you said in your statement that in your opinion that he was a compulsive liar, a fantasist and a con man of the highest order. And you said that he was what you would term an intelligence nuisance. Where did that come from?”*

*A. Yeah, that's correct. That would be my opinion of Keeley, alias Fulton, because when he was recruited, my recollection is that he initially provided some good intelligence on the Provisional IRA and -- but subsequently he began to make it up, and I can remember us mounting many, many operations, covert operations based on his so-called intelligence, where nothing happened, and of course nothing does happen very often so you put it down to experience and you wait until next week and you get something else. But, I became aware then that the Branch in Newry began to realise that he was just making all this up. No doubt he had his reasons for making it up. Sometimes it's because they want to get more money, sometimes it's because they want to please their handlers, sometimes it's because they just live*

*in a fantasy world. But he had us running around in circles for a number of months, I think, or weeks anyway, before it was realised that he was just making this up. So, I wouldn't believe anything he said. The problem with Keeley was that occasionally he would get something that was actually quite good, and I know that he subsequently worked for CID and for the Customs and Excise and that he provided them with some good initial intelligence. Now, the fact that he worked for the CID was -- had Special Branch known that he was working for CID they would have put a stop to it, but they didn't know until very late in the day. Later on there was a system whereby all CID sources had to be registered in the same way as Special Branch sources had to be, but for most of my service, my early days, certainly until, well certainly until the mid-'90s, I think, CID sources were very much simply handled at a local level by the CID Sergeant or Inspector or Constables, they had their sources in the local community. Keeley turned out to be one of them. And very often nobody at a higher level at Regional Headquarters or Headquarters level knew anything about this person. Later on, the system was very much that everybody had to be registered, and at that point it would have been spotted that this intelligence nuisance had put himself forward to be recruited by CID and a stop would have been put to it. I wouldn't trust the man at all. But, as I say, occasionally he did produce some good intelligence and --*

14. The Tribunal and witnesses to the Tribunal were also referred to the statement of the then Chief Constable, Sir Ronnie Flanagan, when giving a response to the Ombudsman's report on Omagh.

#### *4.5 Fulton's Reliability*

*"And he describes his career as follows, at paragraph 4.5, under a heading: "Fulton's Reliability: Fulton was an informant for Special Branch in partnership with another agency from 1992 to 1994. Some of the earlier intelligence he provided was valuable and enabled police to disrupt terrorist activities. However, it emerged he was becoming increasingly unreliable and deliberately fabricating information, he admitted as much at the Stevens Inquiry and to the Ombudsman.*

*And in the autumn of 1994 all contacts with Fulton was severed. From that point on he was consistently treated as an unreliable source by Special Branch. The Ombudsman's statement refers to the absence of a formal written RUC record of Fulton's unreliability prior to August 1998. The Ombudsman's investigators have, however, seen manuscript annotation on Special Branch documents to this effect prior to that date. They also have possession of a formal document from another agency both recording and corroborating Fulton's unreliability. None of these materials is addressed in the Ombudsman's statement or report.*

*“From 1996 to 2000 Fulton provided information to the CID with regards to criminal as opposed to terrorist related matters. Because of his particular access to certain types of criminal activity in that role he provided information which led to a number of successful police operations, which is why his CID handler regarded him as reliable. His handler would not have been in a position accurately to grade his reliability on subversive matters. Nevertheless, the need to exercise caution in dealing with Fulton was borne constantly in mind by the CID, as advised by Special Branch, both in 1997 and 1998. As a result of his behaviour becoming increasingly more erratic and counterproductive, for example, manufacturing information, passing the information to the media and tapping phone calls of police officers, the RUC decided in April 2000 to have no further contact because the risk he posed to the police outweighed any potential gain.”*

- 15.** Also witness 64, who spent twenty-three years of his twenty-nine years service in the Special Branch and went to Newry as a Detective Inspector there at the end of 1988, knew Mr. Fulton from when he was in charge of the Special Branch team in Newry and confirmed that he was not aware of any intelligence that was ever passed from Mr. Fulton about Mr. Corrigan and never told him anything about a connection between Mr. Blair and Detective Sergeant Corrigan. He gave evidence on Day 53, question 46, as follows;

“46 Q. Can you tell us something about the quality of the information that he supplied?

A. The quality of the information was very mixed. There was obviously some truthful information and some useful information to us, but there was also difficulties from very early on in the relationship about inaccurate information and false and misleading information.

47 Q. Well, I think that information can be inaccurate, isn't that right?

A. Yes, it can.

Q. False and misleading is a different matter, isn't it?

A. Exactly.

49 Q. But I think that some of the information that he provided was false and misleading?

A. Yes, I know so.

50 Q. Very well. Now, did any of his information, accurate clearly, lead to lives being saved?

A. I can certainly think of one occasion where there was information supplied that led to the recovery of a explosive device, which, if detonated at the right time, could have killed a member of the public or a member of the security forces.

51 Q. I think, ultimately, Special Branch sort of divested themselves of Mr. Fulton and his services, is that right?

A. That's correct.”

He confirmed at question 172 that it ended up as the police view that Mr. Fulton was not entirely reliable. At question 228 he gave further details of Fulton's misleading information;

“228 Q. You mentioned that there were occasions when Kevin Fulton gave you information which you were aware was misleading information. Without identifying any individuals, could you give an example to the Chairman of --

*maybe you can't recall it, but if you can, can you give an example of the type of misleading information he gave to you which clearly was false?*

*A. Well, there was probably a number I could give, but one particularly interesting one was we were given intelligence about an IRA active service unit planning to travel to Great Britain to carry out a series of attacks there, and Mr. Fulton told us that he had been asked to prepare weapons hides in Great Britain to facilitate the logistics of that unit travelling to Great Britain. Police operations were put in place in England and Scotland, and quite considerable police time, effort, resources, went into carrying out preparatory work to try and catch the alleged active service unit, only for Mr. Fulton to subsequently state that it was something he had made up, and, as you can appreciate, it caused us considerable embarrassment because the intelligence had been relayed across to Great Britain. Various people over there were quite exercised about the thoughts of IRA attacks being carried out in Great Britain. A lot, as I say, time, police effort, resource, a lot of money from the public purse had been spent in police operations, all for it to be disclosed as a work of fiction.*

229 *Q. And could I ask you, sir, did he give any explanation or excuse to you as to why he had created or made up this bit of intelligence?*

*A. No, we never got a satisfactory explanation to that or to other things we were told.*

230 *Q. And from your assessment of him, did you think he was doing it because he was interested in fantasy or was he trying to generate publicity for himself subsequently, or why do you think he did it?*

*A. I think it was probably a complex mixture of things. There was obviously financial reward, and sometimes greed can triumph over common sense. I think, also, attention-seeking ego. There are lots of factors that could play in there, but you would really need a good psychiatrist or psychologist to give those answers.*

231 *Q. We haven't had one of them give evidence yet, sir. But in terms of what you said, there was money obviously paid to Mr. Fulton when he provided information?*

*A. That's correct.*

232 *Q. So that could be an explanation for it?*

*A. There was a reward system in place.”*

At question 287 he found it strange that if such intelligence had been passed to the security service that the security service would not have passed it to us and that it would surprise him and even more so after his move to RUC Headquarters as Chief Inspector in the Special Branch. He had “no recollection of ever seeing or hearing that during his time there and told the Tribunal that at different times he would have reviewed historical records as part of analysis, as part of enquiries, that were occurring in police headquarters and at different times I did look at files in relation to Kevin Fulton and I have no knowledge of ever having read or ever having seen such a report of that nature.” He also had never heard of a red ribbon file in all his years or any similar term.

His evidence on this is at Day 66, question 541, et seq. (and question 527 onwards). It may also be noted that Witnesses 70 and 71 gave evidence of having received useful information from Mr. Fulton on a number of occasions in the 1990's relating to criminal/customs matters and being well paid for it, although Witness 71 described his information as inaccurate at times.

Witness 60 told the Tribunal (Day 40);

“79 *Q. You mentioned Kevin Fulton, what did you make of him?*

*A. In my experience, he seemed to provide some good intelligence when he started with a number of organisations. The quality of the intelligence then seemed to drop. And I, at a later stage, had a role of authorising sources under the regulation of Investigatory Powers Act, and I refused to authorise*

*him to provide intelligence because I believed that he was an intelligence nuisance.*

80 *Q. By "intelligence nuisance", what do you mean?*

*A. He was more trouble than he was worth.*

81 *Q. I see. And likely to provide false information?*

*A. Yes."*

## **16. Undoubted Facts about Kevin Fulton's Credibility**

- (i) He lied in relation to the murder of Paddy Shanahan who was shot dead in Dublin as to his knowledge of the location of the weapon used in the killing and his handlers acting on his information contacted Crime and Security Branch in Dublin, resulting in a visit by Fulton and his handlers to Dublin, which was arranged with the then head of Crime and Security, Detective Chief Superintendent Joe Egan. These claims made by Fulton were retracted and he admitted lying to his handlers.
- (ii) According to his counsel, Mr. Keely accounted for how and why he was telling lies to the Special Branch in 1994 and 1995 and to the Ombudsman in Northern Ireland (Day 65, question 305).
- (iii) He had admitted lying to the Stevens Inquiry into collusion.
- (iv) His claim not to have worked for Special Branch is in complete conflict with Witnesses 62, 64, 70, 71 and Sir Ronnie Flanagan.
- (v) He claimed that both Fine Gael MEP Jim Higgins and former Minister for Agriculture Ivan Yates in articles published in the Sunday Independent in October and November 2004 had colluded with the PIRA in a multi euro milk scam. In settling their libel action and apologising in the High Court on 6

November 2008 the Sunday Independent acknowledged that the allegations made by an alleged former British agent Kevin Fulton were without foundation.

17. The allegation of collusion made by him to Judge Cory in 2003 is in the following terms;

*“In 1979 I enlisted in the British Army. Within months of my post I was recruited by a British intelligence agency to act as an agent. In this capacity I became a member of the Provisional IRA.*

*On one occasion in the late 1980’s I was with my senior IRA commander, Joseph Patrick Blair, and another individual in my car. I knew the other individual to be Eoin Corrigan, a member of the Special Branch of the Gardai. I was introduced by Blair to Corrigan. I knew that Corrigan who was stationed at Dundalk was passing information to the Provisional IRA.*

*I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that after the ambush took place Joseph Patrick Blair was told by a member of PIRA that Sergeant Corrigan had telephoned to the Provisional IRA to tell them that Officers Breen and Buchanan were at the Dundalk station. I should add that I know nothing about the murder of Lord Justice and Lady Gibson.*

*I read the statement and its contents are true and accurate.*

*Kevin Fulton.”*

- (i) Leaving aside for the moment the fact that crucial elements of the statement are contradicted by Owen Corrigan and indeed also Mr. Blair, one of the most extraordinary things is that almost all of the crucial portions of that account

are contradicted by Fulton's own evidence to the Tribunal. For example, in the statement referred to above he says "*he is aware that after the ambush took place my senior IRA commander was told by a member of PIRA that Garda B, (Eoin Corrigan), had telephoned to the Provisional IRA to tell them that Officers Breen and Buchanan were at the Dundalk Station.*" His evidence now in fact is that he is saying he was now present when this took place, rather than merely being "aware" of it.

- (ii) Although his statement to Judge Cory and to the Tribunal purports to identify Owen Corrigan as having been identified by Micky Collins on the day, his evidence to the Tribunal throughout is simply that Micky Collins identified the person who had helped them as "our friend" without mentioning the name of Owen Corrigan.
- (iii) While he alleged in the statement that Owen Corrigan had telephoned the Provisional IRA to tell them the officers were there, he now agreed that he hadn't been told this and that it was incorrect (see Day 67 Pages 76 to 78). He now alleged that he was told at a later date by Mooch that Corrigan had seen the officers at the station and had telephoned to PIRA and that Corrigan would have told "more than likely Patsy O'Callaghan".
- (iv) In relation to the Fintan Callan meeting, not only is there no mention of this place in the statement to Judge Cory but he pins it in the late 1980's but now alleged to the Tribunal it was some time close to July, 1991.
- (v) He alleged he was introduced to Owen Corrigan yet on Day 67 he gave completely the opposite evidence;

"323 Q. *What happened then?*

*A. He was talking to 'Mooch'. I sat looking out the window and that is when he said about Tom Oliver being caught with an unlicensed shotgun and was passing information.*

*324 Q. Did 'Mooch' introduce you to Owen Corrigan?*

*A. No, he didn't. I was, basically, a shadow sitting there. I never spoke, never did anything.*

*325 Q. You weren't introduced to Corrigan?*

*A. Not introduced, no.*

*326 Q. OK. You wrote to Judge Cory on the 9th of September, 2003, and you stated the following: "On one occasion in the late 1980s" -- and you are wrong about that -- "I was with my senior IRA commander and another individual in my car. I knew the other individual to be Garda B" -- that is Corrigan -- "I was introduced to Garda B. I knew that Garda B, who was stationed at Dundalk, was passing information to the Provisional IRA."*

*Now, which is correct, Mr. Keeley?*

*A. Well, 'Mooch' didn't say "this is Owen Corrigan". He just got into the car and started talking to 'Mooch'.*

*CHAIRMAN: He didn't introduce you?*

*A. He wouldn't have introduced me, no.*

*327 Q. MR. O'CALLAGHAN: So what you said to Judge Cory is incorrect in that respect?*

*A. Well, I wasn't introduced as an introduction, no.*

*328 Q. When you said to Judge Cory, "I was introduced to Owen Corrigan," you weren't?*

*A. No, he got into the car."*

(vi) He claimed in his book that he headed out to Paris to work in Euro Disney in August, 1991 and wrote that a newspaper article in the Sunday Express appeared two weeks into his contract which exposed the fact that he and other IRA men were working there. The date of the Sunday Express article has been established to have been the 29 September of 1991. These are

inconsistent with his evidence that he was in Paris working in Euro Disney when Tom Oliver was murdered on the 18 July of 1991.

- (vii) In his statement to the Tribunal he said “I met Corrigan once when I had to drive Patrick Joseph Blair out to Fintan Callan’s Ceili House outside Dundalk”. In his evidence he said that when he was arrested Owen Corrigan came into the room where he was being interrogated. When confronted with a newspaper article printed in the Observer of the 14 November, 2004 where he claimed “I was interrogated by him in Dundalk Garda Station at one stage.” He sought to justify and explain this inconsistency by reference to Owen Corrigan’s presence in the room meant that he was interrogating him. More importantly, over several pages of the Transcript (Day 67 Pages 25-29) he was clearly unwilling to give a straight answer in relation to this.

## **18. Other Claims of Collusion made by Fulton**

### **(i) Narrow Water**

Fulton alleges that he was informed by the IRA that Owen Corrigan had been involved in compromising the scene at Cornamucklagh, Omeath, following the fatal explosions which murdered eighteen British soldiers at Narrow Water, Warrenpoint, on the 28 August, 1979.

It may be noted in passing that this was the only example that Fulton was able to put forward of alleged collusion by a member of An Garda Síochána with the PIRA prior to the murders of Breen and Buchanan on the 20 March, 1989 despite his allegation that it was “*an open secret within the IRA that ‘our friend’ helping the IRA was Sergeant Corrigan*”.

In relation to the Narrow Water allegation, Fulton has conceded necessarily that he has no direct evidence of this but he was informed of this by some unspecified members of the IRA at some unspecified point in time. Naturally the Tribunal has

considered whether there is any possible substance to this allegation and has heard the evidence of Witness 68, Witness 69, Dr. Hall, Pat Ennis, Lionel Mullaney and others, including Dr. Donovan. The allegation centres around a belief arising from the visit of a number of RUC men and Dr. Hall to the scene of the explosion from which they believed that they were met by Sergeant Corrigan, that they had been told that the area had not been forensically examined, that it was promised to them that the scene would be preserved over night so that they could return in the morning and do the forensic examination themselves. The substance of the complaint has been demonstrated to be without foundation.

At the heart of it is an allegation that when Dr. Hall and the RUC men returned the next morning after their visit the previous evening, they found that the site of the alleged nests had been scythed and as they believed, the potential forensic evidence had been completely destroyed, the site having been thus, in their eyes, compromised. The Tribunal has had available to it the RUC preliminary report regarding the murders (of nine pages compiled by Witness 68), a follow up report (nineteen pages), again compiled by Witness 68, extracts from the contemporary RUC investigation log, a variety of miscellaneous statements and reports relating to a review of the investigation subsequently conducted and, most importantly, the covering report of Superintendent Keaney concerning the original Narrow Water investigation, together with all relevant supporting statements, including that of Sergeant Pat Ennis.

The following are extracts from Witness 68's preliminary report;

*“(17)Due to the fact that William Hudson had been shot dead on the Republic side of the border, and his death was attributed to the British Army gunfire, a close liaison was conducted between ourselves and the Garda. The officer at the South side was Superintendent Keaney. It is a fair assessment of that liaison that the Garda showed a degree of reticence in co-operating with us, at official level anyway. Moreover at local level with established contacts in*

*Newry RUC Station there appeared to be a more congenial relationship and at least a little more assistance was forthcoming.*

*(18) With the assistance of Garda and their Technical Bureau an area of dense undergrowth and fern was located on the Southern side of the Border. This area had been trampled down and a cigarette butt was found there. This was indicative of the flattened area having been used as a look-out for the persons who detonated the bomb. Topographically this scene would have been ideal for the detonation of the bomb on the "York" Trailer. It was a slightly elevated sight directly overlooking the main Newry/Warrenpoint Road.*

*(19) The most salient feature to be derived from the investigation originated on the Republic's side when two Crossmaglen Youths called BRENNAN and BURNS were detained by Garda. For details see back of this report. These two men are living now in Dundalk. These two youths were stopped on a motorcycle on a hill outside Omeath and travelling away from the possible detonation point of the explosions. Both youths were duly interviewed by Garda but vehemently denied any part in the murders. However the Garda took possession of their clothing and hand swabbed them. The youth Burns' car was also located in the Republic and again samples were taken from the floor of it. A Forensic report which was derived from the examination of these items and which was obtained by Newry CID via the unofficial channel previously mentioned, has proved positive in so far as the samples taken from Brennan and Burns is concerned, as follows:-*

*(1) The clothing of both men has shown positive in respect of firearms residue.*

*(2) The hand swabs of both men has also proved positive for firearms residue.*

(3) *The clothing of both men on examination showed positively traces of the explosive substance, ammonium nitrate, as being present.*

(4) *The car mat removed from Burns' car has also proved positive in respect of ammonium nitrate traces.*

*A number of other minor comparisons were made in respect of a cigarette butt located at the place, thought to be the detonation point on the Republic's side and also soil and fern samples.*

(20) *Forensic examination of the butt revealed that the saliva could be blood grouped and was similar to both Brennan and Burns. Moreover this blood group shows 40% of the Irish population are similar. The fern samples are also similar but again this is a common variety growing wild all over the country. The cigarette butt was of the type smoked by Burns and 7% of the population as a whole.*

*It could thus be said that these in isolation are of little value but taken with other available evidence correlate highly evidentially.*

(21) *When the youths Brennan and Burns were stopped on the motorcycle outside Omeath there were no identification markings on the motorcycle. The motorcycle was a red and yellow Suzuki 100 and enquiries by us revealed that this motorcycle had been purchased at Bessbrook one week prior to the explosion. It was purchased by a youth [ ] of Crossmaglen at the request of Brendan Burns. Burns also gave [ ] the £130 cash to purchase it. The arrangement being that [ ] was to go and buy the motorcycle at Bessbrook, bring it to his home at [ ] Crossmaglen where it would be collected by Burns. This link between Burns the motorcycle and Crossmaglen has been firmly established by our intensive enquiry. A footnote to this is found in the fact that when interviewed by Garda Burns alleged that*

*he had purchased the motorcycle around two or three weeks prior to the explosion. Brennan and Burns have been charged with motoring offences by the Garda and released.*

*(22)A final link discovered by Garda in their investigation is that two elderly residents of the area in close proximity to the detonation point had observed the motorcycle parked near to it. Moreover these witnesses after making a statement declined to sign it and therefore their evidence may be of little value to the enquiry.*

*(25)I feel that this report would be incomplete without some comment on the link with the Garda's enquiry. In effect we can connect the motorcycle with Burns who purchased it through the innocent part of [ ]. The Garda can connect the motorcycle and the two suspects with what is thought to be the alleged detonation point on the Southern side. However, from this end we are not in a position evidentially to say that Brennan and Burns played any part in the detonation of any bombs on the Northern side. The evidence we have is to say the least tenuous and one has to be speculative and indeed imaginative to connect these men. This problem is to say the least accentuated by the fact that the Garda stopped the two men on the motorcycle simultaneously with the second bomb going off. We can thus assume that they were assisted in the detonation of the second bomb. The only major step we can taken to be conclusive in our case is if we could interview Brennan and Burns in the North and obtain from them statements of admission. Covert observations using military sources have been set out in proximity to their homes just in case these men return North in the intervening period."*

In relation to the last mentioned matter, it is believed that one of the suspects did return North shortly afterwards but the relevant special military squad failed to detect that. The conclusions referred to above are in fact repeated and expanded

upon in Witness 68's full report at paragraphs 43 to 53 onwards. Paragraph 46 in particular states;

*“On meticulous examination and testing at the Forensic Bureau in Dublin the following results were obtained which are salient to our investigation:*

- 1. The hand swabs proved positive for firearms' residue in respect of both Brennan and Burns.*
- 2. The clothing taken from both men also proved positive for firearms residue.*
- 3. Certain items of clothing belonging to both men proved positive in respect of traces of ammonium nitrate explosive.*
- 4. The car belonging to Brennan also showed traces of ammonium nitrate on the front and rear floors. A piece of fern taken from the clothing of Brennan on his arrest also matched up to similar fern found at the scene of the suspected lookout position. A cigarette butt found at this position was the same type as that smoked by Burns and on chemical examination saliva from the cigarette butt matched Burns' saliva. Burns was a secretor.”*

Whilst the RUC log and some of the evidence places Sergeant Corrigan at the scene on at least two occasions, the evidence does not substantiate any improper interference with or obliteration of the scene from any forensic standpoint at all. The RUC log referred to above records both Garda cooperation and being kept informed of developments at Log number 65, 107, 168, 211. At Log number 337 it is recorded, inter alia;

*“D.I. [ ] also spoke of his meeting with Alan Hall at Forensic. The D.I. related of Alan Hall's complaints of how when he returned to the scene in the South the Garda had not preserved the scene and were extremely uncooperative. He stated his opinion that they were being obstructive. He suggests a team go over and search for the transmitter or decoder. He suggests that it is highly unlikely that this*

*was thrown away after the explosions. Hall states he asked Garda for their help in the search but was denied the request.”*

In the remarks section it is noted that “request for this action to be taken by the Garda via Superintendent [                      ]”

That this was done meticulously is clearly evident from Superintendent Keaney’s report, in paragraph see paragraph 38;

*“The cigarette end would be a support in helping to put Burns at the site No. 2 but on its own is of little use. There was no transmitter for setting off a remote control bomb or firearms found on the two suspects when stopped nor were such things found in the extensive search of the area for days following.”*

Witness 68 (Day 78) was cross-examined in relation to his evidence on Day 82. In the interim he had been supplied with a copy of Superintendent Keaney’s covering report and relevant statements relating to the forensic and technical examination of the scene and the suspects and their analysis in the laboratory. He was referred to Superintendent Keaney’s report.

*“124 Q. “... which is heavily wooded and has a very thick undergrowth. At about 4:30 p.m. on the same date, Garda E. Boyle, who was also engaged in the search, pointed out another spot at Cornamucklagh to me. This was along the embankment along the old disused railway line just along the wire fencing which runs along the line.”*

*A. Yes, Mr. Chairman. Interestingly enough --*

*125 Q. “It has a very heavy undergrowth of ferns which stood about 6 foot high. The ferns were freshly broken down and it appeared to be used by some persons lying there. There was a clear view of traffic travelling from Warrenpoint towards Newry from the roundabout to the castle entrance. And I pointed out these three spots to Detective Sergeant Ennis, Detective Sergeant*

*Connaughton, Detective Garda Gavin of the Garda Technical Bureau on the evening of the 28/8 for technical examination."*

*A. Yes, Mr. Chairman.*

126 *Q. And that would appear to suggest that very properly the area was very thoroughly searched and was examined by the Technical Bureau?*

*A. I think I can say without equivocation, Mr. Chairman, that the Garda on the ground did an excellent job at County Louth. I would go further and say that what I'm being told about today, I have never been told about before at any meeting, at any briefing or in any written reply to the requests that we made, and I would say that having read the forensic report attached to this file, which as I say again I got this morning, I would say it was absolutely brilliant work and I would also go further and say that it was as good, if not better, than what went into Mountbatten, considering that the people in Mountbatten were stopped some 30-odd miles away from the detonation scene at Mullaghmore, as compared to 7 miles in the Warrenpoint one when the evidence was overwhelming in relation to all the things that were involved in it.*

127 *Q. I take it that you accept that a very proper examination of the scene was conducted over the two days following it and in fact, a general examination of the area was conducted until the 1st September?*

*A. I most certainly do. The one thing that is questionable is: Why was it not put to me in charge of the Warrenpoint investigation that I could make requests for evidence, statements, etc., etc.? And that would have been in 1979, not now in '2012 or even in '96/'95 when the then Inspector did another file on the whole matter. I find that to be highly improbable and certainly a great cause of concern.*

128 *Q. First of all, just to deal with one thing at a time. You accept it was properly forensically examined, you accept that all of the exhibits that were taken went to the laboratory and that all of the scene was examined?*

*A. I do indeed, but to whose benefit?*

129 *Q. And that was done in the two days following the explosion?*

*A. Excellent work by the Garda. I cannot stress that enough.*

*130 Q. In the course of those exhibits, what was taken in fact was the clothes of the two men who were arrested, Brennan and Burns, and that they were detained for 48 hours, as was permitted by the law?*

*A. I accept that without equivocation.*

*131 Q. And that during that period, they made no admissions?*

*A. That's what the report says.*

*132 Q. And that you were told that at the time; you knew that they had made no admissions?*

*A. That's what I was told at the time, that's correct."*

And he was further questioned about the extent of information that he had got and which had been recorded in the log. Insofar as Alan Hall is concerned, he gave evidence on Day 77. In cross-examination he was asked about his assumptions;

*"417 Q. Yes. And do I understand it that your statements to the Tribunal and your evidence here today is based upon, perhaps, a number of assumptions, but the first assumption is that the scene of the nest wasn't subject to any technical forensic examination by the time the ferns were cut down?*

*A. It's based on the fact that, when I saw it, there appeared to be evidence in existence that had not -- I wasn't aware that anyone had attended the scene prior to that, but even if there had been, there was still, to me, evidence available.*

*418 Q. Yes. But is your assumption not that when you came back on the second day, that, at that point in time, there had been no forensic examination or collection of the evidence at all?*

*A. Well, from my visit on the previous day until the next day, that evidence hadn't -- I was told that nobody had been collecting evidence from that scene then.*

*419 Q. Well, I think the way you put it was that they had cleared the scene?*

*A. Yeah, that had obliterated the scene.*

420 Q. Yes, but I was wondering, perhaps, whether you misunderstood that. Did you take it, from whatever was said to you, that there had been no forensic examination of the scene?

A. Well, I wasn't told that there had been an investigation of the scene, but I was told that the ferns had been cut down to recover evidence.

421 Q. Okay. And you didn't know what stage that had been done at or after -- whether that had been after any forensic examination?

A. Well, it was certainly after I left the previous evening."

He agreed that he knew Sergeant Ennis as a very experienced and dedicated member and very competent. He was cross-examined in relation to the account of events given in Sergeant Ennis's statements, from page 103 onwards, following which the following questions and answers were asked at question 469 to 480;

"469 Q. Now, would you agree with me, therefore, that from what you have seen, it paints a different picture from what you perhaps thought you knew; that there had been an identification of the sites, a preservation of the sites and a technical forensic examination which resulted in samples being recovered?

A. Yes.

470 Q. Now, one your other concerns was obviously about the possible detonator, and this is recorded in the RUC log that we have seen already, where you suggested going over to have a search for it?

A. Yes.

471 Q. But may the Chairman take it that you didn't know that a search had been conducted for that already?

A. That's correct.

472 Q. And would your view have changed if you knew that there had been such a search for such a detonation device?

A. Yes, if the search had been conducted thoroughly, yes.

473 Q. Yes. And would you agree with me that if the scene had been released from forensic examination, a different type of examination could take place?

A. Yes, um-hmm.

474 Q. And would you agree with me that what you have suggested there was the likelihood of suspects throwing away a transmitter or decoder after detonating the explosions?

A. Sorry, say again.

475 Q. What you have said there, of the possibility of the suspects throwing away the transmitter or the device by which they set off the explosions?

A. I am not quite clear what the question is.

476 Q. That's what you wanted a search for?

A. Yes.

477 Q. Okay. And have you made an assumption that the Gardaí didn't search for that?

A. I was offering the view that the search should be made, yes. I wasn't advised that any search had been carried out.

478 Q. Okay. So you just don't know whether the Gardaí searched for that or not?

A. No.

479 Q. Okay. There is a contemporaneous report from -- it is from -- in fact it is the Superintendent, Keeney, in which -- it is towards the end of it. I will read it out to you. "The cigarette end would be a support in helping to put Burns at the site number 2, but on its own is of little use. There was no transmitter found for setting off a remote-control bomb or firearms found on the two suspects when stopped, nor were such things found in the extensive search of the area for days following. Maybe the two men set off the first explosion but then maybe they didn't, there is no way of proving it and they will not admit it, at least they have not done so up to now. They obviously were involved with something to do with firearms and explosives but what connection is not known. They could not have been involved in setting off the second explosion." Would you agree with me that that suggests that there was a search for the transmitters?

A. It certainly would appear to say that, yes.

480 Q. And obviously you knew that young Mr. Hudson had been shot?

A. Yes.”

“487 Q. Yes.

A. Well, I'm not quite sure -- first of all, I wasn't aware that the examination had been done. Secondly, I had no idea of the scope of the investigation that was done. I know the certain items that you are talking about. I still have a view of items that were there while I was there, that I regarded as potential evidence, but I am not sure what other evidence classes were covered in the examination, so I really can't answer that question.

488 Q. Yes. But what I want to suggest to you is that underlying the view you expressed at the time, and your view while giving evidence earlier, was a belief that there hadn't been a technical forensic examination of the scene?

A. That's correct.

489 Q. And now you know differently, if the documents are correct, obviously, isn't that right?

A. Yes, um-hmm.

490 Q. And obviously also you didn't know whether or not there had been a search for the transmitter at the time you --

A. No.

491 Q. And you know differently now --

A. Yes.

492 Q. -- if the documents are correct. And what I just want to canvass with you is whether there is an actual simple explanation for what you believe happened, because what you say in your statement is this: "I accompanied several RUC officers to the area fully expecting to meet up with colleagues from the Dublin Forensic Science Laboratory or the Garda Síochána Technical Bureau." So you were expecting to meet them, but can I ask you, had you made an arrangement to meet them?

A. No, no.

493 Q. No?

A. That was an assumption, that I would meet them.

494 Q. Yes. You then say: "I had met with staff from these organisations on many occasions in the past and knew them to be highly professional, proficient and competent." And again, that is not in dispute. "I was met by a plain-clothes officer from the Garda Síochána who was accompanied by several uniformed officers and was advised that no forensic science resources from Dublin would be available."

Now, is it possible that you misunderstood what was being said to you, that they weren't available to meet you?

A. No, I -- it may have been, but my impression was that other matters happening at the time were commanding attention and they would not be available to attend.

495 Q. Well, that's what I was going to ask you. Was the conclusion you reached, that the Garda authorities weren't prepared to put forensic resources available into this and weren't making them available at the scene?

A. Making available? Weren't available, yes. I mean that was my understanding of the situation, that they were not available.

496 Q. Yes. You have recorded very bleakly there, you were told that no forensic science resources from Dublin would be available?

A. That is my recollection of what I was told, that no --

497 Q. And you concluded, did you not, that there was going -- there had been none and there was going to be no forensic examination?

A. Yes.

498 Q. And you accept that you are wrong in that?

A. So it would appear, yes, but that was what I was told."

Retired Sergeant Ennis gave evidence on Day 88, pages 44 to 90, as did Sergeant Mullaney on Day 84 and 85. It is submitted that there is not a shred of evidence in relation to any failure to preserve, examine, search, and retain all necessary forensic samples for testing, in relation to the Narrow Water site. Still less is there a shred of evidence that there was any collusive action by any member of the Garda Síochána in

connection with the PIRA in concealing and destroying evidence or interfering with the proper preservation of the scene at Narrow Water.

(ii) **Fulton and Omeath**

This relates to a finding by the Gardaí as a result of a Garda Intelligence Operation leading to the discovery of a bomb in a hijacked van at Knocknagoran, Omeath, on the 28 August, 1989. There was no input from the RUC or any other agency which led to this find. This was one of the largest bombs ever found in the Irish Republic at that stage, approximately 1,500lbs. Notably, though Fulton claimed to be involved in the manufacture of this with Mooch Blair and others, he said he hadn't got around to telling his handlers about it but claimed there were fingerprints to be found on equipment in the property where the bomb was found in, in Omeath, and he alleged "that Mooch and all had to go on the run and that he was told to go North and stay North", and alleged that "it could have been about twenty-four/forty-eight hours word came back from Mr. Callaghan that everything was clear, it was ok, go back home. There is nothing, it is all cleared up", and said that basically "'our friend' cleaned it up. I don't know how he cleaned it but there were fingerprints on the equipment inside it." He alleged that again the reference to "our friend" was to Owen Corrigan. (Day 66, question 314 onwards.) When asked was his name mentioned when the bomb factory in Omeath was discovered on the 28 August, 1989, he said no, it was "our friend." (Question 352 and 354.) The Tribunal has had produced to it the complete investigation file of Detective Sergeant John Harney, together with all the statements taken in the course of the investigation and the list of exhibits and documents. Arising out of the investigation there was a prosecution taken against Joseph Patrick Parker, the owner of the property concerned, resulting in a plea of guilty in the Special Criminal Court. Among the statements was one from Detective Garda John Magee of the Fingerprints Section, Garda Technical Bureau, wherein he stated;

*"On the 28<sup>th</sup> of August, 1989 accompanied by Detective Garda William Brennan, Ballistics Section, Detective Garda William Cooper, Photograph Section, Garda Technical Bureau, I travelled to Knocknagoran, Omeath, Co. Louth. I saw a yellow*

*Toyota van, reg. number UIJ-7835 in a garage beside a bungalow. The scene was pointed out to me by Detective Superintendent Thomas Connolly, Dundalk Station. I examined the van and contents, the garage for finger and palm marks. I took possession of a number of items from the scene for further examination. I developed and lifted a number of marks from various surfaces. I subsequently received from Detective Garda G. Murray, Dundalk Station, a set of fingerprints and palm prints on Form C58 bearing the name Joseph Patrick Parker. I compared the lifted marks in my possession with the set of finger and palm prints mentioned above with negative results.”*

John Magee subsequently provided a statement to the Tribunal and gave evidence (Day 79 Pages 60 to 97) as did Detective Sergeant Aidan Daly (Day 83 Pages 2 to 69).

- (a) From all of the above material there is no evidence to suggest that Owen Corrigan was involved in any way in the discovery, examination or investigation of the scene of the bomb factory in Omeath.
- (b) There is no evidence to suggest that he had access to the fingerprint lifts that were discovered by Detective Garda Magee at the time.
- (c) There is no evidence that those were interfered with and in fact they were obviously retained not merely for the purposes of the prosecution of Joseph Parker but were subsequently retained at the Garda Technical Bureau (and not Dundalk Garda Station) until their accidental destruction as a result of flooding which took place when the old fingerprint case files were moved to the basement of the Fingerprints Section of the Technical Bureau when unprecedented flooding took place on the days of the 15 and 16 November, 2000.

Précis Intelligence Document number 663 suggests that a named suspect had gone on the run for a number of weeks subsequent to the discovery of the bomb factory by reason of a

fear of his fingerprints having been possibly found there. (See Brian Brunton, Day 112, page 2.]

This précis and the original intelligence is not in any sense corroborative of the claim made by Fulton. As Chief Superintendent Kirwan explained in evidence, it is one of the most common reactions and fears amongst criminals/subversives that when a crime scene is discovered they may be afraid that they are forensically connected with it. As the suspect concerned and Fulton were in fact both arrested on the 30 June, 1989 prior to the discovery of the bomb factory in Omeath and had their fingerprints on record, the fact of them going offside couldn't prevent any detection of their finger marks if they were there and discovered at the crime scene. John Magee gave evidence of finding unidentified marks, comparing them with suspects on the political file and obviously not giving any identifiable, verifiable matches. Additionally, the timescale within Fulton claims that the fingerprints were cleared, i.e. twenty-four/forty-eight hours is wholly inconsistent with the précis of intelligence of the suspect being offside for several weeks and, of course, inconsistent with the clear retention of the identified fingerprints and the unidentified marks and their storage in the Garda Technical Bureau until they were accidentally destroyed. More importantly, the précis supports no inference of any collusive action on the part of any Garda Officer or any improper interference with the scene or the evidence. It simply speaks as to the fear of a suspect and the action that the suspect has taken on foot of that fear. Nothing more.

It may also be observed that at no stage was this claim made by Fulton ever made known to the RUC and/or the Gardaí.

In summary, therefore, the Fulton allegation concerning Omeath is not merely hearsay as something as having been told to him in relation to the anonymised "*our friend*", it has no foundation in facts and has in fact been contradicted by all of the evidence available and in short has been demonstrated to be a false claim on his part.

**(iii) Fulton and Tom Oliver**

Comment has already been made in relation to Mr. Fulton and his alleged whereabouts at the time of the murder of Tom Oliver. There is only Mr. Fulton's admission to participating in the abduction of Mr. Oliver along with Mr. Scappaticci and others. There is in fact no evidence at all to substantiate his claim that this was a "first" abduction of Mr. Oliver, nor is there any evidence to substantiate his claim that he was out of the country and in Paris in July, 1991 when Mr. Oliver was in fact murdered. His own book, indeed, appears to suggest the contrary.

Similarly there is simply no evidence that Tom Oliver was, as alleged by Fulton, caught with an unlicensed shotgun. Still less that he became an informant, either because of that or related to that in any way. Equally important is the clear evidence that at the time of the alleged meeting with Owen Corrigan, when this information is alleged to have been passed from him to Mr. Blair (a fact which both deny), Mr. Corrigan had been off duty sick from Dundalk Garda Station and his duties there from 8 September 1989 to 15 October 1989 and from 4 December, 1989 and in fact never resumed duty until his retirement from An Garda Síochána on 4 February 1992, a fact which even makes it more highly improbable that Owen Corrigan would be in possession of such information as is alleged to relate to Tom Oliver.

As earlier noted, Fulton's claim in this regard is in conflict with that of Ian Hurst who alleges that it was Scappaticci facilitating the placing of a tape recorder in a telephone booth which led the PIRA to discover allegedly that Tom Oliver was providing information to the Gardaí.

It is certainly clear from Mr. Fulton's evidence that neither he nor his alleged handlers, if he ever reported the matter to them, appear to have taken any step in connection with saving Mr. Oliver's life at a time when certainly he, Mr. Fulton, knew of the threat to Mr. Oliver allegedly made by Mr. Blair and the fatal danger which Mr. Scappaticci and others must have represented to Mr. Oliver when he was in fact abducted.

In short there is no reason to believe Mr. Fulton's claim in this regard and in fact every reason to doubt it. It is submitted it cannot therefore be relied upon as evidence of any collusion on the part of An Garda Síochána or any member thereof.

### **Fulton and the Alleged Viagra Sting**

Fulton gave evidence in relation to this on Day 66 Page 144, Day 67, Day 68, questions 573 to 578. Witness 71 in his statement to the Tribunal and in evidence said;

*“Sometime after April, 2000 Keeley supplied information relating to the theft of Viagra tablets from Pfizer in Cork. He supplied a sample tablet. I passed this to Garda Fraud Squad who subsequently confirmed that Pfizer was able to identify it as one of their tablets not yet issued to the market.”*

The evidence as to any possible theft or loss of Viagra tablets has been completely contradicted by the evidence of Conor Hanlon, Day 94, pages 18 to 39. Also on Day 122 Detective Inspector Heneghan gave evidence that there was no record or knowledge, whether documentary or otherwise, of any enquiry having been made by the RUC in relation to any theft or loss of Viagra. The clearest possible evidence is in fact that Pfizer were not manufacturing the finished tablet Viagra in Cork at all but produced it in powder form from which it was sent to a number of factories abroad for conversion into finished tablets which are then re-imported not directly to Pfizer but to pharmaceutical distributors around the country, none of whom reported any loss or theft of Viagra in the period concerned. Mr. Fulton's evidence, therefore, appears to be unfounded and Witness 71's recollection is clearly also open to doubt.

### **Not a Shred of Evidence**

Fulton's evidence is extremely vague as to when he first learnt that there was a member of An Garda Síochána colluding with the PIRA. How he learnt this; Who told it to him; Who identified “our friend” as being Owen Corrigan; When he reported this allegedly to

his handlers. The other extraordinary fact is that he was unable to give any specific instance or clear example of any collusive action with the PIRA on the part of any garda up until the date of the murders. Such collusion as he has now alleged in relation to the Breen and Buchanan murders, Narrow Water, Omeath and Tom Oliver, were, based on the evidence available to the Tribunal, never communicated to the RUC and/or An Garda Síochána at the time.

## 15. British Army Analysis of the PIRA Operation

### 1. British Army Intelligence

The Tribunal has received a one page document summarising British Army Intelligence. It appears to be based upon the documents provided in HMG16, 17 and 18 to the Tribunal. It is as set out below;

RESTRICTED

HMG 16-18

Annex B

#### Summary of Army intelligence for Smithwick Tribunal

1. On 3 April 1989 the Army received intelligence from an agent reporting that a conversation had taken place in which a named Catholic man and two unknown men briefly referred to the fact that Chief Superintendent Breen and Superintendent Buchanan had been killed. One of the named men implied that PIRA had been responsible. The murder of Lord Justice Gibson was also referred to in the conversation. The agent suggested the named man might have been involved or had knowledge of the murder. Although the agent was fairly reliable the Army was not confident that the intelligence was true.

2. On 10 April 1989 the Army received intelligence from an agent suggesting that a further three named PIRA men were involved in the shooting of the two RUC officers. One was reported to have been involved in clearing the route while the others had taken part in the shooting. Although the agent was usually reliable the Army was not confident that the intelligence was true.

3. On 25 September 1995 the Army received intelligence from an agent suggesting that a further named PIRA man (not one of those named in the intelligence dated 10 April 1989) had been one of those responsible for shooting the two RUC officers. The intelligence came from a fairly reliable agent and was assessed by the Army to be possibly true.

The intelligence was provided by three different Army sources. It was standard practice for the Army to share intelligence with the RUC within 24 hours of receiving it.

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Other non military intelligence material has been supplied, of course, including the log of the 1<sup>st</sup> Regiment of Royal Fusiliers for the 20 March, 1989, the Army Incident Report and the Vengeful Coincidence Analysis and associated

documentation. It may be observed in passing that the military intelligence summarised does not, of course, refer to any act of collusion or allege that any Garda, unnamed or named, was involved in colluding with the IRA in the murders.

## 2. **British Army Analysis**

The Tribunal has heard evidence from a number of witnesses who had served in the British Army in Northern Ireland. This is of an extremely important and significant nature from the point of view of the findings of the Tribunal. All of these witnesses had significant roles and operational experience in dealing with the Provisional IRA and in particular in the South Armagh area. The significant parts of the evidence in this regard are as follows;

### A. The evidence of Brigadier Mike Smith (Day 39).

His evidence in relation to the PIRA included the following;

- in this South Armagh area they were considered to be among the most capable and experienced of the terrorist groupings
- capable of mounting large scale and ambitious terrorist operations within the context of terrorist grouping
- were very much risk averse
- their operations would tend to be predicated on a considerable period in which they might have planned, prepared for, gathered information about a target or a likely target
- they would be very concerned to avoid the risk of loss of personnel or weaponry

- the type of planning that they engaged in included clearly gathering information on multiple levels and building that information together to provide collateral information in which they could form a good image of the likelihood of success involving the correct identification of a target
- they would collect information and intelligence relating to people, places, routes, cars, army patrols, small pieces of information would be gathered together to form a bigger picture to provide the basis for an operation, including the identification of patterns of behaviour and travel
- having identified or established such a pattern it would seek to identify an opportunity that could be exploited for an attack
- insofar as Superintendent Buchanan is concerned because of three years as a regular visitor to Garda Stations there would be multiple occasions on which it might have been sighted so therefore the colour, registration, etc., of the car might be known and it might well have been observed leaving a number of Garda Stations and presumably leaving a number of RUC/PSNI stations where he would be known to have business at that end
- whilst one did everything one could to avoid setting a pattern, there are certain locations, bridges, junctions, etc., at which you have only a number of options and a careful analysis of those routes will tend to lead to the key points along those routes.

There are therefore a number of locations, obviously both in terms of destination and arrival points at one or two key junctions and bridges along the route at which stage one would probably know that a vehicle was committed to or highly likely to be committed to a certain course of action

- identifying these key junctions can lead to an increase in the probability of the intended direction of travel and therefore an increase in the risk and lead to the potential opportunities for exploiting “a soft target”
- having considered the relevant road network at the time an observer at the bridge leading north out of Dundalk (the Newry Bridge) and the use of radio communications at key points could give the signal that the officers were about to appear.
- The garda video was played in the Tribunal showing video footage of the road route at ground level and from a helicopter.
- having considered the timescale involved by reference to HMG 51 (the contemporaneous RUC report in relation to the facts of the matter) and the intelligence relating to the drop off of a number of IRA men at 2.30 p.m. he was of the view that the decision to mount the operation cannot have been dependent on the two officers being seen to leave the police station
- if the trigger for the operation was their arrival at Dundalk garda station he was of the view that the more compressed the timeframe the more difficult the task was. He therefore was of the opinion that whatever the trigger for the operation to start, the PIRA were confident that the two RUC officers were likely in some way to come along that road that day and having analysed the two or three or four possible viable routes it seemed from the evidence available that the people at the scene had confidence that the target was approaching
- his visit to the scene allowed him to conclude that a visual sighting of the vehicle was not the trigger but that once they were committed to crossing the bridge they were essentially returning north and their number of sub-

options then declined and that once they turned onto the Edenappa Road itself they were committed to approaching that illegal VCP

- having considered Mrs. Halpin’s evidence and Mr. King’s evidence (Day 10) that it was reasonable to assume that somebody along the route had given the road party evidence that the officers were about to appear and given the fact that they were being followed by the van immediately before the shooting, it was most likely that they were followed by the van after leaving Dundalk (it being unlikely that the PIRA van full of gunmen would be outside the Garda Station)
  - having considered the Army Incident Report Form (read into the record by Mr. David McConville, Day 13, Page 60) and having visited the site, the position of the ambush was extremely well chosen and that this had been well planned in advance on the day of the operation
  - given the “Vengeful” analysis and given that Superintendent Buchanan had regular and weekly visits to Dundalk, it would be a reasonable assumption to make by the IRA that he might be going down the following week or on any given week.
- B. The second witness of significance was Brigadier Ian Liles (Day 39 and again on Day 63 in private which transcript was read into the record on Day 72 in public).

Brigadier Liles had served in the British Army for thirty-six years including fourteen years in Northern Ireland and including three of those in South Armagh and in 1989 exclusively in South Armagh for two years, arriving there a couple of months after the murders of the 20 March, 1989.

His analysis of the methodology of the South Armagh PIRA were that they were extremely professional and extremely risk averse and that in his experience they did not mount any “ad hoc” operations, but that their operations were well planned and generally well executed.

His opinion as to how long it might have taken them from starting the operation on the day to getting it into completion was that it would have been impossible in under three hours because of the number of moving parts, weapons from hides, cars to be moved, personnel to be assembled, dickers to be put on the route, etc.

- he drew attention to the practice of the PIRA in relation to their weaponry, keeping them in hides, often deep hides, moving them to interim hides, having them collected and transported by persons other than the user, clearing the routes, etc.
- his opinion was that it would be impossible for the PIRA to have mounted this operation in under three hours at an absolute minimum and that accordingly either the officers being seen arriving at Dundalk Garda Station or someone telling the PIRA that they had arrived in Dundalk Garda Station sometime after 2 o'clock would not have given sufficient time to mount the operation
- he confirmed that he saw absolutely no intelligence that any kind of telephone tip off was given to the PIRA and he agreed that a telephone tip off in relation to their arrival, presence or departure from Dundalk Garda Station could not have given the PIRA sufficient time to mount the operation.

He also agreed that it was highly unlikely that either surveillance carried out by the PIRA at the station or a tip off from within the station could be the trigger for the murders.

He also agreed that if the PIRA were sending a hit team to this area they would undoubtedly carry out a certain amount of prior surveillance for their own safety in case they were walking into a trap and that the absolute minimum that he thinks the operation could be mounted in would be three hours but they would probably want between five and eight hours ideally.

Brigadier Liles returned on Day 63 to give further details in relation to his analysis and confirmed that he was an intelligence officer SO2G2 in the Headquarters Third Brigade dealing with intelligence matters holding the rank of Major. He confirmed that the army analysis conducted subsequently showed that the first signs of the operation having started were between 11.30 to 12.00 midday on the day of the murders, the 20 March, 1989, before the officers had even left Northern Ireland and obviously before their arrival at Dundalk garda station. He confirmed that intelligence suggested that up to seventy personnel were involved in total in the PIRA operation. He explained the PIRA methodology whereby;

- (a) they would employ clearers or beaters to ensure that weapons could be safely taken from hides
- (b) that weapons were often kept in deep hides and transferred to interim hides before being collected for operational use and that this was a very significant operation in itself having regard to the likely number of weapons used in the total operation;
- (c) that they used dickers or scouts to keep a lookout and to clear roads and that it was between 9 and 10 o'clock in the morning which would be the

latest time by which the PIRA would have started to mount the operation. He said the “drop dead time” would be 10 o’clock.

It therefore could not have been planned and mounted on the day and must have been planned in advance. Having regard to the number of personnel involved and the belief that there were at least three possible hit teams in situ, it couldn’t have been commenced on the basis of the officers being seen arriving or being in Dundalk garda station or leaving Dundalk Garda Station and that in his opinion it must have commenced at least what he described as a drop dead time of 10.00 a.m. or perhaps the very latest 11.00 a.m. if they definitely knew the policemen were coming. He stated his opinion that it was “impossible” that the operation to murder the RUC officers was a “spur of the moment operation”. He went on to say *“and I think that this was the main thing that came out of the study, that this was not the two policemen driving into the police station and the IRA suddenly mounting an operation to hit them on the way back.”*

He confirmed that the military were not aware that Superintendent Breen and Buchanan were in Dundalk and that his commanding officer had confirmed this to him recently.

In relation to the radio traffic which became apparent as having started between 11.30 and 12.00, he did see a similar amount of similar intelligence in relation to other radio traffic on other days but could not definitively relate it to the superintendents on a previous day.

**The Tribunal has been told on the last sitting day by an unverified, unsworn statement from a Mr. Laramour that there are no records in relation to such radio activity or traffic. It is a matter for the Tribunal to state whether this seems likely or credible in the circumstances.**

In his view the South Armagh PIRA had authority and capability to carry out this operation on their own but that it was known within Northern Command. He confirmed that he had never seen technical information that confirmed that the PIRA had been contacted from someone within Dundalk Garda Station (as was alleged at page 219 of Toby Harnden's book, Bandit Country).

C. The third Army witness was Witness 79, who gave evidence on Day 86.

He was an officer commanding Y Company of the Royal Regiment of Fusiliers, part of Third Brigade stationed in the area at the time. He was in a position to give general evidence about the towers, the operation of patrols and the RRF log books which had already been put into evidence by David McConville (HMG10, 11 and 12). He voiced a view as per his statement in the following term;

*“In my view as regards two possible scenarios that this was the first day of an operation based upon a travel pattern and the IRA got lucky or that this was the result of specific leaked information, the latter is more likely to be correct.”*

He thought the former was unlikely and the latter was more likely. He had in fact no evidence to give as to how, when, where or who might be responsible for this “specific leaked information” North or South. In relation to that he expressed the view that knowledge of the officers' arrival at Dundalk between 2.15 and 2.20 could have provided enough time to mount the operation. He thought that the question of multiple ambushes being prepared by the PIRA lacked credibility because of their, i.e. Y Company's, patrols. However, he conceded that there was no patrol in and around the Edenappa Road that day and that the patrols hadn't stopped the attacks on the North/South railway line in and around the Kilnasaggart Bridge area from November to March. He

gave evidence of having dealt with bomb threats and secondary devices on the railway bridge in February of 1989.

He agreed that the PIRA would be likely to be aware of the presence of Army border patrol and/or of the presence of the Army protection in relation to the Kilnasaggart Bridge at the time. That protection duty ceased on the morning of the 20<sup>th</sup> also, following which it would appear as a consequence that the out of bounds order covering the Edenappa Road, inter alia, was rescinded at the same time.

He attended at the scene of the murders and was of the view that the items of food wrappings, drink, etc., was consistent with the PIRA party there planning for the time that they thought they would need to spend there and providing for their sustenance for that period.

He agreed that when one factored in the stealing of the van from Saturday night, the making of that van available from wherever it had been stored, the collection of the weapons from hides, whether deep or interim, the gathering together of parties, that it was unrealistic to offer an opinion that that could have happened within fifteen or twenty minutes and he therefore agreed that his scenario of having been able to mount the operation with enough time to do so from 2.15 to 2.20 was improbable.

Of relevance to his initial opinion in that regard are the following;

- (a) He was not aware of the frequency of the crossings of Superintendent Buchanan. Indeed he was not aware that the crossings took place at all.
- (b) He was not aware of the signals intelligence or the analysis of it.
- (c) He was not aware of the forensic history of the weapons.

- (d) He did not consider a possibility that the officers were under surveillance for a period prior to the murders.
- (e) He was not in evidence disputing Brigadier Liles's interpretation nor was he privy to the information or intelligence that he had.
- (f) He confirmed that he had no intelligence or evidence in relation to garda collusion in the murders.
- (g) Insofar as the crossing by Superintendent Buchanan of the border, in terms of the car he used, the frequency of the visits, he agreed that he was complacent with his own safety.

## **Conclusion**

It can be safely concluded from the above that the British Army intelligence analysis;

- (a) Does not include any actual evidence or information relating to any alleged garda collusion emanating from Dundalk Garda Station or elsewhere. There was no collusion reported upon at the time by the Army or in the analysis of the events given to the Tribunal.
- (b) It does not support a claim that there was technical information which showed that the PIRA had been tipped off by phone from within Dundalk Garda Station.
- (c) It does not provide any evidence consistent with or supportive of Kevin Fulton's evidence that the PIRA were tipped off by Owen Corrigan or any other member of An Garda Síochána or civilian administrator.

- (d) The analysis of the murders operation positively shows that the operation was started before Superintendent Buchanan and Chief Superintendent Breen had left Northern Ireland and before their arrival, presence or departure from Dundalk Garda Station.
- (e) That the arrival and/or presence and/or departure of the officers from Dundalk garda station could not have given the PIRA the opportunity or time to have mounted the attack, which they did.
- (f) Surveillance of the station by the PIRA and/or a tip off from within the station subsequent to their arrival again could not have provided the necessary time to mount the operation which was already in being.
- (g) There is, of course, no other evidence that the officers told anyone in the North or in Dundalk Garda Station that they were going to take the Edenappa Road as a route back to the north and it would appear an inference from all of the other evidence relating to the superintendents that they are unlikely to have informed anyone about their proposed route.

The question therefore posed frequently in the course of the Tribunal and in the media, how did the PIRA know that the officers would be returning via the Edenappa Road? The answer is twofold. First, if they told nobody about the route they intended to travel, whether north or south, therefore that information could not be leaked and the PIRA could therefore not know it from any possible source.

Secondly, it is a fact that the superintendent was a regular visitor to Dundalk and in the weeks and months previous to the murders had gone there on at least a weekly basis and had, according to the information available to the Tribunal, used the Edenappa Road eight out of ten times. (See also Cory Report at paragraph 2.126, p.86, quoting RUC sources to this effect and the transcript of the Tribunal interview of Eugene Crowley, Q26-28 @ pages 8-9.) Here he confirms that the source of the information which he had for

paragraph 4 of his report of the 17 April, 1989 to the Government was as a result of briefings from Sir John Hermon. This could not be described as anything other than a strong pattern of probability. This strong pattern of probability may well have been confirmed to the PIRA the previous week when accompanied by Inspector Charles Day (when they thought they were being followed by a suspicious van) they actually turned up the Edenappa Road on their route home.

The PIRA therefore did not know definitively, in advance, that Superintendent Buchanan would take that route but could predict with a strong degree of probability that he would do so. This would then merely require to be confirmed by a spotter or dicker at perhaps only one or two locations or perhaps by a vehicle following them, such as the van which in fact later overtook the officers on the Edenappa Road itself.

This is consistent with the British Army analysis and intelligence referred to by the officers concerned relating to the number of personnel, the roads covered and other details concerning the execution of the operation leading to the two officers' murders. This is also logical and consistent with all of the other evidence before the Tribunal.

The other question that has been frequently and publicly posed is what were they doing on the Edenappa Road? There has been speculation that they may have gone to that area in connection with the attacks on the Kilnasaggart Bridge. It seems more likely that they took the road because of the frequency with which Superintendent Buchanan is believed to have taken that road and probably also because he may have been due to attend a meeting in Armagh. In that connection the Secretary of State for Northern Ireland stated in the House of Commons on the following day, when making a statement about the murders (Hansard H.C. Deb 21<sup>st</sup> March, 1989, Volume 149, Column 918) "*I understand their meeting lasted about one hour and that they then left to return to Armagh.*"

If the PIRA had planned, as they must have, in advance of the day of the murders and were giving effect to their plan at an early stage on the day of the 20<sup>th</sup>, there is no reason to suppose that they would not have tried to take the opportunity to ambush the officers

on the way down to Dundalk as opposed to on the way back. There has been an easy and untested assumption that the PIRA only planned to kill the officers after they had visited Dundalk and has not explored in any detail the equally real possibility that the PIRA may have planned to kill them on the way down if the opportunity arose. Why would the PIRA not try this? There are a number of facts consistent with this real possibility.

The facts consistent with this are contained in the log of the Royal Regiment of Fusiliers HMG9, entries 8, 9 and 10, which related to a report of an observation of this that approximately twenty metres south west of the Kilnasaggart Bridge on the road there was a vehicle sitting at what appeared to be the back end of a portable traffic light. They arrived in what appeared to be a blue Cavalier hatchback and a blue Volvo estate. At approximately 12 o'clock they left the area and were seen heading north. Entry 10 says in relation to this entry the vehicles are "not legitimate and are to be treated suspiciously". At the same time approximately the radio communications interpreted by the Army to be related to the operation commence and this is also approximately at the time when Chief Superintendent Breen has left Armagh, i.e. at 11.30.

It also should be noted that the area ceased to be out of bounds at 11.00 a.m. and the 1<sup>st</sup> RRF covert ops to protect the railway bridge ended then. (HMG 99) It is a coincidence that the suspicious men and suspicious radio activity then commences?

Separately and at a later time the log at entry 14 and 15 records that two men working at a white pole one hundred metres east on the Kilnasaggart Road from the bridge, and looked like surveyors at 13.50 and at 14.00 record that two men left the area in red saloon car to Finnegan's Road.

It would also appear that an additional mentioning of men on the road was brought to the attention of the RUC in that in the Operational Imperial Papers (HMG 202) (produced to the Tribunal and described as 22 pages extract from blue book, at page 111 there is the following entry) –

On the 20/3/89 14.15;

*“Message for the attention of Chief Inspector -----  
from Forkhill RUC  
re; suspicious activity Kilnasaggart Road Bridge, four men observed apparently  
erecting road signs.  
DOC Road Service and Water Service contacted  
NI Railways and British Telecom All negative. These men left the scene after half  
an hour in two cars, a blue Cavalier and a blue Volvo. These cars headed north  
towards Meigh.”*

All of the above is consistent with the probable interpretation that the PIRA in pursuit of their plan to murder the officers would have taken the opportunity to do it on the way to Dundalk if they could have. It is also fully consistent with the shared intelligence North and South that PIRA had the four roads covered and had the operation in place for at least a week before the murders. (See e.g. HMG 60.) In fact, an illegal vehicle checkpoint (IVCP) was operated by PIRA at BCP 13 between 6-12 March 1989 (See HMG 85).

It is not known definitively if the Superintendents travelled on the main Newry/Dundalk Road on their way down but it must be highly likely that they did so. This would also be consistent with the précis of Garda intelligence Document 514, which summarised a reported sighting of by a PIRA member of the officers on the main road travelling south.

The PIRA regretfully took the opportunity to commit the murders on the return journey, it being reasonably probable that Superintendent Buchanan would choose the Edenappa Road and having followed him for at least some stage in immediate advance of the shooting to ensure that he had in fact chosen it.

## **16. PIRA Evidence Provided to the Tribunal**

Despite the extensive number of Tribunal public hearings and the voluminous array of witnesses heard over the course of its duration, there were very few former PIRA members to attend in person and give evidence. Given the subject matter of the Tribunal's investigation and its inextricable link with PIRA; the central atrocity (and others) perpetrated by them and the methodology they have employed while committing such heinous acts, it is worth reflecting on what PIRA input there has in fact been. This part of these submissions will firstly review relevant oral testimony received by the Tribunal and then analyse PIRA's official written account as provided privately to the Tribunal's legal team.

### **Michael McKeivitt**

Michael McKeivitt is currently serving a lengthy prison sentence and gave evidence to the Tribunal on the 28 November, 2011 (Day 58) when he was produced at the Criminal Courts of Justice. Clearly, as has been noted by a number of witnesses at the Tribunal, he was a pivotal figure within PIRA and indeed the Tribunal has heard evidence that for periods he was the most watched man in the State.

The central issue that the Tribunal has been mandated to investigate, i.e. whether there was collusion in the murders of the late Superintendent Buchanan and Chief Superintendent Breen, was not explored with Mr. McKeivitt at all and as stated previously, his evidence was confined to a solitary issue relating to the search of his property in January 1990 and any information he may have received in advance of that search. It would therefore seem that beyond this, his evidence is of no value whatsoever to the issue of collusion.

However, notwithstanding his seniority within the PIRA structure, his evidence to the Tribunal was brief and centred upon one narrow issue; the search of his house on the 26 January 1990 and whether he had received a tip off in advance of the said search

effectively warning him to remove a forged passport from the property before the Gardaí discovered it. This issue related to the evidence of Dan Prenty, whereby he claimed to have listened to a recording of a phone conversation between an unidentified caller and Mr. McKeivitt relaying such a tip off. A number of other members of An Garda Síochána were also alleged by Mr. Prenty to have heard the same recording but each of them gave evidence to the Tribunal and none could corroborate Mr. Prenty's recollection. Michael McKeivitt's evidence was consistent with those members and **not** that of Mr. Prenty. He repeatedly denied ever receiving such a tip off or indeed any tip off prior to his property being searched. He accepted that his home had been searched on a handful of occasions but asserted that he was never on any occasion told by the Gardaí why any of those searches were conducted. The height of any information given to him at the time of the searches was to the effect they were being conducted under the Offences Against the State Act but he was never given any further information in advance of the respective searches. He accepted that searches may have been in relation to a missing passport without him being told so but he was consistent in his denial that any tip off had ever been received or that he had ever had any friendly contact within An Garda Síochána. He had become aware of the nature of the issue the Tribunal were seeking to question him upon and had taken the step of talking to an unidentified third party who had apparently also lived in the relevant property around that time and this confirmed his recollection.

### **Patrick "Mooch" Blair**

The evidence of Mr Blair is more wide ranging than that of Michael McKeivitt, having a broader focus and exploring several issues that are of relevance to the Tribunal's terms of reference.

Mr Blair gave evidence to the Tribunal on day 59 (29 November, 2011). Despite his assertion that he never rose above the rank of volunteer within the South Down unit of PIRA, there has been considerable reference to him in evidence from other witnesses to suggest he was a prominent member within the PIRA structure. He himself accepted when asked by Counsel for the Tribunal that he was "actively involved" as a PIRA

member in the 1970's, 1980's and possibly early 1990's (page 5, line 28). His criminal record also tends to strongly corroborate the extent and scope of his terrorist activities. In particular, on the 13 November 1975 he was sentenced to 15 years imprisonment arising from the attempted murder of an RUC Constable with various other notable terrorist associated crimes being taken inconsideration including hijacking, bombing, firearms offences and membership of a terrorist organisation itself. He further acknowledged being a convicted bomb maker.

### **Kevin Fulton and Owen Corrigan and Evidence of Patrick “Mooch” Blair**

Of particular relevance is the relationship between Blair and Kevin Fulton. The issues surrounding the evidence of Kevin Fulton is looked at elsewhere in these submissions in more extensive detail but suffice to say, the credibility of Mr. Fulton is a highly pertinent issue to the Tribunal's investigation and any evidence that has a bearing on that, as is the case with Patrick “Mooch” Blair, warrants attention. Mr. Blair accepted he did know Fulton although characterised him as a *“loose associate. Off and on. Like it wasn't a permanent thing with him”* (Page 7, lines 20 -21). On a number of occasions he describes Fulton's function as being that of a *“gofer”* and one whose reliability was highly questionable. He does however accept that from time to time Fulton would have provided transport for him. Mr. Blair also commented on Fulton's assertion that he had been *“green booked”*, giving evidence to the effect that if he had been, he certainly wasn't aware of it. He also emphatically denied that he was Fulton's commanding officer.

He also took issue with Kevin Fulton's claim that he was in Mr. Blair's house on the day of the murders. Blair puts himself as between *“Toal's”* pub and the bookies for a portion of the day. It was only when returning home around 4p.m. that he claims to have learned two men had been shot dead at the border. A guard called to his home at around 6p.m. inquiring where he was and apparently could see by his *“demeanour”* that he had been in the pub. Mr. Blair does not completely discount the possibility that Kevin Fulton could in theory have been in his house while he was in the pub (between approximately noon to

4.30-5.00p.m.) but bases his disbelief of such an occurrence on the ground that he would have been told of any such visit by his wife.

A further and highly significant aspect of Kevin Fulton's intended evidence was put to Mr. Blair in the witness box, namely that on the evening of the murders, Kevin Fulton and a neighbour were in his house when the aforesaid (and unidentified) neighbour said "*Our friend was involved in the operation*". The inference being that "*our friend*" was a member of An Garda Síochána (specifically Owen Corrigan) who had previously colluded with PIRA in other matters "*when things got cleared up*" (Page 16, lines 8-9). Patrick Blair's assessment of this was to categorise it as nothing less than fantasy. While he knew of Owen Corrigan (and accepted he may have been arrested by him somewhere along the line), he did not know him personally and had "*never met him in an IRA capacity*" (page 17, line 12). It therefore followed that he absolutely denied the statement of Kevin Fulton's intended evidence that around the time of Tom Oliver's PIRA abduction, Fulton had driven him to Fintan Callan's Céilí House and pulled into the car park and Blair allegedly got out. He entered the Céilí House and returned with Mr. Corrigan who got into the back of the car and engaged in conversation which was overheard by Mr. Fulton. Patrick Blair's denials were unambiguous;

*"The only time I got into a car with a Garda Síochána was when I was getting arrested."*  
(Page 19)

*"That's a lie. I wasn't in the car with that detective or any detective."*  
(Page 19)

And generally on the topic of collusion;

*"No Garda ever assisted me, or to my knowledge, I did not know of any Garda assisting anyone."* (Page 16)

Assertions by Fulton that he assisted Blair in making bombs were also denied.

It must be noted that running through the evidence of Mr. Blair is an obvious feeling of considerable disdain towards Kevin Fulton. He periodically describes him as being a;

- “fantasist”
- “liar”
- “nut case”
- “Walter Mitty”
- man who “makes up stories”
- man who was constantly “wheeling and dealing” and always “tricking at something”

While Patrick “Mooch” Blair may well have had clear motive for deriding Kevin Fulton-given Blair's belated discovery of Fulton's association with the British authorities and the fact Fulton has sought to implicate him in the Omagh bombing of August 1998 nonetheless, his evidence cannot be entirely discounted and does broadly chime with a number of other witnesses who held Kevin Fulton in similar disregard.

### **PIRA’s Version of Events**

On the 1 February, 2013, Counsel for the Tribunal read into the record the fruits of its ongoing contact with certain former PIRA volunteers during the currency of the Tribunal. This ongoing process was initiated well before the public sittings began, dating as far back as 2008. None of the parties before the Tribunal were privy to any of the material gleaned until it was publicly read into the record as late as day 125 of the proceedings. It is highly regrettable that a matter as material as the account provided by the perpetrators

of this atrocity was not introduced, in piecemeal fashion if necessary, at an altogether earlier stage of the hearings.

Contact with the former volunteers was engaged in three phases, with the first being the most substantial and the latter two essentially being by way of clarification and occasional elaboration regarding certain points. The salient aspects of each se can be broadly summarised as follows;

**Stage 1: “Final Approved Note” (2008)**

- The operation was executed as a result of lengthy and detailed surveillance initiated and conducted by PIRA volunteers.
- At no time was there any input from the Gardaí or any other outside source or agency regarding its planning or execution.
- In late spring/early summer 1988, a volunteer spotted a red Cavalier car, registration KIB 1204, entering Dundalk Garda Station from the Carrickmacross Road entrance.
- The front seat passenger was identified as someone believed to be “Nigel Day”, an RUC Detective, although the volunteer who made the identification was uncertain of the name. The physical description included a “thick black moustache”.
- On foot of this, a surveillance operation was mounted around Dundalk Garda Station. Its main focus was to locate the red Cavalier in question which was subsequently spotted a number of times in roughly the same spot at the front of the station and would remain there for up to three hours. The surveillance operation intensified at this point and continued through the summer and winter of 1988 and into 1989.

- During this period, 12 The Crescent, Dundalk - a vacant house with a direct view of Dundalk Garda Station – was used to conduct the majority of surveillance and from which it was gleaned that in the aftermath of any major incident in the south border region, the car would appear within days with Mondays and Tuesdays being the more regular days upon which it would be seen. It was lost for a 6-8 week period but was picked up again around late summer/early winter of 1988.
- The surveillance operation was further intensified and included the setting up of an elaborate communications system via radios and landlines. The operation progressed from surveillance to being military based around the end of 1988 and very early 1989.
- Prior to the 20 March 1989, a military operation was mounted on three occasions. Twice the car didn't appear and on the third it was tracked using the Edenappa Road on the return journey.
- On the day of the murders, surveillance was placed from no. 12, The Crescent and other volunteers were in place to track the vehicle leaving Dundalk town. The communications system was also put in place.
- At approximately 12.30 p.m. the red Cavalier arrived and parked in the usual spot. The communications system was activated at approximately 2.30 p.m. and the car was tracked leaving Dundalk Garda Station.
- The Active Service unit in Jonesboro had been alerted and moved into place. When the vehicle was intercepted, the two male occupants were challenged to step out of the car with their hands up. The car was put into reverse and attempted to escape. At that point both officers were executed. Instructions

had been to intercept the vehicle and arrest the occupants but if this was not possible then they were to ensure that neither occupant escaped.

**Stage 2: Response of PIRA to Tribunal letter of 14<sup>th</sup> November, 2008, seeking further information**

- The “*relevant individuals*” were brought together in an effort to address the issues raised. The passage of time, covert nature of PIRA and lack of records all impacted on recollections. Consequently, it was not possible to supply exact dates or times to some questions posed.
- In response to being informed that their estimated time of the officer’s arrival did not tally with the Tribunal’s information, there was some variation to the recollection of those quizzed. Some of the team believed that the two personnel arrived at Dundalk later in the afternoon than previously stated.
- The surveillance from no. 12 was conducted from the bedroom window on the Crescent side looking onto Dundalk Garda Station.
- The 6-8 week period when the Cavalier was not seen “*possibly*” date to the summer of 1988.
- Two diaries were recovered from the car. A briefcase containing documents, including religious tracts, and an electronic pager were also recovered.

**Stage 3: Meeting between Tribunal Legal Team and Three Former PIRA Members in the Presence of Intermediaries in April, 2011.**

- The original sighting of Superintendent Buchanan’s car was the most important element in terms of the operation’s genesis.

- Human error was to blame for their previous statement re the arrival time at Dundalk Garda Station. They now believe it was later than 12.30 p.m.
- They were surprised to see the same vehicle on a repeated basis at the station and regarded that as “sloppy”. A new car would have lost the operation.
- The identification of Nigel Day was critical.
- The operation was not centred around Chief Superintendent Breen.
- It was a South Armagh Operation and nobody from South Down knew anything about it, particularly Peter Keeley, alias Kevin Fulton.
- Dundalk Garda Station was not phone tapped and any suggestion it was is fanciful.
- There were four attempts in total to mount the operation; November & December 1988, January 1989 and March 1989.

### **Observations Regarding PIRA’s Account- Can it be Relied Upon?**

There is bound to be something of an instinctive impulse to distrust and therefore by extension disregard any account of the murders as provided by PIRA. While such an impulse is to an extent understandable from both emotional (after all these are the people responsible for the slaughter of two innocent lives and countless other victims) and rational (as the perpetrators they have a vested interest in skewing the truth) levels, it should nonetheless be firmly resisted. A dispassionate analysis of their version of events is called for before drawing any conclusions. In this regard, it is also worth noting the evidence of Detective Chief Superintendent Peter Kirwan (Day 127 Page 113) who cited PIRA’s bona fide engagement with the Independent Commission for the Location of Victims Remains. This was simply to demonstrate that notwithstanding their extensive

terrorist and criminal history, there is precedent in terms of PIRA offering cooperation which has yielded positive results in the past and this is something which should be borne in mind generally when approaching their contribution in the current instance.

### **Significance of When the Account was Provided**

The first striking feature of the account is the timing of it. The essence of PIRA's version of events stems from as far back as 2008 or in other words, three years prior to the Tribunal commencing hearing oral evidence at its public sittings. While there was further engagement behind the scenes resulting in some fleshing out of details provided, that process was effectively completed by April 2011. This, again, was prior to any evidence being heard by the Tribunal. There were further attempts by the Tribunal's legal team in November, 2012 and January, 2013 to obtain more detail (and procure a witness to give the evidence orally) but nothing further was forthcoming and hence, the well had effectively run dry by April, 2011. As a result, the account as furnished has the virtue of not been influenced by the testimony of the many witnesses that subsequently gave evidence in person before the Tribunal and it is difficult to deny that there are a number of fundamental aspects to it that have been corroborated by witnesses who were providing their evidence completely in the dark – just as all of the parties were- to the account offered by PIRA.

### **The Evidence of Inspector Day**

Inspector Day gave evidence during the very early stages of the Tribunal's public sittings (Day 6, 9 June, 2011). Detective Chief Superintendent Peter Kirwan, who was tasked with offering analysis and commentary on PIRA's version of events, was of the view that the reference to Inspector Day in the furnished account, while not conclusive, was nonetheless "significant." (Day 127 Page 122)

Inspector Day's testimony was relatively brief and it is at this remove safe to suggest that his stay in the witness box would have been considerably lengthier had the parties at that

stage been aware of PIRA's account which casts the sighting of him at Dundalk Garda Station as a passenger in the red Cavalier (late spring/early summer 1988) as the key trigger to commencing the operation which ultimately led to the murders of Chief Superintendent Breen and Superintendent Buchanan in March of 1989. Records have shown the Inspector did travel to Dundalk with Superintendent Buchanan on the 26 April, 2008 which broadly corresponds with PIRA's offered time line as to the sighting. (He had also travelled with him to Monaghan on the 29 March and to Dundalk on the 20 March and would again travel with him to Carrickmacross and Dundalk on the 1 July and 7 July respectively.) While the Inspector's first name was incorrectly furnished by PIRA (and they themselves acknowledged in 2008 that they were not certain of the name), there seems little doubt they were referring to the same man.

Inspector Day confirmed that his trips south of the border (including up to 12 visits to Dundalk) were usually in the company of at least one colleague which accords with PIRA's alleged sighting of him in the context of him being a passenger which infers he was accompanied at the time. He recalled a particular trip to Dundalk Garda Station on the 14 March, 1989 with Superintendent Buchanan and possibly being followed by a Hiace van on the return journey. This has a real significance in the context of PIRA's furnished history indicating that there was heightened surveillance of the Cavalier in the build up to the assassinations. It should also be noted that on this particular journey, Superintendent Buchanan turned left towards BCP 10 and the Edenappa Road at the Ballymascanlon junction instead of returning to Newry via the main road. It was of course on the Edenappa Road where he and Chief Superintendent Breen were subsequently shot. Superintendent Buchanan's diary records the trip to Dundalk with Inspector Day on that occasion, it does seem clear that the visit did occur as outlined mere days before the killings. A source of mystery at the time in the absence of PIRA's statement, Counsel for the Tribunal finished his examination by asking the witness whether he had he a beard or moustache in 1989. Inspector Day confirmed he had a moustache, the significance of which is now readily apparent in light of PIRA physical description of the officer they purported to identify as Nigel Day.

## **PIRA's Ability to Mount the Operation Unaided**

The Tribunal has heard from a multiplicity of witnesses whom have tended to paint a picture of PIRA circa 1989 as being a professionally organised and sophisticated outfit which was methodical in its planning and intelligence gathering ahead of implementing its operations. These witnesses included Detective Chief Superintendent Peter Maguire (Day 34), Brigadier Mike Smith (Day 39) and Brigadier Ian Liles (Day 39 and private evidence read publicly on Day 72). Both Brigadiers provided expert British Army analysis which is focused upon in greater detail elsewhere in these submissions but suffice to say, they found the South Armagh PIRA of that era to be among the most capable and experienced of terrorist groupings; capable of mounting large scale and ambitious terrorist operations which were meticulously planned; generally being risk averse, and focused on discovering and exploiting patterns to their advantage. In terms of the specific operation leading to the murders their evidence can be taken as reliable authority for the proposition that PIRA had the capability, intelligence and operational experience to mount the operation on their own. This offers broad corroboration regarding a central plank of PIRA's account; that the operation was conducted without Garda or any other external assistance. Certainly, the analysis offered by both brigadiers contains no reference to any reliance upon Garda leaks or the necessity for same.

Such a view is echoed by Detective Chief Superintendent Kirwan in his commentary. He spoke of PIRA's resourcefulness; Superintendent Buchanan travelling in the same vehicle; the geographical setting of Dundalk Garda Station and natural chokepoints on the northern side of Dundalk - all of which would have enhanced the ability of PIRA to mount surveillance on their own.

## **The House 12, The Crescent**

PIRA claim to have used this location to carry out surveillance. Initially, a former owner of the property (Moira Carroll, Day 61, 6 December 2011) seemed to contradict this aspect of the account when she made a statement to the Tribunal in 2007. However, it

subsequently transpired that her statement was erroneous and that records now establish she did not in fact live in the property at the time, having only paid for it on the 19 July 1989 and not moved in for a two to three month period thereafter. She also clarified at the time she was viewing the property prior to its purchase it was unoccupied and in her view, judging by its derelict state, had been so for some time.

Further it has been established that the property was indeed vacant at the time as alleged by PIRA and despite there being some confusion over which bedroom they were referring to, it is established that the house did offer a clear vantage point in terms of carrying out surveillance on the front of Dundalk Garda Station. The fact of the property's vacancy at the time was described by Detective Chief Superintendent as being "persuasive" (Day 127, page 114, line 11) when attempting to evaluate and test the authenticity of PIRA's account.

### **Northern Intelligence**

The Tribunal has had produced to it an SB57 report headed "Message Form" dated the 27 July, 1988, time 2.05 p.m., with the following message;

*"PIRA are monitoring the movements of plainclothes RUC officers who since the triple fatal explosion at Killeen border crossing on 24.7.88 are travelling on a regular basis to Dundalk Garda Station."*

The above evidence was provided by David McConville on the 19 June, 2012. The intelligence document as presented in evidence was subject to a number of redactions and Mr. McConville was not prepared to expand on its provenance or to try and contextualise it any meaningful way.

The intelligence does not appear to have been discovered to Judge Cory despite it being on its face clear evidence of surveillance of RUC officers, including Superintendent Buchanan dating as far back as July of 1988. By extension, it is intelligence which is

corroborative of PIRA's account that the operation was rooted in surveillance undertaken by them over a protracted period of time.

## **Witness 62**

This witness (a former sergeant in Newry and detective inspector stationed at Gough Barracks, Armagh, at the time of the murders) gave evidence on day 51 (8 November 2011). In his statement he states;

*“I recall some events of the day well because in the afternoon, probably around 3.00p.m., word came through to us that there was a large amount of Provisional IRA activity in the border area where we subsequently learned that Superintendents Breen and Buchanan were murdered. My colleagues and I were asked if we knew of any security force activity planned for the area and we replied we did not. I believe that the information about the activity came from a reliable source. This activity surprised us because in those days most, although certainly not all IRA activity was at night, certainly the level of activity which I later learned had taken place and the numbers involved were considerably more than I had known of in daylight by this particular terrorist grouping at any time before. I remember that after the murders had taken place I learned that the IRA had a person positioned at Y junction formed where a road leads off to the left and to the north on the main Dundalk to Newry Road. This person was believed to have radioed to the main terrorist grouping that the car containing Superintendents Breen and Buchanan had broken left off the main road and this enabled the murderers to drive across a link road and intercept with the car driven straight on up the main Dundalk to Newry Road then the murderers would have driven in the opposite direction to effect their intercept.”*

This evidence is again suggestive of a methodically organised operation which was not necessarily contingent on the involvement of any would be Garda mole.

## The Vengeful Analysis

This was referred to in Judge Cory's report at paragraph 2.147 and 2.148.

2.147 *There are as well the Army vehicle surveillance reports to consider. One of them indicated that Buchanan's car was being followed by a member of PIRA's car on 15 March, five days before the murder*

2.148 *Similarly, a traffic analysis conducted by Army intelligence, dated 6 June 1989, determined that two vehicles had been regularly sighted in the vicinity of Buchanan's car at Newtownhamilton Town Centre. One of the vehicles was linked to PIRA and had been seen travelling in the same direction as Buchanan's car, within a short space of time, on at least three occasions. In addition, the two vehicles in question had been seen travelling in tandem on various occasions. It was believed that these sightings were unlikely to be a product of random coincidence. Finally, it was observed that there had been no further sightings of one of the vehicles after the murder of the officers on 20 March 1989.*

Counsel for the Tribunal in the course of her opening statement in reference to paragraph 2.147 said that the Tribunal's legal team had seen the surveillance report referred to and would introduce it into evidence. (Para 4.2 (viii) at page 47.) The analysis of vehicular activity by the British Army first referred to is dated the 5<sup>t</sup> May, 1989 and forms part of the HMG documents introduced earlier by David McConville, Day 13 (28 June, 2011). Paragraph 2 of that, headed "*Coincidence Analysis of Vehicles in Proximity RUC Officers' Ambushed Private Car*" states as follows;

*"In brief the analysis had identified three vehicles which had been sighted at the same place as the RUC owned vehicle, two at Newtownhamilton, one at Middletown. Within a short time span of the vehicle on a number of occasions over a five month period in all but once incidence only one vehicle was seen in proximity to the RUC owned vehicle at*

*any one time. However, on the 27<sup>th</sup> of February, 1989 two of the vehicles bracketed the RUC car when it transited the PVCP at Newtownhamilton, all three having being sighted within minutes of each other. Allowing for normal hold-ups, document checks, etc., the PVCP, the three vehicles could in fact have been very close together.”*

At paragraph 4; *“The logical conclusion from this analysis is that some form of surveillance of the RUC car was being conducted over this period. If this is so then it is possible that the CB radio was used between the cars concerned or possibly between them and at least one base station.”*

The further report of the 6 June of 1989 referring to the coincidence analysis took into account Superintendent Buchanan’s known movements and visits to Garda Stations south of the border. At page 2, in paragraph 9, it is stated;

*“From the research carried out there is evidence to suggest that there was targeting carried out by PIRA from the following areas:*

- (a) Camlough/North Louth;*
- (b) South Armagh;*
- (c) Dundalk.”*

At Annex A, Entry 16 the “*bracketing*” of Superintendent Buchanan’s car on the 27 February, 1989, referred to in paragraph 2 of the Report of the 5 May, is recorded and at Entry 18 on the occasion of Superintendent Buchanan’s visit to Carrickmacross on the 15 March, 1989 are recorded the details of the targeting. This is now believed to be the basis for the paragraph as reported upon by Judge Cory in paragraph 2.147 of his report.

It therefore appears, according to the UK Ministry of Defence, that there was not - contrary to Judge Cory’s description of it - an army surveillance report, i.e. a contemporary report of surveillance having been carried out which showed on the day that Superintendent Buchanan’s car was being followed by PIRA members on the 15 March, 1989. Following requests on the part of the Commissioner for clarification of the

existence and content of the alleged army surveillance report, the Tribunal corresponded with the British authorities whose replies and explanations were read to the Tribunal on the 1<sup>st</sup> of February, 2013 without any witness being called in relation to the matter. (See Day 125, pages 47 to 58.) Superintendent Buchanan's journal entry for the 15 March, 1989 confirmed he had a DAC meeting at 9.30 in Armagh with a further DAC at 10 o'clock. He then had duty at Carrickmacross and also at Newtownhamilton and Keady. Inspector Charles Day was accompanying Superintendent Buchanan on that date as he had on the day before on the occasion of Superintendent Buchanan's visit to Dundalk

The Vengeful Analysis evidence once more depicts a terrorist organisation engaged in surveillance prior to the operation being implemented and the two officers murdered.

### **Movements of the Two Officers**

The movements of Superintendent Buchanan and Chief Superintendent Breen and to some extent Inspector Day have been identified by reference to the journals of the two Superintendents. (See Day 125 at page 106, Day 127 at page 109, and another attempt was made to correlate them on Day 130.) However, a fuller analysis has been done and is set out below to show the extent of Superintendent Buchanan's crossing of the border and in particular in conjunction with Chief Superintendent Breen and/or Inspector Day and focusing also on the issue of what day of the week did Superintendent Buchanan visit Dundalk on, was it primarily on Mondays or Tuesdays as asserted by the PIRA.

The table below sets out in comprehensive and, it is hoped, accurate fashion a record of the movements of Superintendent Buchanan. It is in chronological Order and highlights in the first column the dates upon which Superintendent Buchanan crossed the border to visit a variety of garda stations in the south. It covers essentially the year from 4 March, 1988 to the 20 March, 1989 and is correlated in the second column with the known movements or whereabouts of Chief Superintendent Breen, whether in the north or the south, and with the identities of other officers of the RUC who accompanied Superintendent Buchanan on his journey south. It is compiled principally from the

journals of Superintendent Buchanan and Chief Superintendent Harry Breen but also relies upon confirmation of meetings in the south where ambiguity exists in relation to some of the journal entries by reference to the journal of Chief Superintendent John Nolan. Finally, it includes for the latter part the Vengeful Traffic Analysis showing the crossing points of Superintendent Buchanan through permanent vehicle checkpoints on the northern side of the border on the dates shown. It is assumed that where no such Vengeful entries are present that Superintendent Buchanan either or both crossed and returned on unapproved crossings. Finally, the relevant days of the week have been inserted. The table shows graphically the frequency of travel of Superintendent Buchanan across the border and appears to clearly demonstrate in itself how easy it is to create patterns leading to, as a witness has described, “*predictive intelligence*” from which it would be relatively easy for the PIRA to conclude the days of the week that Superintendent Buchanan would customarily visit Dundalk and the routes by which he would customarily come down and return. It does appear to be a fact from the pattern of travel displayed by Superintendent Buchanan that he did indeed, in the overwhelming majority of cases when visiting Dundalk, come there either on a Monday or a Tuesday. This pattern is not therefore in conflict with the PIRA account in that regard but rather on the whole tends to be supportive of the PIRA’s analysis of his travel pattern and attendance at Dundalk Garda Station for the period in question and therefore of their account to the Tribunal in that regard.

Day and Date of Cross Border Visits to Garda Stations	Bob Buchanan Source: B.B. Journal	Harry Breen Source: H.B. Journal	Charles Day	Others	Vengeful Crossing Points (BB) (HMG53)
<b>March, 1988</b>					
Wednesday 2 <sup>nd</sup>	Dundalk	Office, Bessbrook			
Tuesday 8 <sup>th</sup>		Various locations		W.39(per L.S.U.)	
Wednesday 9 <sup>th</sup>	Phoenix Park, Dublin	Office, Bessbrook			
Wednesday 23 <sup>rd</sup>	Monaghan	Monaghan			
Tuesday 29 <sup>th</sup>	Monaghan C6 Meeting	Leave	Monaghan		
Wednesday 30 <sup>th</sup>	Dundalk	Middleton, Keady	Dundalk		
<b>April, 1988</b>					
Thursday 7 <sup>th</sup>	Drogheda	Drogheda			
Monday 11 <sup>th</sup>	Monaghan, Contibret, Castleblayney	Day in lieu			
Friday 15 <sup>th</sup>	Monaghan	Bessbrook, Newry			
Monday 18 <sup>th</sup>	Monaghan	Office, Gough			
Tuesday 26 <sup>th</sup>	Dundalk	Office, Craigavon, Bessbrook	Dundalk		
Thursday 28 <sup>th</sup>	Monaghan	Off in lieu			
<b>May, 1988</b>					
Wednesday 4 <sup>th</sup>	Dundalk	Keady, Middleton			
Friday 6 <sup>th</sup>	Dundalk	Lis			
Monday 9 <sup>th</sup>	Farewell Sup. McCabe CS @ Dundalk?	Chair Garda/RUC meeting			
Thursday 12 <sup>th</sup>	Carrickmacross	Banbridge, Newry, Keady			
Thursday 19 <sup>th</sup>	Leave	Conference	Dundalk	C.I. Nesbitt (meet John Nolan)	
Monday 23 <sup>rd</sup>	Monaghan	Leave			
Tuesday 24 <sup>th</sup>	Dundalk	Leave			
Tuesday 31 <sup>st</sup>	Carrickmacross	Leave		W.39 Willy Murtagh	
<b>June, 1988</b>					
Tuesday 7 <sup>th</sup>	Dundalk	Leave			
Friday 10 <sup>th</sup>	Monaghan	Leave		C.I.?	
Tuesday 14 <sup>th</sup>	Dundalk	Office, Newry, Bessbrook		+ W27 (John Nolan Journal)	

 denotes visits with others

 denotes visits with Chief Superintendent Harry Breen

Day and Date of Cross Border Visits to Garda Stations	Bob Buchanan	Harry Breen	Charles Day	Others	Vengeful Crossing Points (BB) (HMG53)
Monday 20 <sup>th</sup>	Dundalk (J.N.)	Duty to Dundalk		W27 (L.S.U.) Nesbitt and Murtagh	
Tuesday 21 <sup>st</sup>	Monaghan	Lis, Bessbrook			
Monday 27 <sup>th</sup>	Monaghan	Chair RUC/Garda meeting			
Tuesday 28 <sup>th</sup>	Dundalk	Office, Armagh, Donegal Pass			
<b>July, 1988</b>					
Friday 1 <sup>st</sup>	Carrickmacross	Gough, Newry, Bessbrook	Carrickmacross		
Tuesday 5 <sup>th</sup>	Dundalk	Office, Banbridge, Gough			
Thursday 7 <sup>th</sup>	Dundalk (Border Supts meeting)	Office, Donegal Pass	Dundalk	H. Nesbitt (John Nolan Journal)	
Friday 8 <sup>th</sup>	Castleblayney	Duty to Phoenix Park Dublin			
Monday 11 <sup>th</sup>	Dundalk	Office, Gough		Insp?	
Monday 18 <sup>th</sup>	Monaghan	Bessbrook		C.I. ?	
Thursday 21 <sup>st</sup>	Monaghan	Bessbrook, Newtown, Cross, Fork			
Monday 25 <sup>th</sup>	Emyvale Border Supt's Meeting?	Liaison with Buchanan re; letter from Gardai (Hanna Killing)			
Tuesday 26 <sup>th</sup>	Dundalk	Newry, Bessbrook, Killeen			
<b>August, 1988</b>					
Wednesday 3 <sup>rd</sup>	Leave	RUC/Garda Meeting Armagh			
Wednesday 24 <sup>th</sup>	Dundalk	Dundalk			

 denotes visits with others

 denotes visits with Chief Superintendent Harry Breen

Day and Date of Cross Border Visits to Garda Stations	Bob Buchanan	Harry Breen	Charles Day	Others	Vengeful Crossing Points (BB) (HMG53)
<b>September, 1988</b>					
Friday 2 <sup>nd</sup>	Dundalk	Dromore, Hilltown, Keady			
Tuesday 6 <sup>th</sup>	Dundalk	Dundalk Garda/RUC Meeting (sep)		W39 (per L.S.U.) also J.N.J.	
Wednesday 7 <sup>th</sup>	Monaghan	Bessbrook, Cross, Forkhill			
Monday 12 <sup>th</sup>	Liaise with Insp. Murray Dundalk	Annual leave			
Wednesday 21 <sup>st</sup>	Monaghan	Gough, Newry			
Monday 26 <sup>th</sup>	Dundalk	Gough, Bessbrook			
Wednesday 28 <sup>th</sup>	Monaghan	Monaghan Garda/RUC Meeting		W39 (per L.S.U.)	
<b>October, 1988</b>					
Monday 3 <sup>rd</sup>	Dundalk	Liaised with B Duty to G,M,K.		C.I. Nesbitt	
Thursday 6 <sup>th</sup>	Dundalk	N. Stewart			
Friday 7 <sup>th</sup>	Mon and C. Blayney	Duty to various RUC stations			
Wednesday 12 <sup>th</sup>	Carrickmacross	HB Office lieu			
Thursday 13 <sup>th</sup>	Omeath, Carlingford, Dundalk	Leave			
<b>November, 1988</b>					
Tuesday 1 <sup>st</sup>	Mon, Carrick, Dundalk, Dromod	Gough			
Tuesday 8 <sup>th</sup>	Dundalk, Monaghan	Office			
Monday 14 <sup>th</sup>	Carrickmacross, Ret via Dundalk	Armagh ct and scenes			
Friday 18 <sup>th</sup>	Dundalk	Office			
Monday 21 <sup>st</sup>	Monaghan	Office, Gough, Newry			
Tuesday 22 <sup>nd</sup>	Dundalk	Armagh, Newry, Dundalk (Sep)		W39 (per L.S.U.) also J.N.J.	

■ denotes visits with others

■ denotes visits with Chief Superintendent Harry Breen

Day and Date of Cross Border Visits to Garda Stations	Bob Buchanan	Harry Breen	Charles Day	Others	Vengeful Crossing Points (BB) (HMG53)
Wednesday 23 <sup>rd</sup>	Monaghan	Gough, Newtownhamilton			
Friday 25 <sup>th</sup>	Dundalk	no entry in J.			
Monday 28 <sup>th</sup>	Dundalk	Office			
<b>December, 1988</b>					
Friday 2 <sup>nd</sup>	Dublin Phoenix Park with Curran*(from Mon)	Office Bessbrook			
Tuesday 13 <sup>th</sup>	Dundalk	Dun, Ban, Bess, Gough			
Wednesday 14 <sup>th</sup>		Dublin			
Thursday 15 <sup>th</sup>	[Garda meeting ? +	Meeting and function with Garda (Keady?)			
Wednesday 21 <sup>st</sup>	Dromad	Office in lieu			
<b>January, 1989</b>					
Tuesday 10 <sup>th</sup>	Monaghan	Office, visit to various stations			Middleton
Friday 13 <sup>th</sup>	Monaghan	Middleton, Bessbrook			Middleton
Sunday 15 <sup>th</sup>	Dundalk	Leave			
Tuesday 17 <sup>th</sup>	Monaghan	Duty to various stations			None
Wednesday 18 <sup>th</sup>	Monaghan	Monaghan			Middleton
Thursday 19 <sup>th</sup>	Dundalk	Leave			None
Monday 23 <sup>rd</sup>	Dundalk	Leave	Dundalk Carrickmacross?	W50	None
Tuesday 31 <sup>st</sup>	Monaghan	Duty to various stations incl. Warrenpoint acc by BB			Newtown
<b>February, 1989</b>					
Wednesday 1 <sup>st</sup>	Monaghan	Variety of duties		C.I.	Middleton
Thursday 2 <sup>nd</sup>	Dundalk	Dundalk			None
Monday 6 <sup>th</sup>	Dundalk	Liaise 1 <sup>st</sup> R.R.F. Bess		W16 (Nesbitt) (J.N.J.)	None
Monday 13 <sup>th</sup>	Dundalk	Office, Gough, Newry			None
Wednesday 15 <sup>th</sup>	Dundalk	RUC HQ Garda meeting			---
Monday 20 <sup>th</sup>	Dromad	Leave		C.I. Nesbitt	None
Wednesday 22 <sup>nd</sup>	Monaghan	Leave			Middleton

denotes visits with others

denotes visits with Chief Superintendent Harry Breen

Day and Date of Cross Border Visits to Garda Stations	Bob Buchanan	Harry Breen	Charles Day	Others	Vengeful Crossing Points (BB) (HMG53)
Tuesday 28 <sup>th</sup>	Dundalk	Gough, liaised B.B.			None
<b>March, 1989</b>					
Friday 3 <sup>rd</sup>	Gardai sups meeting?	Liaison with IRRF re; Kilnasaggart, Bessbrook			
Monday 6 <sup>th</sup>	Dundalk	Stormont function *		W27	None
Tuesday 7 <sup>th</sup>	Monaghan	Office, meeting, Bessbrook		Ch. Insp. McLean	Middleton
Tuesday 14 <sup>th</sup>	Dundalk	Annual leave	Dundalk (statement and evidence of Day)		None
Wednesday 15 <sup>th</sup>	Carrickmacross	Annual leave	Carrickmacross		Keady
Thursday 16 <sup>th</sup>	Monaghan	Day in lieu			None
Friday 17 <sup>th</sup>	No entry	St. Patrick's Day parade in Newry			
Monday 20 <sup>th</sup>	Dundalk	Dundalk			

 denotes visits with others

 denotes visits with Chief Superintendent Harry Breen

Meigh in County Armagh is essentially a small crossroads where the Forkhill Road coming southwest from Clohogue, the Dublin Road and Newry, (approximately eight kilometres away), meets the Railway road which comes north from the lower Forkhill Road and Jonesborough (to which the Edenappa Road leads). The Forkhill Road which ends at Meigh then continues in a south-westerly direction as the Drumintee Road (turning into what's called the Newry Road as it approaches Forkhill) (4.6 kilometres away). The road going north from Meigh starts as the Chapel Road, turns into the Kegall Road where it then meets the A25 Newry Road at Camlough where it is heading west towards Newtownhamilton. One could pass through Meigh then going to or from a variety of RUC stations in the south or western side of Armagh or going further beyond to Castleblayney or Monaghan or also possibly returning from Dundalk via the Edenappa Road, Jonesborough and Church Hill Road, Lower Faughill Road to the crossroads at Meigh. Its location is therefore consistent with the possibility of Chief Superintendent Breen and Superintendent Buchanan having been seen there on perhaps several occasions and seen there on their return from Dundalk.

## **Conclusions**

1. PIRA's assertion that the operation was mounted without any Garda or external assistance is capable of being an accurate account.
2. A substantial body of evidence before the Tribunal indicates that PIRA had the expertise to conceive, plan and execute the operation of their own accord.
3. The proposition that the operation was primarily surveillance based and conducted by their own volunteers is supported by much evidence, both northern and southern origin.
4. The geography of the surrounding area of Dundalk Garda Station and the route between Dundalk and the border enhances the ability to conduct such surveillance

and therefore increases the likelihood that PIRA executed the operation without the aid of any mole.

5. The fact that the details furnished by PIRA were provided prior to the public sittings commencing raises the reasonable inference that their account was not in any way materially influenced by oral testimony subsequently received by the Tribunal which tends to bear out highly material aspects of the said account.
6. An analysis of Superintendent Buchanan's movements does suggest that in the vast majority of cases, visits to Dundalk Garda Station did occur on Mondays or Tuesdays. This accords with PIRA's account and tends to be supportive of it.
7. The references to Nigel Day in the account furnished are particularly persuasive when married with the public evidence which post dated it.
8. While not all of PIRA's version of events stands up to evidential scrutiny (the account of what occurred at the scene of the murders in particular being contradicted by a number of witnesses), nonetheless, substantial portions of the account provided do ring true and ought to be given serious consideration. The sequence of events as outlined by him did not take place.

#### **17. Evidence of collusion by Gardaí or other State employees in the murders of the RUC Officers**

The potential sources of evidence are;

An Garda Síochána

RUC/PSNI

PIRA

British Army

Intelligence

## **An Garda Síochána**

The Tribunal has had full and unfettered access to all the files of An Garda Síochána. Nothing has been withheld.

The Garda investigation files into all potentially controversial incidents have been examined by the Tribunal. They were full investigations where the events occurred in the Republic. Where the events happened North of the border, the Gardaí investigated in aid of the RUC and shared the results. None of the files revealed or suggested any collusion in the murder of the Officers.

The discipline and personnel files of all members under enquiry have been examined. While some of them contain details of suspected or even proven misbehaviour on the part of members, they relate to incidents completely unconnected to the 1989 murders and are without any link that might suggest that the member colluded in them.

## **RUC/PSN/BSSI**

The RUC and Northern authorities were not obliged by the Tribunal to comply with Orders for Discovery. As such, they were able to decide themselves what they would disclose and what they would conceal.

The incidents referred to in the Kevin Myers article (including the murders of Mr Breen and Mr Buchanan) occurred within the jurisdiction of the RUC and it is to them that the Tribunal must look for the full and final reports of the Senior Investigating Officers appointed to investigate each crime. In those files should be found the opinions and suspicions as to how the incidents were planned and executed and whether any real suspicion was ever directed at a member of the Gardaí. No evidence has been adduced of these final reports. It must be presumed therefore that either they have been withheld by the Northern authorities and not seen by the Tribunal or that they contain no evidence

supportive of the allegation of collusion made in the alleged 1985 SB50 intelligence or in the evidence of Kevin Fulton.

## **PIRA**

The Tribunal has heard evidence from Michael McKeivitt and from “Mooch” Blair, both self confessed and convicted members of PIRA. There is evidence that they were both senior figures in the Dundalk and South Armagh PIRA. The Tribunal may, of course, accept or reject their evidence but it remains the fact that they each were firm in asserting that neither of them ever had any assistance from any Garda nor had they heard of any Garda being helpful to PIRA.

The Tribunal has disclosed that it had contact with members of PIRA who are said to have been deeply involved in the murders of Mr Breen and Mr Buchanan and the written result of that contact has been read into the record. While the weight to be attached to it may be affected by the fact that it is not sworn evidence and has not been subject to cross-examination, it appears to display knowledge of the event that could only be that of the perpetrators. It asserts that that there was no Garda assistance in the planning or execution of the deed.

## **British Military**

It appears that the Military were actively involved in the surveillance and monitoring of people and vehicles on the ground, from watchtowers and with the aid of modern technology. From the logs of traffic movements that the Tribunal has seen, it is clear that full details of each event were recorded.

One would expect therefore that any contact between a Garda and a suspected person would have been observed or monitored and a record kept. In the final days of the Tribunal, a letter was read from Northern Ireland Office to the effect that no records exist and consequently no useful evidence is available. If true, this can only lead to the conclusion that none was ever available.

In his evidence, Kevin Fulton said that he reported in detail to his handlers of his activities in PIRA, including his alleged knowledge of Mr Corrigan. The Army has disclosed to the Tribunal only three (3) items of low level intelligence which were so vague as to be incapable of investigation. It has provided no records or evidence to support the Fulton allegations. Again, if true, it must be assumed that such evidence was never available.

### **Intelligence**

An Garda Síochána has disclosed all relevant intelligence files to the Tribunal and for the very first time has agreed that the content can be disclosed in Public Session in a précis form which protects both the sources and methodology utilised. The Tribunal can assess each item but it is submitted that none lead to a connection to the murders of investigation.

The PSNI has introduced (in précis form only) some twenty (20) pieces of alleged information which it is suggested are supportive of some form of collusion. These date from decades after the event and are so vague as to be incapable of investigation. The Tribunal has not seen the files and cannot come to any assessment of their relevance or importance or possible veracity.

If the items were believed to be of any significance by the Northern authorities it is impossible to understand why they were not shared, as they arose, in the ordinary way with the Gardaí. Any mole could be rooted out. This is particularly so because on a daily, Service to Service basis, information is shared relating to the most serious criminals and their crimes. Why would any Service continue to feed highly sensitive information into another organisation which it believed was infiltrated by spies for its enemies? The answer can only be that it does not consider that any weight should be attached to the information not shared. An Garda Síochána says it is of no value and should not be accepted.

## **18. Purported “Live and of the Moment Intelligence” Emanating From the PSNI**

During the latter stages of the Tribunal’s sittings, it received evidence from two senior PSNI officers purporting between them to convey twenty (20) items of intelligence characterised as being “live and of the moment” in nature. It is not unreasonable to describe this evidence as coming as something of a bombshell and it has proven to be extremely controversial for reasons that will readily be apparent to those who heard it first hand at the sittings themselves. The controversy which ensued is further elaborated upon below.

The officers in question were Detective Superintendent Roy McComb and Assistant Chief Constable Drew Harris. The former gave evidence on the 1 May, 2012 and 25 July, 2012, while the latter provided his evidence on the 19 and 25 of September of the same year. The evidence of Assistant Chief Constable Harris was subsequently read into the record in public session on the 18 October, 2012.

It is not intended to rehearse all twenty (20) items in these submissions but suffice to say - and of particular concern to An Garda Síochána - they include claims to the effect that inter alia;

- PIRA received information regarding Chief Superintendent Breen and Superintendent Buchanan from a Detective AGS member who has not been publically associated with the Smithwick Tribunal and received considerable financial reward in exchange for said information.
- The same (unidentified) officer also provided information in relation to Tom Oliver and continued to provide a variety of information to PIRA for a number of years.
- A senior AGS member provided the IRA with the intelligence that enabled PIRA to murder Chief Superintendent Breen and Superintendent Buchanan.

- An AGS officer played a role in passing details of the officer's movements to PIRA.
- A former AGS member, Jim Lane, frequently expressed his concerns to associates that fellow AGS officers Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area.
- Key PIRA members were aware that some testimony provided to the Tribunal is false and intended to bring it to an early conclusion.
- PIRA "traditionally" obtaining extremely good intelligence from Dundalk Garda Station.
- Owen Corrigan had no time for the IRA but was a "gangster" who "was out for money."
- A senior PIRA figure had several An Garda Síochána officers passing information to PIRA including officers of a more senior position than Owen Corrigan.

It is notable that in the context of the Tribunal's own time line the purported "*intelligence*" conveyed by the two officers reads as follows;

- The atrocity, being the subject matter of the Tribunal's investigation, was perpetrated on the 20 March, 1989.
- The Tribunal commences its investigative phase in 2005.
- Public Hearings begin in June 2011 and last a total of 133 days.
- This evidence is introduced on days 95, 120, 121 and 124.

The evidence was provided;

- Very much towards the back end of the Tribunal’s public hearings.
- More than 22 years after the assassinations took place.
- Without the Tribunal being aware that such “intelligence” was apparently within the possession of the PSNI until shortly prior to the officers giving their evidence in relation to same.

Clearly, the claims being made are of a hugely serious nature, suggesting not only that collusion regarding the murders did occur but that such collusion was engaged upon by a member of An Garda Síochána who has not featured at all in the Tribunal’s investigations to date. Such an allegation demands elaboration which simply has not been forthcoming. Some of the items in their précis form are as brief as a solitary sentence. The paucity of detail is frankly astonishing.

One quite remarkable feature of this tranche of evidence relates to the fact that the vast majority of the aforementioned 20 items were not shared with either the Tribunal or An Garda Síochána in any way other than the précis format in which they were presented during the Tribunal’s sittings. This represents a radical and worrying departure from previous instances where intelligence was presented to the Tribunal. Previously, the précis system was availed of as a mechanism to safely present sensitive information in a public forum but crucially, the Tribunal would have access to the raw material underpinning the précis. Intelligence put forward by An Garda Síochána would be reduced to précis format but the Tribunal had access to the intelligence and inspections were readily facilitated. The Tribunal received unparalleled cooperation from An Garda Síochána in this regard.

Historically, intelligence sharing arrangements as between the respective security agencies north and south of the border were frequently undertaken and enhanced a

hitherto fluid and productive, professional relationship which pulled in the same direction and yielded positive results. This is in stark contrast to the approach adopted in the current instance and the shift in position, irrespective of any rationale offered by the PSNI, remains a source of bafflement and grave concern to the Commissioner. It should also be noted that Assistant Commissioner Harris gave sworn evidence when cross examined on behalf of the Commissioner and addressing the final (12<sup>th</sup>) strand of purported intelligence presented by regarding the murder of John McAnulty (Day 124, 18 October, 2012, Page 34/35), he indicated that intelligence would be passed on. Despite repeated requests, the Commissioner regrets that this has not occurred.

The only body to have viewed the raw material comprising the intelligence in issue and to have allegedly subjected that raw material to analysis is the PSNI themselves. Their verdict is that each of the items can be stood over as being “accurate and reliable”. This formula of words was repeated on several occasions by both officers. However, the Tribunal (and indeed any of the other parties before it) only had access to a variety of précis which it is submitted, in the absence of any further detail regarding their provenance, are woefully inadequate to the point of being evidentially meaningless. While both officers were available for cross examination, they consistently and steadfastly refused to offer any significant elaboration above and beyond what each précis had stated. Even the official grading that the PSNI would formally assign each intelligence strand was not disclosed. The only intelligence to be shared related to the 9<sup>th</sup> and 10<sup>th</sup> items furnished by Assistant Commissioner Harris and these related to Tom Oliver. Regarding the decision to decline to share the vast bulk, the Assistant Chief Constable had this to say;

*“Where we have thought that information would be of immediate investigative value to An Garda Síochána, we have shared it” with the Tribunal”*

*(Day 124, Page 48-49)*

Given the nature of the claims being made, the question must be posed; if the intelligence had any credibility attaching to it, how could it not possibly be of “*immediate investigative value*” to An Garda Síochána? The decision not to share the overwhelming majority of the intelligence on the ground that it does not meet this criterion simply beggars belief in the context of their subject matter and a unilateral assessment undertaken by the PSNI that said intelligence is both accurate and reliable.

While no material elaboration was forthcoming, the evidence of Assistant Chief Constable Harris and subsequent evidence of Detective Chief Superintendent Peter Kirwan who examined each précis and offered commentary and analysis in relation thereto did prove instructive in many regards. While this apparent intelligence was received by the PSNI only in comparatively recent times (during the currency of the Tribunal but far more recently than within that seven year band that Detective Chief Superintendent McComb had initially intimated during his evidence), Assistant Chief Constable Harris agreed with the proposition that most intelligence received in relation to serious crimes comes in the immediate aftermath of the incident, citing that the “vast majority” does stem from this critical period (Day 124, page 54, line 11). He accepted that the greatest flow of intelligence comes in the days, weeks and perhaps months after the incident, before tailing off thereafter. This view is common case as between An Garda Síochána and the PSNI and is evidentially uncontroverted. He further concurred that the further one is removed from the event, the capacity to investigate and evaluate any intelligence arising is hampered to a very large extent. This is notable in the context of there being no Northern intelligence in the immediate aftermath of the killings to suggest that Garda collusion played any part in their commission and yet decades later a glut of supposed intelligence arrives which the Tribunal or any of the parties before it (other than the PSNI themselves) are not permitted to look behind.

Further questioning of Assistant Chief Constable Harris also gave rise to serious concerns regarding the PSNI’s assessment that these strands could seriously be stood over as being “accurate and reliable”. When asked about the first item that Detective Chief Superintendent McComb had brought to the Tribunal’s attention - concerning

information that a detective AGS officer not previously associated with the Tribunal had furnished information regarding Chief Superintendent Breen and Superintendent Buchanan in exchange for financial reward – it transpired that the Assistant Commissioner had no information as to what money was paid, how it was paid, where it came from and where it went to. However, that perhaps pales into insignificance relative to the revelation that the PSNI were – and remain – unaware as to the identity of this, now infamous, “fourth guard”. It seems remarkable that such intelligence would be supported with conviction without having any idea as to the identity of the Garda alleged to be engaging in collusion.

Further serious cause for concern arises when it emerges that the intelligence status of “accurate and reliable” is being maintained notwithstanding the fact some of it contradicts previous PSNI intelligence offered to the Tribunal. On day 99, David McConville gave evidence of PSNI intelligence dating from March 1989 indicating that PIRA had obtained their information concerning the officer’s movements from a person visiting the station on legitimate business. This clearly is at odds with purported intelligence now being provided to the Tribunal by the same security agency. This is also potentially the case as regards the third “live and of the moment” item introduced by Assistant Chief Constable Harris to the effect that Moch Blair stated he was involved in a different operation on the day of the murders and therefore played no part in their commission. This again is characterised as “accurate and reliable” despite being in stark contrast to earlier intelligence presented by David McConville which had indicated a man named “Mooch” from Dundalk had been heavily involved in the murders. The same contradictory situation pertains to previous PSNI intelligence presented to the Tribunal when compared to the most recent strands. These include previous PSNI intelligence indicating that;

- “An unknown female who worked in Dundalk Garda Station passed information to an unknown Provisional IRA man.”
- “A criminal from the border area was linked to the targeting of RUC officers”

Again, it must be questioned as to how the current strands can be elevated to the status of “accurate and reliable” in the face of older, far more contemporaneous intelligence, which blatantly contradicts it.

In addition, the fifth item of purported intelligence put into evidence on the 25 July 2012 by Detective Chief Superintendent McComb stated as follows;

*"Intelligence indicates that a former AGS officer, Jim Lane, who was based in the Dundalk area frequently expressed his concerns to associates that fellow AGS officers Finbarr Hickey and Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area."*

Retired Detective Garda Lane gave evidence himself on the 30 July 2012, and this strand of intelligence was put to him. His comment was that **the only** conversation regarding the three named individuals with his colleagues would have concerned incidents that they were involved in. The kidnapping of Owen Corrigan and the passport incident associated with Finbar Hickey were cited in this regard. It is submitted this puts a very different slant indeed on the précis as framed and illustrates a real concern regarding its reliability. It further begs the question, if this particular strand misleads in such a material fashion, can any of the strands truly be relied upon? The fact that the PSNI continue to maintain their position in assessing this strand as “accurate and reliable”, even in the face of clear evidence from the horse’s mouth in the form of Mr. Lane himself, is a matter that should cause the Tribunal grave concern when assessing this batch of intelligence without the aid of independent inspection or in most cases the ability to test or contextualise it in any meaningful way.

Other, it is submitted entirely proper concerns that were raised by Detective Chief Superintendent Kirwan in both his submitted statement of intended evidence and during his oral evidence included;

- The apparent absence of any corroborative information at the time of the murders or from the decade following, raising the critical question as to what exactly was the intelligence picture which emerged in the aftermath of the murders? In the absence of any suggestion of Garda collusion, was the information/intelligence suggesting another picture? Has potentially relevant material been withheld?
- The strands of intelligence as delivered are diverse in terms of content; often general in nature, devoid of detail and embodied in a formula of words that in many instances presents difficulty and confusion in understanding the essence of what is being conveyed. This is exacerbated by the fact that some of the items are contradictory of others and yet PSNI witnesses have continued to attest that all are accurate and reliable.
- The nature of the presentation of the purported intelligence puts An Garda Síochána at a serious disadvantage when attempting to analyse the said strands. By extension, the Chairman too is equally put to serious disadvantage.
- In most cases no useful information was provided relative to the basis for the state of knowledge of the source or if there were sub sources involved. In his view the PSNI analysis of the various strands has placed significant and possibly exclusive emphasis on the evaluation of the sources and the reporting mechanisms and considered against what was known about the modus operandi of the PIRA at the time. This is borne out by the fact that many of the strands of reporting supplied by the PSNI – as evidenced by Assistant Chief Constable Harris and Detective Chief Superintendent McComb – are clearly contradicted by other strands and yet there is a continued insistence that all are “accurate and reliable”.
- He remains deeply concerned that not all relevant factors have been considered by the PSNI in its evaluation of the various strands.

### **Submissions/Conclusions as to the Weight to be Attached to this Evidence**

1. It is respectfully submitted that the evidence has been adduced in a form that has no real probative value and is of such limited import as to effectively be rendered evidentially meaningless. Hugely significant claims are reduced in cases to as little as one sentence and are cloaked in language that is vague, overly general and at times ambiguous.
2. The PSNI's approach to the evidence represents a radical and worrying departure from previously productive intelligence sharing arrangements.
3. Sworn evidence has been given by the PSNI that some intelligence associated with this batch of purported intelligence would be shared with An Garda Síochána but this simply has not occurred.
4. The rationale repeatedly offered by the PSNI in adopting such an approach is to fall back on "*source protection/methodology/Article 2 protections*" ideology. It is submitted that while these are of course broad, fundamental principles that demand respect, there must be a way – even in the case of "*live and of the moment*" intelligence - to offer greater detail in a way that could materially assist the Tribunal and An Garda Síochána in investigating these most serious of claims while respecting those core values. As stressed by Detective Chief Superintendent Kirwan, source names or other such sensitive information do not have to be shared but ways and means to offer more detail in a non compromising fashion could surely have been arrived at.
5. As a consequence of the approach adopted, the PSNI have effectively erected a brick wall through which the Tribunal, An Garda Síochána or any of the other parties, cannot pass.

6. As the evidence cannot be meaningfully tested, it is submitted that the various strands as presented are more akin to a series of baseless assertions than properly grounded evidence. While the content is sensational on one level, without offering any appropriate support for such assertions, it is submitted the Tribunal ought to reject the entirety of the intelligence in its current form. Such intelligence, without an ability to subject it to greater scrutiny, amounts to an unjustified slur against An Garda Síochána and achieves little else.
7. Under cross examination of Detective Chief Superintendent Kirwan, Counsel on behalf of the PSNI in painstaking fashion set out the credentials of Assistant Chief Constable Harris. These credentials were not in dispute but notwithstanding the protestations of Counsel to the PSNI to the contrary, it is submitted that Detective Chief Superintendent Kirwan was correct when he sensed such a theme being developed and commented upon it by stating *“So, for somebody to say that the calibre of person delivering the message is the overriding consideration in analysing intelligence information, that for me, is completely wrong.”* (Day 129, Page 19).
8. It is submitted that the PSNI’s approach to this intelligence has had the practical consequence of impeding the Tribunal’s ability to offer any true evaluation of the purported material and has hamstrung the Tribunal in establishing the truth.
9. It is further submitted that the PSNI has sought to effectively usurp the Tribunal’s role in respect of this evidence. It has presented a series of assertions which cannot be looked behind but are accompanied with assurances that the underlying material which apparently ground those assertions has been carefully considered by them and therefore can safely be adopted by the Tribunal as *“accurate and reliable”*.
10. Taking the above a step further, the primary purpose of any tribunal of inquiry is surely reflected in its title. *“Inquiry”* is clearly central to the core function of any tribunal. In adopting this approach and in erecting this form of *“firewall”* (to use

Detective Chief Superintendent Kirwans's description on the Day 129 , Page 16), the Tribunal has been deprived of its ability to discharge its function in respect of this issue. An Garda Síochána have also been rendered impotent to investigate the claims further and the families of the deceased have been deprived of the opportunity to have the claims fully and independently investigated. Regrettably, the cause of such deprivation lies solely at the door of the PSNI.

11. Arising from the rigid stance taken in its dealing with this issue, it must with the deepest regret therefore be concluded that in respect of this evidence;

(i) The PSNI have failed the families of the late Chief Superintendent Breen and Superintendent Buchanan.

(ii) The PSNI have failed An Garda Síochána.

(iii) The PSNI have ultimately failed the Tribunal itself.

## **19. Concluding Remarks**

It is appropriate, Chairman, that I make some closing remarks on behalf of An Garda Síochána in relation to the subject matter of the Tribunal. These will be brief but I hope helpful.

You are now faced with a bewildering range and theories and possibilities in relation to collusion in the murders. What started out as a public inquiry possibly restricted to Owen Corrigan now requires you to answer the questions – Was it an unknown female in Dundalk Garda Station? Was it an administrator somewhere in the Republic? Was it Finbar Hickey? Was it Leo Colton? Was it Owen Corrigan? Or, as the recently delivered PSNI intelligence would have you believe, was it another Garda who has not hitherto been publicly associated with the Tribunal who provided the information to the

PIRA, or some other unidentified Garda officer asserted to have been paid large sums of money by the PIRA according to this “intelligence”? All of this recent intelligence is, of course, said to be “accurate and reliable”. Is it finally then said to be the collusion of the unknown Garda or Gardaí, or indeed was there any collusion at all?

### **Origins of the Tribunal**

It is not in any way inappropriate for you chairman to reflect on the origins of the Tribunal, born out of revulsion at the murders, suspicion as to how they could have come about so close in time to their meeting with Gardaí in Dundalk and so close to the border across which they were returning. The cries of “*mole*” go up, echoed by journalists, and become a political demand, across negotiating tables, elevated even to the level of governments who decide to refer the matter to an independent internationally respected Judge of the commonwealth, Judge Cory. He is presented with two pieces of RUC intelligence relating to collusion which have sunk without trace in the Tribunal, coupled with an SB50 from 1985 whose intelligence grading the PSNI have fought tooth and nail to conceal for the duration of the Tribunal until the very end. Then it is revealed as a C6 grade, “6” meaning that it is impossible to assess its accuracy, “C” meaning that it is said to come from a fairly reliable source. We now know that the source, the late Mr. McAnulty, murdered by the IRA, was a grain smuggler who may indeed have been more than a disinterested citizen as there is clear reason to believe that he may have been given some latitude by Customs in relation to his activities. The final trigger, of course, for the Inquiry is a Mr. Fulton who scribbles out a one page statement of less than a dozen lines, the vast majority of which he has contradicted himself on in his own evidence. What then of the evidence of collusion? What do the most relevant sources of evidence establish?

#### **1. The British Army**

The only military intelligence obtained from agents and presented to the Tribunal is largely irrelevant. However, the analysis presented by the Brigadiers is compelling, displays an acknowledgment of a ruthlessly planned military operation which

swung into operation on the morning of the 20<sup>th</sup> of March before the officers had even left for Dundalk and could not have been triggered by their arrival at or departure from Dundalk Garda Station. It doesn't support a claim that there was "*technical information*" which showed that the PIRA had been tipped off by phone from the station and no collusion was reported upon at the time by the Army or in the analysis of the events given to the Tribunal. The prior surveillance of the officers appears to have been confirmed by the "*Vengeful*" Vehicle Coincidence Analysis and it appears to have been known by the RUC since July, 1988 that PIRA were monitoring their movements. The conclusion of the Lieutenant Colonel Commanding the 1<sup>st</sup> Battalion of the Royal Regiment of Fusiliers must have indeed been bitter reading for the families of the officers. The Commanding Officer's comments at paragraph 10; "*This incident was a classic example of the exploitation of patterns created by soft targets. Meetings with the Garda at Dundalk are frequent by necessity and it was inevitable that patterns would be made.*" Of equal importance is the fact that the Army have not claimed ownership, responsibility or parentage for Kevin Fulton as a FRU agent and there is no corroboration by any witness or MISR for any part of his evidence. It is of course a striking contrast that Raymond White, a former head of the Special Branch and Assistant Chief Constable, confirmed that he was aware of the British Agent Stakeknife operating within the internal discipline unit of the PIRA and Witness 82 was called as his handler to disprove the allegation that he, Stakeknife, was acting as Corrigan's handler within the PIRA.

## 2. The PIRA

As is well known, the Tribunal strove over a prolonged period to get not merely an account from the PIRA of the operation, which they did (supplemented by meetings and questions and further written responses), but also a witness. Though they failed in this regard, the account is not without significance because its credibility can be assessed to a degree by measuring whether it was consistent with known or verifiable facts. It has been shown to be consistent

- (a) with the pattern of surveillance discerned in the Vengeful Analysis;
- (b) the knowledge that the RUC had, that PIRA were monitoring the movements of plainclothes officers who were crossing the border;
- (c) the pattern of travel of Superintendent Buchanan, and in particular tending to visit Dundalk on Mondays;
- (d) the identification of Inspector Day with whom he had travelled to Dundalk in 1988;
- (e) the identification of having travelled with Chief Superintendent Breen across the border to visit Dundalk and other Garda Stations in 1988;
- (f) the real probability that they could have been identified in Meigh; and
- (g) the confirmed availability of No. 12, The Crescent, as having been a possible base for surveillance of Dundalk Garda Station.

All these matters not only show the consistency of their account with other evidence, but in themselves tend to establish the lack of any need for such a tip off, which they themselves deny they got.

### 3. Kevin Fulton

It would be hard to think of any other Inquiry or Court proceeding in which a witness had been described by so many other witnesses in the terms in which he has been described, “*a compulsive liar*”, a “*fantasist*”, “*a conman of the highest order*”, “*deliberately fabricating information*”, “*a liar*”, and “*wholly unreliable*”. He himself has admitted lying to his own police Special Branch handlers, to the Stevens Inquiry and has contradicted significant and important parts of his own statement to Judge Cory. Like many skilful liars, the art lies in embellishing the story with as much of the truth as is possible. No witness, credible or otherwise, has been called before the Tribunal to lend any weight or credence to what Mr. Fulton has said.

It would seem impossible, in the submission of An Garda Síochána, for any responsible adjudicator to place any weight whatsoever on his testimony.

4. **The PSNI**

Assistant Chief Constable Drew Harris told the Tribunal that there was no RUC intelligence at the time of the murders that suggested collusion by any member of An Garda Síochána in the murders of Chief Superintendent Breen and Buchanan. This seems to be correct, otherwise it would have been produced no doubt. This is confirmed by the intelligence given to Judge Cory, the first dating from January, 1991 relating to “*an unknown female who works in Dundalk Garda Station made a phone call to an unknown member of the IRA*”. The second piece provided by the RUC to Judge Cory (received more than a decade after the murders) said that it was “*a civilian administrator based at an unknown location in the Republic of Ireland*” who was responsible for the leak. You, Chairman, are now faced, twenty-four years after the murder, with the Niagara of intelligence which is said to exist with the Assistant Chief Constable swearing that this is all accurate and reliable!!! The authority with which he has given his evidence, his rank, his experience, his asserted bona fides, his description of the process involved, are all paraded before you, Chairman, in order to compel you in some way to give weight and credence to these matters. Chairman, however, you’re old enough and wise enough and experienced enough as a lawyer and a judge to see through this. Let’s make no bones about this. This intelligence has been withheld from you. You haven’t seen it in its raw unredacted form or even in a redacted form. You haven’t seen any of the documentation connected with it. You don’t know the identities of the handlers and you haven’t heard from them. Even the grading is being withheld from you, as is the approximate time when these pieces of intelligence came into their possession. And why were they not even signalled to you then?

Mr. Harris has not given any reason or justification for this cause of action. In his evidence he said that this intelligence would be shared with An Garda Síochána. It has not been shared with An Garda Síochána. You have heard extensive evidence from Chief Superintendent Kirwan in relation to this matter which I do not intend to repeat here. It is wholly exceptional and wholly inexplicable that they have not

shared this intelligence. It is in marked and strong contrast to the actual everyday exchange of sensitive intelligence which occurs and has been occurring over many years, the purpose of which is to protect all the people of Ireland.

These pieces of intelligence, having been certified to be accurate and reliable, would vex the head of a professor of logic, when it is revealed that they aren't and haven't been in a position to identify to the Tribunal and claim they don't know who is alleged to be these fourth or fifth or other officers of An Garda Síochána responsible for the collusion in the murders (and not the three who have been represented for the duration of the Tribunal).

Chief Superintendent Breen and Buchanan were their officers. Twenty-four years on from their murders, eight years into a Tribunal, and you are presented with this, an impenetrable, anonymous, unverified bunch of intelligence which they won't even share with you.

Chairman, you are in a worse position than Judge Cory was when he was considering whether to recommend an Inquiry in that he had sight of the intelligence on which he was being asked to make a judgement. You are in a worse position even than your own counsel was at the beginning of the Inquiry when they had seen the intelligence which was then in existence relevant to this issue of collusion.

It beggars belief as to how you are expected to come to adjudication, not merely in relation to this intelligence, but in relation to the issue of collusion as a whole, having regard to the actions of the PSNI in this regard. It is not merely nonsense, but as has been said, "*It is nonsense upon stilts*".

How the PSNI are going to account for this stance in Northern Ireland or in the United Kingdom or in the Court of Public Opinion and more particularly to the families of the deceased officers, is a matter for them, but I invite you Chairman to

ransack the dictionary for the harshest possible words to use in relation to them in frustrating the patient and honourable work of the Inquiry.

It seems to be the import of some of the strands of intelligence is that there was definitely collusion on the part of a Garda or Gardaí in Dundalk Garda Station in relation to these murders, that Dundalk Garda Station was a “*dirty station*” where members (unknown) colluded with the PIRA. Who can call the unknown Garda or Gardaí to give evidence to refute this? What evidence is there of it? These strands of intelligence are worthless and weightless so as to provide proof of any matter. Notwithstanding that, they call into question the very ability of the Tribunal to find any collusion at all. They cast the gravest shadow over the bona fides, the willingness and the ability of the PSNI to co-operate with the Tribunal. It must, with the deepest regret, therefore be concluded that in respect of this evidence

- (i) The PSNI have failed the families of the late Chief Superintendent Breen and Superintendent Buchanan;
- (ii) The PSNI have failed An Garda Síochána by not sharing this intelligence; and
- (iii) The PSNI have ultimately failed the Tribunal itself.

Based upon the totality of the evidence that is in fact before the Tribunal, there is no evidence of any Garda collusion in these murders and that is the submission of the Commissioner of An Garda Síochána.

Thank you, Chairman.

**The Smithwick Tribunal**

**SUBMISSIONS ON BEHALF OF THE  
COMMISSIONER OF AN GARDA  
SÍOCHÁNA**

Delivered by hand 21 June 2013  
Concluding remarks orally made Day 133 21 June 2013

**Submissions to the Smithwick Tribunal on behalf of Mr Patrick Blair.**

**Name and address of applicant:**

Patrick Blair,

**Name of instructing solicitor:**

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**Name of Counsel:**

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**SUBMISSIONS**

**1. Preliminary**

The position of Mr Blair before the Tribunal is unique. He is the only person who was a serving member of the IRA to appear before the Tribunal in person to offer evidence and be cross-examined. He contributed a unique perspective on the events under scrutiny by the Tribunal.

The rationale of these submissions is to comment and make observations on matters relative to the terms of reference of the Tribunal insofar as they affect Mr Blair. Matters not relevant to the terms of reference of the Tribunal will not be commented on.

Mr. Blair is a Republican who participated in the struggle the objective of which was to end the partition of Ireland. Partition as he regarded it not without powerful justification is a political diktat imposed by an alien power. His motivations in opposing it were exclusively political.

The policy of the British was predictable. The latest phase of British involvement in Ireland bears comparison with the tactics of the British throughout the last two to three centuries *ie* through the methods of coercion and control. The reaction of the British administration in Northern Ireland was to criminalise the struggle and those who took part in it. This inevitably led to a huge distortion in perception of what was really occurring in Northern Ireland. What was effectively a civil war was characterised by the British administration as the actions of a few criminals, thus presenting the struggle as a conflict between good and evil, the British and their various manifestations including of course the B Specials and the RUC, naturally representing the good. Thus was created the factitious logic of a security/military solution to the problem.

The craven Government of the Republic, anxious not to awaken the dormant spirit of Republicanism in the 26 counties and eager to avoid the instability that could only threaten vested interests at home, embraced with unseemly alacrity the security solution that the British sought to impose. Instead of opposing the British strategy, the Irish government collaborated with it.

The strategy of criminalisation did not work as it led to entrenchment of the respective positions of the combatants and a profound degree of corruption on the part of the British army/police who relied on paid informers and plants within the ranks of Republicans and worked hand in glove with loyalist paramilitaries, thus undermining the very justice system they purported to represent.

The government of the Irish Republic collaborated with whatever aspects of British misrule it could safely conceal or re-categorise for the consumption of a gullible public. Part of this involved a continuous and relentless campaign of propaganda against those who were participating in the struggle. This necessitated an attempt to portray the violent struggle for self determination of the late twentieth century as somehow distinct from the violent struggle for self determination of the early twentieth century. Participants in the earlier struggle were heroes, those in the later struggle were criminals. This was always an uneasy, not to say queasy distinction to maintain.

If one looks at (referring to that party as the main party of government today) the Fine Gael website, the person from Irish history held up as the cynosure, the very model for the modern Fine Gael, that party of law and order as it is known, is none other than Michael Collins. He was a proponent of the most ruthless violence who was prepared on the 21<sup>st</sup> day of November 1920 to order the deaths of a group of British officers in Dublin. Out of a supposed hit list of 35 men, 13 were killed that day, mostly British officers together with one RIC man.

Had any more recent rebel achieved the same coup in let us say the 1980s, he would been vilified as a criminal. To an average Irish politician violent rebellion against the British is acceptable, nay laudable so long as it occurred in the sufficiently distant past.

Whilst wholly rejecting the distortions and mental gymnastics of the various mainstream political parties in the Republic who claim Collins as their own, Mr Blair unequivocally situates himself in the tradition of Michael Collins and Ernie O'Malley and others as like them a person willing to fight for the right to self determination.

The problem faced by the Tribunal is that the violence of the struggle from 1969 to 1998 has not yet fully received the pardon of history. Or more precisely it has not receded into the past to a point where everyone can openly agree that it was not criminal after all. However, the process of annealment has begun, and for political purposes is largely complete because of the provisions of the Good Friday Agreement. Former IRA activists and 'criminals' now run the government in Northern Ireland.

It is submitted that in the light of the foregoing, the Tribunal ought therefore to examine the evidence from a post-Good Friday Agreement perspective

## **2. The evidence presented to the Tribunal pertaining to Mr Blair**

The relevant evidence pertaining to Mr Blair derives from three main sources. His own testimony, material from the RUC/PSNI and the evidence of Kevin Fulton.

The gravamen and principal areas of speculation concerning Mr Blair relate to

- (a) whether he had any involvement in the deaths of Breen and Buchanan;
- (b) whether Owen Corrigan was a mole who provided him with information.

Mr Blair has always denied any involvement in the deaths of Breen and Buchanan.

Mr Blair has always denied knowledge of Mr Corrigan or any fifth column within an Garda Siochana. As he stated in his evidence to the Tribunal: 'If there was a spy I didn't know about it'.

## **3. Evidence deriving from RUC/PSNI**

It is not the function of submissions to go over each and every item of evidence presented and to comment on it. It intended to comment only in a general way unless an item of evidence is particularly relevant.

On day 95 PSNI officer David McConville put in a redacted document into evidence that stated as follows: 'Reference to the double murder of Superintendent Buchanan and Chief Superintendent Breen, intelligence that a Hard Bap Hardy and a male known as 'Mooch' from the Dundalk area would have been deeply involved in the murder.'

Mr Blair has always denied any involvement in the deaths of Breen and Buchanan. During his evidence to the Tribunal it was not put to him at all that he any involvement. There is no evidence whatsoever to connect him to the killings. He has never been arrested or questioned

in relation to them. It is difficult to escape the conclusion that this piece of evidence is just a piece of idle speculation.

ACC Harris presented various pieces of evidence to the Tribunal. It is submitted that only one thing emerges with any certainty from the evidence of ACC Harris. That is he wishes to create the impression that the PSNI is continuing to spy on Mr Blair. Whether or not this in itself is true is not possible to determine.

In his analysis of the evidence of ACC Harris, at paragraph 2.12.1 DCS Peter Kirwan, commenting on an item of 'evidence' provided by ACC Harris, states as follows: 'I am a loss in attempting to ascribe any meaningful assessment to this strand'. It is suggested that this comment applies to the entirety of the evidence ACC Harris as far as Mr Blair is concerned.

The pertinent piece of evidence put by ACC Harris is contained in his Item 3. It reads:

'In Summer 2011, Mooch Blair commented that he was not involved in the murders of RUC Officers Breen and Buchanan as was claimed during the Smithwick Tribunal in Dublin. Blair stated that he was actually engaged on a separate operation at the time of the murders. Blair also confirmed that there was a garda spy involved...'

No sources were identified, no circumstances specified, no witness was provided for cross examination. Equally strange is the fact that this alleged information has been known to the PSNI since Summer 2011, allowing for argument's sake that it is to be believed in any respect. This merely begs the question, why was the material not put to Mr Blair when he gave evidence? Why did the PSNI withhold the information at that critical time and refuse to allow him an opportunity to controvert it? One can only speculate. It must be stated that those factors detract significantly from the reliability of the testimony.

As a general comment the evidence of ACC Harris was characterised by a notable evasiveness, incompleteness and mystification. It is submitted that the evidence of Mr Harris is marred by his refusal to answer pertinent question; by his refusal to furnish the names of witnesses (if any); and by his apparent willingness to rely on alleged hearsay. Little weight ought to be attached to his evidence because it was all provided at second hand and none of the sources of the alleged information were produced or identified even in secret to the Tribunal.

#### **4. The evidence of Peter Keeley**

Mr Keeley is still under the control of his British handlers. Or in his own more diplomatic language at day 68 page 85 'I get an allowance from MI5 and I get my accommodation'. His evidence ought to be read through that lens.

Concerning the terms of reference of the Tribunal, he makes one essential allegation. He alleges and repeats it at: day 68 page 77 that he was in a car with Mr Blair and Owen Corrigan when information was passed by Owen Corrigan to Mr Blair.

He also makes a secondary allegation that Mr Blair had made a comment to the effect that 'our friend' had helped after the deaths of Breen and Buchanan, from which it is to be inferred that a mole or assistant in An Garda Siochana had somehow helped in the killings.

The allegation of the meeting in the car appears to be the only piece of direct evidence linking Mr Blair with Owen Corrigan that has emerged in the course of the Tribunal. There is no other direct evidence linking the two. That in itself is significant.

No evidence has been adduced by the Tribunal that Keeley informed the RUC of this meeting that is supposed to have occurred. Surely that is a remarkable omission? That he had information that a top Garda was liaising with Mr Blair would surely have been a very important coup.

Mr Keeley gives evidence that Mr Blair was at home with him on the day of the killing of Breen and Buchanan. This evidence is to be found at day 68 page 81: '...he was in the house that day with me'. This is evidently at odds with the account given by Mr Blair himself. It also raises the (unanswered) question of how Mr Blair would know how the operation was carried out, considering that it was an operation with which he had nothing to do.

It is submitted that the evidence of Peter Keeley cannot be given any serious weight unless independently corroborated. He has been denounced by more than one intelligence agency as a fantasist and intelligence nuisance.

## **5. Conclusion**

First. The claim is not seriously made that Mr Blair had anything to do with the killings of Breen and Buchanan.

Second. Mr Blair has consistently denied any knowledge of any mole or informant within the ranks of An Garda Siochana. No other specific piece of evidence has been adduced to controvert this assertion except the statement of Mr Keeley putting him in the car with Mr Corrigan on one occasion. The weight to be accorded to that evidence is clearly a matter for the Tribunal, but it is submitted that in circumstances where (a) Mr Blair has always categorically denied any association between himself and Mr Corrigan or any Garda informant; (b) in the absence of any corroboration whatsoever of the claim; (c) the repeated denunciation of Mr Keeley as an intelligence nuisance and a fantasist; and (d) the provision by the IRA of a wholly convincing alternative explanation for how the operation was carried out without the necessity for any fifth column within An Garda Siochana, it is impossible to ascribe any credibility to the evidence of Mr Keeley.

Third. The supplementary evidence provided by the RUC/PSNI is unfathomable and should likewise be disregarded.

Signed:

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Aaron Kelly & Co, Solicitors.

## SMITHWICK TRIBUNAL OF INQUIRY

Sole Member: His Honour Judge Peter Smithwick

### SUBMISSION FOR AND ON BEHALF OF RETIRED GARDA SERGEANT LEO COLTON

The Smithwick Tribunal

19 JUN 2013

#### 1. BACKGROUND:-

Leo Colton is one of three former members of An Garda Siochana who are under investigation in respect of allegations that members of An Garda Siochana or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan on the 20th day of March 1989.<sup>1</sup>

#### FOOTNOTE:-

See pages 3 & 4 of Opening Statement of Tribunal dated the 3rd day of March 2006:

#### 2. DEFINITION OF COLLUSION:-

The Tribunal Chairman Judge Peter Smithwick defined collusion as meaning and consisting of:-

*""The issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act I am of the view that it should also be considered in terms of an omission or failure to act, in the active sense, collusion has amongst its meanings to conspire, connive or collaborate.*

*In addition I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or pretended ignorance or unawareness of something one ought morally, legally or officially oppose ""<sup>1</sup>*

**FOOTNOTE:-**

i) See top of page '4' of opening statement of the Tribunal dated the 7th day of June 2011:

**3. SOURCES OF ALLEGATIONS OF COLLUSION AGAINST LEO COLTON BY REFERENCE TO SEQUENCE OF TIME:-**

i) Article of Kevin Myers published in the Irish Times on the 10th day of March 2000<sup>1</sup>:

ii) Dail questions raised by then Deputy Jim Higgins now MEP on the 13th day of April 2000<sup>2</sup> :

iii) Dail questions raised by Mr Charles Flanagan TD on the 13th day of April 2000:<sup>3</sup>

iv) Second Edition of a book entitled 'Bandit Country' written by Mr Toby Harnden published in November 2000 (the 1st Edition having been published in late 1999)<sup>4</sup> :

v) Mr Ian Hurst/Martin Ingram by way of an intended statement of evidence to the Tribunal and affirmed in the course of oral evidence given by Mr Hurst/Ingram to the Tribunal commencing on the 17/4/'12: the 18/4/'12 and the 19/4/'12 and ultimately read into the public record of the Tribunal on the 24th day of April 2012:<sup>5</sup>

**FOOTNOTE:-**

1) For ease of reference see Appendix C to Judge Cory's Report:

2) See Dail Volume 518 as read into the Tribunal Record and as recorded at Transcript 56 pages 3 to 14 inclusive:

3) See Transcript 71 commencing at line 18 of page 13 and concluding at line 3 of page 14 of the said Transcript:

4) For ease of reference as to the relevant extracts of the Second Edition of the Book "Bandit Country" see Appendix B of Judge Cory's Report:

5) See Transcripts 92: 93 & 94:

#### 4. EVIDENCE IN RESPECT OF THE 20TH DAY OF MARCH 1989:-

It is submitted on behalf of Leo Colton that the evidence tendered to the Tribunal established the following facts:-

1. The first communication made with Dundalk Garda Station to arrange a meeting between the two RUC Officers with Garda Chief Superintendent John Nolan was at 9.20am<sup>1</sup>.
2. Superintendent Bob Buchanan directly rang Garda Chief Superintendent John Nolan at 10.15am and set up a meeting for 2pm<sup>2</sup>:
3. Garda Chief Superintendent John Nolan informed then Garda Inspector Frank Murray of the proposed 2pm meeting over coffee at about 11am in the District Office/Canteen at Dundalk Garda Station<sup>3</sup>:
4. The two RUC Officers arrived into Garda Chief Superintendent John Nolan's office at or about 2.15/2.25pm<sup>4</sup>:
5. Mr David McConville, a Retired RUC Detective Superintendent gave evidence to the Tribunal involving the putting into evidence of "*Discovered RUC Documentation*" - See Transcript 13:

From a portion of the RUC Discovered Documentation read into the record at the Tribunal an account was given that at approximately 2.30pm a white van travelling from Dundalk arrived to a vacant house on the Edenappa Road. Five men got out of the van and went into this house. The van then left and drove in the direction of Dundalk. At approximately 3.30pm the white van returned and picked up the five men from this house and then parked on the right hand side of the road near another house. After approximately 5 minutes two men in full combat clothing and carrying rifles got out of the van and took up positions on either side of the road.<sup>5</sup>

It is submitted that the foregoing facts and evidence as submitted to the Tribunal on a balance of probabilities establishes that the ambush to murder the two Senior RUC Officers had been in place prior to their arrival at

Dundalk Garda Station at or about 2.10/2.15pm on the 20th day of March 1989.

The foregoing established when taken in conjunction with Documents 264/613 being the Documents contained in the Precise of Intelligence Documents and as referred to at footnote 14 herein establishes it is submitted, greater weight to the proposition that the murder ambush of the two RUC Officers was in place prior to their arrival at Dundalk Garda Station on the 20th day of March 1989:

The IRA ambush team were noted to arrive at the murder scene at approximately 2.20/2.30pm<sup>6</sup>:

6. The two RUC men left Dundalk Garda Station at approximately 3.15pm or thereabouts<sup>7</sup>:

7. The murder ambush of the two RUC men occurred at approximately between 3.40pm and 4pm<sup>8</sup>:

8. Leo Colton as a member of Unit A, commenced duty on the 20th day of March 1989 at 2pm:<sup>9</sup>

9. Unit A including Leo Colton had up to 6am on the 20th day of March 1989 been on night duties ie., duty from 10pm to 6am for a period of 7 days. In other words Leo Colton had come off night duty at 6am on the 20th day of March 1989 and resumed duties at 2pm to 10pm:<sup>10</sup>

10. The Tribunal has heard evidence as to the minimum period that the IRA would have required in order to mount this murder ambush on the two Senior RUC Officers.

Witness 27<sup>11</sup> stated that 30minutes was sufficient to mount the murder ambush: Garda Detective Chief Superintendent Peter Maguire gave evidence that the IRA could have mounted this murder ambush within one hour<sup>12</sup>: and Brigadier Liles of the British Army gave evidence that the murder ambush would have been impossible in under 3 hours<sup>13</sup>.

Witness 62 expressed an opinion that the time span to mount the murder ambush ranged from 30 minutes to 2 hours with greater emphasis on the period of 2 hours<sup>14</sup>:

11. Other witnesses who gave evidence to the Tribunal indicated that a much longer period of time would have been required by the IRA to put in place this murder ambush ranging from a period of several hours to indeed a number of days.

Evidence was submitted to the Tribunal that based on intelligence reports the IRA had mounted over a period of a week an armed presence over four separate roads leading to and from Northern Ireland to Dundalk<sup>15</sup>. This intelligence report is given added weight by the evidence of Witness 62<sup>16</sup>:

12. On the day of the murders in keeping with established practice the two RUC Officers on entering Dundalk Garda Station proceeded directly upstairs to the first floor to Chief Superintendent John Nolan's office<sup>17</sup>:

13. Leo Colton gave evidence to the Tribunal that he did not know either of the two murdered RUC Officers nor had he any direct or indirect dealings with the two murdered RUC Officers<sup>18</sup>:

14. No evidence was submitted to the Tribunal that Leo Colton either knew, saw or interacted with the two RUC Officers from the time they entered Dundalk Garda Station on the 20th day of March 1989 until they left the Garda Station at about 3.15pm.

Equally no evidence was submitted to the Tribunal that Leo Colton had seen or interacted with the two RUC Officers on previous occasions that one or other of them may have visited Dundalk Garda Station:

15. All of the uniformed Gardai below Inspector Rank (save and except then Sgt. Vincent Rowan and then Garda Seamus Nolan and possibly Garda David Sheridan) who were on duty at Dundalk Garda Station from 2pm onwards on the 20th day of March 1989 gave evidence to the Tribunal that they did not know of the arrangements for the visit of the two Senior RUC Officers: nor did they see or interact directly or indirectly with the two Senior RUC Officers and consequently were not even aware of the presence of the two RUC Officers at Dundalk Garda Station on the afternoon of the 20th day of March 1989<sup>19</sup>:

16. All of the Gardai on duty on the 20th day of March 1989 at the time of the arrival and departure of the two RUC Officers gave evidence to the Tribunal that they had no evidence relevant to the terms of the Tribunal and in particular they had no evidence of collusion by any member of An Garda Siochana in the murder of the two RUC Officers:<sup>20</sup>

17. Evidence was given to the Tribunal by a number of senior Garda officers and confirmed by uniformed Gardai that where Garda duties involved anti-subversive investigations such as the arrest of subversives and/or searches for arms and explosives where uniformed Gardai were concerned they were not

informed of such duties and the detailed particulars of such duties until assembled to carry out the particular task:<sup>21</sup>

18. All of the Detective Gardai who were on duty on the day of the murders and who gave evidence to the Tribunal including that of Detective Chief Superintendent John Nolan all stated that they had no evidence relevant to the terms of the Tribunal and in particular that they had no evidence of collusion by any member of An Garda Siochana in the murder of the two RUC Officers:<sup>22</sup>

19. As per evidence of retired Chief Superintendent John Nolan knowledge of the scheduled meeting with the two RUC men for 2pm on the 20th day of March 1989 was deemed sensitive and restricted to a number of senior officers.<sup>23</sup>

The absence of general knowledge of the proposed meeting on the 20th day of March 1989 and further the unawareness of the presence of the two Senior RUC Officers at Dundalk Garda Station from the time of their arrival until their departure is reflected in the evidence of the Detective Gardai and/or Special Branch Detective Gardai who gave evidence and all of whom were primarily involved in anti-subversive crime investigations:

20. Evidence was given to the Tribunal that a van stolen at Mullabawn Church on the Saturday the 18th day of March 1989 was the same van as used by the IRA in the ambush of the two Senior RUC Officers on the 20th day of March 1989:<sup>24</sup>

21. Evidence was given by Witness 27 to the Tribunal that he Witness 27 was informed by a deceased colleague RUC Detective Superintendent Frank Murray that the Northern Security Monitoring Services detected sustained communications activities and that the communications activities were believed to be generated by subversives commencing sometime approximately at 11.30am or thereabouts on the 20th day of March 1989:<sup>25</sup>

22. The Discovered RUC Documents as put into evidence by Mr David McConville also recorded that on the morning of the murders a bogus team of workmen comprising four individuals were seen to put in place temporary traffic lights at or near the vicinity of Kilnasargart Railway Bridge which was relatively close to the murder scene:<sup>26</sup>

23. Evidence was given by Mrs Halpin, one of the civilians stopped at the IRA Check Point on the Edenappa Road that the IRA men had use of walk-talkies.

Mrs Halpin stated in the course of evidence that shortly prior to the arrival of the two murdered RUC Officers on the Edenappa Road that she witnessed an IRA man making use of walk-talkies<sup>27</sup>.

Mrs Halpin's evidence was corroborated by the evidence of Witness 62 when he informed the Tribunal that he, Witness 62 was informed that the IRA had a person at the Y road junction demarcating the Edenappa Road and what was then the Old Main Dundalk to Newry Road.

Witness 62 further gave evidence that this IRA person was in radio communication and thereby was able to determine with accuracy what road the two murdered RUC men were taking as their route back to Northern Ireland ie., whether they were going on the Edenappa Road or the Old Main Road to Newry:<sup>28</sup>

24. Evidence was given to the Tribunal by a range of witnesses comprising both serving or retired Gardai: serving or retired members of the British Army and/or retired RUC Officers/serving PSNI Officers that the South Armagh IRA Units were risk averse.

Evidence was also given to the Tribunal as to an occurrence at Loughall in or about the year 1987 when 8 IRA men were shot dead by units of the Security Forces and that this incident left a lasting legacy on the mind set of the IRA and if anything made them more risk averse and more unlikely it is submitted to mount an ambush without detailed advance planning and preparation so as to avoid or minimise the risk of a second Loughall type incident:<sup>29</sup>

#### **FOOTNOTES:-**

1. See Transcript 4 at page '5':
2. See Transcript 9 at page '25' Q 162:
3. See Transcript 9 at page '30' Qs 179 and 180:
4. (a) See Transcript 9 at pages '38' & '39' Q240 and Q241:  
(b) See Transcript 9 at page '2':  
(c) See Transcript 13 at page 23 Q103:
5. See Transcript 13 page 29 lines 19 to 28 inclusive:
6. (a) See Transcript 3 at page '97' Q 576 and 580:  
(b) See Transcript 13 at page 29 commencing at line 19:

7. See Transcript 9 at page '81' Q 486:
8. (a) See Transcript 3 at page '57' Q285:  
(b) See Transcript 3 at page '66' Q352 and Q353:  
(c) See Transcript 39 at page '18' Q28:
9. (a) See Transcript 18 at page 85 Q439:  
(b) See Transcript 18 at page 87 Q449:  
(c) See Transcript 97 at page 6 Q35:
10. See Transcript 97 at page '6' Q38 - Q39:
11. See Transcript 30 at pages 112 & 113 - Q499:
12. See Transcript 34 at page 80 Q384-386:
13. (a) See Transcript 39 page '66' Q132:  
(b) See Transcript 39 page '67' Q135:  
(c) See Transcript 39 pages '18-21' inclusive ( ie., evidence of Brigadier Mike Smith:)
14. See Transcript 51 page 21 Lines 7 to 10 inclusive and page 22 lines 25 to 28 inclusive:
15. See Garda Précis of Intelligence Documents and in particular Document 247: Documents 264/613 and Document 581 - see Transcript 54 pages 89-111 inclusive when the foregoing intelligence documents and indeed other documents were put into the Tribunal Record by the evidence of Detective Superintendent Brian Brunton:
16. See Transcript 51 pages 21 and 22:
17. See Transcript 9 at page 4 Q19 to Q23 and again page 6 Q37 to Q38:
18. See Transcript 97 at pages 14 and 15 Q85 to 87 inclusive:
19. See Transcript 11 at page 41 Q265:
20. See Evidence of George Flynn and Pat Tierney as per Transcript 4: evidence of Garda Seamus Nolan as per Transcript 9: evidence of Garda Josephine Fitzsimons, Garda David Sheridan and Val Smith as per Transcript 10:

21. (a) See Transcript 34 at pages 44, 45 & 46 Q202 to Q212:  
(b) See transcript 38 at pages 17 & 18 Q104 to Q107:  
(c) See Transcript 38 at pages 18 & 19 Q112 to Q114:
22. See Transcript 9 at pages 87 & 88 Q525-Q527:
23. See Transcript 9 at page 95 Q566-to Q569:
24. See Transcript 13 pages 19-20 Q89 to Q91:
25. See Transcript 30 at pages 111-112 - Q495 to Q498:
26. See Transcript 13 at pages 46-47 Q174 to Q180:
27. See Transcript 3 at page 61 Q319 to Q320:
28. See Transcript 51 at pages 19 & 20 Q62 to Q65:
29. (a) See Transcript 51 at page 21 Q69:  
(b) See Transcript 51 at page 23 line 30:

**5. OBSERVATIONS AS TO COGENCY: RELIABILITY AND THE WEIGHT TO BE ATTACHED TO THE SOURCES OF ALLEGATIONS OF COLLUSION MADE AGAINST LEO COLTON:-**

**(1) KEVIN MYERS:**

Mr Myers in the course of his evidence to the Tribunal stated that he based his article in The Irish Times on a combination of the writings of Mr Toby Harnden and on anonymous phone calls from one or two sources one being a Garda and the other being a former republican.<sup>1</sup>

Mr Myers in the course of his evidence to the Tribunal acknowledged factual errors in his article and also conceded that suppositions and speculations on his part and/or on his sources were presented as being factually based and accurate in the Article.

More significantly Mr Myers in the course of his evidence to the Tribunal re-affirmed what he had previously stated to the Camon/Kirwin investigation

team namely that he had no evidence as to the allegation that members of An Garda Siochana or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan on the 20th day of March 1989:<sup>2</sup>

Of note Mr Myers gave an undertaking to the Tribunal that he, Mr Myers would approach his two sources ie., the Garda source and the former Republican and enquire off his sources as to whether they would co-operate with the Tribunal:<sup>3</sup>

**FOOTNOTE:-**

1. (a) See Transcript 44 at pages 72 & 73 Q349 to Q357:  
(b) See Transcript 50 at page 88 Q398:
2. See Transcript 50 at pages 2 & 3 Q5 to Q6 inclusive:
3. See Transcript 50 at page 126 Q538 to Q539:

**(2) DAIL QUESTIONS:-**

The Dail questions raised by then Dail Deputy Mr Jim Higgins and Mr Charles Flanagan TD directly stemmed from the Article as written by Mr Kevin Myers and published in the Irish Times on the 10th day of March 2000 and also based or prompted on two phone calls made to both Dail Deputies<sup>1</sup>. Mr Jim Higgins confirmed to the Tribunal that he had no evidence of collusion to give to the Tribunal.<sup>2</sup>

Equally Deputy Charles Flanagan confirmed to the Tribunal that he had no evidence of collusion between An Garda Siochana and the IRA in the murder of the two RUC Officers.<sup>3</sup>

**FOOTNOTES:-**

1. See Transcript 56 at page 54 Q181:
2. See Transcript 56 at pages 55-56 Q189:

3. See Transcript 71 at page 29 Q88 to Q93:

**(3) BANDIT COUNTRY:**

Toby Harnden for whatever reason has declined to make himself available to give evidence to the Tribunal and accordingly it is submitted that no weight should be attached to the allegations contained in his book both in the 1st and 2nd Editions implicating Garda X and Y.

Independent of the non appearance of Mr Harnden before the Tribunal evidence was heard by the Tribunal that some of the assertions as contained in Mr Harnden's Book 'Bandit Country' relating to the murder of the two RUC Officers were factually incorrect.

In particular evidence was given to the tribunal that the assertion as contained at pages 158 and 159 of the book 'Bandit Country' were factually incorrect and had no basis in fact namely that:-

*"There was also technical information which confirmed that the IRA had been contacted by someone within Dundalk Garda Station. RUC Special Branch then received intelligence that a Garda Officer had telephoned an IRA member to tip him off"<sup>1</sup>.*

The Book 'Bandit Country' further alleged at page 159 as follows:-

*"This sequence of events was confirmed by Detective Inspector L, a former member of Garda Special Branch who said "I am afraid the leak came from a Guard. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved made the whole thing ten times worse"<sup>2</sup>.*

The only Detective Inspector of Special Branch stationed at Dundalk as of March 1989 was Dan Prenty.

Mr Prenty now retired gave evidence to the Tribunal that he did in fact meet Mr Harnden and spoke to him.

However Mr Prenty denied that he said what was attributed in the book to Inspector L.

Further Mr Prenty stated that he had no evidence of Garda collusion or indeed evidence in respect of the murder of the two RUC Officers.<sup>2</sup>

As it is submitted that no such weight should be attached to the book 'Bandit Country' so also is it further submitted that the Article of Mr Myers is further rendered unreliable and that no reliance can be placed on both Mr Harnden's book and the article of Mr Myers by the Tribunal in its deliberations.

**FOOTNOTES:-**

1. See Transcript no. 44 at pages 103 & 104 Q503 to Q506:
2. (a) See Transcript No. 42 at page 32 Q149 to Q152:  
(b) See Transcript No. 42 at page 36 Q163:

**(4) IAN HURST/MARTIN INGRAM:**

The reference to Mr Colton by Ian Hurst/Martin Ingram was to the effect that he could recall seeing one or two SB50s in respect of Mr Colton.

Mr Ingram alleged that the basis for his recollection was that he considered Mr Colton's name to be an unusual name and that same stuck in his memory. Mr Ingram further stated that the context of seeing the one or two references to Mr Colton was under a generic term of '*ROGUE GARDAI*'.

Mr Hurst/Ingram was unable to give specific details in particular as to dates, locations or the specific circumstances of any such alleged reference to Mr Colton in any SB50.<sup>1</sup>

Throughout the course of the Tribunal apart from the intelligence item No. 5 as introduced by PSNI Detective Chief Superintendent Roy McComb<sup>2</sup> no member of the RUC/PSNI has offered or attempted to offer any evidence of the existence of any SB50 specifically referring to Mr Leo Colton.<sup>3</sup>

Mr Hurst informed the Tribunal that he had no evidence to give to the Tribunal involving Leo Colton in the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan.<sup>4</sup>

The evidence given by Mr Hurst to the Tribunal in respect of Leo Colton must it is submitted be viewed against the evidence of Retired Chief Superintendent Basil Walsh given to the Tribunal on the 26th day of April 2012.<sup>5</sup>

Equally the evidence of Mr Hurst/Ingram should be viewed against the evidence of Retired Detective Chief Superintendent Peter Maguire given to the Tribunal on the 26th day of April 2012.<sup>6</sup>

**FOOTNOTES:-**

1. See Transcript 93 pages 15-17 Q95 to Q113:
2. See Transcript 117 page 4 Q13:
3. (a) See Transcript 93 pages 159-160 Q820:  
(b) See Transcript 93 page 162 Q828 to Q829:
4. See Transcript 93 pages 16 & 17 Q112:
5. (a) See Transcript 93 pages 6-7 Q37 to Q47:  
(b) See Transcript 93 pages 9-10 Q63 to Q65:
6. (a) See Transcript 94 pages 6-9 Q15 to Q19:  
(b) See pages 14-15 Q42 to Q46:

**6. CIRCUMSTANTIAL EVIDENCE OF COLLUSION:-**

The case of Thomas .v. Jones (1921) 1K.B. 22 is often cited as affording a clear explanation as to the operation of circumstantial evidence by reference to the following passage at page 48 of the Judgment namely:-

*"Evidence of independent facts, each of them in itself insufficient to prove the main fact, may yet, either by their cumulative weight or still more by their connection of one with the other as links in a chain, prove the principle fact to be established".*

Evidence was presented to the Tribunal seeking to implicate Leo Colton in the murders of the two RUC Officers on the basis that he, Leo Colton had had

contact, association and interaction with persons who were either members of or had associations with the IRA and/or who associated with members of the IRA or who supported the IRA.

**(1) BRIAN RUDDY:-**

1. Mr Colton furnished a signed Document and bearing a Dundalk Garda Station Stamp to Mr Ruddy to be used by Mr Ruddy when applying for a Trade Plate.

It was alleged that the said Brian Ruddy had links with the IRA and in particular was suspected of fund raising and was a person who had been convicted in respect of the possession, sale or distribution of the Hormone known as Glenbutteral popularly known as 'Angel Dust'.

Evidence was given to the Tribunal by Eamonn Hynes a retired Garda Public Service Vehicle Inspector who was tasked with assessing an application made by Mr Ruddy for a trade plate.

The evidence of Mr Hynes was to the effect that the dominant issue to be considered in the matter was the suitability of the premises from which Mr Ruddy operated his business.<sup>1</sup>

Mr Hynes duly carried out his inspection and certified that the premises were unsuitable and recommended that the application by Mr Ruddy for a trade plate be refused.

In the course of his evidence Mr Hynes stated that the letter written and signed by Leo Colton while unusual<sup>2</sup> did not influence or could not influence his assessment of Mr Ruddy's application for a trade plate.<sup>3</sup>

Mr Hynes further stated in the course of his evidence that he was not approached directly or indirectly by Mr Ruddy or Mr Colton or indeed any other person in and about the carrying out of his duties in assessing Mr Ruddy's Application:<sup>4</sup>

The evidence of Mr Hynes corroborated the evidence of Mr Colton that business of motor repairs were being carried out at the Brian Ruddy premises the subject of the trade plate application.<sup>5</sup>

In the course of his evidence Mr Hynes stated that he was born and reared in Dundalk and that he was a public service vehicle inspector in the Louth Meath Garda Division from 1989 to 2004 operating in locations such as Navan, Drogheda and Dundalk.<sup>6</sup>

Notwithstanding his service as a Garda in and about County Louth and in particular Dundalk and notwithstanding his connections to Dundalk Mr Hynes had no personal knowledge of Mr Ruddy and it was only in the course of making enquiries with Detective Gardai that he was informed as to the belief and/or intelligence that Mr Ruddy had associations with the IRA.<sup>7</sup>

Mr Colton in the course of his evidence stated that his one and only direct contact with Mr Ruddy was in or about June 1990 when he sought to source a small pick-up truck for his son and was referred to Mr Ruddy.<sup>8</sup>

It is submitted that Mr Colton's note did not express an opinion as to the character of Mr Ruddy let alone a recommendation as to the suitability or otherwise of Mr Ruddy's premises for the sale and/or repair of motor vehicles:<sup>9</sup>

My Hynes also gave evidence to the Tribunal that he had no evidence of collusion and did not believe that there was collusion.<sup>10</sup>

#### **FOOTNOTES:-**

- (1) See Transcript No. 88 page 3 Qs 8 to 10 inclusive:
- (2) See Transcript No. 88 page 7 Qs 34 to 37 inclusive:
- (3) (a) See Transcript No. 88 at page 36 Qs 195 to 196:  
(b) See Transcript No. 88 at page 40 Qs 223 to 225 inclusive:
- (4) See Transcript No. 88 page 35 Qs 181 to 186 inclusive:
- (5) See Transcript No. 88 pages 33 and 34 Q 168-169:
- (6) (a) See Transcript No. 88 at page 2 Q5-6:  
(b) See Transcript No. 88 at page 26 Qs 127 to 129 inclusive:
- (7) (a) See Transcript No. 88 at page 26 Q130 to 131:  
(b) See Transcript No. 88 at page 8 Q44 to Q54 inclusive:
- (8) See Transcripts 18 & 97:
- (9) See Transcripts 18 & 97:
- (10) See Transcript 88 at page 40 Q226:

**(2) LEO COLTON'S POST-GARDA RETIREMENT EMPLOYMENT HISTORY WITH MR McCANN:-**

Following his retirement Leo Colton worked for Jim McCann a Dundalk businessman carrying on a range of businesses including that of Amusement Arcades and/or Public Houses and/or Hotels.

Evidence was given to the Tribunal by Mr Colton that following his retirement he worked for a year or so as an Insurance Sales Agent. Thereafter Mr Colton gave evidence that he commenced employment with Mr McCann in or about the year 1993.

Mr Colton stated that he worked with Mr McCann until on or about the year 1997/1998.<sup>1</sup>

His work duties with Mr McCann involved working in full public visibility from a kiosk in the amusement arcade dispensing change to customers in order to operate the amusement machines.

Mr Colton's employment with Mr McCann was a matter of public/local knowledge including indeed serving members of An Garda Siochana. Evidence was given by Mr Colton that a former retired Garda had also worked for Mr McCann namely retired sergeant Pat O'Connor.<sup>2</sup>

Evidence was given to the Tribunal by Superintendent Pat McGee that in all the time he has served in the Dundalk area he has never seen any files or reports indicating that Mr McCann was a subversive or linked to the IRA.<sup>3</sup>

**FOOTNOTES:-**

(1) See Transcript 97 at page 47 Q245:

(2) See Transcript 97 at page 47 Q242:

(3) See Transcript 38 at page 50 Q294 - Q296:

(3) **PASSPORT ISSUE:-**

Former Garda Sergeant Finbar Hickey was arrested in 1998 and ultimately pleaded guilty to offences relating to the issuing of false passports. In the course of Garda interviews Mr Hickey alleged that he signed/certified the passport application forms at the behest of Mr Leo Colton. Mr Colton was arrested and interviewed by Gardai in respect of the passport issue but ultimately was released without charge. The issue of false passports commenced in or about the year 1995 at a point in time when Leo Colton had retired as a member of An Garda Siochana. When giving evidence to the Tribunal on the 2nd day of March 2012 Mr Hickey could offer no evidence to corroborate that on at least 7 different occasions in the period between January 1995 and April 1996 Mr Colton visited Hackballscross Garda Station. Mr Hickey alleged that on each and every such occasion he was entirely on his own when visited by Colton notwithstanding that Mr Hickey acknowledged that in that particular period of 1995 due to a foot and mouth scare the station was exceedingly busy with up to 40 to 50 Garda Officers working out of Hackballscross Garda Station.

On the 1st day of May 2012 (See Transcript 95) the Tribunal called as a witness PSNI Detective Chief Superintendent Roy McComb. The said Detective Chief Superintendent McComb introduced items of intelligence which implicated former Garda Sgt. Finbar Hickey. The first piece of alleged intelligence stated that Finbar Hickey was accused of providing information to the IRA about giving warnings of searches and arrests.<sup>1</sup>

This item of intelligence was deemed to be accurate, credible and reliable.

The second piece of intelligence alleged that Finbar Hickey was responsible for passing information to the IRA which resulted in the murder of the two RUC Officers.

This alleged information was given to a uniformed RUC Officer in or about June 1999/2000.

However when apparently questioned by CID RUC Officers the alleged informant withdrew his allegation against Finbar Hickey.<sup>2</sup>

This evidence of alleged intelligence against Finbar Hickey coming as late as it did in the Tribunal Hearings it is submitted has rendered the entire passport issue flawed as none of this was put to any of the Gardai who investigated the passport issue as evidence that Mr Hickey was working directly with the IRA in and about the processing of passport application forms etc.

In introducing this alleged intelligence against Mr Hickey at such a late stage in the Tribunal Hearings, Mr Colton was denied the opportunity of cross-examining the Gardai on this issue particularly so when Mr Hickey was

unable to give a scintilla of evidence to corroborate his allegations that Mr Colton was the instigator of he, Mr Hickey processing the passport application forms<sup>3</sup>.

In the course of his evidence to the Tribunal Mr Hickey acknowledged that when questioned about passport irregularities he lied on a number of occasions.<sup>4</sup>

Notwithstanding the caveats, risks and reservations relating to intelligence this alleged intelligence in respect of Mr Hickey went to the credibility of Mr Hickey.

Individually and collectively none of the three preceding issues ie., the trade plate issue: the employment with James McCann and the passport issue have any connection with the events of the 20th day of March 1989.

No evidence was tendered to the Tribunal that there was any direct or indirect connection between the murders of the two RUC men and the three incidents referred to above.

Significantly the Camon/Kirwan investigation established in 2000 in response to the publication of Bandit Country and the Kevin Myers Article and following questions raised in the Dail by opposition politicians expressly dealt with the passport issue in the context of the murder of the 2 RUC Officers and whether the murders were facilitated by collusion on the part of a Garda or Gardai.<sup>5</sup>

The Camon/Kirwan investigation also investigated and considered the trade plate issue<sup>6</sup> and Mr Colton's employment with Jim McCann.

As is self-evident the trade plate and the employment with Mr McCann issues were open and without any attempt at subterfuge or to conceal Mr Colton's involvement.

Chief Superintendent Camon was himself directly involved in the investigation of the passport issue involving as it did the arrest and questioning of both Leo Colton and Finbar Hickey.

There is no evidence presented linking any one or all of the three incidents to the murder of the two RUC Officers.

All three incidents occurred years after the murder of the two RUC Officers and in the case of two of the three incidents when Leo Colton was retired from the Gardai.

**FOOTNOTE:-**

- (1) See Transcript 95 at page 28:
- (2) See Transcript 95 at page 42:
- (3) See Transcript 96 at pages 112 and 113 Q660 to Q668:
- (4) (a) See Transcript 96 at page 106 Q621:  
(b) See Transcript 96 at page 113 Q670 to Q673:  
(c) See Transcript 96 at page 124 Q747 and Q750:  
(d) See Transcript 96 at page 126 Q763:
- (5) (a) See Transcript 34 at pages 45 and 46 Q209 to Q212:  
(b) See Transcript 62 at pages 142 & 143 Q451 to Q456:
- (6) See Transcript 62 at pages 139 & 140 Q441 to Q442:

***(4) Apparent conflict as between Inspector Tom Brady then Sergeant Brady as of March 1989 and then Sergeant Leo Colton on the issue of parading:-***

Following the murder of the two Senior RUC Officers and incidental to the O'Dea Inquiry both Sgt. Brady and Sgt. Colton made written statements. In each of the respective statements both Sergeants asserted and claimed to have paraded Unit A on the day of the murders.

It is submitted that the evidence before the Tribunal established that both Sgt. Brady and Sgt. Colton were present at the parading.

It is further submitted that evidence was given by a number of retired and/or serving members of An Garda Siochana that where two sergeants were present at parading that there was a division of labour albeit that the sergeant in charge took a more leading dominant role in the parading.<sup>1</sup>

It is submitted that there was an unquestioning acceptance of the statement of Sgt. Brady presented to the Chairman of the Tribunal.

In contrast the statement and evidence of Sgt. Colton on the issue of parading was very much challenged to the point that he was accused of not actually being present at the parading notwithstanding that even Sgt. Brady in his evidence acknowledged at all times that Sgt. Colton was in fact present at the parading.<sup>2</sup>

When the O'Dea statement of Sgt. Brady is contrasted with his evidence to the Tribunal it is submitted that there are contradictions between the statement and his evidence.

By way of illustration in his statement Sgt. Brady asserted that in the course of parading he paraded among others Garda Seamus Nolan and Garda Ann McMorrow and Garda David Sheridan.

In contrast in his evidence to the Tribunal he stated that these individual Gardai went directly to their posts without actually being paraded.

Ann McMorrow in her evidence to the Tribunal confirmed that she in fact did not attend at the parading but went straight to her post in the radio room.<sup>3</sup>

In the course of his evidence Sgt. Brady asserted that both Chief Superintendent Breen and Superintendent Buchanan were frequent visitors to Dundalk Garda Station.

The overwhelming evidence presented to the Tribunal was to the effect that the late Chief Superintendent Breen was an extremely rare visitor to Dundalk Garda Station maybe possibly only having attended meetings on 2/3 occasions in contrast to Superintendent Buchanan who was clearly established to be a frequent and regular visitor to Dundalk Garda Station over a 2 years period.

In addition Sgt. Brady also at one point maintained that he met and interacted with the two Senior RUC Officers on the day of their death but subsequently acknowledged that this was an error.

#### **FOOTNOTES:-**

1.
  - (a) See Transcript 23 pages 60-61 Q376 to Q384:
  - (b) See Transcript 25 page 11 Q69-71:
  - (c) See Transcript 62 pages 137 to 139 Q437 to Q439:
2. See Transcript 97 at page 18 Qs 106-107:
3. (a) See Transcript 11 at page 43 Q273 lines 13-15:  
(b) See Transcript 15 at page 2 Q10 to Q15:

*(5) Failure of Leo Colton to note down the full registration of a motor vehicle which drove along the Dundalk Garda Station forecourt sometime at or about 2.25/2.30pm on the 20th day of March 1989:-*

Much was made by the Tribunal of the failure of Leo Colton to accurately recall the registration number of the car which he noted to be acting suspiciously.

In the course of his evidence Mr Colton stated that his oversight and failure to accurately record the full car registration number was due to being distracted by a visitor to the Garda Station who was seeking assistance.

The presence and indeed the interaction of Mr Colton with this civilian is verified and confirmed by the evidence of the Station Orderly then uniformed Garda Seamus Nolan.<sup>1</sup>

Mr Colton further in the course of his evidence to the Tribunal stated that in order to deal with the query raised by the civilian it was necessary for him to consult a reference book.

Ultimately when he had dealt with the query he then proceeded down to Dundalk Town Centre in discharge of his duties as a 'beat sergeant'.

On his return to the Garda station and on being informed of the murder of the two RUC Officers Mr Colton immediately recalled the presence of the suspicious car and volunteered as best he could recall the registration number of the suspicious car.

Mr Colton was not the only Garda who due to human failure neglected or failed to take accurate details of a motor car which was seen at or in the vicinity of Dundalk Garda Station on the 20th day of March 1989.<sup>2</sup>

If the Tribunal accepts that this car was present and was acting suspiciously in the manner as detailed by Sgt. Colton it is submitted on behalf of Sgt. Colton that this car was part of the IRA ambush team.

The presence of the suspicious car it is submitted gives corroboration to the proposition that the two RUC Officers were followed from Newry and/or at some point between Newry and Dundalk and that the fact of the suspicious car driving through the forecourt of the Dundalk Garda Station was to confirm that the two RUC Officers had in fact driven to and were present at Dundalk Garda Station.

If it is accepted that the IRA had in place for a week an armed presence on four roads leading from North to South, then having regard to the evidence submitted to the Tribunal that both RUC Officers were known to the IRA that the motor vehicle of Superintendent Buchanan was known to the IRA that the presence of the suspicious car goes to corroborate the submission that the entire murder ambush from planning the attack to its murderous conclusion on the Edenappa Road was entirely confined to the ranks of the South Armagh IRA and did not require or indeed did not obtain the collusion, assistance or input of any member of An Garda Siochana:

**FOOTNOTES :-**

1. (a) See Transcript No. 9 at page 6 Q37:  
(b) See Transcript No. 9 at page 20 Q131-Q133:
2. (a) See Transcript No. 23 at page 7 Q35 to Q36 inclusive:  
(b) See Transcript No. 23 at page 22 Q136 to Q141 inclusive:

***(6) Evidence of Retired Sgt. Thomas Byrne:-***

The evidence of retired Sgt. Thomas Byrne as per Transcript 45 while hostile to Mr Colton was manifestly motivated by personal animosities unrelated to the terms of reference of the Tribunal herein.

Despite his vitriolic tirade against Leo Colton Mr Byrne had no evidence to give to the Tribunal as to collusion by Mr Colton or any other member of An Garda Siochana.

The evidence of retired Sgt. Thomas Byrne it is submitted should be viewed against the context of the evidence as given by retired Chief Superintendent Michael Staunton.<sup>1</sup>

***FOOTNOTE:-***

- (1) See Transcript 19 page 25 Q140-Q144 inclusive:

**7. ALTERNATIVES TO A GARDA LEAK BEING INSTRUMENTAL TO THE MURDERS OF THE TWO RUC OFFICERS:-**

***7. (1) The IRA:-***

***(a)*** The Tribunal heard evidence from retired and/or serving members of An Garda Siochana: Retired and/or serving members of the RUC/PSNI and also from retired and/or serving members of the British Armed Forces that the murder ambush was entirely within the operational capacity of the IRA<sup>1</sup>.

It is submitted that the evidence established that the South Armagh IRA was the most proficient and organised of the IRA Commands and did not require

the assistance of a Garda Mole (s) in the carrying out of the said murder ambush of the two Senior RUC Men on the 20th day of March 1989.

The South Armagh IRA was it is submitted a particularly experienced and ruthless killing machine/network.

The weight of the evidence before the Tribunal it is submitted and most graphically summed up in the evidence of Witness 62 who stated inter alia that the South Armagh IRA were:-

- (a) 'Very very cautious:
- (b) 'They were formidable terrorists':
- (c) 'They were experienced terrorists':
- (d) 'They were ultra cautious':
- (e) 'If they had seen one vehicle which they thought was out of place they would simply call an operation off because they would have feared it was SAS or somebody like that':
- (f) 'They would not just rush out on the word of somebody, because they would fear they were going into some sort of trap':
- (g) 'To loose 20 weapons or 10 weapons would be a disaster for them':
- (h) ' Though I think a strong element of pre-planning perhaps even rehearsal, perhaps even having run the operation before'<sup>2</sup>

establishes that the murder ambush of the two RUC Officers was in train several hours before Leo Colton commenced duties at 2pm.  
it is further submitted that the murder ambush to avoid a Loughall type situation or even an accidental contact with the security forces North and South required strict secrecy and exclusive involvement of the South Armagh IRA.

#### **FOOTNOTES:-**

1. (a) See Transcript 13 at page 59 Q221:
  - (b) See Transcript 31 at page 75 Q279 to 284:
  - (c) See Transcript 39 at pages 7 & 8 Q7 to Q9:
  - (d) See Transcript 40 at page 30 Q149-Q151:
  - (e) See Transcript 51 at pages 21 & 22 Q69:
  - (f) See Transcript 51 at page 25 Q77:
  
2. See Transcript 51 at pages 21 & 22 Q69:

**(b) The South Armagh IRA had a sophisticated intelligence network who routinely kept:-**

- i. RUC Officers under observation going to and from work and to and from their homes, details concerning family members of serving RUC officers, details of private motor cars owned or driven by RUC officers and membership of social/sports clubs:<sup>1</sup>
- ii. RUC Police Stations under observation monitoring the movement of RUC personnel and vehicles in and out of the said police stations:<sup>1</sup>
- iii. The South Armagh IRA operated both in South Armagh and North County Louth including Dundalk. There were a number of direct roads linking Dundalk to South Armagh being a matter of approximately 3/5 miles distance eg, Edenappa Road, Carristicken Road to Forkhill and the Castlblanky Road leading to Crossmaglen and/or Culloville:<sup>2</sup>
- iv. The South Armagh IRA kept Gardai and Garda stations under observation monitoring the movements of people and vehicles to and from Garda Stations including Dundalk Garda Station:<sup>3</sup>

**FOOTNOTES:-**

1. (a) See Transcript 2 pages 31-35 inclusive Q143 to Q157:  
(b) Transcript 2 pages 157-158 Q800 to Q804:  
(c) Pages 144-145 Q727 to Q733:  
(d) See Transcript 2 at page 146 Q736 to Q738:  
(e) See Transcript 9 at pages 88 & 89 Q530 to Q532:  
(f) See Transcript 30 at pages 116-117 Q511 to Q517:  
(g) See Transcript 30 at page 116 Q515-Q517:  
(h) See Transcript 51 pages 141 to 142 Q554-Q556:
2. See Transcript 31 pages 60 and 61 Q190 to Q201:
3. (a) See Transcript 9 at pages 88-89 Q531:  
(b) See Transcript 31 page 71 Q251-Q252:  
(c) See Transcript 31 at page 72 Q261:

(d) See Transcript 83 at page 75 Q299-Q300:

(e) See Statement entitled "Final Approved Note" and furnished to the Tribunal by former members of PIRA and as referred to in a letter dated the 14th day of February 2008 from the said Tribunal to an unidentified entity:

**(c) Evidence submitted to the Tribunal established that the late Bob Buchanan was a soft target in that:-**

- i. He frequently travelled south to visit Garda stations sometimes several times in the one week:<sup>1</sup>
- ii. He used his private car when travelling South and he had the same car approximately 2 years plus prior to his murder:<sup>2</sup>
- iii. He was known to the IRA as a serving Officer of the RUC:<sup>3</sup>
- iv. When visiting Garda Stations he parked his car including the day of his murder in open view of the passing public and any members of the IRA who might have either followed him to Dundalk or at some point between Newry and Dundalk or observed his arrival at Dundalk Garda Station or drove into the Garda Station along the front station forecourt where cars were parked including that of the late Bob Buchanan to carry out a check on cars parked at the Garda forecourt:<sup>4</sup>
- v. He established discernible patterns of behaviour:<sup>5</sup>
- vi. He did not avail of protective security measures such as availing of changeable car registration plates and/or availing of different vehicles to travel to and from visiting Garda Stations:<sup>6</sup>
- vii. A system known as the vengeful analysis for analysing the movement of traffic passing through vehicle check-points in Northern Ireland was scanned and researched against Bob Buchanan's motor car. It was discovered that the late Bob Buchanan's car may have been the subject of surveillance and was noted to be followed suspiciously by other vehicles:<sup>7</sup>

**FOOTNOTES:-**

1. See Transcript 13 at pages 13 & 14 Q58 to Q63:
2. (a) See Transcript 13 at page 21 line 21 - line 28 of Q93:  
(b) See also Transcript 13 at page 22 Q96-Q98:
3. See Transcript 40 at page 70 Q342-Q343:
4. See Transcript 39 pages 11-15 and see also Statement of the late Garda Superintendent Frank Murray made to then Assistant Commissioner O'Dea and which statement was read into the Tribunal public record on the day of
5. See Transcript 13 at page 60 Q227:
6. (a) See Transcript 13 at page 22 Q96-Q98:  
(b) See Transcript 51 at pages 141-142 Q554-Q556 inclusive:
7. See Transcript 39 at pages 46-48 commencing at line 14 on page 46 and comprising Q77 to Q78:

**7. (2)**

The weight of the evidence as referred at pages 22-25 of these submissions taken with the evidence of Garda Detective Chief Superintendent Peter Kirwan given to the Tribunal over the course of the 16th, 17th & 19th day of April 2013 (see Transcripts 127: 128 & 129) affords it is submitted significant and persuasive corroboration and credibility to the IRA's Statement furnished to the Tribunal and read into the public record of the Tribunal on the 1st day of February 2013 - See Transcript 125 (hereinafter referred to as the IRA Statement and which expression includes all supplemental questions raised by and on behalf of the Tribunal and the answers hereto)<sup>1</sup>

On behalf of Leo Colton it is further submitted that the followings facts and observations lend weight and credibility to the IRA Statement and the proposition that the murders of the two Senior RUC Officers on the 20th day of March 1989 were carried out by the IRA free of and without collusion on the part of Members of An Garda Siochana or other employees of the State namely:-

(a) The IRA Statement was submitted to the Tribunal in early 2008 a full 3 years and more before the commencement of public sittings of the Tribunal on the 7th day of June 2011. It is self evident that the IRA Statement was not based on any of the evidence publicly presented before the Tribunal in the period between June 2011 and June 2013:

(b) Extracts from the diary of the late Superintendent Bob Buchanan read into the public record of the Tribunal on the 31st day of May 2013 - See Transcript 132 confirmed that RUC Inspector Day did travel in the company of the late Bob Buchanan on the 29th day of March 1988; the 26th day of April 1988; the 1st day of July 1988 and the 7th day of July 1988<sup>2</sup>. The foregoing diary extracts it is submitted give persuasive support to the IRA claim that *"In the late Spring/early Summer of 1988 one of our volunteers spotted a red Cavalier car registration no. KIB 1204, entering the (DGS) Dundalk Garda Station complex from the Carrickmacross Road entrance. The car parked at the front of the station and two males got out.*

*The volunteer immediately recognised the front seat passenger as an RUC Detective who he believed was named Nigel Day but was not certain of the name"*<sup>3</sup>:

(c) The IRA statement claimed that an intense surveillance of Dundalk Garda Station was commenced throughout the Summer and Winter of 1988 to 1989<sup>4</sup> from a derelict house NO. 12 The Crescent, Dundalk which house had a direct view of Dundalk Garda Station<sup>4</sup>.

Evidence was given to the Tribunal by Mrs Moira Carroll that she purchased No. 12 The Crescent on foot of a mortgage dated the 17th day of July 1989.<sup>5</sup> Mrs Carroll further stated in evidence to the Tribunal that contrary to a written statement made in 2007<sup>6</sup> that in fact she was not residing at No. 12 The Crescent, Dundalk as of March 1989.

Mrs Carroll confirmed that No. 12 The Crescent was in a derelict condition<sup>7</sup>. Mrs Carroll further expressed the belief and opinion that No. 12 The Crescent had been unoccupied for a long time prior to her taking possession of the house<sup>8</sup>:

(d) The descriptive layout of the rear of No. 12 The Crescent as set out in the IRA Statement including a garden wall at Vincent Avenue, a wooden back house door giving access to a kitchen area connecting to a rear living room and from there onto the main entrance hall with a wooden staircase on the left as one moves from the rear to the front of the house<sup>9</sup> was endorsed and affirmed by Mrs Carroll in the course of her evidence to the Tribunal<sup>10</sup>:

(e) The IRA Statement alleged that the surveillance of Dundalk Garda Station was carried out from a large front bedroom window on the Vincent Avenue side of the house and that the bedroom afforded "then a clear view of DGS (Dundalk Garda Station)"<sup>11</sup>.

Mrs Carroll in the course of her evidence to the Tribunal confirmed that at first floor level there were two front bedrooms both bedrooms had a view onto Garda Station<sup>12</sup>.

**FOOTNOTES:-**

1. (a) See Transcript 125 pages 71 to 104 inclusive:  
(b) See Transcript 127 Q2000 to Q2001 pages 124 to 126:
2. See Transcript 132 pages 28 to 31 inclusive:
3. See Transcript 125 at page 71 lines 22 to 30 inclusive and page 72 lines 1 to 9 inclusive:
4. See Transcript 125 at page 72 lines 23 to 30 inclusive. In this regard see also footnote 3(a) to (e) at page 24 of these Submissions:
5. See Transcript 61 at page 6 line 25:
6. See Transcript 61 at pages 4 & 5 Q20 to Q26:
7. See Transcript 61 page 7 Q30: Q33 and page 11 Q60:
8. See Transcript 61 page 13 Q73 to Q77:
9. See Transcript 125 page 73 lines 12 to 18 inclusive:
10. See Transcript 61 at pages 8 to 10 Q37 to Q52 inclusive:
11. See Transcript 125 at page 73 Lines 20 to 24 inclusive:
12. See Transcript 61 at page 11 Q58 and Q59:

**8. EVENTS IN NORTHERN IRELAND FROM THE INITIAL  
DISCUSSION AND COMMISSIONING OF A JOINT NORTH SOUTH**

**SECURITY OFFENSIVE AGAINST THE SMUGGLING ACTIVITIES OF ONE THOMAS (otherwise SLAB) MURPHY:-**

The late Harry Breen's diary for the 6th day of March 1989 recorded inter alia that he attended a "*Function at Stormont accompanied by (redacted) from Lisburn*".<sup>1</sup>

It was established that Harry Breen attended the Stormont function with Witness 27.

On the 8th day of September 2011 - See Transcript 30, Witness 27 gave evidence to the Tribunal.

In the course of his evidence Witness 27 despite acknowledging that his own diary had no mention or reference to a Stormont Function or of him attending a function at Stormont he was adamant that he, Witness 27 never attended a Stormont Function on the 6th day of March 1988 but did attend such a function in the company of the late Harry Breen on the 15th day of March 1989 at which the direction to mount a joint cross border anti-smuggling security operation as given<sup>2</sup>.

Evidence was given to the Tribunal that Harry Breen was on leave on the 16th day of March 1989<sup>3</sup>.

Harry Breen recorded in his diary that he was inter alia on duty at St. Patrick's Day Parade on the 17th day of March 1989 in Newry<sup>4</sup>.

There is no entry or record in Harry Breen's diary of attending a Stormont Function on the 15th day of March 1989<sup>5</sup>.

On behalf of Leo Colton given the contemporaneous diary entries for March 1989 and the time lapse between 1989 and September 2011 greater reliance should be placed on Harry Breen's diary entry as establishing the date of the Stormont Function.

Should the Tribunal accept that the date of the relevant Stormont Function was the 6th day of March 1989 clearly there was a two week time span that the proposed cross border anti-smuggling operation was in gestation, with all the attendant risks of loose talk casual telecommunications and/or deliberate leaks.

Witness 36 gave evidence to the Tribunal on the 10th day of June 2011 that on the 16th day of March 1989 he attended a meeting at Armagh.

Witness 36 stated that the topic for the meeting was smuggling activities along the border by a well known gentleman.<sup>6(a)</sup>

Witness 36 further stated that approximately about 9/10 people attended the meeting.<sup>6(b)</sup>

The meeting directed according to Witness 36 that the late Chief Superintendent Harry Breen and Superintendent Bob Buchanan were to

travel to Dundalk on the following Monday ie., the 20/3/1989 to liaise with their Garda counterparts.<sup>6(c)</sup>

Witness 36 further stated that the late Bob Buchanan left the meeting once or twice to make phone calls the contents of such phone calls however were unknown to Witness 36.<sup>6(d)</sup>

On the basis of the evidence of Witness 36 the proposed anti-smuggling initiative against Thomas Slab Murphy by the security forces North and South had acquired wider circulation involving as many as 9/10 persons a full four days before the brutal murders.

It is submitted that as a probability following on the meeting on the 16th March that one or more of the 9/10 persons who were present at that meeting would have discussed the proposed anti-smuggling initiative with other persons thereby expanding the number of persons who had knowledge of the proposed anti-smuggling initiative and the proposed attendance by the two deceased Senior RUC Officers at Dundalk Garda Station on the following Monday.

Evidence has been given by numerous witnesses drawn from the Police forces North and South and/or the Customs & Excise forces and/or Military as to historical and sustained smuggling culture rampant within South Armagh.<sup>7</sup> Evidence was given that historically smuggling even prior to 1968 was carried on extensively almost to the extent of industrial levels and that that level of smuggling continued right throughout the 70s,80s, 90s up to the present and yielding vast and substantial amounts of revenue to the smugglers.<sup>8</sup> Given the level of revenue generated by smuggling activities consideration even passing consideration has to be given as to whether persons unknown either directly or indirectly associated with Customs & Excise were for financial reward and gain passing on sensitive and confidential information concerning the smuggling campaigns to be carried out either North or South or indeed jointly North and South as was claimed by alleged intelligence information.

It is submitted that having regard to the logistical and practical difficulties presented to the Tribunal it was and is not possible to fully explore this issue. While evidence was called by way of officials from Customs & Excise both North and South, such witnesses were significantly based either in Dublin or Belfast/Scotland.

Witness M acknowledged that local Customs men would have a great knowledge of individuals alleged to be engaged in smuggling in South Armagh.<sup>9</sup>

Equally Mr McGill in the course of his evidence acknowledged that local Customs men on the border with South Armagh were well known to smugglers.<sup>10</sup>

Significantly no locally based Revenue Officials either North or South were called to give evidence.

Again the weight of the evidence on this aspect presented to the Tribunal was sufficient to establish there was a real and tangible inter play between IRA activities with that of smuggling and vis a versa.<sup>11</sup>

Mr Alan Mains who in March 1989 was the Staff Officer to Chief Superintendent Breen gave evidence to the Tribunal on the 21st and 22nd days of June 2011 - see Transcripts 9 & 10.

In addition to giving oral evidence written statements made by Mr Mains were also put into evidence.

As appears from the evidence recorded at pages 108 & 109 of Transcript 9 Mr Mains stated that there was detailed discussion between himself and the late Chief Superintendent Breen concerning the proposed joint North/South security campaign against Thomas Slab Murphy.

In the redacted statement of Mr Mains made on the 22/3/1989 he states as follows:-

*"He then asked me to contact \_\_\_\_\_ of Customs & Excise to arrange a meeting first thing on Tuesday 22nd day of March 1989, this I did".*

Equally in the course of the signed Statement dated the 21st day of June 2011 Mr Mains stated as follows:-

*"I was also asked to contact Customs & Excise with a view to setting up a meeting on Tuesday morning".*

At page 116 of Transcript 9 in answer to question 638 Mr Mains stated as follows:-

*"At that point we were to talk about organising Customs & Excise, but we had difficulties doing that in the area that we operated in and were responsible for.*

*We had to talk to key individuals within Customs to ensure the secrecy and protection of the personnel that we were going to deploy on the ground."*<sup>12</sup>

On behalf of Leo Colton it is submitted that knowledge of the proposed joint North South security anti-smuggling initiative against Thomas Slab Murphy was communicated to Customs Officials several hours before the late Chief Superintendent Breen travelled to Dundalk.

Both witness M and Mr Michael McGill both acknowledged that Mr Thomas Slab Murphy had a reputation as a smuggler and they both believed that he,

Thomas Slab Murphy had been smuggling on a large scale for several decades.

Despite this knowledge by the respective Customs & Excise authorities on both sides of the border and the two police forces no explanation was given or offered to the Tribunal as to how Mr Thomas Slab Murphy could over several decades successfully engage in smuggling without being detected and/or prosecuted.

Det. Chief Superintendent Roy McComb of the PSNI presented intelligence documentation to the Tribunal which read as follows:-

*"since the 1970s a number of A.G.S. and Republic of Ireland (ROI) Custom Officers have provided to PIRA, particularly fore warning of searches and arrests".<sup>13</sup>*

The Tribunal also heard evidence that a Mr Eamonn Collins a Northern Ireland Customs & Excise Officer based in Newry was revealed as a leading intelligence officer within the IRA at a time when Thomas Slab Murphy was alleged to be a leading member of the IRA Army Council and the Northern Command of the IRA and with a reputation of being a major smuggler. Mr Collins was murdered by Republicans in January 1999.

**FOOTNOTE:-**

1. (a) See Transcript 30 pages 95 & 96 Q428 to Q430:  
(b) See Transcript 132 page 52 lines 18 & 19:
2. See Transcript 30 -  
(a) See Transcript 30 at page 93 Q415 to Q416:  
(b) See Transcript 30 at page 95 Q426 to Q427:  
(c) See Transcript 30 at page 96 Q431:  
(d) See Transcript 30 at pages 99 & 104 Q443 to Q462:
3. See Transcript 132 at page 53 lines 15 to 19:
4. See Transcript 132 at page 54 lines 12 to 17:
5. See Transcript 132 at pages 53 & 54:

6. (a) See Transcript 3 at page 11 Q59:  
(b) See Transcript 3 at page 10 Q55:  
(c) See Transcript 3 at page 11 Q62:  
(d) See Transcript 3 at page 11 Q63:
7. (a) See Transcript 51 at page 37 - 39 Q119 to Q123 inclusive:  
(b) See Transcript 51 at page 124 Q457 to Q459:
8. (a) See Transcript 103 pages 47-54:  
(b) See Transcript 106 pages 79-87 inclusive:
9. See Transcript 103 at page 51 Q248:
10. See Transcript 106 at page 82 Q362:
11. See Footnote References 7,8 & 9 herein:
12. (a) See two statements of Alan Mains as referred to in Transcripts 9 at pages 123 & 124 and also pages 125 & 126:  
(b) See Transcript 9 page 108-109 Q616 to Q620:  
(c) See Transcript 9 at page 116 Q638:
13. See Transcript 95 at page 28:

## **9. INTELLIGENCE:-**

Over the course of the Tribunal Sittings on diverse occasions definitions were offered as to the meaning of Intelligence.

In the course of the opening statement of the Tribunal on the 7th day of June 2011 at page 60 a definition of Intelligence was offered in the following terms:-

*"This serves to highlight that intelligence is simply information by another name.*

*Intelligence can be accurate or inaccurate. The provision of information of this nature can be motivated by all sorts of factors, some of them not very noble, accordingly intelligence reports ought to be approached with an open but cautious and questioning mind."*

In the course of his evidence Witness 27 also gave a definition of intelligence as follows:-

*"Well, information and intelligence comes in various forms. It is sometimes historic, its sometimes speculation and it is sometimes rumour and gossip."*<sup>1</sup>

Incidental to giving evidence to the Tribunal in respect of the combined intelligence evidence as given to the Tribunal firstly by Detective Superintendent Roy McComb of the PSNI and ACC Drew Harris, Detective Chief Superintendent Peter Kirwan prepared a witness statement in the course of which at page 3 he offered a definition of intelligence.

Over the course of three days as per Transcripts 120: 124 & 125 Detective Chief Superintendent Peter Kirwan elaborated upon the definition and meaning of intelligence.

As per page 3 of his witness statement he defined intelligence as follows:-

*"The working definition of intelligence, used by An Garda Siochana is information gathered, analysed and recorded with the objective of providing assistance in the investigations of crimes and the prosecution of individuals and groups concerned whether the offences are politically motivated or not involved in the commission of such crimes.*

*Europol defines intelligence as knowledge or processed information designed for action."*<sup>3</sup>

The issue of intelligence perhaps resulted in the most contentious aspect of the Tribunal in the context of the contrasting evidence of ACC Drew Harris and Garda Detective Chief Superintendent Peter Kirwan.

Both men presented as extremely professional, highly qualified and experienced intelligence experts.

Both men were manifestly honest in their presentation of their respective evidence to the Tribunal.

Acknowledging the evidence of ACC Drew Harris that the intelligence information that he was giving to the Tribunal was **"LIVE INFORMATION AND OF THE MOMENT"**, it is submitted that for the reasons set out hereunder that the evidence of Garda Detective Superintendent Peter Kirwan should be accepted in preference to that of Drew Harris.

The grounds for preferring the evidence of Peter Kirwan is that the intelligence material as presented by Drew Harris is vague, lacked detailed particulars and specifics as to time, place and circumstance.

In addition the extreme time lapse between the events of 20th day of March 1989 and the recent emergence of the new stands of intelligence at a time

when the Tribunal had been in public session and had been widely reported and commented upon in all forms of media both main stream and social is such that the recent intelligence material lacks authority, cogency or weight. Ultimately it is submitted that the recent intelligence as presented to the Tribunal is unsafe to rely upon.<sup>2</sup>

The risks and dangers associated with intelligence information and the need for the utmost caution in respect of any such intelligence information is, it is submitted amply illustrated as follows:-

(a) The evidence of Retired Garda Assistant Commissioners Dermot Jennings regarding the meaning and application of intelligence<sup>3</sup>:

(b) The Document known as HMG 151 dated August 2002 wherein a reported belief was attributed to Lady Hermon to the effect that this source of collusion in the Buchanan and Breen Case was *"a Senior Catholic RUC Officer"*.

On the 1st day of February 2013 - at Transcript 125 evidence by way of Sworn Affidavits from Lady Hermon and Lord David Trimble were read into the public record of the Tribunal.

In the course of her Affidavit Lady Hermon averred inter alia as follows:-

*"It is wholly untrue for paragraph '5' NIO Document to assert that I had 'sought and failed to persuade' the UUP Leadership not to include the Breen and Buchanan case on the Weston Park List because 'the likely source of collusion in the Buchanan and Breen Case was a Senior Catholic Officer'"*.<sup>4</sup>

It was also necessary for Lord David Trimble to swear an Affidavit and which Affidavit was read into the public record of the Tribunal on the 1st day of February 2013 wherein he averred inter alia as follows:-

*' at no stage did Lady Hermon seek and fail to persuade me not to include the case on the Weston Park List because the likely source of collusion in the Buchanan and Breen Case was a Senior Catholic RUC Officer'"*:<sup>5</sup>

(c) The first item of alleged intelligence read into the record by Detective Chief Superintendent Roy McComb of the PSNI on the 25th day of July 2012 alleged that *"PIRA had received information regarding the Chief Superintendent Breen and Superintendent Buchanan from a Detective AGS Officer who had not been publicly associated to the Smithwick Tribunal and*

*that this individual had been paid a considerable amount of finance for this information".<sup>6</sup>*

This item of alleged intelligence on coming into the public domain prompted a retired RUC Officer to suggest to the Tribunal the name of the Garda Siochana.

Investigation into this individual resulted in both the PSNI and an Garda Siochana informing the Tribunal that this person had never come to their attention and ultimately the matter progressed no further.<sup>7</sup> -

(d) The fifth piece of alleged intelligence was read into the record by Chief Superintendent Roy McComb of the PSNI on the 25th day of July 2012 alleged that *"intelligence indicates that a former AGS Officer Jim Lane, who was based in Dundalk Area frequently expressed his concerns to associates that fellow AGS Officers Finbar Hickey and Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area".<sup>8</sup>*

Retired Detective Garda Jim Lane was recalled to give evidence to the Tribunal on the 30th day of July 2012 in respect of the alleged intelligence Item No. 5 when he refuted the contents of the alleged intelligence.<sup>9</sup>

(e) The splintering of IRA/Republican Subversives and their support parties/groupings into those who either support or reject *"THE GOOD FRIDAY AGREEMENT"* may reflect itself in *"Black Propaganda"* and disinformation as a means of undermining those in favour of *"THE GOOD FIRDAY AGREEMENT"*:

**FOOTNOTES:-**

1. See Transcript 30 at page 100 Q446:
2. See Transcript 124 pages 15: 16 & 17 Q19 to Q26 inclusive:
3. See Transcript 70 pages 50 & 51 Q130 to Q132:
4. See Transcript 125 at pages 9 to 13 inclusive:
5. See Transcript 125 at pages 13 & 14 inclusive:
6. See Transcript 117 at page 3:
7. See Transcript 125 at pages 7 & 8:
8. See Transcript 117 at page 4:
9. See Transcript 118 at pages 75 & 76:

## 10. STANDARD OF PROOF:-

The Courts have repeatedly endorsed and applied the analysis of Mr Justice Finlay C.J. of a Tribunal namely that:-

*"The Tribunal has no jurisdiction or authority of any description to impose a penalty or punishment on any person.*

*Its finding, whether rejecting an allegation of criminal activity or accepting the proof of an allegation of criminal activity, can form no basis for either the conviction or acquittal of the party concerned on a criminal charge if one were subsequently brought, nor can it form any basis for the punishment by any other authority of that person.*

*It is a simply fact-finding operation, reporting to the Legislator".<sup>1</sup>*

The Supreme Court in the Case of Hazel Lawlor Applicant .v. The Members of the Tribunal of Inquiry into certain Planning Matters and Payments (2010) IR at 170 - (Volume One) laid down the standard of proof at Tribunals of Inquiry.

In the course of his judgment then Chief Justice Murray at paragraph 39 page 184 stated as follows:-

**"IT WOULD, NONETHELESS BE WRONG TO INFER FROM THESE COMMENTS THAT A TRIBUNAL OF INQUIRY IS AT LARGE IN TERMS OF THE REQUIREMENTS OF PROOF OR THAT THE STANDARD OF PROOF IS SIMPLY A MATTER OF PROCEDURE WHICH IT MAY REGULATE AS IT SEES FIT.**

**SUCH AN APPROACH COULD LEAD TO A SITUATION WHERE, FOR EXAMPLE, ON THE BARE BALANCE OF PROBABILITIES, A FINDING OF THE UTMOST GRAVITY COULD BE MADE AGAINST A PARTICULAR INDIVIDUAL.**

**IN PRINCIPLE, EVIDENTIAL REQUIREMENTS MUST VARY DEPENDING UPON THE GRAVITY OF THE PARTICULAR ALLEGATION.**

**THIS IS NOT TO ADOPT THE ""SLIDING SCALE"" OF PROOF ADVOCATED BY COUNSEL FOR THE APPLICANT, BUT RATHER TO SIMPLY RECOGNISE, AS AN INTEGRAL PART OF FAIR PROCEDURES, THAT A FINDING IN RESPECT OF A SERIOUS MATTER WHICH MAY INVOLVE REPUTATIONAL DAMAGE MUST BE PROPORTIONATE TO THE EVIDENCE UPON WHICH IT IS BASED.**

**FOR EXAMPLE, A FINDING THAT A PARTICULAR MEETING OCCURRED ON ONE DAY RATHER THAN ANOTHER MAY BE OF SUCH LITTLE SIGNIFICANCE THAT A TRIBUNAL COULD MAKE A FINDING IN THAT RESPECT ON THE BARE BALANCE OF PROBABILITIES.**

**A FINDING OF CRIMINAL BEHAVIOUR ON THE OTHER HAND WOULD REQUIRE A GREATER DEGREE OF AUTHORITY AND WEIGHT DERIVED FROM THE EVIDENCE ITSELF.'**

Then Chief Justice Murray at page 186 paragraph 45 stated as follows:-

**'THE FOREGOING JUDICIAL STATEMENT APTLY DESCRIBE THE REQUIREMENTS OF DUE PROCESS, AS REGARDS THE CIRCUMSTANCES OF THE PRESENT CASE.**

**11. THE FINDINGS MADE MUST CLEARLY BE PROPORTIONATE TO THE EVIDENCE AVAILABLE.**

**ANY SUCH FINDINGS OF GRAVE WRONG DOING SHOULD IN PRINCIPLE BE GROUNDED UPON COGENT EVIDENCE.'**

## **11. CONCLUSION:-**

It is submitted that there could be no more serious accusation of criminal wrong doing than to be accused of involvement and complicity in multiple murders particularly of policemen in the line of public service.

While the terms of reference of the Tribunal herein is confined specifically to the two murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan those murders are set against a backdrop of other murders involving civilians, members of the judiciary and their family and other serving members of the RUC Police Force.

Given the gravity of the issues under consideration by the Tribunal both for the three individual former Gardai and their respective families and the reputational consequences for An Garda Siochana as a force findings of fact that may be made by the Tribunal against one or all of the three named former Gardai must be grounded upon cogent, authoritative and verifiable evidence free from speculation, rumour, innuendo and suspicion.

While this Tribunal is not bound by findings made by previous inquiries and investigations nonetheless it is submitted on behalf of Leo Colton that the evidence as tendered before the Tribunal does not alter or challenge the findings of the various inquiries and investigations previously held into the murders of the two RUC Officers and their conclusions that there was no

collusion between members of An Garda Siochana and the IRA in and about the murder of the two RUC Officers.

At best the evidence tendered to the Tribunal was speculative and the Tribunal is left it is submitted with a number of competing speculative theories surrounding the murders of the two Senior RUC Officers.

What is beyond all doubt is that the murders were perpetrated by the IRA. Despite the competing speculative theories it is submitted on behalf of Mr Leo Colton the overbearing weight, authority and cogency of the evidence before the Tribunal is that the murders of the late Chief Superintendent Harry Breen and Superintendent Bob Buchanan were committed by the IRA acting and relying solely on its own resources and without the covert or overt assistance/collusion and/or the need for any such covert or overt assistance/collusion from any members of An Garda Siochana and/or State Employees in particular Mr Leo Colton.

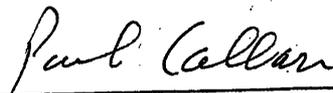
To make a finding against Mr Colton it is submitted would be disproportionate, perverse and contrary to the weight, authority and reliability of the evidence submitted to the Tribunal.

**FOOTNOTE:-**

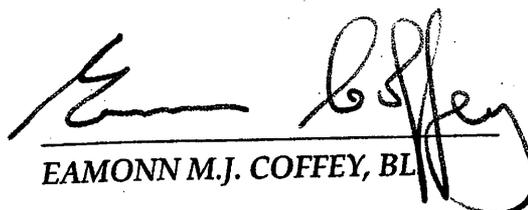
1. See Goodman .v. Mr Justice Hamilton [1992] 2IR at page 588:

**DATED THIS 18<sup>th</sup> DAY OF JUNE 2013**

**Signed:**



**PAUL CALLAN, SC**



**EAMONN M.J. COFFEY, BL**

## **THE SMITHWICK TRIBUNAL**

**The Tribunal established on 31 May 2005 by Instrument dated 31 May 2005, by Mr Michael McDowell TD, the then Minister for Justice Equality and Law Reform pursuant to resolutions of Dáil Éireann and Seanad Éireann passed on 23 and 24 March 2005, respectively, to inquire into suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989**

## **SUBMISSIONS OF MR OWEN CORRIGAN**

**19 June 2013**

**LAWLOR PARTNERS**

**4 Arran Square**

**Arran Quay**

**Dublin 7**



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## INTRODUCTION

### A. Preliminary

1. Since the foundation of the State in 1922 thirty Tribunals of Inquiry have been established pursuant to resolutions of the legislature<sup>1</sup>. An appraisal of the history of Irish Tribunals of Inquiry strongly suggests that no person inquired into by a Tribunal of Inquiry has faced an allegation as grave as that faced in this Inquiry by retired Detective Sergeant Owen Corrigan. The Inquiry into the shooting of Timothy Coughlan in 1928 on Dartry Road, Dublin 6 involved a serious inquiry into the role played in that killing by Seán Harling. Nonetheless, Mr. Harling had always accepted that he had fired the bullet that killed Mr. Coughlan but did so, according to his evidence, after shots had been fired at him by Mr. Coughlan. The death of Liam O'Mahony whilst in

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<sup>1</sup> The Tribunals of Inquiries and the dates of resolution by Dáil Éireann are as follows:

- (i) Retail prices of Articles in General Consumption, 16 December 1925;
- (ii) Ports and Harbours, 19 January 1926;
- (iii) Shooting of Timothy Coughlan, 15 February 1928;
- (iv) Mixture of Maize Meal/Products with Homegrown Cereals, 27 November 1929;
- (v) Marketing of Butter, 30 April 1930;
- (vi) Peak Production, 5 May 1933;
- (vii) Grading of Fruit and Vegetables, 12 December 1934;
- (viii) Town Tenants, 13 December 1935;
- (ix) Pearse Street Fire, 25 November 1936;
- (x) Public Transport, 7 December 1938;
- (xi) Fire at St. Joseph's Orphanage, Cavan, 3 March 1943;
- (xii) Dealings in Great Southern Railway Stocks, 24 November 1943;
- (xiii) Allegations Concerning Parliamentary Secretary, 5 June 1946;
- (xiv) Disposal of Lockes Distillery, 5 November 1947;
- (xv) Cross Channel Freight Rates, 23 October 1957;
- (xvi) Death of Liam O'Mahony in Garda Custody, 18 July 1967;
- (xvii) Illegal Money Lending Television Programme, 17 December 1969;
- (xviii) Allegations against Minister for Local Government, 3 July 1975;
- (xix) Whiddy Island Disaster, 6 March 1979;
- (xx) Stardust Fire, 18 February 1981;
- (xxi) Kerry Babies, 11 December 1984;
- (xxii) Beef Processing Industry, 24 May 1991;
- (xxiii) Hepatitis C Infection, 17 October 1996;
- (xxiv) Payments by Dunnes Stores, 6 February 1997;
- (xxv) Payments to Messrs. Haughey & Lowry, 11 September 1997;
- (xxvi) Planning in Dublin, 7 October 1997;
- (xxvii) HIV and Hepatitis C Infections, 2 June 1999;
- (xxviii) Certain Gardai in the Donegal Division, 28 March 2002;
- (xxix) Abbeylara, 17 April 2002; and
- (xxx) Breen/Buchanan, 23 March 2005.

Garda custody, the investigation into the death of Richie Barron and the investigation into the killing of John Carty all involved members of An Garda Siochana being subjected to extremely serious allegations and potentially serious findings by Tribunals of Inquiry. Nonetheless, none of those inquiries comes close to the gravity of the allegation made against Mr. Corrigan.

1. The allegation made against Mr. Corrigan is that he was part of an IRA group that murdered Chief Superintendent Harry Breen and Superintendent Robert Buchanan on 20 March 1989. The Smithwick Tribunal of Inquiry has investigated this allegation thoroughly, both in terms of the general claim and the specifics of the claim as provided in the evidence given to the Tribunal by Peter Keeley and Ian Hurst.
2. It is hard to think of a more serious allegation that could be made against a member of An Garda Siochana: namely, that he colluded with the Provisional IRA - an organisation that had murdered members of An Garda Siochana and the Defence Forces - in order to arrange the murder of two unarmed RUC Officers after they had departed a cross-border policing meeting in Dundalk Garda Station on 20 March 1989. If such an allegation is correct, Mr. Corrigan would be subject to imprisonment for life on conviction for the double murders of the RUC Officers.
3. Mr. Corrigan has vehemently and consistently denied these allegations. He continues to do so, and will continue to do so for the remainder of his life. The allegation made against him is particularly offensive and painful considering that throughout the time of the troubles in Northern Ireland, Mr. Corrigan stood up to the Provisional IRA, thoroughly investigated their crimes and was responsible for very many members of the Provisional IRA being brought to justice. There is an undeniable irony in the fact that after approximately 26 years of politically motivated violence on this island, planned and activated to a large extent by the Provisional IRA, the government in the Republic of Ireland agreed, along with the British government, that the only aspect of the troubles that merited investigation by the southern State was an allegation of collusion by An Garda Siochana in an IRA atrocity. Mr. Corrigan and indeed

all members of An Garda Síochána are entitled to be bemused by the decision of this State to establish such an Inquiry into An Garda Síochána, particularly since the Gardaí were the thin line that stood between the Provisional IRA and anarchy during the latter part of the last century.

4. An individual exposed to serious allegations of wrongdoing being investigated by a Tribunal of Inquiry has limited protection. This is accentuated when the individual, as in the case of Mr. Corrigan, is not financially capable of paying lawyers. Consequently, throughout the 8 year period of this Tribunal of Inquiry Mr. Corrigan has found himself in the position where he was dependent upon members of the legal profession to defend him in the knowledge that he could not pay them during the course of the Inquiry. In contrast, the major other participants in the Inquiry - the Tribunal itself, An Garda Síochána and the PSNI - were all resourced on an ongoing basis in order to have their interests represented.
5. Unlike the other participants, Mr. Corrigan did not have access to all documentation available to An Garda Síochána and the PSNI. He was dependent throughout the Inquiry on the Garda Síochána in order to ensure that documents he prepared on the Provisional IRA, particularly intelligence reports, were available for inspection by the Tribunal. Furthermore, throughout the Inquiry Mr. Corrigan's health underwent a significant deterioration, not simply because of the onset of age but also, he believes, because of the undeniable stress caused by being so publicly the subject of inquiry in respect of such serious allegations. In December 2012 Mr. Corrigan, having at that stage given evidence to the Tribunal on 15 separate days, underwent a triple bypass which delayed the conclusion of his evidence to the Tribunal. That evidence, given over a period of 18 days, concluded in late June 2013.
6. Mr. Corrigan accepts that the Tribunal of Inquiry was mandated by the Oireachtas to carry out an investigation into the deaths of Chief Superintendent Breen and Superintendent Buchanan and, in particular, to assess whether there were any acts of collusion on the part of An Garda Síochána or any other civil servant. He recognises that the Inquiry was

initiated through the resolutions of the Oireachtas. Nonetheless, he has been unquestionably damaged by the fact that grave allegations against him were investigated in public with consequent media coverage, leading many members of the public to believe that he had an involvement in or an association with the Provisional IRA group that murdered the RUC Officers. This is false and not based on any credible evidence. As was stated on his behalf at the first public sitting of the Tribunal, this was a monstrous lie. It is submitted that the Tribunal must reach a finding that the allegations against Mr. Corrigan are false and baseless. Such a finding will never fully rectify the damage caused to Mr. Corrigan as a result of the allegation, but it would nonetheless bring closure to a baseless allegation that has caused considerable damage to his good name and his health.

## **B. The Allegation**

7. In November 1999 Hodder and Stoughton published a book called *Bandit Country* written by the journalist and former Royal Navy Officer, Toby Harnden, in which he claimed that the murders of Chief Superintendent Breen and Superintendent Buchanan had been caused by a telephone call from a Garda in Dundalk Garda Station whom he identified as Garda X. Mr. Harnden refused to attend before the Tribunal to give evidence in respect of his book and the identity of Garda X. After the publication of Mr. Harnden's book an article was published in the *Irish Times* by Kevin Myers on 10 March 2000, again not naming any Garda but suggesting that a Garda Officer had been responsible for at least 12 murders along the border. The evidence from Mr. Myers was that his interest in this topic was prompted by the publication of Mr. Harnden's book. Although Mr. Harnden did not give evidence, the Tribunal did have the opportunity to consider the transcript of his interview with members of the RUC and, subsequently, An Garda Síochána. The Tribunal also had an opportunity to consider the evidence of Mr. Myers and the transcript of his interview with An Garda Síochána. Further, the Tribunal had an opportunity to consider Judge Peter Cory's conclusion on the veracity and reliability of both Mr. Harnden and Mr. Myers. He concluded that their allegations were:

*“based upon hypothesis, speculation and a source or sources that the authors refused to disclose. Statements and allegations were put forward as matters of fact when in reality they were founded upon speculation and hypothesis”.*<sup>2</sup>

8. There is no evidence or information before the Tribunal contradicting the finding of Judge Cory to the effect that both Mr. Harnden and Mr. Myers based their allegations in respect of collusion on the part of An Garda Siochana in the murder of Chief Superintendent Breen and Superintendent Buchanan on hypothesis and speculation.
9. It was in the aftermath of the Harnden and Myers’ publications that Mr. Keeley was brought to the offices of Mr. Jeffrey Donaldson MP by Mr. Willie Frazer to provide him (Mr. Donaldson) with details of the allegation against Mr. Corrigan. This meeting led to Mr. Donaldson making an allegation against Mr. Corrigan, in the House of Commons on 13 April 2000 in which Mr. Corrigan was publicly named for the first time. Mr. Donaldson stated:

*"Having conducted my own extensive inquiries since the book was published, I believe that there is an overwhelming case for an independent public inquiry into the reasons why Chief Superintendent Harry Breen and Superintendent Bob Buchanan, two of the most senior RUC officers to die during the troubles, were murdered near Jonesborough as they returned from a meeting with the Irish police in Dundalk on 20 March 1989. Superintendent Buchanan lived at Moira in my constituency. The meeting that he and Chief Superintendent Breen attended was arranged only on the morning of the day in question, and took place at 2 pm. How did the IRA know about a meeting involving such senior officers, and the timing of their return to Northern Ireland?"*

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<sup>2</sup> Cory Report on Breen and Buchanan, para 2.118.

*In particular, an independent public inquiry should examine the evidence that Eoin Corrigan, a retired Detective Sergeant now living in Drogheda, passed information to the IRA. On the morning on which he died, Chief Superintendent Breen expressed concern about Sergeant Corrigan's known IRA sympathies. Why was action not taken by the Irish police to prevent sensitive information from falling into his hands? Mr. Harnden's book alleges that the RUC had technical information gleaned - one presumes, from the watchtowers in south Armagh - that proves that the IRA was contacted from within Dundalk Garda station on the day on which Chief Superintendent Breen and Superintendent Buchanan were murdered."*<sup>3</sup>

10. Never before had Mr. Corrigan's name been publicly associated with the killings of the RUC Officers. The Tribunal knows from the evidence it has heard that the sole source of Mr. Donaldson's information was Mr. Keeley.
11. The Tribunal also knows that Mr. Keeley played a central part in the establishment of this Tribunal of Inquiry. On 9 September 2003 he hand delivered a letter to Judge Cory, having been put in touch with the Judge by persons who have never been identified. His letter stated:

*"I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my Senior IRA Commander was told by a member of PIRA that Garda Owen Corrigan had telephoned to the Provisional IRA, to tell them that Officers Breen and Buchanan were at the Dundalk Station."*<sup>4</sup> (Emphasis added)

### **C. The Evidence**

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<sup>3</sup> Speech of Mr. Donaldson MP...

<sup>4</sup> Letter from Peter Keeley (aka Kevin Fulton) to Judge Cory, 9 September 2003.

12. During the course of 8 years of private investigation, 133 days of public sittings and evidence from 198 witnesses the only evidence suggesting that Mr. Corrigan colluded with the IRA in the murder of the 2 RUC officers came from Mr. Keeley and Mr. Ian Hurst.

**(i) The Evidence of Mr. Keeley/Fulton**

13. When he came to give evidence, Mr. Keeley accepted that what he told Judge Cory was not true and that, in fact, the evidence he had against Mr. Corrigan was that on the day of the murders of the two Officers he was in the house of Mooch Blair when Mickey Collins said to him that "*our friend helped out*". He interpreted this as being a reference to Mr. Corrigan. His evidence against Mr. Corrigan was as follows:

*Q. Now, do you recall the day of the Breen and Buchanan murders which, of course, is why we are here today?*

*A. Yes.*

*Q. And where were you on that particular day?*

*A. I was down at 'Mooch's house. Most days I was down in 'Mooch' Blair's house.*

*Q. When you say "down," that means you would have travelled from Newry?*

*A. Yes, from Newry; I would call it going down to Dundalk.*

*Q. Yes. OK. And was he there himself?*

*A. He was there, yes.*

*Q. He actually told us that he was gone out of the house for several hours, four hours, I think, that day?*

*A. No, no, he was in the house. Most times when I would be down he would be with me.*

*Q. Had you any reason to be there if he wasn't there?*

*A. No, if he wasn't there I would have no reason to be there at all.*

*Q. Yes. And when you were there, were you working together or talking or what were you doing?*

- A. *We'd always be talking. Sometimes we would be in his kitchen, he would be soldering things, he would be making things with plastic tubing.*
- Q. *And on this particular day, was it any different to any other day, as far as you were concerned?*
- A. *At the time I was down, no, it was no different than any other day until then, A [Mickey Collins] came over and basically say "reports coming in".*
- Q. *Was A living nearby?*
- A. *A lived in the next square, it was, like, across the road and in another street.*
- Q. *And he was part of your unit, is that right?*
- A. *He was part of that unit, yes.*
- Q. *Yes, and he came over and he said?*
- A. *Well, we always nicknamed him "reports coming in" because he had the phone, he always watched the TV and people would ring him.*
- Q. *Did 'Mooch' Blair have a phone?*
- A. *No, not at that time, no.*
- Q. *And he didn't have a car either?*
- A. *He didn't have a car either, no.*
- Q. *So "reports coming in"?*
- A. *Yes, it was a nickname we gave him because usually when TV channels and things happen, reports are coming in of a shooting or bombing so we nicknamed 'A' that: "reports coming in".*
- Q. *A when did he come over to the house, do you think?*
- A. *He came over, basically, after the incident had happened.*
- Q. *So this would have been sort of late afternoon?*
- A. *Yes.*
- Q. *About perhaps after five?*
- A. *At tea time, yes.*
- Q. *Yes. And did you know anything in advance about this?*
- A. *No, absolutely not, no.*
- Q. *Did any of you know anything about this?*

A. *No, I don't think he knew anything about it either. None of us did. The thing is, South Armagh was a different unit than us in Dundalk...*<sup>5</sup>

...

Q. *So on the 30th -- the 20th of March 1989, your unit didn't know anything about the murders of Breen and Buchanan?*

A. *Not that I knew of in advance and not from my -- not from A or 'Mooch'.*

Q. *Yes. Well when Man A came in, what was the information that he had?*

A. *Well, basically, that there was this shooting and "our friend" -- sometimes we would use the thing as "our friend". "Our friend" at that time, which was the Garda, there was only one garda that I knew as "our friend".*<sup>6</sup>

## **(ii) The Evidence of Mr. Hurst/Ingram**

14. The only other piece of evidence suggesting collusion on the part of Mr. Corrigan in the murders of the RUC officers is the evidence of Mr. Hurst who stated that he had been told by Witness 82 that Mr. Corrigan had an involvement in the murders of the two RUC Officers. This was completely rejected by Witness 82 who, fortunately for Mr. Corrigan, was still alive and able to give evidence to the Tribunal. The evidence of Mr. Hurst against Mr. Corrigan was as follows:

*"Q. Do you have any information linking Owen Corrigan in colluding with the IRA in the killing of those two RUC officers?*

*A. Only what the cipher 82, we have discussed.*

*Q. Okay. Are you stating that Witness 82 said to you that Owen Corrigan leaked information to the IRA that assisted them in murdering the two officers?*

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<sup>5</sup> Day 66, page 79-81.

<sup>6</sup> Day 66, page 82.

A. *I think that would be a general description of that conversation, yeah.*

Q. *What did Witness 82 say to you?*

A. *That's what I have just explained to you, that we had a general discussion that Mr Scappaticci and Owen Corrigan had been involved and had relayed information to Witness 82 via Scappaticci that there had been some involvement with Mr Corrigan.”<sup>7</sup>*

...

“A. *Okay. Sir, cipher 82 told me that Mr. Corrigan was being handled by Mr. Scappaticci and had admitted or passed information to the IRA which was used in the attack upon Mr. Breen and Mr. Buchanan, and it was the communication. There were no specific details because it wasn't in the context that we were discussing it.*

Q. *Did you take it from that Mr. Scappaticci had told Witness 82 that Mr. Corrigan had given him this information?*

A. *Yes.*

Q. *So your evidence is that Owen Corrigan leaked information to Freddie Scappaticci, which had the effect of resulting in the death of these two officers?*

A. *No, no, no, no. I am not saying the information was leaked to Mr. Scappaticci, what I am saying to you is that Mr. Scappaticci was making it aware that Mr. Corrigan had leaked it to the IRA.*

Q. *And what specifically had been leaked, according to...*

A. *I don't know, I don't know.”<sup>8</sup>*

15. He stated that he discussed Mr Corrigan with Witness 82 on two or three occasions.<sup>9</sup>

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<sup>7</sup> Day 92, page 89.

<sup>8</sup> Day 92, page 90.

<sup>9</sup> Day 92, page 52.

16. It is important for the Tribunal to be aware that the only evidence throughout the course of its 133 days of sittings that suggests collusion on the part of Mr. Corrigan in the murders of the 2 RUC officers is the aforesaid evidence of Mr. Keeley and Mr. Hurst.

**D. Reasons to Disbelieve Mr. Keeley**

17. In his statement to Judge Cory dated 9 September 2003 Mr. Keeley stated:

*"On one occasion in the late 1980s I was with my Senior IRA Commander and another individual in my car. I knew the other individual to be Garda B [Owen Corrigan]. I was introduced to Garda B. I know that Garda B, who was stationed at Dundalk, was passing information to the Provisional IRA." (Emphasis Added)*

Mr. Keeley accepted, in a question put to him by the Chairman, that this was incorrect:

*"Chairman: He didn't introduce you?"*

*A. He wouldn't have introduced me, no.*

*Q.Mr. O'Callaghan: So what you said to Judge Cory is incorrect in that respect?"*

*A. Well, I wasn't introduced as an introduction, no.*

*Q. When you said to Judge Cory, "I was introduced to Owen Corrigan," you weren't?"*

*A. No, he got into the car."<sup>10</sup>*

18. In his statement to Judge Cory dated 9 September 2003 Mr. Keeley stated:

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<sup>10</sup> Day 67, page 53.

*“I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my Senior IRA Commander was told by a member of PIRA that Garda B [Owen Corrigan] had telephoned to the Provisional IRA, to tell them that Officers Breen and Buchanan were at the Dundalk Station.” [Emphasis Added]*

19. In his evidence Mr. Keeley gave evidence in respect of this statement that:

- A. No, well that wouldn't be totally correct, no.
- Q. Okay. In your statement to Judge Cory, there are two substantive paragraphs, the one about Fintan Callan's Ceili House and this one here. You are now stating that what you said to Judge Cory is incorrect?
- A. I can't remember it totally. If you are saying that is what is written down on the statement -
- Q. Yes, that's incorrect?
- A. It's not totally correct.
- Q. Yes, it's incorrect, you've said it already?
- A. Yes.<sup>11</sup>(Emphasis added).

20. In his evidence Mr. Keeley stated that Mr. Collins informed him in Mr. Blair's house on the day of the murders that *“our friend helped with the operation”*:

- “Q. *But you think that Mickey Collins comes back a second time and tells you that the incident was the killing of the two RUC Officers?*
- A. Yes.
- Q. *And are you stating on that occasion he says to you about the friend?*
- A. *“Our friend,” yes.*

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<sup>11</sup> Day 67 at page 76

Q. *And what words did he use?*

A. *Just, it was "our friend" helped out.*

Q. *That is all he said?*

A. *Something like that, yeah.*

Q. *Okay. And -*

A. *I took it to be Owen Corrigan.*

Q. *Okay. He didn't mention Owen Corrigan?*

A. *Not by name, no, no, no.*

Q. *He didn't mention that Owen Corrigan had seen the Officers in the Station?*

A. *No, he didn't say that.*

Q. *He didn't say that?*

A. *No, no." <sup>12</sup> (Emphasis Added).*

21. Consequently, what Mr. Keeley said to Judge Cory about the events on the day of the murders was incorrect. His Senior IRA Commander (Mooch Blair) was not told by a member of PIRA (Mickey Collins) that Garda B (Owen Corrigan) had telephoned to the Provisional IRA, to tell them that Officers Breen and Buchanan were at the Dundalk Station. There was no mention of Mr. Corrigan.

22. In his evidence on Day 67 Mr. Keeley mentioned for the first time a later discussion with Mr. Blair at which Mr. Blair allegedly informed him of the detail contained in his statement to Judge Cory:

"Q. *Yes. In your statement to Judge Cory, you state that your "Senior IRA Commander was told by a member of PIRA that Owen Corrigan had telephoned to the Provisional IRA to tell them that Officers Breen and Buchanan were at the Dundalk Station." Where did you get that information from,*

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<sup>12</sup> Day 67, page75-76.

*since it wasn't given to you on the day of the murders?*

A. *That would have been at a later date talking with "Mooch", because, remember, in the same - one of the statements where I was already told, after the operation, that the intention was to capture the two Officers alive and take all their papers and that every road was covered. We didn't know that at the exact time, either.*

Q. *You are now raising a new issue that the Tribunal and I haven't heard of before, that, at a later date, "Mooch" Blair allegedly told you -*

A. *Or at a later time, yeah, "Mooch" would have said that, yeah.*

Q. *When was that said?*

A. *It could have been late that night or the next day.*<sup>13</sup>

23. This detail was never provided to Judge Cory or the Smithwick Tribunal. There is an inherent contradiction between what Mr. Keeley said in his statement to Judge Cory and the evidence he gave to the Tribunal. In the former, he specifies that Mr. Blair was told by Mr. Collins that Mr. Corrigan had telephoned to the Provisional IRA to tell them that Officers Breen and Buchanan were at the Dundalk station. In the latter, Mr. Keeley stated that he was aware that Mr. Collins told Mr. Blair that "*our friend had helped with the operation*", there being no express reference to Mr. Corrigan. The disparity in detail on this crucial aspect of Mr. Keeley's evidence is highly relevant in assessing the veracity and honesty of this evidence that is central to the Tribunal's inquiry.

24. Mr. Keeley also accepted in his evidence that he had previously lied to the authorities. He gave evidence that he lied to his RUC Special Branch

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<sup>13</sup> Day 67 page 78

Handlers in respect of alleged information he claimed to have about the murder of Paddy Shanahan in Dublin in 1993. His justification for this was that:

“A.                   ...*they were lying to me, so I lied to them.*”<sup>14</sup>

25. The murder of Tom Oliver is of importance to the Tribunal in assessing the honesty of Mr. Keeley. Although Mr. Keeley started to claim during his cross-examination on Mr. Oliver that he was “*hopeless on dates*”, he remained adamant that at the time of Mr. Oliver’s murder he was in Paris working on Euro Disney. Mr. Oliver was murdered on 18 July 1991. At page 158 of his book “*Unsung Hero*” Mr. Keeley claims he headed out to Paris to work in Euro Disney in August 1991. This is consistent with the evidence he gave during examination by his own Counsel where it was accepted that the Sunday Express article in which Mr. Keeley was named was dated 29 September 1991. In his book at p. 158 Mr. Keeley stated that the article in the Sunday Express appeared “*two weeks into my contract.*” That would mean his contract started in mid-September, consistent with a departure for Paris in August 1991. If Mr. Keeley is prepared to lie about his whereabouts at the time of Mr. Oliver’s murder, it brings into focus, first, his honesty as a witness and, second, his involvement in the murder of Mr. Oliver. In particular, it undermines his contention (nowhere substantiated in evidence) that Mr. Oliver was abducted on two occasions, only being murdered after the second abduction.

26. Mr. Keeley accepted that the meeting in Fintan Callan’s Celli House occurred shortly prior to the murder of Mr. Oliver on 18 July 2011:

“Q.                   *He [Tom Oliver] was murdered on the 18<sup>th</sup> of July 1991. From that date, can you try and identify when the meeting in the car park was?*

A.                   *Weeks or a month prior to it.*

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<sup>14</sup> Day 16, page130

- Q. *So we are talking, probably, June 1991?*
- A. *A couple of months prior to it, it would have been the first time.*
- Q. *May?*
- A. *Honestly, I can't remember the dates or months. That is not my thing.*
- Q. *Your evidence to the Chairman is that it was a couple of months -*
- A. *Yeah.*
- Q. *Before the murder of Tom Oliver?*
- A. *Yes.*<sup>15</sup>

27. It appears, therefore, that this car park meeting must have taken place in May, June or July, 2011. Mr. Corrigan had gone on sick leave from An Garda Siochana on 4 December 1989. He had no access subsequent to that date to sensitive information pertaining to Garda informants or any sensitive Garda information.
28. It is farcical to suggest that Mr. Corrigan, if he was an IRA mole, would get into a car with Mr. Blair and another man whom he did not know (Mr. Keeley) in order to provide them with sensitive and damaging information about Mr. Oliver being an informer. No coherent explanation has been provided as to why (i) Mr. Corrigan did not provide this information through the alleged orthodox route, namely to his alleged contact Patsy O'Callaghan; (ii) it was necessary for Mr. Corrigan to get into the car with Mr. Blair in order to give him the alleged and very brief information that Mr. Oliver was informing, and (iii) Mr. Corrigan, who would have been well aware of the extent to which the IRA was infiltrated by informers, would have exposed himself to the chance that either or both of these IRA men (whom he did not know) may have been working as informers.

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<sup>15</sup> Day 67, page 49

29. When Mr. Keeley heard this information about Mr. Oliver and was aware of the impending threat to his life, he did nothing about it. This is not the action of an Agent who is interested in saving lives. If the Tribunal is of the view that Mr. Keeley was an Agent who did save lives, then his activity in respect of the meeting in Fintan Callan's Celli House is completely inconsistent with other steps he allegedly took to save lives.
30. Mr. Keeley claimed in his evidence that it was one of his IRA Units "*worst kept secrets*" that Mr. Corrigan was assisting the IRA. He said that when he was informed on 20 March 1989 that "*our friend helped out*" he knew that this was a reference to Mr. Corrigan who, he said, was well known as a Garda who assisted the IRA. When asked to provide one example of assistance furnished by Mr. Corrigan to the IRA prior to 20 March 1989 of which he was aware, Mr. Keeley was unable to cite one example:

“Q. *Mr. Keeley, you were a member of the IRA the time in 1989, isn't that so?*

A. *Yes.*

Q. *Tell the Chairman specifically what assistance Owen Corrigan had given the IRA prior to the 20<sup>th</sup> of March, 1989?*

A. *I can't give specifics or - just going through it again. We can knock about this all the time.*

Q. *Mr. Keeley, we are going to spend a lot of time on this, so ...*

A. *That is just what I am saying. It's things that I have been told by people in the IRA about Owen Corrigan "our friend".*

Q. *Give examples to the Chairman?*

A. *We already talked about examples there now, we did.*

Q. *What examples are you talking about?*

A. *We already talked about the Narrow Water stuff, the stuff in Omeath that I was told about.*

- Q. *Narrow Water is one?*
- A. *Yes.*
- Q. *And that was in 1979. You can't recall who told you, and you don't know whether it was true?*
- A. *Well, there is no way of knowing anything you are told by somebody else is totally true, all you can do is repeat what they have said.*
- Q. *Give me another example of Owen Corrigan providing assistance to the IRA prior to March 1989?*
- A. *The only other things I can give is the Tom Oliver stuff.*
- Q. *That was 1991?*
- A. *Yes.*
- Q. *Give me another example?*
- A. *I can't give you any more examples because I have none of that, is there?*
- Q. *You have no examples of this man assisting the IRA, and yet you were able to tell this Chairman on the 20<sup>th</sup> of March when you hear Mr. A, who by the way is being named here as Mickey Collins, when you hear Mickey Collins coming in and telling you about the two RUC Officers killed and telling you that "our friend assisted in the operation," you say, after that, that you knew that was Owen Corrigan?*
- A. *Well, Owen Corrigan is the only person that I knew that helped them in the Garda Station. I didn't know of anybody else that helped the IRA that was a member of the Guards.*
- Q. *And aside from the Narrow Water matter which happened in 1979, at a time when you weren't even out of the British Army in the IRA, give the Chairman another example of assistance that Owen Corrigan gave the IRA?*

- A. *I can't actually give the Chairman anything because I don't have any of those.*
- Q. *Of course you don't?*
- A. *No, I know I don't, but I never said I did, did I?*
- Q. *You have come in and you have said that Owen Corrigan assisted the IRA?*
- A. *Yes.*
- Q. *And you can't give one example to the Chairman during your time in the IRA of that happening?*
- A. *I can't give any extra because I don't know of any other times.”<sup>16</sup>*

31. Mr. Keeley referred to the Narrow Water operation which was carried out in August 1979 at a time when he was not a member of the IRA and at a time when Mr. Blair was in prison. He claims that he is aware that Mr. Corrigan assisted in this operation because it was brought to his attention by Mr. Blair. It is astonishing that a person who was closely associated with and a member of the Provisional IRA from 1981 throughout the rest of the 1980s was not able to give one example of which he was directly aware of Mr. Corrigan helping out the IRA prior to the murders of Officers Breen and Buchanan on 20 March 1989, as he suggested in evidence.

32. Mr. Keeley told the Tribunal in his signed statement:

*“I met Corrigan once when I had to drive Patrick Joseph Blair out to Fintan Callan's Celli House, outside Dundalk.”<sup>17</sup>*

33. Nowhere in his statement to the Tribunal did he mention that he had previously met Corrigan. In his evidence to the Tribunal he stated that he had been arrested by Mr. Corrigan and that Mr. Corrigan had walked into the Interview Room when he was being interrogated. Mr. Keeley was incapable

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<sup>16</sup> Day 67, pages 19-23.

<sup>17</sup> Statement of 1 March 2011, page 12.

of answering a straight question as to whether or not Mr. Corrigan interrogated him:

“Q. *Did he interrogate you?*

A. *He came into the Interrogation Room because I remember him coming into it.*

Q. *Did he interrogate you?*

A. *He was in the Interrogation Room when I was getting interrogated, well spoken to, it wasn't even an interrogation.*

Q. *Did he interrogate you?*

A. *He came into the room when the Detectives were in the Interrogation Room.*

Q. *Mr. Keeley, it's a very simple question: Was the Retired Detective Sergeant one of the people who interrogated you when you were arrested and held in Dundalk Garda Station on the 30<sup>th</sup> of June 1989?*

A. *He came into the room when I was interrogated, being interrogated by -*

Chairman: *Did he interrogate you himself?*

A. *He was in the room when other Detectives were talking to me, but I would count those people in the room -*

Chairman: *Did he not take part in the interrogation?*

A. *I can't remember, but he was in the room.”<sup>18</sup>*

34. When it was brought to his attention that he was quoted in the Observer article of 14 November 2004 entitled “*Garda Knew of IRA Mole in Force*” as stating: “*I was interrogated by him in Dundalk Garda Station at one stage*”, he sought to justify and explain this inconsistency by claiming that Mr. Corrigan’s presence in the room meant that he was interrogating him:

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<sup>18</sup> Day 67, pages 25-26.

- Q. *Now, is what you said to the Observer correct or is what you said to the Chairman correct?*
- A. *Well, I've just said there now he came into the room. Did he speak to me and actually ask questions? I can't remember, but he was part of the team of Detectives.*
- Chairman: *Alright, I understood that correctly. But what about this Observer journalist. Did you tell him that Corrigan had investigated you?*
- A. *Some of them say like I was interrogated. There was three policemen in the room, you can't call three of them as interrogating you. ...*
- ...
- Q. *Do you not see the inconsistency between what you told the Observer and what you are telling the Chairman?*
- A. *Tell me the inconsistency.*
- Q. *You told the Observer that, "I was interrogated by Owen Corrigan in Dundalk Garda Station at one stage."*
- A. *Yes.*
- Q. *Are you now saying that is correct?*
- A. *No. What is the difference? I'm saying to the Chairman that he was in the room when I was being interrogated. To me that is the exact same thing."<sup>19</sup>*

35. Mr. Keeley claimed that Mr. Corrigan had compromised the Omeath Investigation on 28 August 1989 for the benefit of the IRA. The evidence of An Garda Síochána is that this investigation was conducted by Superintendent Tom Connolly. Mr. Corrigan was not part of the investigation. The relationship between Superintendent Tom Connolly and Mr. Corrigan was

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<sup>19</sup> Day 67, pages 26-28

not, as the Tribunal is aware, particularly warm and Mr. Corrigan was not asked by Superintendent Connolly to work with him on any investigations. Furthermore, the evidence of An Garda Siochana is that none of the evidence in respect of the Omeath Investigation was compromised.

36. Had Mr. Corrigan been an IRA mole and had he had the level of involvement in Omeath as suggested by Mr. Keeley, then surely he would have tipped off the IRA that the Gardai were going to raid the bomb factory.
37. In his evidence Mr. Keeley denied that he was ever aware that Mr. Corrigan had been assaulted by the IRA whilst with his wife. In one of his earlier statements to the Tribunal this assertion was included.
38. In order for Mr. Keeley's hearsay suspicion about Mr. Corrigan's involvement in the murders of Chief Superintendent Breen and Superintendent Buchanan to be correct, the information about the RUC Officer's presence in the Dundalk Garda Station must have been communicated by Mr. Corrigan sometime after 2.10p.m. on the day of the murders, the time at which the officers arrived in Dundalk. As is apparent from the evidence of Brigadier Lises to the Tribunal, the IRA operation on the ground had commenced by 11.30 a.m. that morning. Consequently, the alleged involvement of Mr. Corrigan as asserted by Mr. Keeley simply cannot be correct.
39. It is submitted that the evidence given by Mr. Keeley displayed a number of characteristics that one would associate with a witness giving false evidence. First, a significant amount of Mr. Keeley's evidence was truthful. The evidence he gave about his background, joining the British Army, being approached by Military Intelligence and his infiltration of the IRA are, most probably, to a large extent correct. When giving evidence upon areas on which he was comfortable and, it is submitted, which were incapable of being challenged, Peter Keeley was specific, certain and demonstrative. He gave evidence in considerable detail on these areas and was manifestly comfortable in recounting specific details. For instance, he was able to give specific details about joining the British Army, the training he received and the type of work

he carried out for the Army and the RUC in Northern Ireland between 1981 and 1995.

40. In contrast, when Mr. Keeley was giving evidence upon areas of particular importance to the Tribunal's inquiries, and in which there was a complete conflict of evidence - the meeting at Fintan Callan's Celli House or the alleged assistance provided by Mr. Corrigan to the IRA - he became vague, unspecific and reticent. His answers shortened; he was not demonstrative with the Chairman; he became taciturn, and he sought to evade being specific on detail. It is hardly a coincidence that the first time that Mr. Keeley said "*I am hopeless with dates*" was in answer to question 808 on Day 67 when he was being asked when he first became aware of Mr. Corrigan. In his answers about Fintan Callan's Celli House, whether Mr. Corrigan interrogated him and what happened in Mr. Blair's house on the day of the murders, the witness was vague, unsure and unconvincing.
41. It is not unusual for the evidence of witnesses giving evidence about events many years ago to be vague, hesitant and unconvincing. However, when compared to the other aspects of his evidence it indicates a deliberate intention on the part of Mr. Keeley to avoid being tied down to specific answers on the areas of conflict.

**E. Reasons to Disbelieve Mr. Hurst.**

42. Mr. Hurst's evidence must be discounted and rejected since it has been expressly refuted by Witness 82, as is apparent from the following:
  1. Witness 82 told the Tribunal that he worked in the Force Research Unit in Northern Ireland. He stated that he worked in the same Unit as Mr Hurst/Ingram and that he knows Mr Hurst/Ingram. Witness 82 handled 'Agent Steak Knife.' Witness 82 told the Tribunal that he

never saw any document referring to a Mr Corrigan during his time in the Force Research Unit.

“Q. Very good. Okay. Then I will pass over, since you are not familiar I will pass over the remainder of that. Now, if you go to page 42, please, where Mr. Hurst was asked about what he could contribute to the Tribunal's investigation of the allegation of collusion. And you see there at line 20, he refers to "documents would record Mr. Corrigan as being one". Now, that is what he says, but I'll carry on then. He was asked: "How did you come across his name?" And he said "in documents FRU. Again, we would look at the whole province, no matter where you are in the province because you could be moved at very short notice and we would have an overall view." Then he went on to speak about rogue elements within the Irish Army, rogue elements within the RUC. I just stop there at that point. Are you aware of any document of that nature referring to Mr. Corrigan?

A. I've never seen a document referring to Mr. Corrigan, as far as I can recall.”<sup>20</sup>

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“Q. Further down, page 43, line 25, he was asked: “Are you saying that the intelligence documents that you saw suggested that Mr. Corrigan was leaking information to the IRA?” To which he said “Yes, yes”. I think you have made it clear to the chairman that you haven't seen any such documents?

A. I have seen no such documents.”<sup>21</sup>

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<sup>20</sup> Day 93, pages 156-157.  
<sup>21</sup> Day 93, page 158.

2. Witness 82 told the Tribunal that any intelligence which suggested collusion between the security forces, either north or south of the border, and the IRA would have been paid a great deal of attention.<sup>22</sup> He stated that such information would most certainly have gone into a specific folder.<sup>23</sup>
3. Witness 82 stated that he never saw any documents which referred to Mr Corrigan as a "rogue" officer.<sup>24</sup>
4. Witness 82 denied speaking to Mr Hurst/Ingram about Mr Corrigan.

*"Q. Yes. Now, if you wouldn't mind going to page 50, I think it is this point you begin to come into the process, if I can put it that way. Line 18: "Did you make any inquiries about who Owen Corrigan was when you saw his name turning up from time to time being a member of the Garda Síochána." Then he says, "Well, he came up in conversation with 82." You see further down at line 26 that is yourself. If you wouldn't mind just before we deal with that, if you go to page 51 at line 7: "How many times you may have discussed him it would have been a rough guess, but probably two or three at the most." Did you have conversations with Mr. Hurst about Mr. Corrigan?*

*A. Well, I had no information about Mr. Corrigan, so, to the best of my knowledge, I don't see how I could have had that conversation with Mr. Hurst."<sup>25</sup>*

5. Witness 82 stated that he was not aware of any link between Mr Corrigan and Mr Scappaticci.

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<sup>22</sup> Day 93, page 157.

<sup>23</sup> Day 93, page 157-158.

<sup>24</sup> Day 93, page 159.

<sup>25</sup> Day 93, page 160.

*“Q. Now, if you wouldn't mind going to page 53. Line 26, question 278: "What connection was there between Mr. Scappaticci and Mr. Corrigan?" Then he said that you Witness 82, told him that Mr. Scappaticci effectively acted as a conduit for information, in other words the handler of Corrigan. Again, can you comment on that?*

*A. I'm not aware of any relationship between any of the individuals mentioned there.”<sup>26</sup>*

....

*“A. No, I have got no -- I don't believe I have ever seen any information linking -- I don't think I have seen any information about Colton or Corrigan and I certainly, as far as I can recall, see no information linking Mr. Scappaticci and the two individuals, the two garda officers, to the best of my knowledge.”<sup>27</sup>*

...

*“Q. Now, page 89, question 442, it starts at line 8, he was asked: “Do you have any information linking Owen Corrigan in colluding with the IRA in the killing of those two RUC officers?” Then he said only that yourself and he discussed it and then it was put to him: “Are you stating that you and Witness 82 said that Owen Corrigan had leaked information to the IRA that assisted them in murdering the two officers?” And he said: “I think that would be a general description of that conversation.” And he said: “that is just what I explained to you. We had a general discussion that Mr. Scappaticci and Owen Corrigan had been involved and had relayed information to yourself via Scappaticci and there had been some involvement with Mr. Corrigan.” Now, did you have such a conversation?*

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<sup>26</sup> Day 93, page 160-161.  
<sup>27</sup> Day 93, page 160-161.

A. *No, no, not that I can recall. I am not aware of any such relationship, as I have said, between the individuals mentioned and therefore I can't see how I could have had that conversation with him.*<sup>28</sup>

6. Witness 82 refused to reveal the identity of 'Agent Steak knife' but he did confirm that he never saw any intelligence suggesting or evidencing a link between Mr Corrigan and 'Agent Steak knife.'

"Q. *The rest is repetition of matters you have already dealt with. Now, if I could just turn to your statement very briefly. A lot of the matters you have already dealt with in dealing with the evidence of Mr. Hurst. Now, I think it is the case that, as one of your functions in the army, you handled an agent called 'Stakeknife'?*

A. *Correct.*

Q. *I think it is the case that you never saw intelligence linking 'Stakeknife' to Detective Guard Corrigan, is that right?*

A. *Correct.*<sup>29</sup>

7. Witness 82 stated that he never saw any intelligence, in the form of RUCIRACs or SB50s or otherwise, that implicated any Gardaí in the murder of the two RUC Officers.

"Q. *Okay. Apart from contact forms that you might have seen or records relating to an agent's information, did you ever see any RUC RUCIRACs or SB50s which implicated any member of An Garda Síochána in connection with these murders?*

A. *Not that I can recall.*<sup>30</sup>

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<sup>28</sup> Day 93, page 165.

<sup>29</sup> Day 93, page 167.

<sup>30</sup> Day 93, page 77.

8. Witness 82 gave evidence that in his opinion Mr Hurst/Ingram was exaggerating his role and information to make money:

“Q. *What do you believe, and it is only your opinion, [redacted], what do you believe is Mr. Hurst's motivation for his career whereby he is writing about his position in the FRU and his telling, publicly, information he has about intelligence, what do you believe is his motivation in all of this?*

A. *Well, I think he has made a career out of it, so I can only assume that it's because of that. He has got a career in it. He is earning money out of it.”<sup>31</sup> (Emphasis added)*

## **F. Assessment of Mr. Keeley’s and Mr. Hurst’s Evidence**

43. The reasons outlined above and many others, including the evidence of retired RUC officers who worked with Mr. Keeley, reveal that Mr. Keeley’s evidence is so weak, so second-hand, so indirect, so based on hearsay, so unreliable and so tainted through inconsistency that the Tribunal must conclude that his evidence is false. It is submitted that the evidence of Mr. Keeley should not simply be categorised as unreliable or hearsay. It is fabricated. That is evident from the two stories that Mr. Keeley told to the two Judicial Officers investigating this event. In the first instance, he told Judge Cory that a telephone call had been made from Dundalk Garda Station by Mr. Corrigan. In the second instance, he told Judge Smithwick that no such call had been made but that he simply heard from Mickey Collins that “*our friend helped out*”. It is submitted that Mr. Keeley is a dishonest witness who, for

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<sup>31</sup> Day 93, page 183.

reasons that the Tribunal may decide not to determine, has decided to perjure himself in order to support an allegation of collusion against Mr. Corrigan.

44. Mr. Hurst's hearsay and second hand evidence has been directly rejected by the alleged source of this information, witness 82, who gave evidence to the Tribunal.
45. No evidence has been presented to the Tribunal of Mr. Corrigan being seen in the station at the time the Officers were there or of him encountering the Officers or of him making telephone calls from the station on the day of the murders. The evidence against him that the Tribunal has heard solely centres on the evidence of the unreliable duo of Mr. Keeley and Mr. Hurst. Both of these witnesses have made money from their books and thrive on presenting themselves as knowledgeable insiders. Both are disreputable Water Mittys. Mr. Hurst has sought to make a career out of presenting himself as holding sensitive and explosive information. Mr. Keeley's role, it is submitted, is more sinister since he was presented to Judge Cory near the end of the Judge's enquiries by a group who were described in evidence by Mr. William Frazer as *"retired members of the security forces, there were a few lords and stuff."*<sup>32</sup>

#### **G. How Did The Murders Occur?**

46. It should not be forgotten that Chief Superintendent Breen and Superintendent Buchanan were unarmed at the time of the IRA ambush. They were travelling along the Edenappa Road, which many witnesses described as one of the most dangerous roads at that time in Northern Ireland. They were travelling in Superintendent Buchanan's car, a red Vauxhall Cavalier Reg No. KIB 1204. They arrived at Dundalk Garda Station at approximately 2.10 p.m. on 20 March 1989. As the RUC report into the murders records:

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<sup>32</sup> Day 120, page 59.

*“They parked their vehicle at the front of the Garda station which was open and on view to the public.”<sup>33</sup>*

47. The meeting ended at approximately 3.15 p.m. when both Officers left to return North. It is assumed that they travelled North via the main road from Dundalk through Faughart, crossing the border at Jonesborough bridge, and then on to the Edenappa Road. Sometime between 3.30 p.m. and 3.54 p.m. they were ambushed by the IRA unit and shot dead. The investigation into the murders suggested that the Officers were forced to stop by some means on the Edenappa Road, approximately 100 yards north of the border. It would appear that Superintendent Buchanan tried to reverse his vehicle. He was found in the vehicle slumped over the steering wheel, apparently shot in the head at close range. Chief Superintendent Breen was found lying out of the car with gunshot wounds to the head. A witness told the Garda Síochána that Mr. Breen had got out of the car and waved a white handkerchief. A gunman then shot him in the head. Two of the gunmen then searched the car and took a briefcase or folder. They also took what appeared to be two small notebooks. All of the gunmen then got into the van used by the IRA in the attack and the driver, who never left the van, drove north turning left towards the Kilnasaggart Bridge and over the border.<sup>34</sup>
48. The RUC investigation established that one of the vehicles used in the attack was a beige Toyota Liteace van Reg No. VIA 776. The vehicle had been stolen between 8 and 9 p.m. on 18 March 1989 from the car park at Mullaghbawn Chapel. The owner had locked his vehicle and was attending a service in the church at the time. This vehicle was later found abandoned at Crossing Point 23 facing north on 22 March 1989. The vehicle had been destroyed by fire.
49. It is the submission of Mr. Corrigan, and indeed of many others, that the IRA planned this ambush on foot of a surveillance operation it had been

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<sup>33</sup> RUC H Division Report, 20 March, 1989: Document No. A001871,PILU,20/05/08.

<sup>34</sup> RUC H Division Report, 20 March, 1989: Document No. A001871,PILU,20/05/08.

conducting for a number of months. The Tribunal heard a considerable amount of evidence attesting to what a pleasant and friendly man was Superintendent Buchanan. He appeared to be universally popular with his colleagues in both the RUC and An Garda Siochana. Nonetheless, colleagues who spoke about him with great affection also recognised that the repeated nature of his visits to Garda stations across the border, driving the same car which he did not change, was reckless. Those repeated visits in the same car exposed him to serious danger that ultimately, it is submitted, enabled his murder by the IRA.

50. It is important to outline the frequency of Superintendent Buchanan's visits across the border. The frequency of his visits from when he returned to work in late August 1988 (after his summer holidays) until his murder on 20 March 1989 are set out hereunder. This information was produced to the Tribunal based on the "vengeful" vehicle sightings and reference to Superintendent Buchanan's

**Frequency of Superintendent Buchanan's Visits Across the Border:**

<b>Date</b>	<b>Garda Station Destination</b>
Wednesday, 24 August 1988	Dundalk
Tuesday, 6 September 1988	Dundalk
Monday, 12 September 1988	Dundalk
Monday, 26 September 1988	Dundalk
Monday, 3 October 1988	Dundalk
Thursday, 6 October 1988	Dundalk

Thursday, 13 October 1988	Dundalk
Tuesday, 1 November 1988	Dundalk, Monaghan, Carrickmacross and Dromad
Tuesday, 8 November 1988	Dundalk and Monaghan
Monday, 14 November 1988	Carrickmacross (returned via Dundalk)
Friday, 18 November 1988	Dundalk
Tuesday, 22 November 1988	Dundalk
Friday, 25 November 1988	Dundalk
Tuesday, 13 December 1988	Dundalk
Tuesday, 10 January 1989	Monaghan
Friday, 13 January 1989	Monaghan
Sunday, 15 January 1989	Liaised with Gardai but no details of the whereabouts of his crossings
Tuesday, 17 January 1989	Monaghan
Wednesday, 18 January 1989	Monaghan
Thursday, 19 January 1989	Meeting with Gardai but no details of his crossings

Friday, 20 January 1989	Carrickmacross
Monday, 23 January 1989	Dundalk
Tuesday , 24 January 1989	Liased with Gardai but no details of his crossing
Wednesday, 31 January 1989	Monaghan
Wednesday, 1 February 1989	Monaghan
Thursday, 2 February 1989	Dundalk
Monday, 6 February 1989	Dundalk
Monday, 13 February 1989	Meeting with Gardai, presumed to be Dundalk
Monday, 20 February 1989	Dromad
Tuesday, 21 February 1989	Monaghan
Wednesday, 22 February 1989	Monaghan
Tuesday, 28 February 1989	Dundalk
Friday, 3 March 1989	Met with Gardai but no details of location of meeting
Monday, 6 March 1989	Dundalk
Tuesday, 7 March 1989	Monaghan
Tuesday, 14 March 1989	Dundalk

Wednesday, 15 March 1989	Carrickmacross
Thursday, 16 March 1989	Monaghan
Monday, 20 March 1989	Dundalk (murdered on way home).

51. The following facts are important when assessing the frequency and advisability of Superintendent Buchanan's trips across the border:

- i. From 24 August 1988 until his murder on 20 March 1989 Superintendent Buchanan travelled across the border at least on 39 occasions;
- ii. He travelled in the same red Vauxhall Cavalier car Reg No. KIB 1204 on each cross border crossing;
- iii. Chief Superintendent Buchanan never availed of the option of changing the registration plates on his car, as was done by other RUC Officers;
- iv. In the 89 days of 1989 prior to his murder he travelled across the border in his car to Garda stations on at least 25 occasions, more than twice a week;
- v. He very frequently visited Dundalk on a Monday;
- vi. Superintendent Buchanan did not change his pattern of travel during these habitual trips across the border;
- vii. Garda Chief Superintendent Bernard King, Officer Commanding in Monaghan from 1987 to 1990, gave evidence to the Tribunal that soon after he arrived in 1987 he became concerned at the frequency

and manner of Mr. Buchanan's visits to stations in his district. This concern was also shared by Garda Sergeant Jim Gannon of Dromad Garda Station and Garda Sergeant Ray Roche of Hackballscross. RUC Chief Superintendent Brian Lally told the Tribunal that the Garda concern about the frequency and manner of Superintendent Buchanan's visits was communicated to him in 1987-1988.<sup>35</sup>

52. The evidence of Superintendent Buchanan's trips across the border must be considered in light of the statement given to the Tribunal by the IRA. This statement was not available to ex-RUC witnesses at the time they gave evidence to the Tribunal about Superintendent Buchanan's movements and the advisability of his habitual trips across the border. The IRA statement contained the following:

*“That in the late Spring, early Summer of 1988, one of our volunteers spotted a red Cavalier car, Reg No. KIB 1204 entering the Dundalk Garda Station complex from the Carrickmacross road entrance. The car parked at the front of the station and two males got out. The volunteer immediately recognised the front seat passenger as an RUC Detective who he believed was named Nigel Day, but was not certain of the name. He was approximately 40 years of age, 6 foot tall, black hair with a hint of grey. He had a thick black moustache and was wearing a jacket, shirt and tie. The volunteer did not recognise the driver, although we now know it to be Bob Buchanan. The volunteer watched both men being admitted to the working area of Dundalk Garda Station. The volunteer was able to leave the vicinity of the Dundalk Garda Station confident of not having been noticed by either of the two men. When this information was fed back by the volunteer to the IRA structures, it was decided to mount a surveillance operation around Dundalk Garda Station. This was initially done by designated volunteers driving and walking past and around the Garda Station. The focus was to locate the red Cavalier, but the presence of any other*

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<sup>35</sup> Day 35 (16 September 2011) page 629

*Northern registered vehicles was also to be noted. The red Cavalier was spotted on a number of occasions. It was parked in roughly the same spot at the front of the station and would remain there for up to 3 hours, and at this stage it was decided to mount a more intense surveillance operation. This continued throughout the summer and winter of 1988 to 1989.*<sup>36</sup>

53. The journal of Superintendent Buchanan reveals that on 26 July 1988 and 7 July 1988 he and Inspector Charles Day visited Dundalk Garda Station.<sup>37</sup> They also travelled to Dundalk together on 20 January 1989. Inspector Day also accompanied Superintendent Buchanan to Dundalk on 14 March 1989, the week before the murders.<sup>38</sup>
54. The IRA explanation of what occurred is corroborated by the evidence to the Tribunal of RUC Inspector Day who gave evidence at a time when he was unaware of the content of the IRA statement. Inspector Day, who had a thick moustache in 1989, recalled two occasions, one the week before the fatal shootings and therefore probably the 14 March 1989 visit, when he travelled south with Superintendent Buchanan to Dundalk Garda station and he felt they were being followed on the return journey by a white van which did not cross the border.

*“Q. I think you travelled south with Superintendent Buchanan on the 14th March 1989?”*

*A. That's correct.*

*Q. Is that correct? Was it the Tuesday before the two officers were killed?”*

*A. I believe that is so, yes.*

*Q. Do you have any particular reason for remembering that journey?”*

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<sup>36</sup> Day 125 (1 February 2013) page 71.

<sup>37</sup> Day 132 (Date) page 30

<sup>38</sup> Day 132 (Date) page 31

- A. *Well, just because it was so close to the tragedy and because on that particular journey I did mention to him that I thought we were being followed on the return journey to Newry.*
- Q. *Where had you gone to?*
- A. *We had gone to Dundalk Station.*
- Q. *And on the way home from Dundalk?*
- A. *On the way home from Dundalk, before we reached the border with Northern Ireland, I noticed a Hiace van behind us.*
- Q. *Can you remember what road you were travelling that day?*
- A. *We were travelling on the main road up to Newry.*
- Q. *The A1?*
- A. *Yes.*
- Q. *And you noticed a Hiace van behind you?*
- A. *That's correct. And Hiace vans generally would have caused some suspicion because they were used so much by the IRA particularly on the south Armagh area. Of course there are a lot of them about, but I just remarked to Superintendent Buchanan that we may be being followed and this vehicle did follow us across the border.*
- Q. *And did -- Superintendent Buchanan, I think, was driving that day, is that correct?*
- A. *That's correct.*
- Q. *Did he make any comment in relation to it?*
- A. *No specific comment. He just noted, looked in the mirror, kept on eye on it, I suppose.*
- Q. *It was a matter that caused you some concern?*
- A. *Well, not undue concern. I mean, you would be security-aware in that area and you didn't need to say much more. These things would happen from time to time, you just flag it up and would let the driver be alert to any suspicions you might have. On this occasion the van followed us quite a way up into the north but it went off on one of the side roads just before we*

*reached the main border checkpoint, permanent checkpoint controlled by the army.*

Q. *That was the checkpoint just south of Newry?*

A. *That's right, at Cloghogue.*

Q. *At Cloghogue, yes. I suppose would it be fair to say that it caused you some precautionary concern rather than active concern?*

A. *That's correct. I mean, we didn't feel on that occasion that we needed to accelerate in any great way, just keep an eye out. The danger on the main road would have been a drive-by shoot.*

Q. *Did you ever previously have any concerns that you might have been followed when travelling with Superintendent Buchanan?*

A. *Well, just one that stood out in my mind, and that is when we were coming back from Monaghan, I think I said in the statement, several months before.*

Q. *That was a similar type of incident?*

A. *Yes, similar, plus there were some people standing on the border crossing point, looked a bit suspicious. It could have been something, it could have been nothing, but, again, you are trained to be alert, you are always subconsciously taking it on board, being aware.*

Q. *And what -- can you remember what road you were taking that day? You were coming from Monaghan to where?*

A. *Monaghan back to Armagh, so that would have been a road just east of Middletown, a minor road.”<sup>39</sup>*

55. It is submitted that the cause of the ambush of Chief Superintendent Breen and Superintendent Buchanan is clear. Superintendent Buchanan travelled far too frequently across the border in his own identifiable car and he was subject to a surveillance operation, as outlined by the IRA in its statement, that ultimately led to his murder and the murder of Chief Superintendent Breen.

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<sup>39</sup> Day 6 (9 June 2011) page 144-147 and page 156-157

## H. How the Tribunal Should Report

56. Any finding that Mr. Corrigan was involved in the murders of the two RUC Officers would be irrational and/or unreasonable since there is no credible evidence upon which such a finding could be based. The Tribunal should reject the allegations made by Mr. Keeley and Mr. Hurst. Throughout the course of the Inquiry Mr. Corrigan has consistently suggested that this Tribunal of Inquiry was established in order to deflect attention from the very real allegations of collusion between loyalist paramilitaries and the British army or RUC, particularly in respect of the murder of the Belfast Solicitor, Mr. Pat Finucane. Mr. Corrigan's thesis is compelling when the evidence of co-operation between Mr. Harnden and the RUC is considered. It is also fascinating to reflect on who it was that organised for Mr. Keeley to visit Judge Cory on 9 September 2003, as is evident from the email that was sent to Judge Cory's assistant on 8 September 2003 but where the identity of the sender was never revealed by the British Government to the Tribunal. It is submitted that this Tribunal could, having considered

- (a) the evidence of co-operation between Mr. Harnden and the RUC,
- (b) the manner in which Mr. Keeley was brought before Judge Cory,
- (c) the fact that Mr. Keeley, on his own evidence, continues to be paid by the British Security Service, and
- (d) the provision of new intelligence material to the Tribunal by the PSNI/British Security Service at the eleventh hour of the Tribunal's inquiries,

reach a finding that this Tribunal was viewed as an opportunity by certain elements of the British Security Service and PSNI to deflect attention from grave allegations of collusion in Northern Ireland on the part of the British

State. Nonetheless, if the Tribunal is not satisfied that such a finding could be reached on the evidence, the Tribunal must nonetheless accept that the evidence it has heard requires a finding fully vindicating the good name of Mr. Corrigan in light of the heinous allegation made against him. No credible evidence exists substantiating the grave allegation made against him. It is a monstrous lie and the Tribunal must say so.

## Chapter I                      Legal Submissions

### A        Terms of Reference

- 1.1     The Tribunal was established on 31 May 2005 by Instrument dated 31 May 2005, by Mr Michael McDowell TD, the then Minister for Justice Equality and Law Reform pursuant to resolutions of Dáil Éireann and Seanad Éireann passed on 23 and 24 March 2005, respectively, to inquire into suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989.<sup>40</sup>
- 1.2     The Resolution passed by Dáil Éireann on 23 March 2005 and Seanad Éireann on 24 March 2005 states inter alia:

*“That Dáil Éireann/ Seanad Éireann: <sup>41</sup>*

*— noting that following agreement reached between the British and Irish Governments at Weston Park in 2001, retired Canadian Supreme Court Judge Mr Peter Cory was appointed to undertake a thorough investigation of allegations of collusion between British and Irish security forces and paramilitaries in six incidents;*

*— noting that the aim of this process was to determine whether there is sufficient evidence of collusion between State security forces and those responsible for the killings in each case to warrant a public inquiry;*

*— noting that, as part of the Weston Park agreement, the two Governments committed themselves that in the event that a public inquiry is recommended in any case, the relevant Government will implement that recommendation;*

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<sup>40</sup> Tribunals of Inquiry (Evidence) Act 1921 (Establishment of Tribunal) Instrument 2005.

<sup>41</sup> Seanad Éireann in the Seanad Resolution.

— *noting that having completed his investigation into the murder of Chief Superintendent Harry Breen and Superintendent Robert Buchanan, both of the Royal Ulster Constabulary RUC, Mr. Peter Cory concluded that evidence was revealed that, if accepted, could be found to constitute collusion;*

— *mindful that certain incidents from the past in Northern Ireland giving rise to serious allegations of collusion by security forces in each jurisdiction remain a source of grave public concern;*

*resolves that it is expedient that a tribunal established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 to inquire into the following definite matter of urgent public importance:*

— *Suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989;*

*and to report to the Clerk of Dáil Éireann and to make such findings and recommendations as it sees fit in relation to these matters;*

*and further resolves that:*

*(1) the tribunal shall report to the Clerk of the Dáil on an interim basis not later than three months from the date of establishment of the tribunal and as soon as may be after the tenth day of any oral hearings of the tribunal on the following matters:*

- (a) the number of parties granted representation by the tribunal,*
- (b) the progress which will then have been made in the hearings and work of the tribunal,*
- (c) the likely duration, so far as might then be capable of being estimated, of the proceedings of the tribunal,*

*(d) any other matters that the tribunal considers should be drawn to the attention of the Houses of the Oireachtas at the time of the report, including any matters relating to its terms of reference;*

*(II) if the tribunal finds that there is insufficient co-operation from a person(s) not compellable to give evidence pursuant to the provisions of the Tribunals of Inquiry (Evidence) Acts 1921 to 2002, to report that fact to the Clerk of the Dáil, including the steps taken by the tribunal to obtain the co-operation of that person(s), for consideration by the Houses of the Oireachtas, in conjunction with the Minister for Justice, Equality and Law Reform, having regard to the public interest; and*

*(III) the inquiry shall be completed in as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it.*

- 1.3 At the first public sitting of the Tribunal, held on 3 March 2006, the Chairperson commented on his terms of reference *inter alia* as follows:

*“The background to this Inquiry begins with events which occurred around the 20th March 1989.*

*On that date, the late Chief Superintendent Breen and the late Superintendent Buchanan travelled to Dundalk Garda Station for a meeting with a Senior Garda Officer, which meeting had been scheduled only that morning to take place. On their return, in County Armagh, just north of the border, they were both ambushed and killed. The Provisional IRA, in a statement issued subsequently, claimed responsibility for these murders.*

*I want to take this opportunity to offer to the families of the late Chief Superintendent Harry Breen and the late Superintendent Robert Buchanan, who I know are following this Inquiry, our deepest sympathy*

*on their loss. I can well understand that the holding of this Inquiry may bring back unhappy memories for them. I wish to assure the families that the Tribunal, while having a duty and obligation in the matter, will be mindful of their sensitivities. The Tribunal will conduct its business dispassionately, impartially, focusing on the core issue and avoiding any unnecessary references to the more distressing aspects of the matter.*

*To return to the background to this Tribunal's terms of reference, these two murders were examined by Judge Cory, a retired Canadian Supreme Court Judge, appointed to investigate and to report into allegations of collusion between Irish and British security forces and paramilitaries in six instances, one of these was the killing of these two Royal Ulster Constabulary officers.*

*Judge Cory's appointment arose from the Weston Park Agreement in August 2000 where the Irish and British Governments undertook to appoint a Judge of international standing to carry out such an investigation. The two Governments also undertook that in the event that a public inquiry was recommended, such an inquiry should be established.*

*Judge Cory submitted his reports to the Government in October 2003 and redacted versions were published in December 2003.*

*On the question of collusion, Judge Cory stated that it could be said that the Provisional IRA did not need information from the Gardaí to mount the ambush and that intelligence reports received shortly thereafter could be taken to point to a similar conclusion. However, there were also, according to Judge Cory, two intelligence reports which referred to a Garda leak.*

*Judge Cory also considered a statement of a man with a pseudonym of "Kevin Fulton". This man is said to have been a former British*

*intelligence agent who became a member of the Provisional IRA. In his statement, “Kevin Fulton” claims that on the day of the ambush, his senior IRA commander was told by another member of the IRA that a particular member of the Garda Siochana informed the Provisional IRA that the two officers were in Dundalk Garda Station.*

*In the view of Judge Cory, this statement could add credence to the two intelligence reports which referred to a Garda leak. His view was that if this evidence were accepted by those making findings of fact, it could be found to constitute collusion.*

*Judge Cory therefore concluded that there should be a public inquiry to be conducted by an independent Tribunal...”*

## **B. Definition of ‘Collusion’**

- 1.4 At that first public sitting of the Tribunal the Chairperson defined the term ‘collusion’ as follows:

*“... the issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody deliberately ignored a matter, or turned a blind eye to it, or to have pretended ignorance or unawareness of something one ought morally, legally or officially to oppose.”*

- 1.5 It is clear from this definition that a finding of collusion will only be warranted where there is evidence that a person or body:

- a. Conspired, connived or collaborated to commit a positive act of collusion;
- b. Ignored, or turned a blind eye to, something which a reasonable person should have morally, legally or officially opposed, or
- c. Pretended ignorance or unawareness of something which a reasonable person should have morally, legally or officially opposed;

in relation to the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989.

## **C The Nature of Findings**

1.6 Tribunals of Inquiry are established to inquire into and make findings in relation to definite matters of urgent public importance which are identified in their terms of reference.

1.7 In ***Haughey v Moriarty [1999] 3 IR 1***, Hamilton CJ stated:

*“The essential purpose, however, for which a tribunal is established under the Act of 1921 is to ascertain the facts as to the matters of urgent public importance which it is to inquire into and report those findings to parliament or the relevant minister.”*

1.8 In ***Maguire v Ardagh [2002] 1 IR 385*** the Supreme Court considered the meaning of word “findings” in the context of a challenge to the procedures adopted by the Oireachtas Sub-Committee established to inquire into the Abbeylara incident. The Sub-Committee argued that because its findings were legally sterile they should be regarded as nothing more than an expression of opinion. This argument was rejected in no uncertain terms by the Supreme Court. Hardiman J stated that:

*“I have no doubt that the phrase, according to its ordinary and natural meaning, describes a rigorous analytical process leading to factual*

*conclusions, conducted by a body uniquely equipped or authorised to do so. It is the diametric opposite, in my view, of the sort of opinion expressed about a work of art or music: matters of taste and artistic impression are known to vary from person to person and not to be susceptible of rigorous, objectively justifiable, demonstration. When it is recalled that the hypothetical finding of fact in this case might involve a finding as serious as "unlawful killing", made by a parliamentary sub-committee acting under the authority of both Houses, I believe that it is quite fanciful to consider that a reasonable man or woman in the street would not regard a report so phrased as a solemn finding of demonstrated wrongdoing.*"<sup>42</sup>

1.9 Hardiman J continued:

*"If, in relation to one of the applicants, it was found as a fact by this parliamentary group that he or she had unlawfully killed the deceased man, I do not believe that the alleged technical status of such finding as being (contrary to its obvious and natural meaning) merely an opinion would at all avail him or her in the eyes of the ordinary reasonable member of the community. It would strike such persons as a quibble. Nor could this be regarded as unreasonable since, in law, the "findings" are given the special status of being presumed to be true for the purpose of justifying any comment based on them. Nor would it be unreasonable having regard to the Oxford English Dictionary meanings. There, the primary meaning of the word "findings" is "the action or an instance of finding or discovering", and the relevant special meaning is "the result of a judicial or other formal inquiry; a verdict."*<sup>43</sup>

1.10 Similarly, Hardiman J was not impressed by the argument that any findings that could be made would be legally sterile. He stated:

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<sup>42</sup> [2002] 1 IR 385 at 668

<sup>43</sup> [2002] 1 IR 385 at 668-669

*“The applicants do not submit that the 'findings of fact' by the sub-committee would be an administration of justice. But they say, and it has not been disputed, that while such findings have no 'legal' effect, they may have many and far reaching effects.*

*Moreover, I have to say that I find the phrase 'legally sterile' extremely unattractive in any realistic human context ... One is therefore left with an entity described as a 'finding of fact or conclusion' which, it is agreed, could in practice have an adverse effect on an individual. But that, the respondents contend, does not take away from the central truth that 'in law' it is of no effect at all.”<sup>44</sup>*

1.11 A majority of judges in the Supreme Court agreed with this analysis. McGuinness J stated:

*“In this context I have had the advantage of reading Hardiman J.'s careful analysis of the significance of the term "findings of fact" and the adjudicative nature of the sub-committee's role and I agree with his reasoning and conclusions.*

*In argument before this court, it was submitted on behalf of the members of the sub-committee that the term "findings of fact" used by the sub-committee in reality meant merely "opinions". Their findings, they argue, can be no more than "opinions" because they have no legal effect and no legal penalty follows from them. This is true, but it does not, as is pointed out by Hardiman J., mean that their findings are without effect. Their findings would be the result of an inquisitorial process, held in public, and in reality would be accepted by the public at large as being "the true facts". This would have the power to inflict enormous damage on the individual gardaí involved.”<sup>45</sup>*

1.12 Geoghegan J stated:

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<sup>44</sup> [2002] 1 IR 385 at 669

<sup>45</sup> [2002] 1 IR 385 at 617

*“The respondents also submit that the so called “findings” are sterile of effect and are therefore unobjectionable. In relation to this argument, I am in agreement with the cogent views expressed by Hardiman J. in his judgment.”<sup>46</sup>*

1.13 Murray J stated:

*“An inquiry conducted by members of the Oireachtas on its behalf deploys a concentrated authority that derives from its role as one of the great organs of government established by the Constitution. A committee of the Oireachtas acting under the aegis of that authority and exercising extensive and magisterial, in a non-judicial sense, powers can make an enormous impact on the name and reputation of citizens against whom it makes findings of wrongdoing which, in a court of law, would constitute civil or criminal wrongs. Should the sub-committee in this case proceed to find that an individual Garda or Gardaí had participated in an unlawful killing it could only have devastating impact on the professional and personal reputation of those concerned, even in the absence of legal effect.”<sup>47</sup>*

1.14 In ***De Roiste v Judge Advocate General & Ors [2005] 3 IR 494***, the respondents argued that because the Judge Advocate General’s findings, conclusions and recommendations were “legally sterile” the conclusions, findings and recommendations contained in her report were not amenable to review by the courts and further that the applicant was not entitled to the application of fair procedures by the first respondent and that she was not obliged to act judicially in the conduct of the process. Quirke J rejected this argument. Having cited and considered the decision of Hardiman J in *Maguire v Ardagh [2002] 1 IR 385* he concluded:

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<sup>46</sup> [2002] 1 IR 385, at 730  
<sup>47</sup> [2002] 1 IR 385 at 592

*“The instant proceedings concern a process established by statute by the government of a sovereign State. It was conducted by a statutory personage entitled “The Judge-Advocate General”. The process was concerned directly with matters relating to the reputation and good name of the applicant. The report which resulted from the process was adopted on behalf of the government and published.*

*It is inescapable that the findings and conclusions resulting from the process had the capacity to affect the applicant's reputation and good name whether favourably or adversely. He enjoys the right to right to a reputation and a good name. That right is constitutionally protected.*

*I am satisfied that since the process undertaken directly concerned matters relating to the applicant's reputation and good name, its findings and outcome affected his constitutionally protected right to his reputation and good name.”<sup>48</sup>*

1.15 In ***O’Callaghan v Mahon [2006] 2 IR 32***, Hardiman J stated:

*“The tribunal in the end of the day merely reports its opinions and makes recommendations. It does not make binding findings of fact, though its report can, of course, have the effect of vindicating some persons and utterly destroying the reputations of others.”<sup>49</sup>*

1.16 Commenting on the ability of the Planning tribunals of inquiry to make very grave findings, Hardiman J in ***O’Callaghan v Mahon [2006] 2 IR 32*** commented::

*“this tribunal is at another extreme, and features:-*

- *very grave allegations some of which, if true, would constitute breaches of the criminal law;*

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<sup>48</sup> [2005] 3 IR 494 at 512

<sup>49</sup> [2006] 2 IR 32 at 74

- *clear and obvious attacks on the good name of the applicant which is constitutionally protected;*
- *the personal credibility of the notice party as a vital factor;*
- *little or nothing in the way of paper trail or corroboration;*
- *immediate and extensive media coverage of un-notified allegations.*"<sup>50</sup>

1.17 In ***Re Bovale Developments [2011] IESC 24*** at 13, Denham J discussed the origin and meaning of that phrase:

*"37. The courts have used the term "sterile of legal effect" since that judgment. This comes from the judgment of Costello J. in Goodman. As stated by Hardiman J. in Murphy & Ors v. Mr. Justice Flood & Ors [2010] IESC 21:-*

*"In the words of Costello J., or in the words of the judicial authorities cited with approval by him, the Tribunal of Inquiry is "not imposing any liabilities or affecting any rights" (at p.557); its conclusions have merely the status of opinion and "this opinion is devoid of legal consequences" (at p.557), its findings are "sterile of legal effect" (562 and its purpose is "merely" to inquire and report (at p.562). A Tribunal of Inquiry is "a simple fact-finding-operation" according to Finlay C.J. (at p.588). The Tribunal has no power to inflict a penalty and its determinations cannot "form any basis for the punishment by any other authority of that person" at p.588. Its function is to "make a finding of fact, in effect, in vacuo, and to report it to the Legislature." (at p.590)"*

*38. I am satisfied that the terms of the judgment of Finlay C.J. in Goodman, as quoted above, at p.590, are not an obiter dictum, and may not be distinguished. Applying that law to this case, it is clear that the two extracts from the tribunal report may not be admitted in*

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<sup>50</sup> [2006] 2 IR 32 at 62

*evidence by the Director. Thus I would dismiss the appeal on this issue.”*

## **D The Standard of Proof**

1.18 The law relating to the standard of proof that a tribunal of inquiry must apply was authoritatively set out by the Supreme Court in ***Lawlor v Planning Tribunal [2010] I IR 170***.

1.19 In that case, the applicant sought *inter alia* a declaration that the respondents could not make findings of serious misconduct against her late husband unless such findings were supported by evidence establishing them beyond reasonable doubt. In other words, she submitted that the criminal standard of proof applied. The respondents submitted that they were entitled to make findings on the balance of probabilities. In other words, they submitted that the civil standard of proof applied.

1.20 In a lengthy judgment, Murray CJ (Denham, Geoghegan, Fennelly and Kearns JJ agreeing) held that:

1. a tribunal was an inquisitorial body which derived its authority, its existence and its terms of reference from resolutions passed by the Oireachtas. It was a simple fact finding operation. A tribunal could never be seen as a substitute for or an alternative mode of criminal trial. Tribunal findings did not have the status of a judicial finding, civil or criminal;
2. the requirement to prove beyond a reasonable doubt was most appropriate to proceedings by way of criminal trial. It had never been mandated by the courts in respect of any tribunal of inquiry. A tribunal of inquiry was not, however, precluded from adopting that higher standard in appropriate cases;

3. tribunals had an obligation to apply fair procedures and to infringe as little as possible upon the rights of individuals, consistent with the aims and objectives of the inquiry itself;
4. due to the devastating consequences an adverse finding of grave wrongdoing by a tribunal could have for the standing and reputation of a person in the community, the evidential requirements of a tribunal must vary depending on the gravity of the particular allegation. This was not, however, to adopt a "sliding scale" of proof but rather to simply recognise that a finding in respect of a serious matter which might involve reputational damage must be proportionate to evidence upon which it was based.

1.21 In light of the devastating consequences that a finding of collusion would have for the standing and reputation of Mr Corrigan it is clear that the standard of proof required to ground such a finding would be very high indeed. Consequently, it is necessary to set out the judgment of Murray CJ in detail.

1.22 At pages 183-186, Murray CJ (as he then was) held:

*"[35] The legislation which provides for tribunals has survived constitutional scrutiny and the courts in this jurisdiction have repeatedly upheld the right of tribunals to purposively inquire into matters, the subject of their terms of reference. Nonetheless, the courts have stressed repeatedly the obligation of tribunals to apply fair procedures and to trench upon the rights of the individual as little as possible, consistent with the aims and objectives of the inquiry itself. In this regard the invocation by persons under investigation of the panoply of rights identified by this court in **In re Haughey [1971] I.R. 217** is an entitlement repeatedly upheld and supported by the courts. That said, the courts have been quick to acknowledge that considerable adverse reputational consequences can flow, both from allegations aired at tribunals and from supposedly "legally sterile" tribunal findings. The term "legally sterile" has been used as an allusion to the fact that the findings of a tribunal are the conclusions only of the chairperson, and*

*its members where there is more than one member, and in no sense, as pointed out above, has the status of a judicial finding, civil or criminal, notwithstanding that in order to ensure the independence of a tribunal, its chairman and members are judges. Persons, the subject of inquiry by such a tribunal, are never charged with any offence nor are they on trial. A tribunal can never be seen as a substitute for or an alternative mode of criminal trial. That does not of course take away from the fact that the adverse findings of grave wrongdoing can have devastating consequences for the standing and reputation of a person in the community.*

*[36] Where a tribunal of inquiry is investigating the reason why a bridge collapsed or a ship broke in two at its moorings, its processes do not usually involve allegations of criminal behaviour. The allegations may not be such as to give rise to reputational damage, such as that identified by this court in **Maguire v. Ardagh [2002] 1 I.R. 385**, where an Oireachtas committee proposed to inquire into the lawfulness or otherwise of a killing. There was but one judicial review in the Whiddy Inquiry which was tasked with investigating the causes for the break up in 1979 of an oil tanker at the jetty in Bantry whereas the court was informed that in excess of 20 judicial review applications have been brought during the course of this planning inquiry, some successful, some not, and some of which, intentionally or otherwise, have slowed and delayed the work of this tribunal.*

*[37] Counsel for the applicant has pointed out that all of the adverse reputational consequences outlined above are actually or potentially present in this case and are exacerbated because Mr. Lawlor has died. It is those particular features of his situation which essentially underpin the application in this case, namely, that a standard of proof beyond reasonable doubt, that is to say a criminal standard of proof, should apply to any adverse findings that might be made by the respondents in respect of the late Mr. Lawlor.*

[38] At the outset it must be said that such a standard has never been mandated in respect of any tribunal of inquiry by this court. It was a contention specifically rejected by this court in **Goodman v. Mr. Justice Hamilton [1992] 2 I.R. 542**. That is not to say that a tribunal of inquiry is precluded from adopting that standard in circumstances it considers appropriate. In this regard, reference was made by both sides to certain dicta from the judgment of Hederman J. in that case where he stated, first, at p. 600:-

*"It may well not have been necessary for the Tribunal to set a standard of proof "beyond reasonable doubt" but that is a procedural requirement which it was well within the competence and entitlement of the Tribunal to lay down. It does not have the effect of transmuting what is an inquiry into a "trial",*

and to the following passage at p. 603 of his judgment:-

*"In the course of this inquiry it may be necessary for the Tribunal to relax the rules of evidence in regard to some particular party - including the applicants. It would be very unwise for this Court to attempt to fetter the discretion which the Tribunal undoubtedly possesses to regulate its own procedure. Similarly, in regard to whether any evidence should be taken in private - that would be a matter for the Tribunal to rule on as the occasion requires."*

[39] It would, nonetheless be wrong to infer from these comments that a tribunal of inquiry is at large in terms of the requirements of proof or that the standard of proof is simply a matter of procedure which it may regulate as it sees fit. Such an approach could lead to a situation where, for example, on the bare balance of probabilities, a finding of the utmost gravity could be made against a particular individual. In principle, evidential requirements must vary depending upon the gravity of the particular allegation. This is not to adopt the "sliding scale" of proof advocated by counsel for the applicant, but rather to simply recognise, as an integral part of fair procedures, that a finding in respect of a serious matter which may involve reputational damage must be proportionate to the evidence upon which it is based. For

example, a finding that a particular meeting occurred on one day rather than another may be of such little significance that a tribunal could make a finding in that respect on the bare balance of probabilities. A finding of criminal behaviour on the other hand would require a greater degree of authority and weight derived from the evidence itself.

[40] The common law requirement to prove a criminal case beyond reasonable doubt dates back to the late 18th century (see Langbein's, *The Origins of Adversary Criminal Trial* (Oxford and New York, Oxford University Press, 2003), a time when punishments following conviction could range from the death penalty to transportation for life or a lengthy prison term. Many of the rights enjoyed by persons facing criminal trials and criminal sanctions undoubtedly developed because of the severity of such sanctions. There is a self-evident requirement for the strictest levels of proof where draconian punishments may follow a particular finding by a court. However no punitive sanctions or consequences attend the findings of a tribunal of inquiry. It is this fundamental distinction which differentiates the criminal law from the law applicable to tribunals.

[41] Thus in **Banco Ambrosiano S.P.A. v. Ansbacher & Co.** [1987] I.L.R.M. 669 this court was satisfied that an allegation of fraud did not require to be proved to the criminal standard where the proceedings take place other than in a criminal court. As Henchy J. stated at p. 700:-

"When fraud has to be proved in a criminal court as an element of an offence charge, it must of course be proved beyond a reasonable doubt, which is the prescribed degree of proof for every essential ingredient of a criminal charge. In the civil courts, while fraud is not recognised as a distinct tort or cause of action, it is well recognised as an element which, if proved in the appropriate manner, will vitiate the act or conduct which it induced or resulted in, so that the court will seek to undo the intended and actual effect of the fraud by awarding damages or

*making such order as it deems necessary for the purpose of doing justice in the circumstances."*

[42] *Henchy J. was firmly of the view that it would be an error to introduce some intermediate standard of proof between that of civil liability and criminal liability, stating at p. 701:-*

*"If, as has been suggested, the degree of proof of fraud in civil cases is higher than the balance of probabilities but not as high as to be (as is required in criminal cases) beyond reasonable doubt, it is difficult to see how that higher degree of proof is to be gauged or expressed. To require some such intermediately high degree of probability would, in my opinion, introduce a vague and uncertain element, just as if, for example, negligence were required to be proved in certain cases to the level of gross negligence. Moreover, since in this jurisdiction many civil cases involving fraud are tried by juries it would be difficult for a trial judge to charge a jury as to this higher degree of proof without running the risk of confusing the jurors."*

[43] *Quite apart from the practical difficulties which would arise from the creation of an intermediate standard of proof, Hamilton C.J. in **Georgopoulos v. Beaumont Hospital Board [1998] 3 I.R. 132** offered a perhaps more important rationale for maintaining the distinction when he stated at pp. 149 and 150:-*

*"As already pointed out in this judgment, the proceedings before the defendant were in the nature of civil proceedings and did not involve any allegations of criminal offences. The standard of proving a case beyond reasonable doubt is confined to criminal trials and has no application in proceedings of a civil nature.*

*It is true that the complaints against the plaintiff involved charges of great seriousness and with serious implications for the plaintiff's reputation.*

*This does not, however, require that the facts upon which the allegations are based should be established beyond all reasonable doubt. They can be dealt with on 'the balance of probabilities' bearing in mind that the degree of probability required should always be proportionate to the nature and gravity of the issue to be investigated."*

*[44] To revert to the judgment of **Henchy J. in Banco Ambrosiano S.P.A. v. Ansbacher & Co. [1987] I.L.R.M. 669**, he concluded his judgment by stating at p. 702:-*

*"Proof of fraud is frequently not so much a matter of establishing primary facts as of raising an inference from the facts admitted or proved. The required inference must, of course, not be drawn lightly or without due regard to all the relevant circumstances, including the consequences of a finding of fraud. But that finding should not be shirked because it is not a conclusion of absolute certainty. If the Court is satisfied, on balancing the possible inferences open on the facts, that fraud is the rational and cogent conclusion to be drawn, it should so find."*

*[45] The foregoing judicial statements aptly describe the requirements of due process, as regards the circumstances of the present case. The findings made must clearly be proportionate to the evidence available. Any such findings of grave wrongdoing should in principle be grounded upon cogent evidence."*

## E. Evidence

### 1 introduction

1.23 In *Lawlor v Planning Tribunal [2010] I IR 170*, Murray CJ stated:

*[45] The foregoing judicial statements aptly describe the requirements of due process, as regards the circumstances of the present case. The findings made must clearly be proportionate to the evidence available. Any such findings of grave wrongdoing should in principle be grounded upon **cogent evidence**.*"

1.24 What constitutes cogent evidence is of the utmost importance to this inquiry.

### 2 Phipson's definition

1.25 Phipson defines evidence as follows:

*Evidence, as used in judicial proceedings has several meanings. The two main senses of the word are, first, the means, apart from argument and inference, whereby the court is informed as to the issues of fact as ascertained in the pleadings; secondly the subject matter of such means. The word is also used to denote that some fact may be admitted as proof and also in some cases that some fact has relevance to the issues of fact. In a real sense evidence is that which may be placed before a court in order that it may decide the issues of fact... Evidence, in the first sense, means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in dispute. In the second sense it means the content of that testimony.<sup>51</sup>*

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<sup>51</sup> Phipson on evidence (15<sup>th</sup> Edition) at 1.03.

1.26 This portion of the submissions is concerned with the first sense of the term evidence, namely, the testimony, whether oral, documentary or real, which may be legally received. There are a number of different types of evidence, oral testimony, real evidence and documentary evidence.

- Oral testimony is oral evidence given under oath or affirmation. Witnesses are confined to testifying only as to facts of which they have personal knowledge, except for expert witnesses who are allowed to give opinion evidence. The hearsay rule prohibits from giving evidence of what other people have told them.
- Real evidence are material objects other than documents, produced for inspection, unless the genuineness of the thing speaks for itself.
- Documentary evidence relates to documents, which are put in evidence. The hearsay rule prevents documents being put in evidence to prove the truth of their contents unless the author gives oral evidence

### 3. “Evidence” and Tribunals of Inquiry

#### (i) The Legislation

1.27 The Tribunals of Inquiry (Evidence) Acts 1921 – 2004 do not provide any definition of what constitutes evidence. At paragraph 134 of its Report on Tribunals of Inquiry the Royal Commission chaired by Lord Justice Salmon referred to the natural reluctance of tribunals of inquiry to “*make any findings reflecting on any person unless it is **established beyond doubt by the most cogent evidence.***”

#### (ii) The Law Reform Commission

1.28 In its Consultation Paper on Public Inquiries Including Tribunals of Inquiry the Law Reform Commission drew a distinction between evidence and information. At paragraph 9.03 the Commission stated:

*At this point the, we must make explicit our understanding of two central terms. Evidence is defined as material on the basis of which the inquiry is entitled to draw conclusions of fact and to make recommendations. In other words, it can make its way into the eventual report. In most inquiries this will be given on oath or affirmation, usually but not necessarily in public, and will be tested in some manner (see paragraph 9.25 below) unless entirely non-contentious. Information we define as material on the basis of which the inquiry may make immediate decisions only as to relevance and how it intends to organise the inquiry (with two exceptions, considered below, paragraph 9.06). This rather formal distinction is imposed for a particular reason.*

(iii) The Case Law

1.29 In considering the case law it is important to bear in mind the distinction drawn by Phipson between the rules of evidence as to procedure and the rules of evidence as to the material that may be regarded as evidence. The distinction is important because very different policy considerations apply. The courts have repeatedly stressed the need for flexibility as regards the former, subject of course to the requirements of natural and constitutional justice, but have considered the latter on only a few occasions.

1.30 In the Supreme Court decision of ***In Re Haughey [1971] IR 317***, Mr Justice McLoughlin, delivering a concurring judgment in the Supreme Court, commented on the allegations made against Mr Haughey by Chief Superintendent Fleming as follows:

*I do not need to set out in full the special circumstances under which Mr. Haughey appeared before the Committee. They have been fully set out in the judgment of the Chief Justice; in short they were that, one week before his appearance, a witness, Chief Superintendent Fleming, had given evidence implicating Mr. Haughey with the purchase of arms with moneys from the Vote. It is clear that this "evidence" was not first-*

*hand evidence but hearsay, or even hearsay upon hearsay, or as the witness said as to part of it "speculation or rumour." In my opinion the Committee was entitled to receive information in this way, not by way of proof, but as a line of inquiry to be investigated, although I think it should have been obtained in private or by way of preliminary statement and not at a public sitting; I also think that the witness was bound to divulge the sources of his information unless he could claim and legally sustain a claim of State privilege.*

There is a clear parallel between the hearsay material in this case which the Supreme Court was not willing to admit and the hearsay material in front of this Tribunal.

- 1.31 Much reference has been made to the decision of Mr Justice Henchy in ***Kiely –v- Minister for Social Welfare (1977) 1 I.R.267*** as authority for the broad proposition that tribunals have a discretion to depart from the rules of evidence applied by the courts. This case was concerned with an appeal concerning an application for death benefit under the Social Welfare (Occupational Injuries) Act, 1966.

*I do not think it is open to judges here to adopt such a laissez-faire attitude to the vagaries of tribunals exercising quasi-judicial functions. This Court has held, in cases such as In re Haughey , that Article 40, s. 3, of the Constitution implies a guarantee to the citizen of basic fairness of procedures. The rules of natural justice must be construed accordingly....<sup>52</sup>*

It is also useful to set out what Mr Justice Henchy stated after the quotation referred to by the Tribunal.

*Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the*

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<sup>52</sup> At 281.

proceedings. *Audi alteram partem* means that both sides must be fairly heard. **That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross-examination.** The dispensation of justice, in order to achieve its ends, must be even-handed in form as well as in content. Any lawyer of experience could readily recall cases where injustice would certainly have been done if a party or a witness who had committed his evidence to writing had been allowed to stay away from the hearing, and the opposing party had been confined to controverting him simply by adducing his own evidence. In such cases it would be cold comfort to the party who had been thus unjustly vanquished to be told that the tribunal's conduct was beyond review because it had acted on logically probative evidence and had not stooped to the level of spinning a coin or consulting an astrologer. Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice.<sup>53</sup>

When viewed in its totality it is clear that the decision in **Kiely** is not authority for the proposition that tribunals are entitled to pick and choose from the rules of evidence simply because they are not courts. Fair procedures apply in all circumstances and fetter this discretion. Because tribunals are not courts the manner in which fair procedures will apply will of necessity differ but they still apply. When viewed in this context the refusal of the court in **Kiely** to allow the tribunal to rely on documentation submitted where the author of the document had not given oral testimony is quite telling in relation to the various letters and documents which have been referred to during the public hearings but where the authors of those documents have refused to give evidence. In

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<sup>53</sup>

At 281-282.

this regard it is submitted that the Tribunal is not entitled to have regard to such documentation because, to quote Mr Justice Henchy:

*Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross-examination*

1.32 In **Goodman v Hamilton (No 1) [1992] 2 IR 542**, Mr Justice Costello in the High Court stated:

*The applicants claim that all the rules of evidence which apply to court proceedings should apply to the proceedings of the Tribunal. When requested to make a ruling on this point the Tribunal stated (see p. 12 of transcript of the afternoon of the 10th October, 1991):*

*"It is extremely difficult at this stage to give any definitive rulings with regard to admissibility of evidence. The rules of evidence which have been established over many years by the courts are of extreme importance to ensure fair play. And having regard to the nature and importance of the allegations and the possible effect on the good name and reputation of any person appearing before it, it is my intention to apply, wherever possible, the rules of evidence which have been established over many years, reserve the right in exceptional circumstances, having heard objections to the admissibility of such evidence in the ordinary way and counsel for any party affected in any way by any evidence sought to be adduced before the Tribunal will have ample opportunity of objecting to its admissibility and securing a ruling thereon."*

*There is no rule of law which requires a Tribunal of Inquiry to apply the rules of evidence applicable in a court of law. The acceptance of evidence and the weight to be given to it is a matter for the Tribunal. **But it is subject to the requirements of fair procedures and***

**should, for example, a question arise as to the receipt of hearsay evidence, the Tribunal might be required to hear persons affected on the point.** This is exactly what the Tribunal said it will do. Accordingly, no case has been made out for the declaration sought.<sup>54</sup>

The Supreme Court upheld this decision. Mr Justice Hederman referred to the specific problems posed by hearsay evidence and noted:

*With regard to the first there was a fear that there might be an over-use of hearsay evidence. This because, undoubtedly, in the material furnished to the solicitors for the applicants there was included much hearsay, **but the Tribunal will doubtless adopt the same approach as the Tribunal of Inquiry into dealings in Great Southern Railway Stock (Pri. 6792; 1943), the members of which were Mr. Justice Overend, Judge Davitt and Judge Barra Ó Briain . While it sifted through rumour and hearsay it relied only on admissible evidence for its findings.***

The distinction that Mr Justice Hederman drew between looking at hearsay material during the course of its investigation and relying on it for findings should be noted, where the former appears to have been permitted but the latter was not. This is very important in the context of the current Tribunal, which has relied on a considerable amount of hearsay evidence during the course of its public hearings. If the Tribunal adopts the flexible approach proposed by the High Court and refined by the Supreme Court in **Goodman** it is not permitted to make findings on the basis of hearsay evidence.

- 1.33 The Report of the Tribunal of Inquiry into the Beef Processing Industry only had regard to “*properly admitted evidence which had been where necessary subjected to cross-examination*”. Further, Mr Justice Hamilton stated, “*the Tribunal ...has sifted through rumour but relies only on evidence properly admitted for its findings*”. Similarly, the Commission to Inquire into Child

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<sup>54</sup> At 564-565.

Abuse rejected hearsay evidence. In the third interim report of the Commission to Inquire into Child Abuse the following were emphasised as the guiding principles of the investigation committee in relation to evidence:

*“The Committee has adopted certain guiding principles which govern the manner in which it receives and evaluates evidence. In formulating those principles, the primary consideration has been to fulfil the Committee’s obligation to act fairly and judicially in accordance with the Constitution and, in particular, to apply fair procedures in implementing its statutory mandate to inquire into abuse and to report on the result of the inquiry. The Committee has had regard to the gravity of the matters it is inquiring into, the abuse of children in institutions and the risk of, and the potential for, serious injustice if it reaches and publishes conclusions which are incorrect.*

*The principles which guide the Committee are as follows:*

*Evidence on Oath;*

*In all cases, witnesses who testify to the Committee are required to give evidence on oath.*

*Standard of Proof;*

*In making findings of fact the Committee:*

- i. applies the Standard of Proof applicable in civil proceedings in a Court, that is to say, proof on the balance of probabilities, and*
- ii. the findings are based only on evidence which would be admissible in a Court, so that, for example, the Committee does not make a finding based on hearsay evidence.”*

(iv) Hearsay, Opinion Evidence and Speculation

1.34 It is submitted that there are three problem areas in relation to the definition of evidence. They are (1) can the Tribunal rely on hearsay evidence, (2) can the

Tribunal rely on opinion evidence given by non-experts, and (3) can the Tribunal rely on mere speculation. Unfortunately, and perhaps inevitably, hearsay, opinion evidence and speculation have played a major role in the public hearings, often to the detriment of Mr Corrigan.

1.35 The primary concerns in relation to these types of evidence may be summarised as follows:

- Hearsay evidence is generally rejected because:
  - The statement was not made on oath,
  - Its not reliable because it is incapable of being tested. There is no opportunity for the trier of fact or other interested parties to cross examine or assess the demeanour of the person making the statement,
  - It can be manufactured or distorted. Hearsay allegations are easily made and hard to disprove,
  - It may be mistaken, ambiguous, misperceived or inaccurate. Furthermore the witness giving the hearsay evidence can distort the statement and magnify these problems,
  - It can lead, and in the case of this Tribunal has led, to a multiplication of side issues.
- Opinion evidence is generally rejected because:
  - It may be founded on no evidence,
  - It is worthless,
  - It usurps the functions of the trier of fact, in this case the Tribunal.
- Speculation evidence is subject to all of the infirmities of both hearsay and opinion evidence.

1.36 The case law cited in the previous section indicates that although the courts are willing to afford tribunals considerable leeway as regards the procedures adopted during the course of the first four stages of the tribunal process, subject of course to the requirements of natural and constitutional justice, they have resiled from any statement allowing tribunals to make findings on

evidence that would not be admissible in a criminal or civil trial. It is submitted that the reason for this is that fair procedures simply do not permit a tribunal to act on such evidence. To hold otherwise would be to directly undermine the foundations of fair procedures. This is neatly illustrated by looking at the classic formulation of fair procedures as they apply to tribunals of inquiry.

*“(a) that he should be furnished with a copy of the **evidence** which reflected on his good name; (b) that he should be allowed to cross-examine, by counsel, his accuser or accusers; (c) that he should be allowed to give rebutting **evidence**; and (d) that he should be permitted to address, again by counsel, the Committee in his own defence.”*

‘Evidence’ is the rock upon which these protections are built. If tribunals are given the power, prohibited to the courts, of deciding what constitutes evidence, then the *In Re Haughey* rights may be totally undermined. How can a potential accused be furnished with a copy of the evidence affecting his good name if he is not told which material in the boxes given to him is evidence and which is not? Similarly, how can he cross-examine his accusers if they refuse to give evidence and how can his right to cross examine be vindicated if the Tribunal acts on the documentation he prepared but was not examined in respect of?

(v) Other Factors Militating against the Acceptance of Hearsay, Opinion Evidence and Speculation

1.37 It is submitted that there are a number of other factors, which militate against the adoption of a definition of evidence, which allows material, which would not be admissible before a court to be admissible before a Tribunal. These are (1) the inconsistency between this approach and the adoption of the civil standard of proof, (2) the downstream effect of findings based on evidence subject to such infirmities.

1.38 The first point is quite simple. In adopting the civil standard of proof on the balance of probabilities the Tribunal accepts that it is not entitled to make findings that are not probable. However, as the case law indicates, this standard is a flexible one whereby the degree of probability required to ground a finding will vary depending on the seriousness of the allegation. Consequently, the degree of probability required to ground a finding of collusion in murder will be so high as to equate with the beyond reasonable doubt or beyond doubt standards. The second point is more serious. Although the findings of a Tribunal which are based on evidence are devoid of legal effect they are not devoid of legal consequence. Such findings can have a devastating effect. For example, a finding that Mr. Corrigan had colluded with the IRA in the murder of the 2 RUC officers would result in him being viewed as a murderer by society. This would have an irreparable impact on him and his constitutional rights.

## Chapter 2 Events in the North prior to the murders

### A Introduction

1.39 In light of the expert evidence from Brigadier Liles and Brigadier Smith that the operation must have begun at 10am (11.30am-12pm) at the latest and the acceptance by the PSNI that the IRA operation to murder the two RUC Officers could not have begun when the men arrived in Dundalk Garda Station, the issue of 'who knew what' about the visit in Northern Ireland is of crucial importance to the Tribunal's investigation.

### B. Wednesday, 15 March 1989

1.40 The document 'HMG 58,' undated but clearly generated between 1 March and 20 March 1989, is a letter from an unknown author to the Under Secretary Law and Order Division of the Northern Ireland Office, Stormont, which was copied to the Chief Constable's Office. This letter refers to a recent Security Policy Meeting (SPM) at which the smuggling activities of Thomas Slab Murphy were discussed and to follow up actions by the Northern Ireland Office and British Army. Security Policy Meetings were chaired by the Secretary of State for Northern Ireland and attended by the General Officer Commanding Northern Ireland. It states *inter alia*:

#### "MURPHYS FARM

*The Secretary of State mentioned [redacted] observations about Slab Murphy and his smuggling operations in South Armagh at the SPM yesterday. I have looked into the particular incident mentioned – 28 tankers over a 60 hour period netting an alleged profit of 14k per vehicle – and now report back as requested.*

*The survey was made by Glassdrumman Observation Tower, G30, during a completely random survey between 001 hours on 27 February and 1200 hours 1 March 1989. The bald facts that emanate from the survey are as noted by the Secretary of State and there is nothing to add further except to confirm that the tankers contents, and the alleged profit, are as a result of informed speculation rather than firm evidence.*

*The question that the Secretary of State raised specifically – who was told and what if anything was done about it, is answered as follows...*

*With this in mind and recalling GOC's advice at SPM that only a cumulative rather than individual exposure of Murphy's smuggling would prove effective, the observation towers survey was one of a number of surveys that are directed at Murphy's operations. The information was collated manually by G30 and passed directly to 1 RRF Intelligence Cell in Bessbrook Mill on 1 March. The information was shared routinely with the RUC Liaison Officer in the Mill, entered on the Military Computer Crucible on 2 March and then disseminated quite widely to Military and RUC addresses in 1 RRF Intelligence Summary on 5 March.*

*The point behind this is that the survey was not designed for immediate executive action – Murphy's expertise has moved well beyond the point of being disturbed by the periodic interception of fuel Lorries. It will require a plan of considerable depth and subtlety, possibly involving additional legislation and certainly much cooperation from the South, finally to remove Murphy from the map..." (emphasis added)*

- 1.41 On 15 March 1989, the Chief Constable issued an Order to the Senior ACC Operations (David Cushley) and the Senior ACC Crime and Special Branch. This stated as follows:

*“Senior Assistant Chief Constable ‘Ops’  
Senior Assistant Chief Constable ‘C&E’*

1. *I refer to the attached letter from the GOC's MA.*
2. *This matter was raised recently at SPM.*
3. *The Chief Constable wishes a full report on this matter, including the Garda view via Divisional Commander 'H.'*
4. *The Chief Constable would also like to know if our procedures for dealing with similar smuggling cases are adequate.*
5. *Please treat as urgent."*

1.42 The Tribunal was not provided with a copy of the letter from the "GOC's MA." Divisional Commander 'H' was Chief Superintendent Breen.

1.43 On 15 March 1989, David Cushley, Senior ACC Operations, issued an order to Witness 18, ACC Rural East which referred to the Order of the Chief Constable and stated: *"Please comply with points 3 and 4 above and further report by 24<sup>th</sup> March 1989."* The Tribunal was not actually provided with this document but was simply informed as to its content by the British Authorities.

1.44 David Cushley, Senior ACC Operations, told the Tribunal that he had no recollection of the Order dated 15 March 1989 but he accepted that it was issued by him. He outlined to the Tribunal what he would have required of Witness 18, ACC Rural East as follows:

*"Q. Can you envisage -- whilst you don't remember the document, what do you think, reading it now, you would have envisaged that that would have required to be done?"*

*A. Well, the Divisional Commander -- it would have been -- it would have gone from the Regional Commander East to the Chief Superintendent 'H', and then he would have had to examine and come up with a plan to implement what the Chief Constable and the SPM required, and that would have involved liaison with his counterparts south of the border because this was right -- anything that was involved, there had to be involved both sides of the border.*

- Q. *What form would you envisage that liaison would take?*
- A. *Well, it would need to be eyeball communication between the opposite numbers of the officers concerned.*
- Q. *It couldn't just be on the telephone?*
- A. *I would not have been happy with the -- if a plan had been produced which had been organised over a telephone, it would have been deficient, in my view.*
- Q. *Why?*
- A. *You need to work up a rapport with your opposite numbers, you need to have confidence in each other and you need to talk at some distance -- at some length, sorry. But certainly, it would have been a deficient plan if organised over a telephone.”<sup>55</sup>*

1.45 Mr Cushley rejected the suggestion posited by Witness 18 that what was required was simply low level reporting:

- “Q. *... yesterday, Witness Number 18 described this as a simple low-level operational reporting system that didn't require any crossing of the border. In your view, is this, just from looking at that direction, do you agree with that analysis that this is a low-level operational reporting system?*
- A. *No, sir.*
- Q. *Why not?*
- A. *This was direction coming from the Secretary of State, had gone to the Chief Constable, it had gone to the GOC and it had -- the -- it had the Chief Constable's imprimatur to require a report and detail, and that certainly was not low level, in my mind.*
- Q. *OK.*
- A. *The Chief Constable's directions were expected to be carried out in a disciplined organisation.”<sup>56</sup>*

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<sup>55</sup> Day 7, page 38.

<sup>56</sup> Day 7, page 38-39.

1.46 In March 1989, Witness 27 was a Chief Superintendent and Deputy to Mr David Cushley, the Assistant Chief Constable, Border Zone. He was acting Assistant Chief Constable Border Zone at the time as Mr Cushley was unwell.<sup>57</sup> He told the Tribunal that he attended a dinner in Stormont Castle with Mr Tom King, the Secretary of State for Northern Ireland on the evening of Wednesday, 15 March 1989.<sup>58</sup>

1.47 Witness 27 was adamant that the dinner took place on 15 March 1989 even though his official diary entry for that date does not record him attending any such dinner.

*“A. No, but it was the practice on my behalf to maintain in my journal, which you see before you, basically official duties connected with the operational end of my task. The fact that I was on a virtually a social occasion with the Secretary of State would not have counted in my mind as duty, so it wasn't recorded as such.”<sup>59</sup>*

1.48 It was pointed out to Witness 27 that Chief Superintendent Breen's official diary does not contain any reference to a dinner in Stormont on 15 March 1989 but does record such a dinner as having occurred on 6 March 1989.<sup>60</sup> He stated that:

*“Q. From this point. So he certainly records that he attended a function at Stormont Castle with you on the 6th March?”*

*A. That's correct, sir, but I didn't attend a function on that night and it is possible that some officers had a habit of retrospectively completing their journals and occasionally they put in the wrong dates and the wrong days, and that is the only explanation I can offer for that.*

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<sup>57</sup> Day 30, page 95.

<sup>58</sup> Day 30, page 93.

<sup>59</sup> Day 30, page 96.

<sup>60</sup> Day 30, page 95-96.

- Q. *Even if that were the case, the latest that Chief Superintendent Breen could have retrospectively completed that is two weeks later, because he died exactly two weeks after that. It does seem unlike that, given that relatively short timeframe, he would be so out on his dates, would you accept that?*
- A. *I can't answer for that because it is a matter for the late Chief Superintendent Breen as to how he completed his journal.”<sup>61</sup>*

1.49 It should be noted that Chief Superintendent's note taking was not infallible. During the course of the examination of Mr Breen's deputy, Witness 39, his diary and Mr Breen's diary were compared and Counsel for the Tribunal pointed out that it is apparent that Chief Superintendent Breen wrote his entry for 7 March 1989 under the date 8 March 1989 and vice versa.<sup>62</sup>

1.50 It should be noted that no indication was given in the Public Sitings as to whether the Tribunal was aware from the British Military or from the Northern Ireland Office as to when the dinner took place. In this regard, it should also be noted that the Tribunal is aware of the identity of the Colonel who made the comments about Thomas 'Slab' Murphy at the dinner.<sup>63</sup>

1.51 Witness 27 stated that such an invitation would not have been unusual as it was not unusual for senior police officers to have supper with senior officials at Stormont.<sup>64</sup> Witness 27 stated that he travelled to the dinner with Chief Superintendent Harry Breen who picked him up at his home.<sup>65</sup> Also present were two senior army officers who were operating in South Armagh and who had recently arrived in Northern Ireland as well as Mr King's personal assistant, who took a "prodigious amount of notes" during the course of the dinner.<sup>66</sup>

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<sup>61</sup> Day 30, page 96.

<sup>62</sup> Day 69, page 15.

<sup>63</sup> Day 69, page 29.

*"MR. VALENTINE: In line with normal practice, we don't intend to allow the name of the colonel, but I have no difficulty, I can supply that name from this witness's journal to Mr. Durack, Chairman."*

<sup>64</sup> Day 30, page 94.

<sup>65</sup> Day 30, page 93.

<sup>66</sup> Day 30, page 94.

1.52 Witness 27 stated:

*“Well, there was general conversation about policing the border and so on, and at one stage one of the military officers described how they had observed lots of activity in the region of a border farm complex which they suspected was related to terrorism or illegal activities; that was discussed in great detail.”<sup>67</sup>*

1.53 Witness 39, Deputy Divisional Commander of H Division, told the Tribunal that Chief Superintendent Breen had discussed the dinner with him:

*“Well, he did say that they were talking with the Secretary of State, and the local colonel was there, and I think, also, Witness 27 was there as well, and the colonel was giving a brief on the activity around Forkhill, and it seemed to be, according to Mr. Breen, it seemed to be a lot more than we were aware of, and he wasn't terribly pleased with the report that was being given, and that was it; it just seemed to have been exaggerated.”<sup>68</sup>*

1.54 Witness 27 stated that both he and Chief Superintendent Breen were unhappy at the fact that the Secretary of State was directing police operations:

*“We were deeply disappointed at the direction of the Secretary of State, Chairman, and I made it plain that I wasn't happy with the direction for a couple of reasons. Harry Breen was equally unhappy about the fact that we were being directed by a politician, Secretary of State, to conduct a police operation which both of us thought at the time was ill-advised, and when we sat outside my house discussing it, he expressed that a number of times to me, that we were both unhappy with the operation. However, at that meeting we had the official*

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<sup>67</sup> Day 30, page 94.  
<sup>68</sup> Day 69, page 11.

*direction from ACC Rural East, which presumably came from the Chief Constable, and we proceeded on that basis.”<sup>69</sup>*

- 1.55 He stated that he informed the Secretary of State that the proposed action was ill advised and dangerous and that the Secretary of State responded by thumping the table and demanding that the operation proceed.

*“Q. And if it was the Secretary of State who initiated this proposal, would you agree with me that it was ill-advised and a dangerous proposal emanating from him?*

*A. I told him at the supper that that was the case, sir.*

*Q. And how did he respond to that, sir?*

*A. He thumped the table and demanded that I go ahead, and who is a humble Chief Super to argue with a Secretary of State?”<sup>70</sup>*

- 1.56 This evidence was echoed by Witness 39, Deputy Divisional Commander of H Division, who told the Tribunal that Chief Superintendent Breen was not happy at what had transpired.

*“Well, he was certainly not pleased. The very fact that he brought it to my attention, that he certainly didn't think it was right that it should have been done that way.”<sup>71</sup>*

- 1.57 He stated that both he and Chief Superintendent Breen felt that the operation was ill advised because:

*“At that time it was a very complex situation on the border, Chairman, and the operation in question related to both jurisdictions and it is extremely hard, at the best of times, to mount a coordinated operation with An Garda Síochána, Customs and ourselves. There was, at that time in our judgement, no actionable intelligence which would have*

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<sup>69</sup> Day 30, page 99-100.

<sup>70</sup> Day 30, page 145.

<sup>71</sup> Day 69, page 11.

*warranted, at that particular point, an operation of this magnitude, and we expressed that view to no avail.”<sup>72</sup>*

1.58 By actionable intelligence, he indicated that he meant:

*“Well, information and intelligence comes in various forms. It is sometimes historic, it's sometimes speculation and it is sometimes rumour and gossip, and to mount an operation against an individual and his premises on the basis that something highly illegal is happening, we always strive, strove, to be very precise in the accuracy and the veracity of the information before deploying all the resources necessary or causing the inconvenience to the target individual. So, at that stage the intelligence, in our view, did not warrant such a process.”<sup>73</sup>*

1.59 Witness 27 told the Tribunal that, following the dinner, he and Chief Superintendent Breen discussed their future course of action:

*“When Harry Breen drove me back from the Secretary of State's supper, we sat in the driveway of my house in his car for about 40 minutes discussing what we had been directed to do and we made plans there, and the plans included having the meeting on the 16th March and including Bob Buchanan in the meeting with myself and Harry Breen.”<sup>74</sup>*

1.60 He stated that they decided to include Superintendent Buchanan because:

*“Well, Bob was part of the trio of Harry Breen, myself and himself because, we knew the border intimately over many, many years and we knew it from many perspectives and, of course, Bob Buchanan,*

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<sup>72</sup> Day 30, page 100.

<sup>73</sup> Day 30, page 100.

<sup>74</sup> Day 30, page 98.

*very rightly, had the liaison role with An Garda Síochána across the border so he was a very vital part of the team.”<sup>75</sup>*

**C. Thursday, 16 March 1989**

- 1.61 On 16 March 1989, the Order dated 15 March 1989 was forwarded by the ACC ‘C&Es’ Staff Officer to Assistant Chief Constable Crime on 16 March 1989 as the ACC ‘C&E’ was on leave.
- 1.62 Witness 18, ACC Rural East, told the Tribunal that he attended a meeting with the Chief Constable in Headquarters in Belfast on the morning of 16 March 1989, following which the “...*the Chief Constable spoke to me as an aside about looking into the activities of certain smuggling activities in the south Armagh area.*”<sup>76</sup> Witness 18 stated that this was the first that he became aware that this was an issue causing concern at senior level.<sup>77</sup> He said that he learned subsequently that the Secretary of State for Northern Ireland had directed the action because of comments that had been made by military officers at a dinner about the volume of Lorries crossing the Border at a particular point.<sup>78</sup> He agreed with Counsel for the Tribunal that the Chief Constable told him to “...*contact Chief Superintendent Breen to have all available operational information in operational hands in respect of smuggling activities of a particular individual...*” following which this information would be forwarded to Headquarters for review with a view to considering whether to stage a joint Police/ Customs/ Revenue operation against the smugglers.<sup>79</sup>
- 1.63 Witness 27’s official diary records him attending a meeting of the ‘Chief Officers Group’ at Headquarters in Belfast on Thursday, 16 March 1989 after which he travelled to Armagh via Lisburn and attended a meeting with staff

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<sup>75</sup> Day 30, page 98.

<sup>76</sup> Day 6, page 43.

<sup>77</sup> Day 6, page 44.

<sup>78</sup> Day 6, page 45.

<sup>79</sup> Day 6, page 44.

from 'H' Division and Witness 18, Assistant Chief Constable, Rural East, regarding customs.<sup>80</sup>

- 1.64 There was considerable dispute amongst the RUC witnesses as to when this meeting took place, who attended it, and what transpired.
- 1.65 In relation to when the meeting took place, Superintendent Buchanan's Official Diary provides little guidance. It simply states: "... *Duty in Armagh meeting with ACC [Witness 18] re Slab Murphy.*" Witness 27 stated that he arrived in Armagh at approximately 2.30pm and the meeting commenced at approximately 3pm. He stated that he left the meeting at approximately 5pm.<sup>81</sup> Witness 18, Assistant Chief Constable Rural East, stated that the meeting commenced at 5pm.<sup>82</sup> Witness 6, Staff Officer to Witness 18, stated that the meeting commenced at 5pm. Witness 36 told the Tribunal that the meeting commenced at 2pm. His comment on the evidence of Witness 18 that the meeting commenced at 5pm was "*definitely not.*"<sup>83</sup> Alan Mains, Staff Officer to Chief Superintendent Breen, had no recollection of any meeting in Armagh on 16 March 1989.<sup>84</sup>
- 1.66 In relation to who attended the meeting, Witness 18, Assistant Chief Constable Rural East, stated that the meeting was attended by himself, his Staff Officer, Witness 6, Chief Superintendent Breen and Superintendent Buchanan.<sup>85</sup> He stated that Chief Superintendent Breen's Staff Officer, Alan Mains, came in and out of the meeting from time to time to bring refreshments.<sup>86</sup> He stated that he had no recollection of Witness 36 being at the meeting.<sup>87</sup>

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<sup>80</sup> Day 30, page 97.

<sup>81</sup> Day 30, page 97.

<sup>82</sup> Day 6, page 48.

<sup>83</sup> Day 7, page 19.

<sup>84</sup> Day 9, page 106.

<sup>85</sup> Day 6, page 48.

<sup>86</sup> Day 6, page 49.

<sup>87</sup> Day 6, page 54-55.

- 1.67 Witness 6, Staff Officer to Witness 18, stated that the meeting was attended by himself, Witness 18, Superintendent Buchanan and later by Chief Superintendent Breen. He stated that Chief Superintendent Breen's Staff Officer, Alan Mains, came in and out of the meeting from time to time to bring refreshments.<sup>88</sup> He stated that Witness 36 was not at the meeting and that he had no recollection of any Special Branch officers or military officers attending the meeting.<sup>89</sup>
- 1.68 Witness 39, Deputy Divisional Commander of H Division, told the Tribunal that he attended the meeting on 16 March 1989 and his diary entry for that date confirms that this was the case: "*Administration duty in Armagh. Had visit from the ACC, who held a meeting regarding 'Slab' Murphy's operation in south Armagh.*"<sup>90</sup> He was unclear as to who else attended the meeting.<sup>91</sup> However, he was clear that Superintendent Breen was not there.<sup>92</sup> He was also clear that there were no military personnel present.<sup>93</sup>
- 1.69 Witness 27 stated that the meeting was attended by himself, Chief Superintendent Breen, Superintendent Buchanan and Witness 18, Assistant Chief Constable Rural East.<sup>94</sup> He stated that Chief Superintendent Breen's Staff Officer, Alan Mains, came in and out of the meeting with papers and tea.<sup>95</sup> He stated that he had no recollection of Witness 6 being present and he was adamant that Witness 36 was not there.<sup>96</sup>
- 1.70 Chief Superintendent Breen's Official Diary records him as being on leave on 16 March 1989. Witness 18 was adamant that Chief Superintendent Breen was there:

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<sup>88</sup> Day 6, page 4-5.  
<sup>89</sup> Day 6, page 5.  
<sup>90</sup> Day 69, page 17.  
<sup>91</sup> Day 69, page 18.  
<sup>92</sup> Day 69, page 18-19.  
<sup>93</sup> Day 69, page 31.  
<sup>94</sup> Day 30, page 97.  
<sup>95</sup> Day 30, page 97.  
<sup>96</sup> Day 30, page 99.

*“Well, I don't know whether he wrote that entry by mistake or what he did, but I can tell you he was there because (A) there'd be no point in me speaking to Mr. Buchanan, because it was literally nothing to do with him. I spoke to him simply out of courtesy. And my business was with Mr. Breen. I completed it that day and I didn't see or hear from Mr. Breen from that day until I was told he was dead.”<sup>97</sup>*

1.71 As indicated earlier, Alan Mains, Staff Officer to Chief Superintendent Breen, had no recollection of any meeting in Armagh on 16 March 1989 so he was unable to provide any assistance as to who was present at the meeting.<sup>98</sup>

1.72 The Tribunal did not hear any evidence from any Special Branch Officers or Military Personnel who were present at the meeting.

1.73 In relation to what transpired at the meeting, Witness 18, ACC Rural East, told the Tribunal that he conveyed the Chief Constable's direction to him at the meeting in Armagh on 16 March 1989:

*“...I told Mr. Breen that we wanted any operational intelligence, i.e. from his local people on the ground regarding the movement of a smuggler, to be collated, put together and brought up to Headquarters or sent up to Headquarters...”<sup>99</sup>*

1.74 He stated that he told Chief Superintendent Breen that:

*“.... on no condition was there anybody to go across the border, or that, and I said to him, if you want -- if you are making contact with the Garda across the border, make sure you use the telephone, the secure telephone, and I also said that to Mr. Breen, knowing that Mr. Buchanan would speak to Mr. Breen as he was border Superintendent, and I wanted to make sure that Mr. Breen knew my instructions to the*

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<sup>97</sup> Day 6, page 50.

<sup>98</sup> Day 9, page 106.

<sup>99</sup> Day 6, page 56.

*letter so that he would not go off on his own to get involved in an operational matter that was no concern of his.”<sup>100</sup>*

1.75 This account was corroborated by Witness 6, Staff Officer to Witness 18, who stated:

*“I recall him [Witness 18] -- and he was talking to Mr. Buchanan about not going across the border. Now, if I recall correctly, that was at the very start in relation to -- it was a very informal meeting at that stage, or at any time when I was there, it was informal, and he had a concern about the number of times he was crossing the border and he told him not to go across the border. In relation to the information that he was trying to gather, it was only operational information, i.e. movements of vehicles in and out, movements of cars, etc., and he was adamant that he shouldn't cross the border, I can recall that okay.”<sup>101</sup>*

1.76 Witness 36 was emphatic that no such direction was given:

*“Q. And the ACC [Witness 18], in his evidence here yesterday that you were not present for, he said that he gave a specific direction and extracted an undertaking from the two officers that under no account were they to travel south of the border?*

*A. No, definitely not, I would dispute that.”<sup>102</sup>*

1.77 His evidence was that Witness 18 directed Superintendent Buchanan to arrange a meeting with his Garda counterparts on Monday, 20 March 1989 and to bring Chief Superintendent Breen with him.

*“Q. And how did that decision for a meeting on the Monday come about?*

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<sup>100</sup> Day 6, page 56.  
<sup>101</sup> Day 6, page 8-9.  
<sup>102</sup> Day 7, page 13.

A. *The ACC, Number 18, told Mr. Buchanan to arrange a meeting with his counterparts on Monday and to take Mr. Breen with him and to ring and let Mr. Breen know.*"<sup>103</sup>

....

"Q. *Now, did the Assistant -- can you repeat again for the Tribunal for clarity what exactly did the ACC, Number 18, say to Superintendent Buchanan?*

A. *His exact words I can't recall but it was along the lines "Bob, you ring up and I will arrange a meeting with the guards, and take Mr. Breen with you." He would have called him Harry, "take Harry with you."*

Q. *And did he give any directions as to when this should take place?*

A. *Yeah, it was to take place on the Monday. The Friday was a bank holiday, St. Patrick's Day, and then the weekend.*

Q. *And where was the meeting supposed to take place?*

A. *I assumed Dundalk. There was nothing specifically said, but one assumed that is where it was.*

Q. *Did you hear at any stage the Assistant Commissioner telling Bob Buchanan you are not to go south of the border?*

A. *No, no, definitely not.*"<sup>104</sup>

1.78 Witness 39, Deputy Divisional Commander of H Division, told the Tribunal that he had no recollection of Witness 18 issuing a direction that Chief Superintendent Breen and Superintendent Buchanan were not to cross the Border.<sup>105</sup> He told the Tribunal that any such oral direction would have been contrary to the Order of the Chief Constable dated 15 March 1989.

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<sup>103</sup> Day 7, page 11.

<sup>104</sup> Day 7, page 12-13.

<sup>105</sup> Day 69, page 19.

“Q. *Is it your understanding that any such oral direction, as Witness 18 says he gave, would be contrary to your understanding of the written direction that had come down earlier in the week?*

A. *Oh, yes, yes, indeed.*

Q. *Your understanding was that the written direction would require a face-to-face meeting with the Gardaí?*

A. *Yes.”*<sup>106</sup>

1.79 He was unable to recall whether the meeting came to any firm conclusions as to the next steps that should be taken.<sup>107</sup>

1.80 Witness 27 summarised what happened at the meeting as follows:

*“Well, Harry Breen and I had agreed that we would have the meeting to plan the way forward and that way forward included the cooperation and planning with An Garda Síochána as to the methodology we would use to mount an operation. Also, we had the aerial photographs and the maps and all the general stuff that we do have in planning an operation, and we discussed those as well. We were fully conversant on a day-to-day basis with the topography of the scene of this particular premises, these premises, so we were well briefed on that already. But basically the thing was to get the joint operation moving to organise the meeting with An Garda Síochána and to go down that road.”*<sup>108</sup>

1.81 He was emphatic that a face to face meeting with the Gardaí was necessary:

“Q. *And it was your understanding that a face-to-face meeting with An Garda Síochána was an integral part of that process?*

A. *Absolutely necessary, sir, absolutely necessary.”*<sup>109</sup>

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<sup>106</sup> Day 69, page 20.

<sup>107</sup> Day 69, page 19-20.

<sup>108</sup> Day 30, page 103-104.

<sup>109</sup> Day 30, page 104.

1.82 He stated that the timing of the meeting with the Gardaí was discussed and that by the time he left the meeting it was agreed that the meeting would take place on Monday, 20 March 1989, in Dundalk.

“Q. *And at the meeting on the 16th, was there a discussion of when the meeting with Chief Superintendent Nolan would take place?*

A. *It was discussed and it couldn't have possibly taken place on the Friday because it was St. Patrick's Day, so it was left to Harry whether it was done over the weekend or we agreed that the meeting should take place as early as possible, which was the Monday, but...*

Q. **So when you left the meeting it was your understanding that?**

A. **Harry Breen would make arrangements with the Chief Superintendent in Dundalk.**

Q. **For a meeting to take place on Monday?**

A. **Yes.**

Q. **Were you yourself on leave on St. Patrick's Day?**

A. **I was, I was off.** (Emphasis added)

1.83 Witness 27 totally rejected the evidence of Witness 18 that he, Witness 18, had given Chief Superintendent Breen a direction not to travel south:

“Q. *It has been suggested to the Tribunal by Witness No. 18 in evidence that at that meeting he gave a direction to Chief Superintendent Breen not to travel south across the border, that it wasn't necessary to travel south to meet An Garda Síochána on foot of this request. Do you recall such a direction being given?*

A. *Wholly inaccurate, sir. No such order in my presence was given and I have to say no such order could have been given, given*

*the role that I was detailed by Headquarters, it couldn't have been given.”<sup>110</sup>*

**C. Friday, 17 March 1989**

1.84 Witness 39, Deputy Divisional Commander of H Division, told the Tribunal that Chief Superintendent Breen returned from leave on 17 March 1989. He stated that he briefed him, probably in the morning, on what had transpired at the meeting of 16 March 1989 and that Mr Breen was also provided with the Order that had come down from Headquarters.<sup>111</sup> His diary records that he and Chief Superintendent Breen met with Witness 18, ACC Rural East, in Newry on 17 March 1989.<sup>112</sup> He did not recall the meeting.<sup>113</sup>

1.85 Witness 39 told the Tribunal that he spent the day with Mr Breen and that they discussed the upcoming meeting with the Gardaí in Dundalk over a drink in the office to celebrate St Patrick’s Day. He said that Mr Breen indicated that he was going to have to arrange the meeting and he was not particularly happy about it.

*“Well, it was only when we started talking about this that he certainly seemed a bit down. He just was unhappy about -- whether it was the whole situation or whether it was having to go to Dundalk, I don't know, but he certainly was not in great form.”<sup>114</sup>*

1.86 Witness 39 said that he offered to go to Dundalk with Chief Superintendent Breen but that Mr Breen declined his offer and “... said that he would see Bob Buchanan and get him to go with him.”<sup>115</sup> He said that he did not think that Mr Breen had made any firm arrangements at that stage.<sup>116</sup>

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<sup>110</sup> Day 30, page 104.

<sup>111</sup> Day 69, page 20-21.

<sup>112</sup> Day 69, page 21.

<sup>113</sup> Day 69, page 21.

<sup>114</sup> Day 69, page 22. See also page 23.

<sup>115</sup> Day 69, page 23.

<sup>116</sup> Day 69, page 24.

**D. Saturday/Sunday, 18/19 March 1989**

1.87 Mr Harmon Nesbitt told the Tribunal that he was serving as Duty Officer in Newry Station on Saturday, 18 March 1989 and that Superintendent Buchanan popped into the Station for a chat. Importantly, Mr Nesbitt told the Tribunal that Superintendent Buchanan told him that the RUC was trying to arrange with the Gardaí an operation targeting Thomas 'Slab' Murphy and that he was planning to attend a meeting south of the Border on Monday, 20 March 1989, to discuss the matter.

*"Q. What sort of chat did you have?"*

*A. Usually it was just a general chat ... but **he did mention there was some sort of operation coming up that he would have been trying to arrange with the guards involving 'Slab' Murphy's premises.** But there was no -- from my point of view, it was just a general chat because he wouldn't have -- we normally would chat in general because he wouldn't have involved me in the specific operation because he would have known that whenever the decision was made to either mount an operation, then they would come to me and say, "Look, Harmon, we want to mount this operation, can you do so?" At that stage it would have been just generally chatting about the operation, but nothing -- it was more a conversation in passing about it.*

*Q. No, I understand that. Did he say anything to you about his plans for the following week?*

*A. Well, I knew, if memory serves me right, I knew that Monday he had planned to go down across the border to talk about it.*

*Q. **So, he said to you during the weekend that I plan to go to Dundalk, is that right?***

*A. **Yeah.***

*Q. Did he tell you anything about those plans?*

*A. No.*

- Q. *Did he tell you anything about whether any meeting had been arranged or what status were the plans?*
- A. *I wasn't -- well, other than the fact that he had planned to go down, there was no specific details about when he was going, who he was meeting, or anything else. It was just a general chat about the operation as such.*
- Q. *Did he tell you who was going to be travelling with him to Dundalk?* A. *I don't think he did. He may have, but I can't remember that he did. Although, having said that, Bob was liaison and I don't think Bob would have gone down to discuss an operation per se without having the likes of Harry Breen with him, because Harry would have been the operational command and would be the one who would be making the decision. Bob wouldn't have been making the decision. That was part of his role as the middle man.*
- Q. **Now, you are quite clear that Bob Buchanan told you that weekend that he was going go to Dundalk?**
- A. **Yeah.**
- Q. **And did he say what day of the week he was going to Dundalk?**
- A. **I think he said it was the Monday.**<sup>117</sup> (Emphasis added)

1.88 Mr Nesbitt stated that Mr Buchanan did not tell him that the meeting had been definitely arranged for Monday but rather that he was hoping to travel down on that day:

*“Q. Now, in terms of the nature of the operation that he was going down to discuss, I understand from you that, you know, he was talking in a informal sort of general way about it but you understood that to be the purpose of the visit?*

A. *Yeah.*

Q. *And that the visit was to take place on Monday in his mind?*

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<sup>117</sup> Day 40, page 58-60.

A. Yeah, I think I mean, he was working on that basis but Monday wouldn't have been set in concrete but I think Monday he was hoping to --

Q. He was hoping to do that?

A. Yes.”<sup>118</sup>

1.89 Mr Nesbitt stated that he did not know how many people Superintendent Buchanan had spoken to about his impending visit south of the Border.<sup>119</sup>

### E. The Morning of Monday, 20 March 1989

1.90 Two faxes were sent by the RUC to the Dundalk and Monaghan Garda Stations at 8:55 am and 8:58 am on Monday, 20 March 1989. Both faxes were from Superintendent Buchanan and enclosed the agenda for an upcoming meeting between representatives of the two forces to be held in April 1989. However, it is clear from the dates on the faxes that the documents were in fact prepared on Thursday, 16 March 1989. The faxes did not refer to the meeting to be held on 20 March 1989.<sup>120</sup>

1.91 Alan Mains, Staff Officer to Chief Superintendent Breen, told the Tribunal that he met with Mr Breen “just after 9 o'clock, maybe 9.15” for “probably just over an hour.”<sup>121</sup> He stated that during the course of that meeting Chief Superintendent Breen told him about the dinner in Stormont with the Secretary of State for Northern Ireland. He stated that Mr Breen told him that he had been directed :

*“... to speak with the guards and the army, to come up with some sort of reply for the Chief Constable, Secretary of State, and again, with a strategy in place, to sort of look at it and do something about it.”*<sup>122</sup>

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<sup>118</sup> Day 40, page 73.

<sup>119</sup> Day 40, page 73.

<sup>120</sup> Day 108, page 69-73 and Day 116, page 20-21.

<sup>121</sup> Day 9, page 111.

<sup>122</sup> Day 9, page 110.

1.92 Mr Mains stated that Chief Superintendent Breen was under significant time pressure as

*“...he had been off the previous week. The call-up date, I believe, was the next day, and he had to have the report in, so he was pretty well rushed, as he felt, at that point, to get this report in.”*<sup>123</sup>

He stated that they:

*“... discussed the possibility, and I think if I got back to what I said early on about the description of Mr. Breen, he was very much a guy, a gentleman with manners probably like I have never seen before in any police officer then or since. He felt that because he was requesting that meeting, he had to go down to the guards and not ask the guards to come up to him because it was he that was asking for the meeting.”*<sup>124</sup>

1.93 Mr Mains stated that Chief Superintendent Breen asked him to check with the British Army in Bessbrook Mill the actual number of vehicles that were going in and out of Thomas ‘Slab’ Murphy’s premises. He stated that:

*“... And I remember going out and -- nipping out to make a phone call, and I phoned Bessbrook Mill, and coming back with an answer which, you know, there was nowhere near what was suggested at the meeting with the Secretary of State.”*<sup>125</sup>

1.94 Mr Mains told the Tribunal that while they were talking about Thomas ‘Slab’ Murphy, Chief Superintendent Breen stated that he was concerned that there were members of the Gardaí on Murphy’s payroll and he mentioned Owen Corrigan as a Garda he did not trust adding that he had previously been investigated for his connection with the Provisional IRA.

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<sup>123</sup> Day 9, page 110.

<sup>124</sup> Day 9, page 110.

<sup>125</sup> Day 9, page 112.

*“Q. Did he express any concerns to you prior to travelling south?”*

*A. Yeah, Mr. Breen had mentioned, whilst we were talking about 'Slab' Murphy, that he was concerned that members of the Gardaí were on his payroll. He also mentioned Owen Corrigan as the Detective Sergeant that he didn't trust. He stated that he had been investigated for his connection and involvement with the Provisional IRA previously.*

*Q. How do you recall the name?”*

*A. How do I recall that name?”*

*Q. Yes.*

*A. Well, I have to say, it was sort of news to me for him to be so specific about an officer. I clearly recall it at that time because that's what was said.<sup>126</sup>*

1.95 Mr Mains did not mention Mr Corrigan in any of the statements he made after the fatal shootings and Counsel for the Tribunal queried why this was the case. Mr Mains accepted that this was the case and stated that he had been advised to omit the name in order to protect Mr Corrigan's safety.

*“Q. ... Now, there is no mention of the name of any particular Garda in that statement, and perhaps you'd explain or clarify why that's not the case, since your evidence today is that it was Owen Corrigan that you were referring to, or that, sorry, not you, but that Chief Superintendent Breen was referring to*

*A. Well, first of all, that statement was made on the 22nd. It would have been recorded for what they call a murder investigation. It would have been factually in the sense of sequence of events. I would have been advised, and I would probably, in hindsight, agree with it now in terms of the action that was decided at that time, not to mention Mr. Corrigan for his own, you know, safety. This would have gone before an inquest and it would have*

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<sup>126</sup> Day 9, page 117.

*become public. At that stage, I think we had to do, or the murder investigation team, I assumed, would have been doing their own inquiries into that information, and I didn't feel -- or I was advised not to put it in at that point.*

Q. *Well, presumably you were advised by somebody who knew that you had a name that had been quoted to you by Chief Superintendent Breen?*

A. *Yes.*<sup>127</sup>

1.96 Unsurprisingly, Mr Mains was asked, by Counsel for An Garda Síochána, to identify the person who advised him not to include Mr Corrigan's name in his Statement of 22 March 1989. Notwithstanding the significance of the information, Mr Mains replied that he was unable to do so.

*"Q. Yes, but, as I understand it, you were advised in some form or fashion not to put his name in, is that right, in your first statement?*

A. *Yeah.*

Q. *And who advised you to do that?*

A. *I think, from memory, it was one of the CID police officers, I can't recall the name at this point, but it was somebody, maybe, and I would be speculating at this point to say who it was.*<sup>128</sup>

1.97 Notwithstanding this evidence, on the following day when he was being cross-examined by Counsel for Mr Corrigan, Mr Mains was able to recall, without difficulty, the identity of the CID Officer who gave him this advice. That individual, he said, was Maynard McBurney who was deceased.<sup>129</sup>

1.98 Mr Mains did not mention in any of the statements he made after the fatal shootings the fact that Chief Superintendent Breen had allegedly told him that Mr Corrigan had previously been investigated for his connection and

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<sup>127</sup> Day 9, page 124-125.

<sup>128</sup> Day 9, page 146.

<sup>129</sup> Day 10, page 38-39.

involvement with the Provisional IRA . Mr Mains was asked by Counsel for An Garda Síochána why this was the case:

*“Q. Right. Okay. Now, what you don't say in your first statement is that he told you that this person, Detective Sergeant Corrigan, apparently, had been previously investigated?”*

*A. That's right.*

*Q. Now, why didn't you record that in your first statement?”*

*A. By the fact that I didn't record the person's name, I think was probably obvious why I didn't.”<sup>130</sup>*

1.99 In the Statement dated 22 March 1989, Mr Mains referred to Chief Superintendent Breen having a concern about “*certain garda síochána members*” rather than a garda officer i.e. plural rather than singular. When this was pointed out to him by Counsel for Mr Corrigan, Mr Mains simply replied “*If that's the way it reads, that's the way it reads.*” In light of its importance it is worth setting out the exchange in detail.

*“Q. ... And I just want you to look at the last four lines of the first page of your statement of the 22nd of March, where you say:*

*“Mr. Breen also stated to me that he felt 'Slab' Murphy had contacts within the Garda, and to this end he felt that he could not trust certain Garda Síochána members. To use his own words, he felt that certain members of the Garda were on Murphy's payroll.”*

*Now, isn't it apparent there, Mr. Mains that you're not referring to one individual Garda, but you are referring to Gardai, plural?”*

*A. That is the way the statement reads, and that is what Mr. Breen said, so you know, I can't really comment much more on it.*

*Q. So are we to take it, and is the Chairman to take it, that Chief Superintendent Breen said to you he had concerns about*

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<sup>130</sup> Day 9, page 147.

*members of An Garda Siochana who had contacts with 'Slab' Murphy?*

A. *If that is the way it reads, that is the way it reads.*

Q. *Well, this is important from my client's point of view, Mr. Mains, because the impression I got yesterday was that your evidence was that Chief Superintendent Breen merely identified one Garda, Owen Corrigan, as being a person about whom he had concerns. Am I to take it, and is the Chairman to take it that, in fact, Chief Superintendent Breen expressed concerns about members of An Garda Siochana?*

A. *I think I was clear when I was giving my evidence yesterday that Mr. Breen said that Mr. Corrigan had been investigated, so probably that's the only one that he was aware of, that he could confirm. Had he thought other members of the Garda Siochana were on the payroll, that was a matter for Mr. Breen. As I said already, we didn't go into the conversation in any great detail.*

Q. *But would you agree with me that according to this statement, Mr. Breen was complaining about Gardai plural, not one Garda?*

A. *He made that statement and qualified it by stating Owen Corrigan.*

Q. *OK. I am asking you whether or not the statement you made is correct in asserting that Chief Superintendent Breen expressed concerns about members plural of An Garda Siochana? **Did he express concerns about members --***

A. **Yes.**

Q. *OK. Because I had taken it yesterday that your evidence was that he had just expressed a concern about one, but, in fact, your evidence is he expressed concerns about members and then he went on to particularise my client, is that your evidence?*

A. *That's correct."*<sup>131</sup>

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<sup>131</sup> Day 10, page 34-36.

1.100 Under cross-examination by Counsel for Mr Corrigan, Witness 27 stated that Chief Superintendent Breen did not express any concern on the morning of 20 March 1989, or before, about travelling down to Dundalk because of certain Garda officers.

“Q. *Did Harry Breen mention to you on the day of the murders or on the day before it or in the days before it that he was worried about travelling down to Dundalk because of certain Garda officers?*

A. *Absolutely not. And Harry Breen was my closest colleague. Socially we were close as well. We discussed the whole operation after the supper in my driveway. The only concern he expressed was what I have already outlined to the Tribunal, that it was the wrong time, the wrong place, and there wasn't enough intelligence, accurate intelligence to support it. He expressed no concern whatsoever about meeting with An Garda Síochána or at any other of their stations. Nor during my relationship with him over the years did he ever express such fears.*

Q. *And, sir, if Mr. Breen did have such fears or concerns, do you think he would have shared them with you?*

A. *Well if Harry Breen thought he was driving into the arms of death, he surely would not have asked me to accompany him if he had any fear or belief or suspicion. So absolutely not.”<sup>132</sup>*

1.101 Mr Mains stated that it was originally intended that he would travel to the meeting in Dundalk with Chief Superintendent Breen but that he asked to be excused as he had rugby training that evening. He stated that Chief Superintendent Breen “*was very good about [this]*” and suggested that Superintendent Buchanan might want to go as “*... he was being transferred to Newtownards as the Deputy Divisional Commander, [and] might want to say his cheerios to the guards.*”<sup>133</sup> Mr Mains stated that he telephoned

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<sup>132</sup> Day 30, page 146.

<sup>133</sup> Day 9, page 113.

Superintendent Buchanan, at home,<sup>134</sup> to see whether he was available and “...Mr. Buchanan said that he was happy enough to do that, and they were to meet in Newry prior to going down.”<sup>135</sup>

1.102 Mr Mains did not mention the fact that it had originally been intended that he would travel South instead of Superintendent Buchanan in any of the statements he made after the fatal shootings.

“Q. Yes. Do you agree with me that there is no indication in that statement, which you signed two days after the murders, suggesting that Chief Superintendent Breen asked you to go to Dundalk?”

A. That statement, Mr. Chairman, was taken in relation to the actual -- the murder itself, in reflection, by, obviously -- the statement was made in relation to the murder, so the detail was not, in my opinion, at that stage, important.

Q. I just want to get confirmation. I think you agree with me, but I want to ask you again: Would you agree with me that there is no indication in that statement that you are asked by Chief Superintendent Breen to go with him to Dundalk?

A. Well, you have just read the statement and it is what it says.

Q. And you would agree with me there is no indication in it that he asked you to go to Dundalk?

A. That would be correct, yes.”<sup>136</sup>

1.103 Mr Mains did not mention the fact that Superintendent Buchanan had effectively replaced him in any of the statements he made after the fatal shootings. When this fact was put to Mr Mains by Counsel for An Garda Síochána, Mr Mains stated that “*what relevance would that have been to a statement recorded for a murder inquiry*” and “*I didn’t see the relevance.*”<sup>137</sup>

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<sup>134</sup> Day 9, page 115.

<sup>135</sup> Day 9, page 113.

<sup>136</sup> Day 10, page 26-27.

<sup>137</sup> Day 9, page 133-134.

1.104 Mr Mains also did not mention the fact that he had telephoned Superintendent Buchanan in any of the statements he made after the fatal shootings.

“Q. Now, why did you not include in any of the statements, what you have told the Tribunal today, that you phoned Superintendent Buchanan that morning?

A. Clearly, going back to the time, whenever the investigation team had come to me and asked for a statement, I thought just keep it very factually correct and not put hearsay in, or whatever.

Q. Well, what you do is not hearsay, isn't that correct? You could say, I phoned Superintendent Buchanan to ask him to go down?

A. **On that specific point, it's not hearsay, you are right.**

Q. **Okay. So why is that not in any of the earlier statements?**

A. **The reason for making the statement the way it was, as read out, was to stick to the facts as they were at the time and probably didn't go into the detail behind it, and I think probably at the time, from memory, I was advised just to stick to the facts, you know, as it happened.”**<sup>138</sup>

1.105 Mr Main's account also jars with the statement made by him in the aftermath of the shootings that he was informed by Chief Superintendent Breen that he was going to travel south with Superintendent Buchanan. When this fact was put to Mr Mains by Counsel for An Garda Síochána, Mr Mains accepted that Chief Superintendent Breen did not say that:

“Q. And, in fact, the first statement Mrs. Lavery opened to you said that you were informed by Chief Superintendent Breen that he was going down with Superintendent Buchanan?

A. That was said in the context of what happened that day and not with the detail behind it.

Q. **Well, it's a question of just whether that's accurate. Did Chief Superintendent Breen tell you that he was attending a**

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<sup>138</sup> Day 9, page 135-136.

**meeting in Dundalk that afternoon with the Border Superintendent, Superintendent Buchanan?**

A. **No.**

Q. **He didn't say that?**

A. **No.**"<sup>139</sup>

1.106 Mr Mains also did not mention the fact that he had telephoned Dundalk Station in any of the statements he made after the fatal shootings.

"Q. ... you said you phoned Dundalk Garda Station. Now, would you agree with me again that nowhere in your statement, which was prepared two days after the murders and two days after -- when you allegedly contacted Dundalk Garda Station, is there any reference to you contacting Dundalk Garda Station?

A. No, there is not."<sup>140</sup>

1.107 Mr Mains stated that Chief Superintendent Breen also asked him to arrange the meeting with the Gardaí in Dundalk.

"Q. Did you contact anybody else? Did you make any other phone calls?

A. I remember going out and having to phone Dundalk to see if -- to see if that was -- to see if Harry's opposite number would have been available. From memory, I don't believe that I actually got an answer. I think he either wasn't there or he was out in the car, or something. But **I also recall speaking to a female and just asking, you know, can we check his availability and see what was going on in terms of his diary, and going back into the meeting with Mr. Breen to discuss other issues, and it came back to the smuggling again, and to say, look, I have left a message with Dundalk to say, you know, can the meeting be facilitated that afternoon.**

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<sup>139</sup> Day 9, page 135.

<sup>140</sup> Day 10, page 29.

Q. *What time do you think that was?*

A. *Probably, I feel it was probably before their second cup of tea, and the reason why it becomes important is because everything was, sort of, you know, ten o'clock you got another cup of tea, and I remember clearly doing that before then.*"<sup>141</sup>

1.108 Mr Mains stated that he went for lunch with Chief Superintendent Breen in the staff canteen and before he left for Newry at 12.20/12.30,<sup>142</sup> Mr Breen asked him:

*"...Are you sure you don't want to go down? I can guarantee you you'll be back before the rugby starts that evening." And I said that I, you know, I had made the plans and I didn't go and that was it.*"<sup>143</sup>

1.109 Witness 27 told the Tribunal that Chief Superintendent Breen telephoned him at approximately 9.25am to inform him of the arrangements for the meeting with the Gardaí.<sup>144</sup> His Official Diary records that he spoke with Chief Superintendent Breen "*re customs matter*" on 20 March 1989.<sup>145</sup> He stated that the plan was that he, Chief Superintendent Breen and Superintendent Buchanan would attend the meeting and that they would meet in Newry and travel onwards to Dundalk.<sup>146</sup> He stated that "two minutes" after this telephone conversation he learned that he had to attend a Brigade Conference with the British Army in his capacity as Acting Assistant Chief Constable.<sup>147</sup> His attendance at this Brigade Conference is recorded in his Official Diary.<sup>148</sup> These meetings were held on a monthly basis on Fridays and "*reviewed all the previous month's activities in the Border Zone, addressed problematic areas and planned for the coming month strategically and tactically.*"<sup>149</sup> He stated that he did not know why the meeting was

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<sup>141</sup> Day 9, page 113-114.

<sup>142</sup> Day 9, page 145.

<sup>143</sup> Day 9, page 113-117.

<sup>144</sup> Day 30, page 107.

<sup>145</sup> Day 30, page 106.

<sup>146</sup> Day 30, page 107-108.

<sup>147</sup> Day 30, page 107.

<sup>148</sup> Day 30, page 106.

<sup>149</sup> Day 30, page 108.

rescheduled for a Monday but speculated that it was “*probably an operational issue to do with the military.*”<sup>150</sup> He stated that he telephoned Chief Superintendent Breen “*two minutes*” after this conversation and told him that if he, Witness 27, was not in Newry by either 12.45/1.45, he could not remember which, they were to travel on to Dundalk without him.<sup>151</sup> He told the Tribunal that the Brigade Conference did not finish until 1.20pm and as a result he did not attend the meeting in Dundalk.<sup>152</sup>

1.110 Alan Mains was also asked to comment on this evidence and attempted to cast doubt upon it, notwithstanding the fact that it was corroborated by the contemporaneous journal entry:

“Q ... another witness, whom I don't want to refer to by name, but he is Witness 27, and you would know him as the Chief Superintendent and Deputy to the ACC border zone, he will say that, on that day, Harry Breen rang him at twenty-five past nine to tell him that arrangements had been made to travel to Dundalk, leaving Newry at 11:45, and the Chief Superintendent agreed to meet him and Bob Buchanan at Newry station. However, in the absence of the Assistant Chief Constable, the Deputy became involved in the monthly brigade meeting which had been brought forward to the 20th March, and, at twenty-nine minutes past nine, the Chief Superintendent rang Harry Breen to tell him of this development, and he wasn't able to attend at the time. Do you recall any of that?

A. I think maybe the best way to describe what I have just listened to is that -- I mean, it's very easy for me to say that, no, I have no recollection of that. It's equally important to stress, had that have been the case, I think I would have been made aware of it.”<sup>153</sup>

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<sup>150</sup> Day 30, page 108.

<sup>151</sup> Day 30, page 107.

<sup>152</sup> Day 30, page 107-108.

<sup>153</sup> Day 9, page 1114-115.

1.111 A Redacted Witness Statement dated 24 April 2007 ‘HMG 205’ prepared by the person who was Chief Superintendent Breen’s typist states that “just prior to lunch Mr Breen came into my office and said “[redacted] I am going to see our friends across the Border; I will see you tomorrow.””

1.112 Witness 33, Chief Inspector and Deputy Sub Divisional Commander in Newry, told the Tribunal that Superintendent Buchanan called into his office in Newry Station at approximately 1.30pm.<sup>154</sup> He stated that Superintendent Buchanan told him that he was to meet Chief Superintendent Breen in the car park and that they were both travelling to a meeting in Dundalk.<sup>155</sup> He stated that Superintendent Buchanan did not indicate what the purpose of the meeting was but the impression he formed was that it was just a routine meeting.<sup>156</sup> He stated that Superintendent Buchanan asked him whether he would like to come to Dundalk as well.<sup>157</sup> Witness 33 stated that he told Mr Buchanan that he was unable to go as he was tied up with other duties.<sup>158</sup> He stated that they then left his office and met Witness 50, the Sub Divisional Commander in the corridor and that Superintendent Buchanan asked Witness 50 whether he would like to come to Dundalk. He stated that Witness 50 was unable to go as well.<sup>159</sup> He stated that he did not see Chief Superintendent Breen.<sup>160</sup>

1.113 Witness 50 did not give evidence to the Tribunal.

1.114 An RUC Report, drawn up after the murders, which was read into the record on Day 13 of the Public Sitings states inter alia:

*“At Newry RUC Station both Officers [Breen and Buchanan] spoke to the SDC [Witness 50]. They invited him to join them on their visit to Dundalk. Superintendent [Witness 50] declined due to other duty commitments. At approximately 1.40pm Chief Superintendent Breen*

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<sup>154</sup> Day 35, page 8 and page 11.

<sup>155</sup> Day 35, page 10.

<sup>156</sup> Day 35, page 9.

<sup>157</sup> Day 35, page 9.

<sup>158</sup> Day 35, page 9.

<sup>159</sup> Day 35, page 9.

<sup>160</sup> Day 35, page 10.

*and Superintendent Buchanan left Newry Station en route to Dundalk.”<sup>161</sup>*

1.115 Witness 64, Detective Inspector, Special Branch, Newry Station, told the Tribunal that he was working on 20 March 1989 and that at some point that morning he became aware that there was to be a meeting in Dundalk that afternoon.

*“Q. And that you were working between Gough Barracks and RUC station in Newry?*

*A. Yes.*

*Q. Did you speak to either Bob Buchanan or Harry Breen that morning?*

*A. I recall that I had spoken to someone that morning, I'm not sure exactly who, but I did have it in my mind that there was a meeting arranged in Dundalk.*

*Q. So, on the morning of the 20th, you were aware that there was going to be, at the very least, contact between the RUC and the guards, is that right?*

*A. Yes, yes.*

*Q. And that meeting was going to take place in Dundalk?*

*A. Yes.”<sup>162</sup>*

...

*“A. As I say, I'm sure one of them [Breen and Buchanan], but who, I can't honestly remember. It is 20-odd years ago.*

*Q. Of course it is.*

*A. But some one of them did say to me at some stage, and again, I can't say if it was that morning or a week earlier, but I was asked if I had any issues that I would like raised at a forthcoming meeting. Again, I don't think the question was time-specific.*

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<sup>161</sup> Day 13, page 22. This excerpt is located on page 2 of the actual report.  
<sup>162</sup> Day 53, page 2-3.

- Q. *Do you recollect was this a telephone conversation or was it an actual in-person conversation?*
- A. *I think it was probably an in-person, but again, I can't be 100 percent sure, but I think it was more likely in passing, "Have you anything that we can raise on your behalf?"*
- Q. *But I think it is fair to say that it wasn't a matter of just discovering it that morning; that, in fact, it had been a matter of some discussion during the course of the previous week?*
- A. *I'm sorry, I can't say that. It could have been that morning that I was asked the question. I honestly can't recall when exactly it was. As I say, it is quite a considerable period of time ago.*
- Q. *And on that particular day, were you in Newry or had you...*
- A. *I commenced duty, I had gone to Newry in the morning, and, yes, was travelling, then, from Newry to Armagh, to Gough Barracks, to attend a normal management meeting.*
- Q. *And so, therefore, you must have learned of it, I presume, in Newry, either that day or the previous days?*
- A. *Yes, it would have been in Newry I would have heard it at some time.*"<sup>163</sup>

## **F. Conclusion**

1.116 It is clear that:

- a. Mr Breen was telling people on Friday, 17 March 1989, that he was travelling to Dundalk on Monday, 16 March 1989 as per Witness 39
- b. Mr Breen was telling people on Saturday, 18 March 1989, that he was travelling to Dundalk on Monday, 16 March 1989 as per Harmon Nesbit
- c. Other people were aware in the morning of Monday, 16 March 1989 that they were travelling to Dundalk, as per Witness 64 (Newry) and Witness 27 (Dromad Barracks, Armagh) and Alan Mains (Gough Barracks, Armagh)

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<sup>163</sup> Day 53, page 15.

- d. Other people were aware at various points in the afternoon of Monday, 16 March 1989 that they were travelling to Dundalk, as per Witness 33, the Redacted Statement of the Typist, Witness 50,

1.117 Consequently it is clear that a lot of people in different places on the RUC side knew about the meeting well in advance of the actual meeting on Monday, 20 March 1989. This is relevant to the suggestion that the leak came from the RUC side.

## Chapter 3 Events in the South prior to the murders

### A Events leading up to the meeting

1.118 Garda George Flynn was working in the District Office on the morning of 20 March 1989.<sup>164</sup> He had started work at 9.15am. At 9.20am he received a telephone call from Superintendent Buchanan. He knew the Superintendent well.<sup>165</sup> After exchanging pleasantries, Superintendent Buchanan asked to speak to Superintendent Tierney and when Garda Flynn told him that Superintendent Tierney was not in the station, he left a message for Superintendent Tierney to return his call. Superintendent Buchanan did not ask to speak to anybody else nor did he make any reference to his forthcoming visit.<sup>166</sup> Garda Flynn told the Tribunal that he passed Superintendent Buchanan's message on to Superintendent Tierney. Garda Flynn did not recall discussing the call with anybody else. He said that he did not think he would have as it was just a routine call with nothing special about it.<sup>167</sup> Superintendent Buchanan telephoned the Station regularly. He said that this conversation did not take place on a secure line.<sup>168</sup>

1.119 Sergeant Vincent Rowan was also working in the District Office on the morning of 20 March 1989.<sup>169</sup> He said that he did not recall Garda Flynn receiving a telephone call from Superintendent Buchanan.<sup>170</sup> He said that he was surprised that Garda Flynn had not told him about the call since he was Garda Flynn's sergeant and the person who normally dealt with cross-border communications.<sup>171</sup> However, he said that Superintendent Buchanan was a regular visitor to the Station and that there was nothing unusual about him turning up.<sup>172</sup>

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<sup>164</sup> Day 8, page 5.

<sup>165</sup> Day 8, page 5.

<sup>166</sup> Day 8, page 6.

<sup>167</sup> Day 8, page 7.

<sup>168</sup> Day 8, page 7.

<sup>169</sup> Day 11, page 2.

<sup>170</sup> Day 11, page 2.

<sup>171</sup> Day 11, page 2.

<sup>172</sup> Day 11, page 3.

- 1.120 Garda Jim Dolan was also working in the District Office on the morning of 20 March 1989.<sup>173</sup> He said that if a phone call came in it would be taken by Sergeant Rowan or Garda Flynn.<sup>174</sup>
- 1.121 Garda Mary Clarke was also working in the District Office on the morning of 20 March 1989.<sup>175</sup> She was an Assistant Clerk at the time. She said that if a call came in for the Superintendent and he was not there it would go first to Sergeant Rowan.<sup>176</sup>
- 1.122 Kathleen Freeman was a civilian administrator who worked in the District Office. She told the Tribunal that she was not working on 20 March 1989 because she was on maternity leave.<sup>177</sup>
- 1.123 Superintendent Pat Tierney told the Tribunal that he arrived at work at approximately 9.30am on the morning of 20 March 1989.<sup>178</sup> When he arrived, Garda George Flynn told him that Superintendent Buchanan had telephoned the Station looking for him and asked that he return the call. Superintendent Tierney rang Armagh Station and the line got disconnected. He said that he tried again and eventually got through. Superintendent Buchanan was not there and he left a message for Superintendent Buchanan to return his call. He said that Superintendent Buchanan rang back a couple of minutes later.<sup>179</sup> This was a couple of minutes after 10am.<sup>180</sup> Superintendent Buchanan informed him that he was being transferred from his Border duties on the 17 April 1989 and after a brief conversation about this issue, Superintendent Buchanan told him that he wanted to arrange a meeting between Chief Superintendent Breen and Chief Superintendent Nolan. Superintendent Tierney told the Tribunal that he suggested that Superintendent Buchanan telephone Chief Superintendent Nolan directly as he could not make

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<sup>173</sup> Day 23, page 64.

<sup>174</sup> Day 23, page 69.

<sup>175</sup> Day 23, page 49.

<sup>176</sup> Day 23, page 50.

<sup>177</sup> Day 19, pages 63 – 64.

<sup>178</sup> Day 8, page 25.

<sup>179</sup> Day 8, page 25.

<sup>180</sup> Day 8, page 42.

arrangements for Chief Superintendent Nolan.<sup>181</sup> He said that Superintendent Buchanan did not make any reference to when he wanted to meet Chief Superintendent Nolan.<sup>182</sup> He also said that Superintendent Buchanan did not make reference to the content of the proposed meeting.<sup>183</sup> He said that this telephone conversation took place on an open line.<sup>184</sup>

1.124 Chief Superintendent John Nolan told the Tribunal that he received a telephone call from Superintendent Buchanan on his direct open line at 10.15am on the morning of 20 March 1989.<sup>185</sup> After a brief exchange of pleasantries during which Superintendent Buchanan told him that he was being transferred to Newtownards in April 1989, Superintendent Buchanan indicated that he and Chief Superintendent Breen wished to meet with him. Chief Superintendent Nolan speculated that Superintendent Buchanan must have left the date open because he recalled saying that he was not available on Tuesday or Wednesday of that week and he recalled Superintendent Buchanan said that it suited them to come down at 2pm later that day.<sup>186</sup>

1.125 Chief Superintendent Nolan told the Tribunal that RUC Document 'HMG 50' could not be correct when it stated that he rang Chief Superintendent Breen at 10.30am as he had no telephone conversation with Chief Superintendent Breen that day nor did he ring anyone; it was he who received the call.<sup>187</sup>

1.126 Chief Superintendent Nolan told the Tribunal that he met with Inspector Frank Murray at 11am. He could not recall whether they met in his office or in the District Office. He speculated that it was probably the District Office or the tea room because he recalled that Inspector Murray was having coffee at the time.<sup>188</sup> He told Inspector Murray about the forthcoming meeting. He said

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<sup>181</sup> Day 8, page 25-26.

<sup>182</sup> Day 8, page 28.

<sup>183</sup> Day 8, page 42.

<sup>184</sup> Day 8, page 50.

<sup>185</sup> Day 9, page 25.

<sup>186</sup> Day 9, page 25.

<sup>187</sup> Day 9, page 27.

<sup>188</sup> Day 9, page 30.

that he did so because Inspector Murray was Superintendent Buchanan's opposite number in Dundalk.<sup>189</sup>

1.127 In his Statement to Assistant Commissioner O'Dea in March 1989, Inspector Murray stated that at 11am he went to the District Office for a cup of tea and that Chief Superintendent Nolan informed him that Chief Superintendent Breen and Superintendent Buchanan were coming down to see him at 2pm later that day. At the time this conversation was taking place, Inspector Murray's statement stated that Superintendent Tierney, Sergeant Vincent Rowan, Garda George Flynn, Garda Jim Dolan and Garda Mary Clarke were also present.

1.128 Chief Superintendent Nolan told the Tribunal that this accorded with his recollection.<sup>190</sup> He said that he could not remember why he did not tell Superintendent Tierney about the meeting as he was Murray's superior officer. He speculated that it was because Superintendent Tierney might have been speaking to somebody else at the time and he did not want to interrupt their conversation.<sup>191</sup> When asked might others have overheard his conversation with Murray, Chief Superintendent Nolan said that he doubted that very much as it was a large room and that there were probably a number of conversations in progress at the time.<sup>192</sup> In his statement, Inspector Murray stated that *"the others present were not aware of what the Chief said to me."*<sup>193</sup>

1.129 Garda George Flynn was not asked about his recollection of the 11am tea break. Superintendent Tierney was also not asked about his recollection of the 11am tea break. He did not mention it in his statement to Assistant Commissioner O'Dea.<sup>194</sup> Sergeant Rowan was also not asked about his recollection of the 11am tea break.<sup>195</sup> Garda Jim Dolan said that he did not

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<sup>189</sup> Day 9, page 30.

<sup>190</sup> Day 9, page 32.

<sup>191</sup> Day 9, page 32.

<sup>192</sup> Day 9, page 32.

<sup>193</sup> Day 9, page 32.

<sup>194</sup> Day 8, page 39

<sup>195</sup> Day 11.

engage in “*idle chitchat*” at tea time. He said that there was certain decorum whereby work matters were not discussed during breaks.<sup>196</sup> Garda Mary Clarke said that they had a tea break every morning at 11am. While she did not recall the tea break on 20 March 1989 she had no reason to think that it did not take place.<sup>197</sup> She said that while some times Chief Superintendent Nolan joined them, usually he had his tea in his office.<sup>198</sup> She said that she did not recall hearing any discussion about Chief Superintendent Breen or Superintendent Buchanan’s impending visit during her tea break.<sup>199</sup>

1.130 Chief Superintendent Nolan told the Tribunal that he did not tell anybody else about the forthcoming meeting.<sup>200</sup>

1.131 Superintendent Tierney remained in the Station until approximately 11.30am at which time he went out on a security check along the Border with Inspector Murray. He said that at approximately 1.40pm when they were on the way back to the Station; Inspector Murray mentioned to him that Superintendent Buchanan and Chief Superintendent Breen were coming to the Station that afternoon. He said that this was the first that he heard about the visit.<sup>201</sup> He said that he thought that Inspector Murray had been told earlier that morning by Chief Superintendent Nolan that the officers were coming. Chief Superintendent Nolan had not said anything to him about the meeting.<sup>202</sup>

## **B Arrival of the RUC Officers, the meeting with Chief Superintendent Nolan and their departure**

1.132 Chief Superintendent Nolan said that after his conversation with Inspector Murray he went back to his office and remained there until approximately 2pm when he telephoned the Public Office in the Station and told the Garda who

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<sup>196</sup> Day 23, page 68.

<sup>197</sup> Day 23, page 53.

<sup>198</sup> Day 23, page 54.

<sup>199</sup> Day 23, page 58.

<sup>200</sup> Day 9, page 33.

<sup>201</sup> Day 4, page 28.

<sup>202</sup> Day 4, page 29.

answered the phone that he was expecting two visitors that were to be brought straight up to his office.<sup>203</sup> He said that he did not tell the Garda who the visitors were.

1.133 Garda David Sheridan was the Garda who received Chief Superintendent Nolan's call.<sup>204</sup> He said that he was in the Day Room/Public Office when he received the call and that Chief Superintendent Nolan told him *"that he had two visitors calling to the station and that they were to be shown to his office."*<sup>205</sup> He said that he did not recall it being mentioned that the visitors were RUC Officers.<sup>206</sup> Garda Sheridan told the Tribunal that he passed this message on to Garda Seamus Nolan who was due to take up the position of Station Orderly at 2pm.<sup>207</sup>

1.134 Garda Seamus Nolan told the Tribunal that Garda Sheridan told him that Chief Superintendent Nolan was expecting two visitors who were to be shown directly up to his office. He said that he could not recall if he was told at what time the visitors were due but he thought that they were due at 2pm.<sup>208</sup> He said that the fact that they were RUC men was not mentioned.<sup>209</sup>

1.135 Garda Vincent Jackson told the Tribunal that he met the two men on the front steps of the Station. He said that he had never seen the men before although he presumed that they were members of the RUC because they were very well dressed and RUC men *"cut a certain dash when you saw them about the station."*<sup>210</sup> He said that he was chatting to Garda Kevin Forde at the time.<sup>211</sup> He had just finished his shift. He thought that this was about 2pm/2.05pm although he accepted that it could have been 10 to 15 minutes later.<sup>212</sup> Garda Jackson stated that he did not see Sergeant Leo Colton on the steps.

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<sup>203</sup> Day 9, page 36.  
<sup>204</sup> Day 10, page 78.  
<sup>205</sup> Day 10, page 78.  
<sup>206</sup> Day 10, page 88.  
<sup>207</sup> Day 10, page 80.  
<sup>208</sup> Day 9, page 13.  
<sup>209</sup> Day 9, page 2-3.  
<sup>210</sup> Day 15, page 36.  
<sup>211</sup> Day 15, page 35.  
<sup>212</sup> Day 15, page 36.

*“Q. Did you - do you recall seeing Sergeant Leo Colton on the steps of the station during that period that you were there?”*

*A. No.”*<sup>213</sup>

1.136 Garda Matthew O’Reilly said that he was in the Parade Room sometime between 2.10pm and 2.20pm when he saw two men walk through the Parade Room. He did not know who they were.<sup>214</sup>

1.137 Garda Seamus Nolan said that the two men arrived at the Station at approximately 2.20pm – 2.25pm.<sup>215</sup> Garda Nolan said that they were dressed in suits.<sup>216</sup> Garda Nolan said that he brought the men up the stairs to Chief Superintendent Nolan’s office.<sup>217</sup> Garda John McKeown told the Tribunal that he saw the legs of two men going up the stairs. He had no idea who the men were.<sup>218</sup> Garda Ann McMorrow told the Tribunal that she was on duty in the Radio Control Room from 2pm to 10pm on 20 March 1989. In her statement after the shootings, she stated that at 2:25 pm she was in the corridor outside the Communication Room door when she saw two men at the bottom of the stairs, one of whom she knew to be Superintendent Buchanan.<sup>219</sup> In her evidence she was unable to remember this.<sup>220</sup>

1.138 Mr Colton stated that he came on duty at 2pm on 20 March 1989.<sup>221</sup> He stated that he did not see the two RUC officers. He stated that at about 2.20/2.25pm he was standing on the front steps of the Garda station when he observed a grey cavalier car behave suspiciously. It entered the forecourt and drove slowly past the front of the station and then left.<sup>222</sup>

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<sup>213</sup> Day 15, page 37.

<sup>214</sup><sup>214</sup> Day 16, page 66 to 68.

<sup>215</sup> Day 9, page 7.

<sup>216</sup> Day 9, page 4.

<sup>217</sup> Day 9, page 4.

<sup>218</sup> Day 11, page 25.

<sup>219</sup> Day 15, page 6.

<sup>220</sup> Day 15, page 6.

<sup>221</sup> Day 18, page 87.

<sup>222</sup> Day 18, page 97.

- 1.139 Garda Sheridan said that he saw the two men in the hall way.<sup>223</sup> Garda Tom Molloy said that he came out of his office at 2.15pm and he saw the two men on the landing. He did not know their names but he had seen them before and knew that they were members of the RUC.<sup>224</sup> He said that he said 'hello' and carried on down the stairs.<sup>225</sup> Garda Laurence Crowe also told the Tribunal he saw the two men on the landing after lunch.<sup>226</sup>
- 1.140 Garda Josephine Fitzsimons told the Tribunal that she worked in Detective Superintendent Connolly's office and that she thought at approximately 2.20pm, although she accepted that it was possible it was perhaps an hour later,<sup>227</sup> Superintendent Buchanan "*put his head into the office*" inquiring for Superintendent Connolly and when he ascertained that he was not there he left immediately.<sup>228</sup> She knew Superintendent Buchanan from his previous visits to the Station.<sup>229</sup>
- 1.141 Garda Val Smith was a probationary garda in 1989. As part of his training he had meetings with the Chief Superintendent every six months. He had one of these meetings on 20 March 1989 at 2pm. He said that he arrived at Chief Superintendent Nolan's office shortly after 2pm. The meeting lasted ten minutes and he told the Tribunal that as he left the office two men went in.<sup>230</sup> This was at approximately 2.15pm.<sup>231</sup> Garda Smith told the Tribunal that Chief Superintendent Nolan had told him that he was expecting two visitors from the North but that he did not say whether they were civilians or RUC men.<sup>232</sup>

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<sup>223</sup> Day 10, page 88.

<sup>224</sup> Day 16, page 39.

<sup>225</sup> Day 16, page 39.

<sup>226</sup> Day 18, page 66.

<sup>227</sup> Day 10, page 72.

<sup>228</sup> Day 10, page 69-70.

<sup>229</sup> Day 10, page 70.

<sup>230</sup> Day 10, page 101. Garda Smith made no reference to meeting the two men in his statement to Assistant Commissioner O'Dea or in his statement to Detective Superintendent Tom Connolly. He said that he did not know why he did not mention this to Assistant Commissioner O'Dea or Detective Superintendent Tom Connolly. Day 10, page 105.

<sup>231</sup> Day 10, page 108.

<sup>232</sup> Day 10, page 107.

1.142 Chief Superintendent Nolan told the Tribunal that his recollection was that the meeting started between 2.15pm and 2.20pm.<sup>233</sup> He said that there was a gap of between 5 and 10 minutes between his meeting with Garda Smith and the arrival of the two men.<sup>234</sup> He said that the two men were brought up by a garda, who he subsequently learned was Garda Seamus Nolan.<sup>235</sup> Chief Superintendent Nolan told the Tribunal that RUC Document ‘HMG 50’ could not be correct when it stated that the meeting at 2pm was attended by Superintendent Tierney.<sup>236</sup>

1.143 Chief Superintendent Nolan said that shortly after the two men arrived, he telephoned the District Office and asked Sergeant Vincent Rowan to bring in some tea and biscuits for his visitors.<sup>237</sup> This arrived at around 2.25pm.

1.144 Sergeant Vincent Rowan said that he received the instruction to make the tea from Superintendent Tierney.<sup>238</sup> He said that at that time Chief Superintendent Nolan did not have any divisional staff so he was assisting him with his paperwork and administration.<sup>239</sup> He said that he went downstairs to the kitchen to make the tea. At this stage he had no idea who the visitors were.<sup>240</sup> Garda Jim Dolan told the Tribunal that he saw tea being prepared at approximately 2.30pm. He said that he could not remember who took the tea from the office.<sup>241</sup>

1.145 Garda Mary Clarke told the Tribunal that she saw Vincent Rowan carrying a tea tray in the direction of Chief Superintendent Nolan’s Office. She said that she asked who the tea was for and Sergeant Rowan replied “*Superintendent Buchanan and Chief Superintendent Harry Breen.*”<sup>242</sup>

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<sup>233</sup> Day 9, page 29.

<sup>234</sup> Day 9, page 39.

<sup>235</sup> Day 9, page 39.

<sup>236</sup> Day 9, page 29.

<sup>237</sup> Day 9, page 55.

<sup>238</sup> Day 11, page 3.

<sup>239</sup> Day 11, page 3-4.

<sup>240</sup> Day 11, page 4.

<sup>241</sup> Day 23, page 64.

<sup>242</sup> Day 23, page 55.

1.146 When Sergeant Vincent Rowan went in he saw the two men and he recognised them from previous meetings. He said that he congratulated Superintendent Buchanan on his transfer as “*somebody had told me he was being transferred or moved to Armagh.*”<sup>243</sup> Sergeant Rowan could not recall who told him that Superintendent was being transferred. He said it was “*definitely*” somebody in the District Office. He speculated that it might have been Garda George Flynn, Inspector Murray, Superintendent Tierney or even Chief Superintendent Nolan.<sup>244</sup> He later narrowed it down to Inspector Murray.<sup>245</sup>

1.147 Chief Superintendent Nolan told the Tribunal that the purpose of the meeting was not to discuss a potential police/army operation. He said that they discussed the movement of trucks in and out of a particular premises and specific incidents of smuggling.<sup>246</sup> He said that he told Breen and Buchanan that anti-smuggling operations were a matter for the Customs & Excise service rather than the Gardaí and that he would contact the Customs & Excise about the matter.<sup>247</sup> He said that before the meeting finished, Chief Superintendent Breen asked whether he and Superintendent Tierney would be willing to attend a meeting in Armagh in April and he indicated that they would.<sup>248</sup>

1.148 Chief Superintendent Nolan said that at some point towards the end of the meeting Superintendent Buchanan left the room for approximately five minutes to talk to some garda colleagues.<sup>249</sup> Initially, he stated that he did not know whether he met Superintendent Tierney or Inspector Murray<sup>250</sup> but later he stated that it was Superintendent Tierney he left the meeting to meet.<sup>251</sup>

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<sup>243</sup> Day 11, page 5.  
<sup>244</sup> Day 11, page 5-6.  
<sup>245</sup> Day 11, page 6.  
<sup>246</sup> Day 9, page 55.  
<sup>247</sup> Day 9, page 56.  
<sup>248</sup> Day 9, page 56.  
<sup>249</sup> Day 9, page 56.  
<sup>250</sup> Day 9, page 56.  
<sup>251</sup> Day 9, page 98..

1.149 In the Statement which he made to Assistant Commissioner O’Dea, Inspector Frank Murray said that he met Superintendent Buchanan in the corridor at approximately 3.10pm and they had a brief chat before Superintendent Buchanan continued on to Superintendent Tierney’s office.<sup>252</sup> Superintendent Tierney told the Tribunal that at approximately 3pm Superintendent Buchanan came into his office.<sup>253</sup> He said that Detective Superintendent Connolly also came in. Detective Superintendent Connolly agreed. He told the Tribunal that he was passing Superintendent Tierney’s office at approximately 3.10pm and saw Superintendent Buchanan so he decided to pop in.<sup>254</sup> Superintendent Tierney said that Superintendent Buchanan only visited for a couple of minutes. It was “*not a lot more than ‘hello.’*” He said that Superintendent Buchanan mentioned his forthcoming transfer and stated that he was “*a very happy man that he was going on transfer.*”<sup>255</sup> Detective Superintendent Connolly agreed that the conversation was very short and centred on Superintendent Buchanan’s transfer.<sup>256</sup>

1.150 Chief Superintendent Nolan said that he could not remember what he and Chief Superintendent Breen spoke about while Superintendent Buchanan was absent although he speculated *that “there was maybe an element of small talk.”*<sup>257</sup> He said that they left at approximately 3.15pm.<sup>258</sup> He stated that he did not discuss their travel arrangements at the meeting.<sup>259</sup>

1.151 Garda Mary Clarke told the Tribunal that she thought that she may have seen the two men on the landing when they were leaving.<sup>260</sup> Garda Seamus Nolan said that he did not see them leave the Station.<sup>261</sup>

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<sup>252</sup> Day 11, page 36. (This statement was read into the record on Day 11)

<sup>253</sup> Day 8, page 30.

<sup>254</sup> Day 16, page 8.

<sup>255</sup> Day 8, page 31. He also said on the same page of the transcript that Superintendent Buchanan was “in a joyous mood. He was delighted.”

<sup>256</sup> Day 16, page 10.

<sup>257</sup> Day 9, page 56.

<sup>258</sup> Day 9, page 29 & 81.

<sup>259</sup> Day 9, page 81.

<sup>260</sup> Day 23, page 59.

<sup>261</sup> Day 9, page 5.

1.152 The other Garda officers and civilian personnel who were asked, stated that they were neither aware of the impending visit of the two RUC Officers nor their presence in the Station.

1.153 Garda Jim Green told the Tribunal that he was on duty from 6am to 2pm. He stated that he did not see any visitors.<sup>262</sup> Garda Jim Lane stated that he was on duty from 9am to 6pm. He stated that he left for Dublin with Garda James Boyle at 1.45pm. He stated that he was not aware that the two RUC officers were visiting the station.<sup>263</sup> Sergeant Thomas Brady told the Tribunal that he was the acting sergeant in charge of Dundalk Station on 20 March 1989 from 9am to 2pm at which time he took over charge of 'Unit A.' He stated that he finished duty at 10pm. He told the Tribunal that he did not see the two RUC officers. When it was put to him that he had stated in his Tribunal Statement that he had met them he indicated that the latter was an error due to his mixing up his dates.<sup>264</sup>

1.154 Garda Joe Flanagan told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989 and that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>265</sup> Garda Michael Johnson told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989. He stated that he had no recollection of seeing the two RUC officers.<sup>266</sup> Garda Errol Boyle told the Tribunal that he was on duty from 9am to 5pm on 20 March 1989 and that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>267</sup> Garda Tom Mulpeter told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989 and that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>268</sup>

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<sup>262</sup> Day 11, page 59.

<sup>263</sup> Day 12, page 7.

<sup>264</sup> Day 11, page 49.

<sup>265</sup> Day 12, page 30.

<sup>266</sup> Day 12, page 55.

<sup>267</sup> Day 12, pages 77-78.

<sup>268</sup> Day 14, page 64.

- 1.155 Nora Burns told the Tribunal that she was working in the Sergeants Office from 9.15am to 5.30pm on 20 March 1989 and that she had no recollection of seeing the two RUC Officers or of being aware that they were expected.<sup>269</sup> Detective Garda John Gerard O'Connor told the Tribunal that he was on duty from 9am to 5pm and that he did not see the RUC officers or their car.<sup>270</sup> Garda John Daly told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989 and that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>271</sup>
- 1.156 Garda Joe Whelan told the Tribunal that he was Station Orderly from 6am to 2pm on 20 March 1989.<sup>272</sup> He stated that he had no recollection of seeing the two RUC officers.<sup>273</sup> Garda Donal Smyth told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989.<sup>274</sup> He gave no evidence that he was aware the RUC men were coming.
- 1.157 Garda Harry Murtagh was a clerk in the Sergeants Office. He told the Tribunal he worked from 3pm to 11pm on 20 March 1989.<sup>275</sup> He stated that he did not see the RUC Officers.<sup>276</sup> Detective Garda James Boyle told the Tribunal he came on duty at 9/9.30am on 20 March 1989.<sup>277</sup> He stated that he was in Dublin with Detective Garda Jim Lane from 1.45pm to 6pm.<sup>278</sup> He stated that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>279</sup>

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<sup>269</sup> Day 15, page 22.  
<sup>270</sup> Day 15, page 70-71.  
<sup>271</sup> Day 16, pages 50-51.  
<sup>272</sup> Day 17 (13 July 2011) at 80.  
<sup>273</sup> Day 17, page 77.  
<sup>274</sup> Day 23 (22 July 2011) at 76.  
<sup>275</sup> Day 21 (20 July 2011) at 43.  
<sup>276</sup> Day 21 (20 July 2011) at 40.  
<sup>277</sup> Day 23 (22 July 2011) at 36.  
<sup>278</sup> Day 23 (22 July 2011) at 37.  
<sup>279</sup> Day 23, page 37.

1.158 Mr Finbarr Hickey stated that he had no knowledge of the two RUC men visiting the station and he believes that he was not working on 20 March 1989.

1.159 Mr Corrigan stated that he worked from 8am-4pm. He stated that he was not aware of any meeting between Chief Superintendent Nolan and members of the RUC on that day and he did not see the two RUC officers.<sup>280</sup> He stated that he was not aware of the two men's presence in the Station on 20 March 1989.<sup>281</sup> He stated that he did not collude with the IRA in the killing of the two RUC Officers and that he did not provide any assistance to the IRA in identifying the men in Dundalk.<sup>282</sup> He stated that he never provided any assistance to subversives.<sup>283</sup>

**C There is no evidence that Mr Corrigan was aware that the two men were coming to Dundalk or that they were in the station**

1.160 It will be apparent from the foregoing that there is absolutely no evidence that Mr Corrigan was aware that the two RUC officers were coming to Dundalk or that they were in the Station. This is crucially important in light of the expert evidence from Brigadier Liles and Brigadier Smith that the operation must have begun at 10am (11.30am-12pm at the latest) and the acceptance by the PSNI that the IRA operation to murder the two RUC Officers could not have begun when the men arrived in Dundalk Garda Station.

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<sup>280</sup> Day 20, page 110..

<sup>281</sup> Day 20, page 135.

<sup>282</sup> DAY 20, page 122.

<sup>283</sup> DAY 20, page 122-123.

## Chapter 4 The Fatal Shootings

### A Eye-Witnesses to the Murders

1.161 Maurita Halpin was a school teacher. She told the Tribunal that in 1989 she worked as a part-time remedial teacher in Jonesboro, Co Armagh. She stated that two or three times a week she would visit the house of a young boy who was sick and unable to attend school for the purpose of teaching him. She stated that his house was on the Edenappa Road.<sup>284</sup> She stated that on the 20 March 1989 she arrived at the boy's house at "*around two-ish, two, about two*" and left at "*twenty to four, about twenty-five to four, twenty to four because I know this time is etched in my head.*"<sup>285</sup> She stated that she had only driven a short distance "*perhaps three or four lengths of the car*" when she was stopped by a man in combat clothing.<sup>286</sup>

1.162 She stated that she initially thought that he was a soldier because there were regular road blocks on that road. She only realised that it was not a regular road lock when she saw that he had a long rifle and just said "*out [of the car]*" to her. When she got out she was told to lie down on the ground on the passenger side of her car. She told the Tribunal that she could not recall whether she was frightened or not; her only memory was that she was "*numb.*"<sup>287</sup> She stated that she did not move because she did not know who these people were and she was afraid that they would shoot her.<sup>288</sup>

1.163 She told the Tribunal that there were two people manning the road block. She recalled that they were communicating with each other via walkie-talkies:

"Q. Now, did you hear any conversation?"

A. Yes and no. I didn't -- you couldn't make it out, but they had walkie-talkies, and they were obviously, in hindsight, they were communicating with somebody, I don't know whether it was

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<sup>284</sup> Day 7, page 56-57.

<sup>285</sup> Day 7, page 57.

<sup>286</sup> Day 7, page 58.

<sup>287</sup> Day 7, page 60.

<sup>288</sup> Day 7, page 62.

*each other or other people, but there was a lot of crackling and just general, as if they were communicating through some sort of mechanical devices.”<sup>289</sup>*

1.164 She stated that another car coming from the North was stopped behind her car and the occupants were forced to get out of the car. She could not recall the colour or make of that car because she was afraid to move but she did see out of the corner of her eye *“somebody with their hands being put up over their heads.”* She told the Tribunal that the men also stopped a car travelling from the South. She could not recall the colour or the make of that car or whether anyone was told to get out. All she recalled was that *“some vehicle came in across the road from me.”*

1.165 She told the Tribunal that the next thing she recalled was the arrival of a white van from the South. She stated that the van was parked at an angle, effectively blocking the road.

*“Q. And what happened after that?”*

*A. The doors opened and people got out, more people in combat dress. Now, the back doors were open. I don't know if there was -- I can't recall if there was a lot of doors. I do know the two front doors opened and people got out, and I don't know if people -- the back doors opened and people got out. I don't know how many people, but they were all the same.*

*Q. They were all in combats?*

*A. To my knowledge, they were all the same.*

*Q. And have you any idea how many people were around at that stage?*

*A. Well, the two original ones. There was two got out of the driver's and the other seat, and some others got out the back. I don't know, it could have been two or three or four, I don't know.”<sup>290</sup>*

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<sup>289</sup> Day 7, page 61.

<sup>290</sup> Day 7, page 63.

1.166 Seconds later, she told the Tribunal a red car arrived travelling from the South. The car was trapped by the van and upon realising this, the driver of the red car tried to reverse out of the trap. However, he was unable to do so because of a wall. She then described how faced with the impossibility of escape, the occupants of the car got out, came around the front of the car and put their hands over the heads. Notwithstanding this, the men in combats shot them.

*"A. Just as they came in, some moments, I presume, or maybe seconds, I don't know, there was a red car, I know there was red, came in right behind them; in other words, it seemed like they were driving up the road just behind us.*

*Q. Behind the van, I take it?*

*A. Yeah, and they came in. Now, they right -- they'd have come past the car on the other side of the road that was blocked, that had come in from the south.*

*Q. Yeah, the one that was ahead of you?*

*A. Yes, they would have come, I'd nearly say, past that, and they came into this behind the van, but I could still see it, and they -- when they came in and they obviously realised they were in a trap, they went to reverse, they tried to reverse the car, and there is a wall with moss on it just there, and they must have realised they couldn't -- they wouldn't make it, and the passenger, he got out and he came round the front of the car and he put his hands up, and they shot him and he fell on the road.*

*Q. Was that the first shooting that you'd heard?*

*A. Yeah, yeah, and it was like a burst of shot, a burst of shot -- a burst of --*

*Q. Did you see that yourself?*

*A. Yeah.*

*Q. And how far away do you think you were from the car at this stage?*

*A. Just --*

- Q. *Just in relation to the courtroom?*
- A. *Just between that mirror, that thing there and this one, I was just, maybe, just about a little bit further back than from where you are standing.*
- Q. *So there was no prior shooting until the passenger got out?*
- A. *Not that I can recall. They shot him. And then the other man, I think -- the driver -- I am not sure whether he opened the door to get out, or whether they went down and opened the door, but they shot him behind the wheel, to my knowledge. He was -- I think he was just maybe getting out of the car.*
- Q. *And to your recollection, when the passenger got out of the car first, you said he had his hands up. Was he stationary or was he walking towards --*
- A. *He was coming towards them.*
- Q. *Coming towards --*
- A. *I think.*
- Q. *-- the people in combat gear?*
- A. *Yeah.*
- Q. *Did you notice anybody in bushes around with guns?*
- A. *No. They were all -- to me, they seemed to be all in that middle of the road.*<sup>291</sup>

1.167 Maurita Halpin told the Tribunal that at this point the men who had opened fire on the red car and the men who had been “minding” her ran down to a car and drove off.

- “A. *Well, nothing, because they all ran -- the ones that were up with us, they were up minding us, we'll say, or minding me, he went down to the car and -- so some of them were at the boot of the car and I think I saw them open the boot of the car, I think the boot of the car was up, and I thought I'll just leave now, so I got*

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<sup>291</sup> Day 7, page 64-65.

*up and I switched the car on and reversed back and went away.”<sup>292</sup>*

1.168 She stated that at this point she went into the yard of the house adjacent to where she had been stopped and tried to open the door but it was locked. She then returned to her car and drove back to the school in Jonesboro because she thought there would still be someone there.

*“Q. Were there people there when you got there?*

*A. Yes, the teachers were there.*

*Q. And what was your reaction when you finally got to safety in the school?*

*A. When I got in, they saw me come to the outside door and, I don't know, I must have looked a bit pale, and they opened the door and I just kept saying, "They are dead, they are dead, they are dead," and they thought I had killed somebody, I had run over somebody with the car. So I am only going by what they tell me. Apparently, I fainted, and they gave me some water and then they got out of me that they were shot. So when they heard the word "shot," they said, right, let's get out of here quickly, because we'll be closed in, if you know what I mean, the whole part, they'll seal us off. So one of the teachers took me home and another one took my car down to the Carrickdale and left it there so we could collect it that evening. So my two children had a concert that night with the school, so I went with them to the concert, and I was home about maybe nine o'clock, and, when I came home, my husband said to me, "How are you feeling?" I said, "I am fine." And they said, "Well, the Special Branch were here to see you." And that was the worst part.”<sup>293</sup>*

1.169 Finbarr King told the Tribunal that he was employed as Transport Manager in McGeogh's Garage in 1989. He stated that on 20 March 1989 he had

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<sup>292</sup> Day 7, page 65.

<sup>293</sup> Day 7, pages 66-67.

received a call that a large truck had broken down at a custom's post on the Border. He stated that he and a mechanic, Packie O'Hanlon, drove up the Edenappa Road en route to the custom's post.

1.170 He stated that as they drove up the road they were stopped by a man wearing combat fatigues. As a former soldier, he told the Tribunal that he knew from the way the man was dressed that he was not a member of either the Irish or British armed forces. He stated that they were forced to get out of the car and lie, face down, on the grass verge at the side of the road. His recollection was that a second car was stopped as well and the occupants of the vehicle, a man and a woman, were forced to get out as well. A third car, driven by a woman was also stopped and she was forced out of the car as well. He was unable to say whether these people were forced to lie down on the grass as he could not see what happened to them. He described how he said an Act of Contrition as he lay on the ground.

1.171 Finbarr King stated that as he lay on the ground he was able to peep over his hands and see a car coming towards the road block. He stated that just as the car was 50-60 feet away, a van overtook it and cut it off at an angle. He stated that the van was darker than white and may have been grey or dark white. He stated that as the car arrived, two men got out of the front of the van and three more emerged from the side door, and they "opened up" on the car. He stated that the driver of the car tried to reverse out of the way but he was unable to do so. He recalled that he heard one shot after the initial volley.

*"A. Well, what I saw was, I saw a car coming up towards, shall we call, the roadblock, and approximately 50, 60 feet from where the cars were, a van then overtook it and cut it off at an angle.*

*Q. If I just stop you for second. Can you remember the colour of the car which is coming towards you?*

*A. All I can tell you is I think it was dark. I really don't know. A dark colour, I believe.*

*Q. Did you notice anything about the registration plate?*

- A. No.
- Q. *And the van, what colour was that?*
- A. *I think the van, seemingly, I believe that it was definitely a darker than white or a very dark grey, or something like that. Definitely not white.*
- Q. *Was the van in the shade at the time when you saw it?*
- A. *No, it was in the middle of the road. Well, it was after cutting out the car.*
- Q. *I think at that part of the road there are trees that cover the road, is that right?*
- A. Yes.
- Q. *Which blocks, to a degree, some of the sunlight?*
- A. *Possible. But, I mean, I think I'd distinguish between white and a darker colour.*
- Q. *But in any event, this van overtook the car?*
- A. Yes.
- Q. *And what happened next?*
- A. *It cut in front of the car. The driver's door and the passenger door opened and two people got out. The side door slid back and I think maybe at least another three got out. The car then tried to perform a reversing movement and the whole lot of them opened up on it.*
- Q. *When you say "opened up," they --*
- A. *They opened fire.*
- Q. *They opened fire on the --*
- A. Yes, yes.
- Q. *On the car?*
- A. *That's right.*
- Q. *And --*
- A. *The car then -- well, it rolled back into the ditch, and then, after that, I really don't know what happened because I put my head down. I didn't know what was going to happen after that at that stage. Then I heard one shot after that.*

- Q. *But between hearing the one shot and the volley, if I can put it that way --*
- A. *Yes.*
- Q. *-- what did you see in relation to what was happening on the road?*
- A. *The gentleman who was driving, definitely tried to reverse out of the way, definitely.*
- Q. *What about the passenger, what did he do?*
- A. *I didn't see him, as such. I didn't know what he done or what he didn't do. I just saw the car going into a reverse motion.*
- Q. *Did you not see the passenger lying out of the car?*
- A. *No, no, that was after.*
- Q. *That was afterwards?*
- A. *That was after.*
- Q. *Very well. So, when you say "after," that's after --*
- A. *That was after --*
- Q. *After the people had left?*<sup>294</sup>

1.172 He stated that the men, he estimated their number at between 5 and 6, then shouted '*hurray*' and left the scene in a car. He recalled that the entire incident took between 5 and 6 minutes. He did not hear any conversations on walkie-talkies. He told the Tribunal than in his view the whole operation was very well executed.<sup>295</sup>

1.173 James Sheelan told the Tribunal that he worked in McGeogh's Scrap Yard in 1989. He stated that he was working on the afternoon of the 20 March 1989 when he head "*a barrage of shots being fired*" followed by a "*a single shot.*" The sound of the shots came from the direction of Jonesboro.<sup>296</sup>

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<sup>294</sup> Day 7, page 81-84  
<sup>295</sup> Day 7, pages 83-84.  
<sup>296</sup> Day 7, page 89.

1.174 Denis Dullaghan told the Tribunal that at around 4pm<sup>297</sup> on the 20 March 1989 he and his wife were driving up the Edenappa Road (which he referred to as the 'Jonesboro Road) when they were stopped by a man "about a quarter of a mile" from McGeogh's Petrol Station. He stated that the man was dressed in a heavy jacket and politely told him that he could not drive up the road as "there was trouble ahead." He stated that the man had blocked the road with a piece of twine.

*Q. And how far up the road did you get before you noticed something amiss?*

*A. I only got about a quarter of a mile up the road and then we were stopped.*

*Q. And who stopped -- how were you stopped?*

*A. A gentleman walked across the road and put his hand up --*

*Q. Um-hmm.*

*A. - and stopped us.*

*Q. And what did he look like?*

*A. The gentleman, thinking back on it, the gentleman looked more like a type of council worker with a Columbia jacket, you know a heavy jacket that they wore at the time, normally council workers would wear a heavy garment.*

*Q. Yes, so he looked like a sort of a local working man or farmer, is that right?*

*A. Yes.*

*Q. Yes. Was there anything threatening about him stopping you?*

*A. No, no, no, he was very polite.*

*Q. And did he have anything with him?*

*A. He had. In his hand he had some twine.*

*Q. Yes. And what sort of twine was it?*

*A. The nearest recollection was baler twine and he proceeded, after stopping me he proceeded to my window, the driver's window.*

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<sup>297</sup> Day 26, page 81.

- Q. Yes.
- A. *And he said to me not to go up there, that there was trouble ahead.*
- Q. *And what was he doing with the twine?*
- A. *He had already tied the twine onto one tree or a post, I'm not a hundred per cent sure.*
- Q. *So he seemed to be in the process of sealing --*
- A. *Closing the road off.*
- Q. *Sealing or closing the road off?*
- A. *Yes.*<sup>298</sup>

1.175 Mr Dullaghan told the Tribunal that his recollection was that the man told him that two people had been shot. He stated that he was able to see a body close to a red car approximately 20 to 30 yards from his car. Mr Dullaghan was a mechanic and noticed that there was steam rising from the car. He stated that steam or smoke will generally rise from a car which has been damaged. As he could see the steam he estimated that he had arrived very rapidly after the incident had occurred.

- "A. He said that there was people -- that there was, I think he said, two people shot dead.*
- Q. *And did you notice anything then?*
- A. *Not until he actually pointed it out to us.*
- Q. *Yes. And how far away were you from the people who had been shot and what did you actually see?*
- A. *When he told us -- there seemed to be a body lying in front of the car, but I wasn't sure.*
- Q. *Sorry, you saw a car first?*
- A. *I saw a car on my right-hand side.*
- Q. *On your right-hand side. And then you said there seemed to be a body close to the car?*
- A. *More to the front of the car.*

- Q. *To the front of the car?*
- A. *Yes.*
- Q. *And when -- what colour was the car, do you recall?*
- A. *Well, I know now it was red, but I'm not sure at the time.*
- Q. *And how far away were you at the time?*
- A. *I would be approximately about 30 yards, 20 to 30 yards.*
- Q. *Yes. And did you notice anything else about the car?*
- A. *Yes, there was one door open on the car.*
- Q. *Yes.*
- A. *There seemed to be like steam coming from the car as if it had recently happened.*
- Q. *And you would know that because of your job as a mechanic, presumably?*
- A. *Well, yes. You would see steam or smoke fairly regularly in jobs.*
- Q. *And how long would that take to -- say a car is damaged. How long does it take for the steam to dissipate or for the car to stop?*
- A. *It would take about five minutes, I'd say the steam would disappear after approximately five minutes.*
- Q. *So you must have been on the scene very rapidly after the incident occurred?*
- A. *Yes, I got the impression that it was fairly recent, that it had happened within 10, 15 minutes of me arriving.”<sup>299</sup>*

1.176 Mr Dullaghan stated that he reversed his car and drove back to McGeogh’s Petrol Station. When he arrived, he stated that he met a man, told him what happened, and asked whether medical assistance and a Priest had been sent for. He told the Tribunal that the man told him that *“that was being taken care of.”*<sup>300</sup> He stated that he did not see any traffic on the road coming from either direction and that the only other vehicle he encountered was at the petrol

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<sup>299</sup> Day 26, pages 72-73.  
<sup>300</sup> Day 26, page 78.

station. He stated that he advised the lady driving the car not to “go further north because there was a problem ahead, trouble ahead.”<sup>301</sup>

1.177 Mr Dullaghan stated that notwithstanding the absence of traffic there were a considerable number of young people at McGeogh’s Petrol Station. He stated that “one or two of them seemed to know more about it than others and they were explaining to one another what had happened.”<sup>302</sup> He stated that he spoke to a man on a tractor who told him that one of the mechanics who worked in the garage adjacent to the petrol station had gone home in bits as a result of having been held down at gun point.

1.178 Frank Larrigan told the Tribunal that in 1989 he was the Manager of McGeogh’s. He stated that on 20 March 1989 he was working in the shop. He stated that during the afternoon he went outside to remonstrate with one of his employees. When he did so he noticed that there was a white van “facing out onto the road.” It was a “Hiace or Liteace van.” He stated that it was there for approximately six or seven minutes.<sup>303</sup> He stated that when he looked out again the van was gone and a while later someone came into the shop and said that there had been a shooting up the road. He was unable to recall what time this was.

“A. I went to the door to get his attention and told him to get up and carry on working, not in that manner as you can understand, but I came back in, without discussing anything with him I came back in and was attending to the customer again. When I looked out he was there still and there was a van there facing out to the road, a white van. I am not sure whether it was a Hiace or Liteace, and I carried on with the customer. And then there was a commotion, I looked out again and the van was gone and he was back working. Now, originally if you'd have looked at him you'd have thought he had a hangover or

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<sup>301</sup> Day 26, page 79.

<sup>302</sup> Day 26, page 79.

<sup>303</sup> Day 7, page 98.

*something because he had his head between his legs. So then up came the – there was a car --*

Q. *Sorry, did you form any impression from his demeanour when he was --*

A. *No, not at that stage.*

Q. *Okay.*

A. *Not at that stage. It was later when there was a bit of a commotion outside and customers came in, one was looking for water for a woman, that they had run into a shooting up the road. Now, on checking my previous evidence that I didn't remember, I remembered something from it, which was the two customers who came in that were at the shooting in Ardoyne the night before, they happened to pass a remark and they happened to run into that shooting. They were an elderly couple.*

Q. *So they had been involved in two shootings?*

A. *Yes. And that's why they were looking for the water because after coming on it again, it was like the Wild West, if you like.*

Q. *And have you any recollection as to what time in the afternoon this may have been?*

A. *No, only that I was back from lunch and I took over the till and was selling a radio to a man, because we used to sell electrical stuff as well. And the time? I couldn't give an accurate time at this stage, but it was in the afternoon.*<sup>304</sup>

1.179 Gabriel Nicholson told the Tribunal that in 1989 he was employed by an Insurance Brokerage firm based in Dundalk. He stated that on 20 March 1989 he travelled to McGeogh's Garage to meet with Mr Kevin McGeogh. When he arrived he went to Mr McGeogh's office but there was nobody there so he went to the Petrol Station where someone told him that Mr McGeogh had gone back to his office. He stated that he returned to the office where he conducted his business with Mr McGeogh. He told the Tribunal that he could

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<sup>304</sup> Day 7, pages 96-97.

not remember exactly when all of this took place but *“it was after lunch, I know it was after lunch, half two, three o’clock, I am not quite sure.”*<sup>305</sup>

1.180 Mr Nicholson stated that the meeting lasted 20-25 minutes and that on his way out somebody in the outer office mentioned to him that there had been a shooting. He did not recall who that person was and he could not remember what he looked like. He told the Tribunal that a number of days later he was in Dunleer, Co Louth when he received a telephone call from the man in the outer office. He stated that the man told him that the Gardaí would be in touch with him and that it was important that they both had the same story. Mr Nicholson stated that he replied that if he was asked to make a statement he would make his own statement. He stated that subsequent to this conversation he received a number of silent telephone calls on his mobile phone from an unknown number.

1.181 Mr Nicholson was asked by Counsel for the Tribunal if the man in the outer office who subsequently telephoned him was Mr Finbarr King, the Manager of McGeogh’s. He answered that *“I couldn’t tell you for definite.”*<sup>306</sup> In his Statement to the Tribunal, Mr Nicholson stated that he believed that it was Mr King who telephoned him.<sup>307</sup>

1.182 Mr Nicholson told the Tribunal that the thought *“may have crossed his mind” that the telephone call was an attempt to “influence him.”*<sup>308</sup>

1.183 Finbarr King told the Tribunal that he was not in the office when Mr Nicholson was there and that he did not know him.

“Q. Now, did you hear what the previous witness, Mr Nicholson, has said in relation to the possibility of there having been a phone call made by you?

A. By me?

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<sup>305</sup> Day 7, page 71.

<sup>306</sup> Day 7, page 72.

<sup>307</sup> Day 7, page 74.

<sup>308</sup> Day 7, page 74.

- Q. Yes.
- A. *I don't even know the gentleman.*
- Q. *You never met him before?*
- A. *I think once when I was looking for insurance, but that wouldn't have been anything to do with McGeough's.*
- Q. *So if a phone call was made to Mr. Nicholson, it wasn't made by you, is that what you are saying?*
- A. *No. Well, I mean -- that's the first I heard of it when I arrived here, and, actually, if I was the gentleman, I wasn't even in the office when that gentleman would have been there.*
- Q. *I understand. Thank you very much.*<sup>309</sup>

1.184 He stated that he later realised that the white van must have been the van that was involved in the shooting.<sup>310</sup>

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<sup>309</sup> Day 7, page 84.  
<sup>310</sup> Day 7, page 97.

## Chapter 5 Word is received of the shooting

1.185 Witness 33 told the Tribunal that on 20 March 1989 he was the RUC Chief Inspector in Newry. He stated that he received a telephone call from Forkhill RUC Station informing him that a report had been received from a civilian that a red car had been involved in a shooting incident on the Edenappa Road, near Jonesboro. He stated that he immediately thought of Chief Superintendent Breen and Superintendent Buchanan, so he telephoned Dundalk Station and asked Superintendent Pat Tierney whether the two RUC Officers had left Dundalk.<sup>311</sup> His Journal entry for 20 March 1989 records that this telephone call took place at 3.55pm.<sup>312</sup> He stated that following his conversation with Superintendent Pat Tierney he briefed his Sub divisional commander for five minutes. He stated that he then drove to Bessbrook Mill where he got a helicopter to Border Crossing 10, arriving sometime between 4.30pm and 4.45pm.<sup>313</sup> He stated that when he arrived he was the only police officer present but the British Military were on the ground securing the scene. He stated that he was soon joined by the Inspector from Forkhill RUC Station. He then went down to the car and identified the bodies.<sup>314</sup>

1.186 Superintendent Pat Tierney told the Tribunal that he received a telephone call from Witness 33, RUC Chief Inspector in Newry, asking *"I wonder have our boys left yet? There is an incident at Meigh and there is a red car involved, we are worried."* He stated that he did not know whether Chief Superintendent Breen and Superintendent Buchanan had left so he checked Chief Superintendent Nolan's Office to see whether they were there. The door was locked and he told Witness 33 they had left the Station. He stated that Witness 33 then told him there had been an ambush at Border Crossing 10.<sup>315</sup>

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<sup>311</sup> Day 35 (16 September 2011) pages 11-12.

<sup>312</sup> Day 35 (16 September 2011) page 13.

<sup>313</sup> Day 35 (16 September 2011) page 13.

<sup>314</sup> Day 35 (16 September 2011) page 14.

<sup>315</sup> Day 8, page 31 - 32.

- 1.187 He stated that when he put the telephone down he rang Inspector Murray and they both left the Station to go to Border Crossing 10. He stated that they gave instructions to the Gardaí en route as to the steps to be taken. He stated that when they arrived they could see a red car 300-400 yards north of the Border and they “... *assumed the worst.*”<sup>316</sup> He stated that shortly afterwards he was informed that the two officers had been murdered.<sup>317</sup>
- 1.188 Inspector Murray is deceased. The Statement he gave to Assistant Commissioner O’Dea on 22 March 1989 was read into the record at the Public Sitting held on Day 11 (23 June 2011). No reference was made in that Statement to Inspector Murray’s trip to Border Crossing 10 with Superintendent Tierney.
- 1.189 Garda Edward Buggle was stationed in Hackballscross Station on 20 March 1989.<sup>318</sup> He told the Tribunal that he was out on patrol with Garda Joe Kilcoyne of Omeath Station when, at approximately 4.15pm, they received a Radio Message telling them that there had been a shooting at the Border near McGeogh’s farm.<sup>319</sup> He stated that when he arrived at the Border Crossing 10 he could see people gathered “*about 500 yards across the Border.*”<sup>320</sup> He stated that they set up a checkpoint and that they were joined by Superintendent Tierney and Inspector Murray from Dundalk later that afternoon.<sup>321</sup> Garda Joe Kilcoyne was not asked, nor did he give any evidence, about his arrival at Border Crossing 10.<sup>322</sup>
- 1.190 Garda Matthew O’Reilly told the Tribunal that at approximately 4.30pm they received a radio call to return to the Station and that when they returned they learned that two RUC Officers had been shot and that Chief Superintendent Nolan, who had been the last person seen with them, could not be found.<sup>323</sup>

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<sup>316</sup> Day 8, page 32.

<sup>317</sup> Day 8, page 32.

<sup>318</sup> Day 36 (27 September 2011) at 129.

<sup>319</sup> Day 36 (27 September 2011) at 133.

<sup>320</sup> Day 36 (27 September 2011) at 134.

<sup>321</sup> Day 36 (27 September 2011) at 134.

<sup>322</sup> Day 27 (2 September 2011).

<sup>323</sup> Day 16 (1 July 2011) at 69.

He said that the two of them were detailed to locate Chief Superintendent Nolan.<sup>324</sup> He agreed with Counsel for the Tribunal that news of the shootings had caused shock in the Station and that it was “... *a particular shock to me.*”<sup>325</sup> He stated that Sergeant Leo Colton arrived in the Station at approximately 4.30/4.35pm and “...*he basically said that he had seen a car earlier driving into the car park at the Garda Station and driving out the other gate.*”<sup>326</sup>

1.191 Detective Garda Errol Boyle told the Tribunal that he was on the 9am to 5pm shift on 20 March 1989. He stated that he was out on patrol and that he had come back to the Station briefly at 2.30pm.<sup>327</sup> He stated that he received a radio message at approximately 4.30pm to come back to the Station. He stated that the radio message did not specify a reason for the summons and that it was only “... *when we got back [that] we were told what had happened.*”<sup>328</sup> He stated that there had been some concern in the Station that Chief Superintendent Nolan might have been involved “... *as he may have left the Station sometime around the same time as the two policemen and he couldn't be contacted.*”<sup>329</sup> He stated that the Garda investigation into the fatal shootings began later that day and it was headed by either Detective Inspector Prenty or Detective Superintendent Connolly.<sup>330</sup> He said that he was detailed to carry out house to house inquiries in the Faughart area.<sup>331</sup>

1.192 Detective Garda Tom Molloy was not asked when he learned about the murders. However, in the Statement he made to Detective Inspector Carty on 22 March 1989, he stated that he left the Station at approximately 4.15pm to go to Border Crossing 10 where reports had been received of a shooting.<sup>332</sup>

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<sup>324</sup> Day 16 (1 July 2011) at 69.  
<sup>325</sup> Day 16 (1 July 2011) at 72.  
<sup>326</sup> Day 16 (1 July 2011) at 72.  
<sup>327</sup> Day 12 (24 June 2011) at 83.  
<sup>328</sup> Day 12 (24 June 2011) at 79.  
<sup>329</sup> Day 12 (24 June 2011) at 79-80.  
<sup>330</sup> Day 12 (24 June 2011) at 80.  
<sup>331</sup> Day 12 (24 June 2011) at 80.  
<sup>332</sup> Day 16 (1 July 2011) at 41.

- 1.193 Garda Seamus Nolan stated that he was in the Station when word was received of the fatal shooting of Chief Superintendent Breen and Superintendent Buchanan.<sup>333</sup> He agreed with Counsel for the Tribunal that there was “*general shock*” and “*pandemonium*” in the Station.<sup>334</sup>
- 1.194 Garda David Sheridan told the Tribunal that he recalled hearing about the shooting later that afternoon but *she* “[*did not*] *know exactly where I was when I heard about it or how I heard about it...*”<sup>335</sup>
- 1.195 Garda John McKeown told the Tribunal that he returned to the Station at approximately 4 pm and that Inspector Murray came down the stairs and “... *the man was in just total shock, pale in the face, and he told us then there had been a shooting...*”<sup>336</sup> He stated that he could not recall if Inspector Murray mentioned the names of the men who had been shot but stated “... *The names didn't mean anything to me, even if he did say them to me. Just two RUC Officers...*”<sup>337</sup> Later, Garda McKeown stated that he returned to the Station at 6.15pm rather than 4pm.<sup>338</sup>
- 1.196 Detective Garda Jim Lane had gone to Dublin for a meeting at 1.45pm and did not return to the Station until approximately 6pm.<sup>339</sup> Detective Garda Joe Flanagan told the Tribunal that he had finished his shift at 2pm and that he had left the Station at that time.<sup>340</sup> Garda Michael Johnson told the Tribunal that he had finished his shift at 2pm.<sup>341</sup> He was unable to remember anything about his activities on 20 March 1989.<sup>342</sup> Garda Tom Mulpeter told the Tribunal that he was on duty in the Radio Control Room<sup>343</sup> on 20 March 1989 and that he finished his shift at 2pm.<sup>344</sup> He told the Tribunal that he learned of

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333 Day 9, page 5.  
 334 Day 9, page 5.  
 335 Day 10, page 82.  
 336 Day 11, page 27.  
 337 Day 11, page 27.  
 338 Day 11, page 30.  
 339 Day 12 (24 June 2011) at 7.  
 340 Day 12 (24 June 2011) at 30.  
 341 Day 12 (24 June 2011) at 53.  
 342 Day 12 (24 June 2011) at 63.  
 343 Day 14 (29 June 2011) at 59.  
 344 Day 14 (29 June 2011) at 62.

the killings on the evening news.<sup>345</sup> Garda Ann McMorrow told the Tribunal that she was on duty in the Radio Control Room from 2pm to 10pm on 20 March 1989.<sup>346</sup> She did not give any evidence to the Tribunal about when she learned of the killings. Garda John Daly told the Tribunal that he commenced duty on 20 March 1989 at 2pm and that he went out on patrol in an official Garda car with Garda Matthew O'Reilly.<sup>347</sup> He was not asked about nor did he give any evidence about when he learned of the killings. Garda Tom Duffy told the Tribunal he did not think he was on duty on 20 March 1989.<sup>348</sup> He was not asked about nor did he give any evidence about when he learned of the killings. Garda Con Nolan told the Tribunal he did not think he was on duty on 20 March 1989.<sup>349</sup> He was not asked about nor did he give any evidence about when he learned of the killings. Sergeant Leo McGinn was not stationed in Dundalk on 20 March 1989.

1.197 Chief Superintendent John Nolan told the Tribunal that he was “*shocked*” when he heard about the killings.<sup>350</sup>

1.198 Ms Nora Burns told the Tribunal that she was working in the Sergeants Office from 9.15am to 5.30pm on 20 March 1989.<sup>351</sup> She stated that she had no recollection of word coming in to the Station about the killings or her reaction to them.

“Q. *I think you said that you worked in the office until 5:15 or 5:30?*

A. *Yeah.*

Q. *And I think, at that stage, information was coming into Dundalk Garda Station about the shooting on the Edenappa Road. You've no recollection of that news coming in?*

A. *No.*

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<sup>345</sup> Day 14 (29 June 2011) at 64.

<sup>346</sup> Day 15 (30 June 2011) at 9.

<sup>347</sup> Day 16 (1 July 2011) at 49.

<sup>348</sup> Day 20 (19 July 2011) at 50 and 53.

<sup>349</sup> Day 20 (19 July 2011) at 76.

<sup>350</sup> Day 30 (8 September 2011) at 47.

<sup>351</sup> Day 15 (30 June 2011) at 21-22.

- Q. *Do you have any recollection of the immediate aftermath, any sense of shock in the station?*
- A. *No.*
- Q. *No recollection of that at all?*
- A. *No.*
- Q. *I mean, it was quite a significant event in that two people who had left the station, 15 minutes later were killed and lying dead on the Edenappa Road, but you don't remember --*
- A. *I'm sure we talked about it.*
- Q. *But you don't remember the news spreading through the station as word came in from the Edenappa Road?*
- A. *No.*<sup>352</sup>

1.199 Detective Garda Mick O'Driscoll told the Tribunal that he was in the Station on 20 March 1989 but that he did not *"... recall it very vividly, I don't really, no no."*<sup>353</sup> He also stated that he was not involved in the subsequent investigation. Detective Garda John Fintan Kenny told the Tribunal that he could not recall whether he was on duty on 20 March 1989.<sup>354</sup> Garda records indicate that he was.<sup>355</sup>

1.200 Detective Garda John Gerard O'Connor told the Tribunal that he was working with Detective Garda Errol Boyle on the 9am to 5pm shift on 20 March 1989.<sup>356</sup> He told the Tribunal that he could not *"... recall what duty we did, except that we obviously left the station and patrolled, as would be quite normal."*<sup>357</sup> He said that they returned to the Station at approximately 4.30pm and that he did not recall when he was told about the murders.<sup>358</sup> He did not give any evidence about a Radio Call.

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<sup>352</sup> Day 15 (30 June 2011) at 22.

<sup>353</sup> Day 38 (29 September 2011) at 4.

<sup>354</sup> Day 38 (29 September 2011) at 25.

<sup>355</sup> Day 38 (29 September 2011) at 26.

<sup>356</sup> Day 15 (30 June 2011) at 67.

<sup>357</sup> Day 15 (30 June 2011) at 68.

<sup>358</sup> Day 15 (30 June 2011) at 73.

1.201 Garda Vincent Jackson told the Tribunal that he was out on patrol in an official Garda car from 6am to 2pm with Garda Kevin Forde on 20 March 1989.<sup>359</sup> He stated that he learned about the killings from the evening news.<sup>360</sup> He told the Tribunal that he did not return to the Station when he heard the news and that he simply turned up as normal for his shift at 6am the following day.<sup>361</sup>

1.202 Detective Superintendent Tom Connolly told the Tribunal that he learned about the murders from Superintendent Tierney.<sup>362</sup>

1.203 Garda Regina McArdle told the Tribunal that on 20 March 1989 she was attached to Unit A when she first learned of the murders:

*“Well, I can’t say for definite if I actually learned on that particular day. All I know is, I was actually out with my father and I came home and my mother had received a phone call from Dundalk Garda Station asking for me to go in to work, overtime, or that an incident had occurred. I honestly can’t recall exactly what the nature of the incident was, other than something had happened. And I went to work that evening.”<sup>363</sup>*

1.204 Garda Joe Whelan told the Tribunal that he was Station Orderly from 6am to 2pm on 20 March 1989.<sup>364</sup> He stated that he left the Station when his shift ended.<sup>365</sup> Garda Donal Smyth told the Tribunal that he was on duty from 6am to 2pm on 20 March 1989.<sup>366</sup> He stated that he was on patrol in an official garda car with Garda Joe Whelan.<sup>367</sup>

1.205 Detective Garda Laurence Crowe told the Tribunal that Sergeant Vincent Rowan told him that there had been a shooting incident north of the Border and that some RUC men had been injured. He stated that Sergeant Rowan

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<sup>359</sup> Day 15 (30 June 2011) at 33.  
<sup>360</sup> Day 15 (30 June 2011) at 35 and 39.  
<sup>361</sup> Day 15 (30 June 2011) at 39.  
<sup>362</sup> Day 16 (1 July 2011) at 15.  
<sup>363</sup> Day 17 (13 July 2011) at 41.  
<sup>364</sup> Day 17 (13 July 2011) at 80.  
<sup>365</sup> Day 17 (13 July 2011) at 85.  
<sup>366</sup> Day 23 (22 July 2011) at 76.  
<sup>367</sup> Day 23 (22 July 2011) at 76.

also told him that Chief Superintendent Nolan could not be located and that there was a fear that he might have been involved in the incident.<sup>368</sup> He stated that he did not play any role in the subsequent investigation.<sup>369</sup> He stated that he had been a detective since 1979.

1.206 Inspector Michael Staunton told the Tribunal that he was not on duty on 20 March 1989.<sup>370</sup> He described the atmosphere in the Station the following day as:

*“... one of shock and horror that this happened up the road from where we were, and of course that it happened when the officers were leaving Dundalk, having left Dundalk Garda Station.”<sup>371</sup>*

He was not asked, nor did he give evidence in relation to, how he learned of the murders.

1.207 Detective Garda Gerard Murphy told the Tribunal that he was not on duty on 20 March 1989.<sup>372</sup> The ‘On/Off Book’ records him as having come on duty at 8.30pm that evening and leaving at 11pm and he accepted that this was correct.<sup>373</sup>

1.208 Detective Sergeant Jim Gannon told the Tribunal he commenced duty at 6.30pm on 20 March 1989.<sup>374</sup> He stated that that the news of the shooting came as a terrible shock.<sup>375</sup>

1.209 Garda Harry Murtagh was a clerk in the Sergeants Office. He told the Tribunal he worked from 3pm to 11pm on 20 March 1989.<sup>376</sup> He said that the first he

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<sup>368</sup> Day 18 (14 July 2011) at 67.

<sup>369</sup> Day 18 (14 July 2011) at 67.

<sup>370</sup> Day 19 (15 July 2011) at 3-4.

<sup>371</sup> Day 19 (15 July 2011) at 4.

<sup>372</sup> Day 19 (15 July 2011) at 43.

<sup>373</sup> Day 19 (15 July 2011) at 53.

<sup>374</sup> Day 21 (20 July 2011) at 5.

<sup>375</sup> Day 21 (20 July 2011) at 6.

<sup>376</sup> Day 21 (20 July 2011) at 43.

heard about the shootings was that there had been an incident on the Border and he later learned that “... *it was the two men who had been in Dundalk.*”<sup>377</sup>

1.210 Detective Sergeant Tadhg Foley told the Tribunal that he was in Clones, Co Monaghan on 20 March 1989.<sup>378</sup>

1.211 Detective Garda Terry Hynes told the Tribunal he commenced duty at 8.30/9.00am on 20 March 1989.<sup>379</sup> He stated that he did not finish until midnight because of the incident.<sup>380</sup> He said that there was a general muster of detectives after the fatal shooting.<sup>381</sup>

1.212 Detective Garda Tom Fox told the Tribunal that he was unable to recollect whether he was working on 20 March 1989.<sup>382</sup> The ‘On/Off Book’ records him as having come on duty at 5pm that evening.<sup>383</sup>

1.213 Detective Garda James Boyle told the Tribunal he came on duty at 9/9.30am on 20 March 1989.<sup>384</sup> He stated that he was in Dublin with Detective Garda Jim Lane from 1.45pm to 6pm.<sup>385</sup>

1.214 Garda Mary Clarke worked in the District Office. She told the Tribunal that she was working from 9am to 5.30pm on 20 March 1989 but that she was unable to remember whether she heard about the shootings on 20 March 1989 or subsequently.<sup>386</sup>

1.215 Garda Jim Dolan told the Tribunal that he worked from 9.30am to 5.30pm on 20 March 1989.<sup>387</sup>

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<sup>377</sup> Day 21 (20 July 2011) at 45.  
<sup>378</sup> Day 21 (20 July 2011) at 53.  
<sup>379</sup> Day 21 (20 July 2011) at 77.  
<sup>380</sup> Day 21 (20 July 2011) at 78.  
<sup>381</sup> Day 21 (20 July 2011) at 80.  
<sup>382</sup> Day 23 (22 July 2011) at 3.  
<sup>383</sup> Day 23 (22 July 2011) at 26.  
<sup>384</sup> Day 23 (22 July 2011) at 36.  
<sup>385</sup> Day 23 (22 July 2011) at 37.  
<sup>386</sup> Day 23 (22 July 2011) at 53.  
<sup>387</sup> Day 23 (22 July 2011) at 64-65.

- 1.216 Detective Garda Edmund Sheridan told the Tribunal that he was not working on 20 March 1989.<sup>388</sup> Garda Pat O'Donoghue told the Tribunal that he was working on the morning of 20 March 1989 but he took a half day's leave in the afternoon.<sup>389</sup>
- 1.217 Garda Terence Fanning provided a statement to the O'Dea Investigation in which he stated that he worked from 9.15am to 5.15pm on 20 March 1989 and that he left for home when he finished work.<sup>390</sup> He stated that "*nothing unusual came to my notice.*"
- 1.218 Detective Garda Bernard McGrath told the Tribunal that he was not on duty on 20 March 1989 but that he was called in to the Station at 6pm.<sup>391</sup>
- 1.219 Detective Inspector Dan Prenty told the Tribunal that on 20 March 1989 he was playing golf in Skerries with Superintendent Tom Connolly.<sup>392</sup> He stated that, to the best of his recollection, he heard about the murders when he was in Skerries.<sup>393</sup> He stated that he arrived back in the Station within an hour or an hour and a half of receiving the news.<sup>394</sup>
- 1.220 Garda Tom Byrne told the Tribunal that he did not think that he was on duty on 20 March 1989.<sup>395</sup>
- 1.221 Garda Patrick O'Connor told the Tribunal that he was not on duty on 20 March 1989 but that he was called in to the Station at 6.30pm.<sup>396</sup>
- 1.222 Detective James Sheridan told the Tribunal that he could not recall whether he was on duty on 20 March 1989 although he remembered the incident.<sup>397</sup>

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<sup>388</sup> Day 24 (26 July 2011) at 56.  
<sup>389</sup> Day 27 (2 September 2011) at 41.  
<sup>390</sup> Day 24 (26 July 2011) at 51.  
<sup>391</sup> Day 39 (30 September 2011) at 75.  
<sup>392</sup> Day 42 (7 October 2011) at 8.  
<sup>393</sup> Day 42 (7 October 2011) at 8.  
<sup>394</sup> Day 42 (7 October 2011) at 9.  
<sup>395</sup> Day 45 (20 October 2011) at 3.  
<sup>396</sup> Day 46 (21 October 2011) at 6.  
<sup>397</sup> Day 31 (9 September 2011) at 33.

1.223 Detective Sergeant Sean Gethins told the Tribunal that he was not on duty on 20 March 1989.<sup>398</sup>

1.224 Detective Garda Colm Murray told the Tribunal that he was not on duty on 20 March 1989.<sup>399</sup> He stated that he was not called into the Station to take part in the subsequent murder investigation.<sup>400</sup>

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<sup>398</sup> Day 31 (9 September 2011) at 69.  
<sup>399</sup> Day 55 (16 November 2011) at 88.  
<sup>400</sup> Day 55 (16 November 2011) at 88.

## Chapter 6 The Murder Investigation

- 1.225 The murder investigation is only relevant to the suggestion put to Mr Corrigan during his cross-examination by Counsel for the PSNI on Day 114 that he betrayed the two RUC men who were killed on 20 March 1989 by not assisting in the murder investigation.<sup>401</sup>
- 1.226 Detective Superintendent Tom Connolly told the Tribunal that he set up a murder investigation after he learned about the murders from Superintendent Tierney.<sup>402</sup> He stated that he could not remember whether he took this decision at the request of Chief Superintendent Nolan, the Assistant Commissioner or on his own initiative.<sup>403</sup> He agreed with Counsel for the Tribunal that the purpose of that investigation was *to “collect as much information that was available on this side of the Border to assist the RUC.”*<sup>404</sup>
- 1.227 Detective Superintendent Tom Connolly stated that he assembled a team of Detectives and assigned the team various tasks as part of this investigation.<sup>405</sup> He stated that he did not bring in any body from outside the Louth Meath Division.<sup>406</sup>
- 1.228 Detective Superintendent Tom Connolly was not asked, nor did he give any evidence as to why he did not include Detective Sergeant Corrigan in the murder investigation.
- 1.229 Detective Superintendent Tom Connolly stated that one of the first tasks he assigned was to Garda Fintan Kenny to interview the members of the Gardaí who had been working between 2pm and 10pm on 20 March 1989.<sup>407</sup> The next task he assigned was to Garda Fintan Kenny and to Garda Martin

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<sup>401</sup> Day 114, pages 63-65

<sup>402</sup> Day 16 (1 July 2011) at 15.

<sup>403</sup> Day 16 (1 July 2011) at 16.

<sup>404</sup> Day 16 (1 July 2011) at 16.

<sup>405</sup> Day 16 (1 July 2011) at 16.

<sup>406</sup> Day 16 (1 July 2011) at 24.

<sup>407</sup> Day 16 (1 July 2011) at 17.

Flanagan and it was to get statements from those Gardaí who were on duty between 2 and 4pm.<sup>408</sup>

1.230 He stated that Assistant Commissioner O’Dea was carrying out his own investigation at this time. He stated that Superintendent Tierney was also collecting statements from people.<sup>409</sup>

1.231 He stated that he did not share the results of his investigation with Assistant Commissioner O’Dea because his investigation was not completed for some time.<sup>410</sup> He stated that he was in constant contact with the RUC during his investigation.<sup>411</sup>

1.232 He stated that in the immediate aftermath of the shootings there was concern as to who had been shot.<sup>412</sup>

1.233 Detective Superintendent Tom Connolly told the Tribunal that he recalled the extensive media coverage of the murders. He stated that he always has an open mind on crime but that he did not think the IRA needed a mole to help them with their attack.

*“Q. But I'm not going down that road; I'm asking you how do you reconcile the fact that you had an open mind on the possibility of there being a mole, on the one hand, with what you told the Chairman, which was you are quite satisfied there was no leak?*

*A. There is no reconciliation there, as far as I am saying. I always have an open mind about investigating a crime, about what could be involved, but you are asking me did they need the information, and I say I don't believe they did need the information.*

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<sup>408</sup> Day 16 (1 July 2011) at 19.

<sup>409</sup> Day 16, page 21.

<sup>410</sup> Day 16 (1 July 2011) at 22.

<sup>411</sup> Day 16 (1 July 2011) at 24..

<sup>412</sup> Day 16 (1 July 2011) at 31.

- Q. *So I am just trying to follow this through. Does this mean that even if they did have somebody in the station assisting them, they didn't need that person for this particular event, is that what you are trying to tell us?*
- A. *Yes.*
- Q. *I see. And if they had carried it out without assistance, it was based on surveillance, in your opinion?*
- A. *Yes. It is only an opinion.*
- Q. *I accept that.*
- A. *It is only an opinion, and that is my opinion.”<sup>413</sup>*

1.234 **Counsel for the PSNI** put it to Mr Corrigan that he showed the two Deceased men no respect by leaving the station and going home when he finished his shift. This was a most unfair question as the PSNI did not put it to any of the other Garda witnesses who left work at 4pm that afternoon and who were not involved in the investigation.<sup>414</sup>

1.235 This unfairness is increased by the evidence of other Gardaí who stated that they were not surprised that Mr Connolly did not ask Mr Corrigan to be involved in the investigation.

1.236 Mr Bernard McGrath was a Detective Garda who served with Mr Corrigan in Dundalk Station. He told the Tribunal that he was not surprised that Mr Corrigan was not involved in the murder investigation run by Chief Superintendent Connolly as Mr Connolly did not like Mr Corrigan. Mr Sean Gethins was a Detective Garda who served with Mr Corrigan in Dundalk Station. He stated that he was not surprised that Mr Corrigan was not involved in the investigation because Superintendent Connolly always used the same team of people.

1.237 It should also be noted that notwithstanding the fact that Mr Corrigan was not involved in the murder investigation, he did provide an intelligence report on

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<sup>413</sup> Day 16 (1 July 2011) at 28.

<sup>414</sup> For a detailed account of the Garda evidence in this respect see the previous chapter.

17 July 1989 recording the names of the members of the IRA Unit that killed Superintendent Breen and Superintendent Buchanan, and a later one in September 1989 in relation to intelligence that the IRA had taken Mr Breen's notebook.<sup>415</sup>

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<sup>415</sup> Day 114, page 64 and 52.

## Chapter 7 Press coverage in the immediate aftermath of the murders

### A. Introduction

1.238 There was extensive press coverage of the murders in the days following 20 March 1989. This press coverage is obviously not evidence of any fact or facts. Indeed, as will be seen, many of the newspaper reports contradict each other. However, they do give an indication of what was in the public domain in the Irish newspapers at the time.

### B. The Press Coverage

1.239 On 21 March 1989, the Irish Times published an article entitled “Government to order inquiry as IRA kills top-level RUC men:

*“Forensic experts will move in this morning to examine the bodies of the two senior RUC officers who were shot dead yesterday afternoon by the IRA as they returned across the border from a meeting with senior Garda officers in Dundalk.*

*The bodies of Chief Superintendent Harry Breen (51) from Banbridge, County Down, and Superintendent Bob Buchanan (55) from Moira, County Down, were left at the scene overnight because of the fears that the area may have been booby-trapped. Both men were married with grown-up families.*

*The Northern Secretary, Mr. Tom King, said last night that the RUC would carry out the most thorough investigation to find those responsible and to bring them to justice. 'We look to the Garda and the Irish Government to play their full part in that', he said.*

*The Government is today expected to order the Garda authorities to mount a top-level investigation into how the IRA may have acquired*

*information about the movements of the two officers. The inquiry is expected to focus on the possibility of IRA penetration of security forces communications links.*

*The IRA in south Armagh last night admitted that it murdered the two officers and said that a more detailed statement would be issued later.*

*The RUC appealed last night for the occupants of a white van which stopped close to the scene of the killings, to contact the murder investigation team at Bessbrook, County Armagh. The RUC said that they had received a report that armed men had approached the van and forced those inside to get out and lie on the ground shortly before the ambush on the RUC officers.*

*The Taoiseach, Mr. Haughey, in a statement, last night, said 'every possible cooperation' would be extended to the Northern authorities to ensure that those responsible were apprehended and brought to justice. The British Prime Minister, Mrs. Thatcher, said yesterday she was 'shocked' by the killings and was being kept informed of developments.*

*The shooting happened at about 3:50 p.m. on a narrow roadway at Edenappa in County Armagh, several hundred yards from the County Louth border. A priest who was one of the first on the scene said it appeared both men had been shot in the head. One of the bodies was sprawled across the front seat of the Vauxhall Cavalier and the other one was on the roadway beside the vehicle.*

*After an anonymous telephone call informing them about the killings, security forces moved in and sealed off the area.*

*A massive security operation was underway last night on both sides of the border. Two helicopters hovered over the scene and there were RUC and Garda check-points on all cross-border routes.*

*The IRA in south Armagh, in a statement, said that the victims had been identified as 'crime forces personnel' before they were killed. In spite of an RUC denial, the circumstances of the killing are likely to trigger Unionist demands for a major investigation into the possibility of an IRA mole, either in the Garda or among civil servants in the North, who knew about the two officers' movements. Chief Superintendent Breen was responsible for the RUC's H Division, which includes most of south Armagh. Two years ago, as a Superintendent, he was involved in a security operation at Loughgall where eight IRA men and one civilian were shot dead in May 1987. Superintendent Buchanan was responsible for border security in south Armagh, and was in frequent contact with his opposite number in Dundalk.*

*The RUC would not confirm details of the attack last night, but it is understood that no escort was provided for the two men in Northern Ireland. An RUC source said they were on the Edenappa Road, a minor road near Jonesboro, because they routinely changed their route when returning from meetings with Gardaí.*

*Local people said that a surprising feature of the ambush was that the murder scene, which is on a well-known smuggling road, is overlooked on both sides by heavily fortified British Army posts.*

*As speculation grew that the IRA must have had inside information to plan the attack on the two men, the RUC in Belfast issued a categorical denial that this was the case.*

*A spokesman said: 'Even the Gardaí didn't know what way they would be going. There were no bombs, so it wasn't prepared beforehand. The IRA must have been using their radios, and they set the attack up after seeing the men drive into Dundalk police station'.<sup>416</sup>*

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<sup>416</sup> Day 54, pages 4-7.

1.240 In a separate article in the Irish Times on 21 March 1989, entitled 'Gardaí to focus on breached security,' Security Correspondent, Sean Flynn wrote:

*"The Government is expected to request the Garda authorities to begin a top-level investigation later today into how the IRA acquired information about the movements of the two senior RUC officers murdered yesterday evening.*

*Chief Superintendent Harry Breen and Superintendent Bob Buchanan were murdered in south Armagh shortly after returning from a routine meeting with a senior Garda officer in Dundalk, Co. Louth.*

*A senior security source said last night that RUC officers up to and including the rank of chief superintendent are not provided with armed Garda escorts on arrival in the Republic. A suggestion by a senior Garda officer that no armed Garda escort was provided at any time for the two RUC officers yesterday, could not be confirmed last night.*

*The Garda investigation will begin amid speculation about the existence of a 'mole' within the security forces in the Republic. However, according to senior Garda sources, yesterday's meeting in Dundalk between the two RUC officers and Chief Superintendent John Nolan had been arranged 'at very short notice'. It is understood that even a number of senior officers in Dundalk were unaware of the presence of the RUC men in the town until they arrived at Dundalk Garda Station yesterday afternoon.*

*There was widespread speculation last night regarding the source of the IRA's information about yesterday's meeting, but little hard evidence was emerging. A common theory advanced by several Gardaí was that the IRA may have access to sophisticated electronic equipment capable of picking up Garda or RUC messages. Last year, a Dublin man was charged with carrying out electronic surveillance of*

*Garda Special Branch officers in the city, but he later absconded. The Garda inquiry into yesterday's double murder is expected to focus on the possibility of IRA penetration of communication links.*

*It was learned last night that Garda and RUC officers, as well as officials from the Irish and British Governments, are generally not provided with armed police escorts while travelling inside the Republic and Northern Ireland, respectively. A senior Garda officer said that this practice was in accordance with a longstanding agreement between both Governments dating back to the earliest Garda/RUC meetings in the early 1970s. One security source said that the intention was to ensure that security personnel could travel without arousing undue suspicion.*

*It is understood that both of the murdered senior RUC officers were in plain clothes. Normally, RUC officers must surrender any firearms to the authorities on arrival in the Republic, but the exact procedures operated yesterday have not been confirmed.*

*Only police officers or civil servants designated to be particularly high risk personnel are provided with armed escorts. In general, officers at Assistant Commissioner level in both the Garda Síochána and the RUC do not receive armed escorts when travelling in one another's jurisdiction.*

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*Cooperation between Armagh and Dundalk, which was being discussed yesterday, is widely accepted to be the best example of close liaison between the two Forces. Last year, the Government appointed Chief Superintendent John Nolan as Border Liaison Officer for the Louth/Meath division. He is free to concentrate exclusively on anti-subversive operations and cooperation with the RUC. It is understood that personal relationships between the Gardaí and the RUC in Louth and Armagh are excellent and that this appointment has helped to further improve cooperation.*

*Two years ago, there was a spate of allegations by Unionist politicians about the alleged existence of a Garda mole. These followed the murder of Lord Justice Gibson and Lady Gibson on the border as they travelled to Belfast from the car ferry in Dublin. It subsequently emerged, however, that Lord Justice Gibson had ignored RUC advice and made his travel arrangements in his own name.*

*Further concerns about internal security were raised when a Garda document on the travel arrangements of the British Ambassador, Sir Nicholas Fenn, was apparently leaked to the Provisionals in 1987. The Government set up a top-level Garda investigation to trace the source of the leak and Government sources at one stage indicated that the arrest of an officer was imminent. In the event, however, nobody was charged."<sup>417</sup>*

1.241 On 21 March 1989, the Irish Independent published an article entitled 'Ambushed: RUC Chiefs die in hail of bullets' which was written by Jerome Reilly and Dominic Cunningham:

*"Two senior RUC officers were murdered in an IRA ambush in the border area yesterday as they returned from talks in the south with Gardaí.*

*The two men, Chief Superintendent Harry Breen and Superintendent Buchanan, were the most senior officers killed in 20 years of Northern troubles.*

*Their bodies were found in a car about 200 yards from Jonesboro on the Edenappa Road. The area was sealed off and a helicopter scoured the scene for booby-traps before the security forces moved in.*

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<sup>417</sup> Day 54, pages 7-10

*As the Provisional IRA last night claimed responsibility for the murders, a major investigation into a possible security leak was launched on both sides of the border. The probe by the Gardaí and the RUC will try to discover how the Provos apparently knew the two officers were on their way back from a meeting with the Gardaí in the south.*

*The two men were accompanied to the border by Gardaí and it is understood were travelling alone to Forkhill where an escort was waiting for them. The attack took place at the bottom of a long hill. Why they chose an isolated back-road remains a mystery. Their meeting in Dundalk with their southern counterpart, Superintendent John Nolan, was one of a series of discussions in the ongoing battle to defeat terrorism.*

*Top of their agenda was the spate of bombings on the rail link between Dublin and Belfast and, ironically, the two men died instantly, less than half a mile from the Kilnasaggart Bridge, which the Provos have repeatedly targeted for bombing since December.*

*Unionist politicians last night questioned how the information was provided to the Provos. Democratic Unionist MP for mid-Ulster, the Reverend William McCrea, said the British Government had lost control of the situation.*

*And Shadow Northern Ireland Secretary, Mr. Kevin McNamara, said he would raise the killings in an emergency Commons question. He said: 'The important questions to be asked include why two such senior police officers were in an unmarked car in "bandit country".'*

*However, senior Gardaí were adamant that the Provos were not tipped off by a mole within their own ranks. Security sources said there was a possibility that radio messages from either the Gardaí or the RUC could have been intercepted by the IRA.*

*The deaths trebled the number of police killings in the North this year. Northern Secretary, Tom King, has already been given an initial report on the incident. Taoiseach, Charles Haughey, last night condemned the killings.*

*The South Armagh IRA claimed responsibility for the attack. They said the victims were identified as 'Crown forces personnel' before they were slain.*

*One Republican source said there was a recent increase in the number of 'undercover' security personnel using roads in the area 'since the recent spate of bombings on the Dublin-Belfast railway line'.*

*Last week, in admitting responsibility for the rail attacks, the Provos said that they were 'drawing out the security forces who were dug into the area'.*

*Security forces in the area suggested that both the INLA and its rival break-away group, the IPLO, are understood to be reforming in the Dundalk and south Armagh area after being almost totally decimated by the 1987 feud which left 12 key members dead.*

*Last night, Superintendent John Nolan declined to comment on the killings. He told the Irish Independent that he was unaware of any internal inquiry within the Gardaí as to how the killers knew the exact movements of the two senior officers.*

*He also refused to confirm that he had met the two men for cross-border security talks yesterday.*

*Last night, the scene of the double slaying was still sealed off but those who arrived at the scene shortly after the ambush said that both men had been badly mutilated.*

*It appears that at least one of the victims was decapitated by the hail of gunfire which met the two men less than half an hour after they had left the Gardaí's senior man in the area.*

*The two men died less than half a mile from Killeen where Mr. Justice Gibson was killed in May 1987 and the Hanna family lost their lives in July 1988 - both in bomb attacks.*

*Attacks on the railway line linking Dublin and Belfast started in earnest last December with the bombing of Kilnasaggart Bridge. In the period since then, nine further instances caused by six bombs and three hoaxes have severely disrupted traffic. The financial losses have been considerable for both Governments, and the Tanaiste and Minister for Foreign Affairs, Brian Lenihan, raised the issue with Secretary of State, Tom King, at their most recent meeting.*

*The terrorist godfathers planned the brutal slaying of the two top RUC men with meticulous precision.*

*At first light today, a final check for booby-type bombs will take place before the bodies are recovered from the scene, but for security staff both sides of the border, a number of key questions still remain to be answered about the bloody killing of Chief Superintendent Breen and Superintendent Buchanan:*

*-- why were they driving on an isolated back-road regularly used by the south Armagh IRA and the INLA to mount attacks, instead of the main Dundalk/Newry road?*

*-- why two of the RUC's most senior officers were travelling without army escort on such a dangerous route?*

*-- how the killers knew the route, the time and the make of the car of the two men.*

*It is still unknown if Chief Superintendent Breen and the other victim, Superintendent Buchanan, had decided on a low-key security operation for their meeting in Dundalk, in an effort to beat the threat of terrorist attack.*

*The meeting between the two men and Superintendent Nolan is understood to have taken some hours to complete.*<sup>418</sup>

1.242 In a second article published in the Irish Independent on 21 March 1989 under the headline 'Death on the Border sparks 'leak' alert,' Barry White wrote:

*"The deaths of two RUC men on the border, apparently returning from a security meeting with senior Garda officers in Dundalk, could have wider repercussions than any murders in recent months.*

*It raises questions about the confidentiality of such meetings which take place on a regular basis and must provoke a storm of protest by Unionist politicians. They and their constituents identify totally with the RUC, and if there is any question of information having been leaked from Garda sources, however inadvertently, about the movements of the policemen, there will an enormous political fallout.*

*Unionists are by no means convinced that cross-border contacts yield significant dividends and they can only be justified if absolutely secrecy is observed.*

*An immediate investigation will take place and will be expected to pinpoint the source of the information available to the IRA, if they carried out the killings.*

*Until the facts are known, relations between the British and Irish Governments must again be strained at a time when the IRA are*

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<sup>418</sup> Day 54, pages 22-27.

*causing alerts in Britain, and sectarian murder has again become a feature of Northern life. The last thing the Anglo-Irish process needed was a security lapse of this nature.*

*The deaths on the border are another grizzly reminder of how far the IRA's tentacles now reach and how ineffective the security forces have been in penetrating the organisation.*

*The British police are still on full alert following the bomb in an army barracks in Shropshire, as well as the discovery of bomb-making materials in London and near Scarborough. Meanwhile, over the past few days, there have been IRA-inspired incidents all over the six counties.*

*Only last summer, British intelligence was claimed to have done the IRA so much damage through SAS operations in Loughgall, Gibraltar and near Omagh, that they were being forced to revert to soft targets on the Continent among British servicemen. Hours before the Jonesboro murders, Secretary of State, Tom King, was meeting the Deputy Chief Constable Michael McAtamney - the only high-ranking Roman Catholic in the RUC - to discuss the latest wave of sectarian killings in Belfast. The effect of the latest developments in that the IRA has again seized the initiative, switching attention to the border area.*

*It is as if they were telling the Government and the Loyalist population that whatever murderous reaction there may be to Republic violence, they will not be deterred.*

*Once again, the army will be forced to concentrate its covert work on bandit country of south Armagh which seems to have been largely pacified - except for the regular attacks on the Belfast/Dublin railway in recent weeks by the threatening presence of observation towers.*

*The killing of two policemen would be regarded by the IRA as a highly successful and professional operation, of the kind that has been so absent recently. There have been 26 violent deaths in 1989 so far, 12 of them in the past fortnight and the majority of them innocent victims from one side of the community or the other.*

*Many of them are extremely embarrassing for Sinn Fein, forced - despite the broadcasting ban - to justify apparently random killings. Within 24 hours of Mr. Gerry Adams, the president, telling a meeting in County Tyrone of the need for 'non-armed political movement' to work for national self-determination, three IRA gunmen shot dead three Protestants only miles away in Coagh in a reckless retaliation for the killing of a Sinn Fein councillor.*

*Earlier, at the Ard Fheis he warned the IRA to be 'careful and careful again', but little attention seems to have been paid to 'refining the campaign'.*

*No doubt the killing of the two policemen will be hailed as a kind of 'clean' operation which the IRA needs, for morale purposes, but it means almost certain death for vulnerable Catholics in areas like North Belfast.*

*A well-armed and well-trained Loyalist murder gang is at large, ready it seems to kill two Catholics for every Protestant.<sup>419</sup>*

1.243 In a third article published in the Irish Independent on 21 March 1989 under the headline 'Another blow to North-South links,' Jerome Kelly wrote:

*"Moves to curb repeated attacks on the vital North-South rail link were top of the cross-border security talks between the murdered RUC men and their counterpart in the south, Superintendent John Nolan.*

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<sup>419</sup> Day 54, pages 27-30.

*But less than an hour after the discussions - part of ongoing cross-border security cooperation - the two men lay dead and mutilated not far from the railway line they had sought to protect and just a shown's throw from the Republic.*

*Attacks on the railway line which carried 15,000 passengers a month until the spate of bomb attacks have been denounced by trade union leaders, the hierarchy and the British and Irish Governments.*

*The recent spate of attacks began on December 16 last when a bomb was planted at Kilnasaggart Bridge - within walking distance of the ambush site.*

*Since then, nine further incidents have seriously disrupted traffic. Six bombs and three hoaxes closed the line down during February and again this month.*

*The economic costs are high. Bussing passengers alone costs Irish Rail and their Northern counterparts, NI Railways, thousands of pounds a week.*

*Behind the attacks is the IRA's plan to embarrass both governments by permanently severing the link between the capitals.*

*The cost in pure economic terms - especially for trade with Northern Ireland - is enormous.*

*Guinness, Harp and Smithwicks transport consignments worth tens of thousands of pounds every week to the North using bulk tankers on the cross-border rail network.*

*And Irish Cement rely heavily on the Dublin-Belfast line to transport bulk cargo. Irish Rail have lost most from the repeated disruption affecting their 10 freight trains a day in each direction.*

*Senior security sources believe that the ultimate aim of the IRA in south Armagh and Dundalk is to close the rail permanently with a series of bomb attacks followed by another series of hoax calls which all have to be taken seriously by security chiefs.*

*As well as tying up vast numbers of security personnel in a key area, the bomb attacks could also leave RUC and British Army personnel vulnerable to attack.*

*It was in this context that the two senior RUC officers travelled in their unmarked car to discuss future security arrangements for the rail link as well as more general cross-border security matters.*

*The sensitive nature of the talks and the necessity for the two RUC men to cross the border into the Republic would have meant the highest possible security arrangements in the Republic and in Armagh - where the two men were based.*

*Plans for the meeting would have been on a strict 'need to know' basis with only senior officers being aware of the meeting.*

*Cross-border security meetings at this level have been held regularly since the signing of the Anglo-Irish Agreement, more than three years ago, writes security editor, Tom Brady.*

*And the Garda and RUC officers maintained a good working relationship even during the cool standoff period when Larry Wren took over as Garda Commissioner and was at odds with the RUC Chief Constable, Sir John Hermon, over the Dowra affair, which involved the Garda brother-in-law of former Minister for Justice, Sean Doherty.*

*Yesterday's attack inevitably raises all the old doubts about the cross-border security that arose in the wake of the IRA's bomb attack which killed northern Chief Justice Sir Maurice Gibson, as he returned home from a holiday through Dublin.*

*Sir Maurice and his wife, Cecily, had been driving home from a holiday in the south of England when they were killed in a land mine explosion triggered off in a security 'no go' zone on the far side of the border.*

*The Judge had left his Garda escort minutes before on the Dundalk side and was due to link up with an RUC escort a quarter of a mile further on. There were bitter recriminations on both sides of the border with accusations emanating from the north of an IRA 'mole' active within the Garda force.*

*The latest murder hunt is certain to show a more restrained reaction on both sides publicly, but privately desperate measures are bound to be taken to plug any security leak that may be found.*<sup>420</sup>

1.244 On 21 March 1989, The Irish Press published an article entitled 'Mole fear in double killing' written by Security Correspondent, Fergal Keane, which stated:

*"A hunt is underway to establish if a 'mole' set up the two top RUC officers shot dead by the IRA on the border yesterday. Chief Superintendent Harry Breen and Superintendent Bob Buchanan were murdered as they crossed the border from Co. Louth after talks in Dundalk with Garda anti-terrorist officers.*

*Senior officers from the North and the Republic meet regularly to discuss measures to counter the IRA, but it's believed that yesterday's meeting was not a routine one and had been arranged at short notice.*

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<sup>420</sup> Day 54, pages 30-34.

*The men - the most senior RUC officers killed by the IRA in the North - were wearing civilian clothes and travelling in an unmarked car when they were killed by a hail of bullets near Jonesboro, just north of the south Armagh border but several miles from the main security crossing.*

*The murders are bound to renew speculation that a mole may have given the IRA exact information about when the two RUC officers would be crossing the border and what route they would be taking back to their base in Armagh.*

*Last night the attack was seen as the third in a series of border attacks on top northern officials by the IRA. Two earlier attacks in 1986 and last year on northern judges has raised speculation that an IRA mole is operating either in the Gardaí or at Dublin Airport.*

*In July last year, Robert and Maureen Hanna and their six-year-old son, David, were killed near Killeen when an IRA bomb blew up their car in mistake for that belonging to northern High Court Judge Ian Higgins. The Hannas had just returned from the US on the same flight as Mr. Justice Higgins into Dublin Airport and it is thought that the IRA had been tipped off about his arrival.*

*In April 1987, Mr. Justice Maurice Gibson and his wife, Lady Cecily, were killed when a bomb destroyed their Ford Fiesta car at Killeen. The Gibsons had just returned from holiday in Britain and had driven from the ferry in Dublin.*

*Both the Gibsons and Mr. Justice Higgins had been provided with a Garda escort to the border. Judge Higgins missed death as he had been delayed for an hour at Dublin Airport and the Hannas car was blown up in mistake for theirs.*

*Senior Gardaí reacted with shock to the killings last night. One senior officer described the murders as 'a disaster' for security cooperation.*

*An investigation has already begun from Dundalk into how the two officers were ambushed but the killings are certain to raise suspicion about how the IRA is getting its information on people crossing the border. Gardaí have in the past ruled out allegations about a mole on the southern side, but the latest killings are certain to fuel speculation and recriminations in Britain and the North.”<sup>421</sup>*

1.245 This was followed by a second article in The Irish Press entitled 'Killings a major blow to RUC:'

*“The two officers who were killed in yesterday's border ambush, were Chief Superintendent Harry Breen, who was in charge of the RUC's H Division which covers most of County Armagh, and Superintendent Bob Buchanan, who was responsible for the border area, a special responsibility, created following the signing of the Anglo-Irish Agreement.*

*Superintendent Buchanan's responsibility was to collate information and liaise with senior Garda officers in the Republic about activities of the IRA and other Republican groups.*

*The two officers had been travelling in Superintendent Buchanan's maroon Vauxhall car when the ambush took place. RUC sources last night suggested that the meeting in Dundalk had been arranged 'at the last minute', and there is concern that the movement of the two officers was noted to such an extent to enable the IRA to set up an ambush.*

*Chief Superintendent Breen is the highest ranking RUC officer to have been killed in the present phase of political unrest in the North. Ten*

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<sup>421</sup> Day 54, pages 42-44.

*years ago near Crossmaglen in the same area, Superintendent Stanley Hanna was killed when a land mine was detonated as he walked along a laneway shortly after alighting from a helicopter.*

*The loss of the two men, both of whom are married with families, is a major blow to the RUC and to the process of cross-border liaison which was referred to in the RUC Chief Constable's report in 1988.*

*Sir John Hermon, who is in England, is understood to be flying back to the North today, to resume operational responsibility and last night Northern Secretary Tom King was given an initial briefing on the incident by the Deputy Chief Constable Mr. Michael McAtamney.*

*The two officers were described as 'extremely popular' by fellow officers who served with them in County Armagh.*

*Superintendent Buchanan is believed to have carried out regular journeys across the border in his own car which was used for yesterday's top level visit to Dundalk.*

*While the meetings with the Gardaí were regular, it is almost certain that the routes used by the Superintendent were very varied and there will be considerable concern that the road used for the return journey yesterday became known to the IRA.*

*There is no suggestion from RUC sources that they believe details of the officers' travelling plans were leaked to the IRA by security forces in the Republic or the North, but one source last night said that the meeting had been arranged 'at the last minute'.*

*The ambush will lead to a review of arrangements for such cross-border security meetings and it may lead to the suggestion from the British authority that the RUC officers should be helicoptered from the North to the Republic to avoid any similar ambush.*

*Garda sources said last night that the arrangements for meetings between the RUC officers and their counterparts in the Republic were usually very loose and that sometimes the RUC officers just dropped in unannounced at Dundalk. It was not clear last night whether or not the murdered men had a Garda escort as far as the border.*"<sup>422</sup>

1.246 This was followed by a further article entitled 'We killed RUC men, IRA say' written by Patsy McArdle:

*"The IRA in south Armagh said last night that they killed the RUC men and would issue a 'detailed statement' later. "*

*Security forces sealed off the area in a massive operation after the bodies were discovered and last night Dundalk gardai set up checkpoints on the Republic side of the border as a dragnet for the killers was launched.*

*The South Armagh IRA said the victims were identified as 'Crown forces personnel' before they were slain.*

*"One Republican source said there was a recent increase in the number of 'undercover' security personnel using roads in the area 'since the recent spate of bombings on the nearby Dublin/Belfast railway line'.*

*Last week, in admitting responsibility for the attacks on the cross-border rail link, the Provos said it was drawing out the security forces which were 'dug into the area'. It was suggested last night that the senior RUC men had been on a tour of the area near the bombed railway line - now restored after a series of attacks - to monitor cross-*

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<sup>422</sup> Day 54, pages 44-47.

*border security and consider improved North-South surveillance measures.*

*Two helicopters hovered above the red Vauxhall Cavalier car in which the police officers were travelling along the Edenappa Road when they were gunned to death.*

*The shooting happened on a lonely mountain road about 56 yards away from a farmhouse and on an incline on the narrow roadway which leads to the border on one side and a maze of south Armagh roads on the other.*

*A priest who was one of the first on the scene said it appeared both men had been shot in the head. One of the bodies appeared to be out of the car on the roadway beside the vehicle and the other sprawled across the front seat.*

*Meanwhile, Garda sources in Dundalk said last night that the two RUC men were in the south discussing 'new measures for the protection of the North-South rail link'. They were ambushed on their return, which included a tour of roads near the Kilnasaggart railway stretch - the target of several recent bomb attacks.<sup>423</sup>*

1.247 This was followed by a fourth article entitled 'Killings are condemned by Haughey':

*"The Taoiseach, Mr. Haughey, condemned the murders 'in the strongest possible terms' last night.*

*'I extend deepest sympathy to the families of the dead men,' Mr. Haughey said. 'Every possible cooperation will be extended to the*

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<sup>423</sup> Day 54, pages 47 -48.

*Northern authorities to ensure that those responsible are apprehended and brought to justice.'*

*The Taoiseach said that 'This latest atrocity follows on a sickening cycle of sectarian violence.' He extended sympathy to the families and friends of the victims of 'these campaigns of terror'.*

*The leader of Fine Gael, Alan Dukes, said the killings showed 'the utter contempt terrorists have for human life', and that the two men were 'taking part in such valuable work' when they were mercilessly cut down.*

*The leader of the Progressive Democrats, Dessie O'Malley, condemned the killings and said if the two officers had been discussing attacks on the Dublin-Belfast rail link with the Gardaí, 'then they died as much in the service of the people of the Republic as in the service of the people of Northern Ireland'.*

*He said the deaths raised 'very disturbing questions' about the level of intelligence available to the IRA.*

*Labour Party Leader, Dick Spring, condemned absolutely 'the vicious and brutal killing'.*

*The SDLP MP for Newry and Armagh, Seamus Mallon, said the killings were 'a calculated and brutal act of slaughter carried out by people for whom murder has become a way of life'. He called on anyone with information to make it available.*

*The Chairman of the North's Police Federation, Alan Wright, said he was shocked and horrified at the killings. 'They were two of the finest and most valuable members of the RUC', he said.*

*Mr. George Maybury, the General Secretary of the Association of Garda Sergeants and Inspectors, said the Association condemned the murder of any person, regardless of occupation or religious persuasion.*

*He said that the whole question of cross-border security may have to be examined, but that it was too early to say anything positive about the security implications, since nothing about the circumstances of the killings was yet clear.*

*Fine Gael spokesman of Foreign Affairs, Mr. Peter Barry, TD, said that the murders were 'another indication of the lengths to which the IRA will go to divide the communities in Northern Ireland.*

*'All Irish people who want justice', he said, 'will help the Gardai and the RUC to bring these murderers before the courts.'*<sup>424</sup>

1.248 On 22 March 1989, the Irish Times published an article on the front page written by Fergus Pyle under the headline 'No Mole involved in murders says Hermon:'

*"As intensive investigations are underway on both sides of the border into the IRA killings of two senior RUC officers in south Armagh on Monday, the Chief Constable of the RUC, Sir John Hermon, has categorically ruled out any possibility that the IRA had been tipped off by a mole in the Garda about the movements of the two men who had spent just over two hours in the Republic.*

*The President of the RUC Superintendents' Association, Superintendent Patrick Cullough, dismissed speculations that a mole as 'uninformed and at best mischievous'.*

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<sup>424</sup> Day 54, pages 49-50.

*In Dublin yesterday, the Government promised to give 'every possible cooperation' to the Northern authorities investigating the 'outrage', while in London, the Northern Ireland Secretary, Mr. Tom King, told the House of Commons that the attack on security cooperation would only increase determination to make cooperation more effective.*

*Answering suggestions that the gunmen may have taken a significant haul of documents dealing with cross-border strategy by the security forces, Sir John told a press conference in Belfast yesterday that the private diaries and other personal papers belonging to the two men 'which may or may not contain information' were missing, but he added: 'We have recovered quite a lot of what they might have had in their possession in their offices, but there was nothing in their car'. He refused to comment further, saying that there were still 'widespread inquiries' to be made about the location of documents that the two men may have had.*

*It is understood that the two RUC officers were not accompanied by a Garda escort to the border - as had earlier been suggested - following their meeting in Dundalk. Official sources in Dublin commented last night 'that these meetings are quite informal; arranged as required and the people involved come and go without any fuss'.*

*One possibility being pursued by the security forces investigating the attack, a police source said in Belfast, is that the two RUC officers strayed into the path of an IRA unit that was preparing a different operation, were recognised and killed.*

*After its meeting yesterday, the Government ordered the Garda Commissioner, Mr Eugene Crowley, to report urgently on the visit by Mr Breen and Mr Buchanan to Dundalk.*

*In the House of Commons, Mr King said that the murders had been a deliberate attack on security cooperation between the Irish and British Governments.*

*According to Sir John Hermon, the meeting in Dundalk was 'almost impromptu', having been arranged earlier on Monday morning between Mr Breen and the senior Garda officer there, Superintendent John Nolan. The two men regularly varied their routes for visits, which, Sir John said, were 'frequent'.*

*Sir John said that the two officers had decided what route they were going to take after they had left the Garda station in Dundalk, and had told no one which way they intended to return to the North. They were unarmed and their car was unmarked, and they had not been escorted at any point on either side of the border, he said. Though the car was fitted with a radio telephone, it had not been used.*

*He also said he had talked at length with the Garda Commissioner yesterday and that they had both consulted their investigating officers."*

*"I can say now, categorically, that the evidence which we have firmly confirms that there was no mole, and we asked that this should be discounted very firmly and very clearly."*

*Unionists yesterday renewed their accusations that the attacks must have resulted from inside information. Mr Ken Maginnis, official Unionist Party MP, calling for the use of helicopters to transport senior RUC officers on such missions in future, said that an informant must exist in the RUC or the Garda, either among members or their civilian backup.*

*As police put together what happened, it is thought that Chief Superintendent Breen was either forced or ran from his car in an attempt to escape. His body was discovered in front of the vehicle,*

*which had been riddled with bullets, from the heavy calibre weapons used by the gunmen.*

*Sir John resisted suggestions that it would be wise in future for Garda officers to travel North rather than continue to hold meetings between the two Forces in the Republic. There was 'total reciprocation' between the Garda and the RUC, with officers travelling in each direction.*

*He revealed that he himself, after a recent visit to Dublin, had returned to the North by a road very close to the one used by the murdered men.*

*Sir John dismissed speculation that Monday's meeting was routine, or held as part of a series dealing with the IRA's attacks on the Belfast-Dublin railway line. He said that there was no indication that the officers had had any warning of the attack, which seemed to have followed a sudden blocking of the road. 'Gunmen sprang out of a vehicle, we believe, and from the side of the road and the two men were murdered instantly.'*

*He also rejected any notion that Mr. Breen and Mr. Buchanan had contributed to their own deaths by a security lapse. Both men were experienced and skilled, he said, and died in an 'unfortunate, indeed a tragic, incident'.*

*Yesterday, Sir John Hermon and the Garda Commissioner agreed to review methods of contact between the two Forces. The killings, Sir John added, would make the Garda and the RUC 'more committed to cooperation, more dedicated to dealing with the terrorists'.<sup>425</sup>*

1.249 On 22 March 1989, the Irish Times published a second article written by Fergus Pyle:

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<sup>425</sup> Day 54, pages 11-15

*“The sequence of events which would ultimately lead to the murder of the two RUC officers on Monday evening began shortly after 10 a.m. that morning when Superintendent Bob Buchanan contacted Garda Chief Superintendent John Nolan in Dundalk.*

*According to senior Garda sources, Mr. Buchanan was anxious to discuss a virtual joint operation between both Forces on the border - although sources have declined to give details. It is understood, however, that the two men did not discuss recent IRA attacks and cross-border rail links.*

*In accordance with normal procedures, it was the RUC officers who travelled for the meeting - as it was they who had requested it.*

*Neither officers would be provided with any armed escort in order not to arouse any undue suspicion. This is the longstanding practice for such meetings which have been taking place at least once a month in the last two years. This informal practice was confirmed two years ago in discussions between the former Garda Commissioner, Mr. Laurence Wren, and the RUC Chief Constable, Sir John Hermon.*

*The two men who were in plain clothes travelled south on an unapproved road and in general they tried as much as possible to vary their route on journeys into the Republic. On this occasion, they were travelling in Mr. Buchanan's red Vauxhall Cavalier car.*

*It is understood that neither man was armed.*

*The officers arrived in Dundalk at 1:45 p.m. It is understood that only one officer, Chief Superintendent Nolan, had information about the impromptu visit. Certainly, senior Gardaí in Dundalk were unaware of it until they saw both officers entering the station.*

*This limited access to information appears to rule out the possibility of a Garda mole. Senior Garda officers said yesterday that the RUC men's presence in the station would not have been known even to a large number of Gardaí working in the station that day.*

*After a one-hour meeting with Chief Superintendent Nolan, both men left Dundalk about 3pm. No Garda officer escorted them to the border and no RUC unit was waiting for them in Northern Ireland. It appears that the men were in radio contact with their base in Armagh, but not, apparently, with the Gardaí in Dundalk.*

*The two officers appeared to have turned off the main Belfast Road near Ballymacscanlon and they took an unapproved road towards Jonesboro - where they were killed.*

*It is possible that both men were spotted in Dundalk and an IRA active service unit intercepted them on the border. Alternatively, it is possible that the IRA could have penetrated communications between Dundalk and Armagh.*

*It appears that all communications about the meeting took place on a special scrambled telephone line. However, the IRA are known to have equipment capable of detecting the most secure telephone systems. This was confirmed last year when a Dublin man was found monitoring communications of the Garda Special Branch from a flat opposite the Dublin Headquarters.<sup>426</sup>*

1.250 This article was followed by an additional one under the headline "Collins dismisses speculation on mole:'

*"The speculation that an IRA mole operating in the Garda, had been involved in the shooting dead of the two senior RUC officers was*

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<sup>426</sup> Day 54, pages 15-17.

*rejected as 'totally untrue' by the Minister for Justice, Mr. Collins, yesterday.*

*A 'lot of emphasis' had been laid on the theory that an IRA informant had provided intelligence from the Garda, the Minister said, but he totally rejected this.*

*'It is certainly not the first time that such a rumour has been used. I was very happy this morning to hear the RUC say that they have every faith in the Gardai', Mr. Collins added.*

*The Minister confirmed that the Government had asked the Commissioner of the Garda, Mr. Eugene Crowley, to conduct an 'immediate and thorough investigation' into all the circumstances and arrangements surrounding the RUC officers' trip to Dundalk. The Commissioner would relate all his findings to the Minister.*

*However, Mr. Collins refused to either confirm or deny reports that only the deceased officers and Garda Superintendent John Nolan, whom they met in Dundalk, knew of the meeting on Monday afternoon, or that messages relating to the meeting had been broadcast over RUC or Garda radios.*

*It was never practice to give details of arrangements made between the two police officers, he said.*

*The Minister dismissed as 'political motivation' claims by Unionist politicians that the latest killings were further hard evidence that the Anglo-Irish Agreement was not working.<sup>427</sup>*

1.251 There then followed an article by Denis Coughlan, Political Correspondent, entitled "The Government orders inquiry":

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<sup>427</sup> Day 54, pages 17-19.

*“The Government has ordered an immediate Garda investigation of the circumstances surrounding the deaths of the two senior RUC officers as an indication of its concern that cooperation between the two Forces should continue at the highest possible level.*

*There was some annoyance in Government circles over the suggestion that the deaths might be in any way due to a breach of security in the Republic. Arising from a discussion in Cabinet, the Garda Commissioner, Mr. Eugene Crowley, has been ordered to conduct an investigation and to report urgently to the Minister for Justice, Mr. Collins.*

*Following on the Taoiseach's expression of sympathy with the relatives of the murdered policemen on Monday night, the Cabinet 'reiterated the commitment already given that every possible cooperation would be provided to the Northern authorities in relation to the investigation of this outrage'.*

*For reasons of security, a Government spokesman refused to comment on the frequency of such contacts between the security forces under the provisions of the Anglo-Irish Agreement. Neither had he anything to say about the men being unarmed.*

*He expressed satisfaction, however, over the fact that there had been no hint or suggestion from the Northern Ireland Police Authority or from the Chief Constable of the RUC, Sir John Hermon, that the Gardaí had been in any way culpable for what had happened.*

*Garda Commissioner Crowley last night rejected any suggestion of an IRA mole within the security forces. 'I absolutely reject any allegation of a mole within the Gardaí', he said. Speaking at the annual conference of the Association of Garda Sergeants and Inspectors in Donegal the*

*Commissioner expressed his sincere condolences to the relatives and friends of the two senior RUC officers murdered by the IRA on Monday.*

*Mr. Crowley said he was confident that the present investigations into the murders would clarify all aspects of the incident. He expressed confidence that the Garda/RUC relations could continue at the present excellent levels of cooperation. He was also hopeful that any future meeting between the officers of both forces could take place in a secure environment.”<sup>428</sup>*

1.252 On 22 March 1989, the Irish Independent published an article entitled ‘Route led RUC men into IRA trap’ on its front page:

*“A decision by the two RUC men to travel back across the border by the same route which they used to travel to Dundalk probably cost them their lives, senior Garda officers disclosed last night.*

*Garda and RUC chiefs believe that the IRA gambled that their victims, Chief Superintendent Harry Breen and Superintendent Bob Buchanan, would return to Armagh by the same route and set up their cold-blooded ambush in anticipation. Time would have necessitated setting up the ambush in advance.*

*Both sides are now satisfied that the IRA followed the red Vauxhall Cavalier car, owned privately by Superintendent Bob Buchanan, from Armagh to Dundalk. The two officers did not have a police escort on either side of the border, in an attempt to maintain a low profile.*

*The Irish Government asked Garda Commissioner, Eugene Crowley, for an immediate inquiry into the two officers' visit and promised full cooperation with the northern authorities in the investigation. Both*

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<sup>428</sup> Day 54, pages 19-21.

*Commissioner Crowley and RUC Chief, John Hermon, ruled out a 'mole' in the Garda force.*

*As RUC forces on both sides of the border began a review of security arrangements for officers involved in cross-border meetings, it emerged yesterday that the two men made a desperate bid to escape the gunmen when they drove into the trap at Jonesboro.*

*Mr. Buchanan attempted to reverse the car at speed into the side of the Edenappa Road, but both men were slain by a hail of bullets before they could get away.*

*Earlier, British Prime Minister, Margaret Thatcher, called for more cooperation between the North and the Republic in the fight to eradicate terrorism. Every possible instrument, including extradition and the Prevention of Terrorism Act, had to be used, she claimed. A joint Anglo-Irish investigation into the murders is underway, Northern Secretary, Tom King, confirmed yesterday.”<sup>429</sup>*

1.253 The Irish Independent published a second article on the same date entitled 'Last Minutes of murdered RUC top officers' by Northern Editor, John Devine, which stated inter alia:

*“RUC Police Chief Sir John Hermon last night categorically ruled out the possibility that a 'Garda mole' had set up two of his most senior officers, who were murdered by the IRA a couple of hundred yards from the border on Monday afternoon.*

*The RUC Chief surprised journalists in Belfast, after he had visited the murder scene yesterday, by disclosing that the 'informal' meeting between Chief Superintendent Harry Breen and Superintendent Bob*

*Buchanan, who directed the war against the IRA in the Newry and Armagh areas, had only been set up the same morning after 11 a.m.*

*He told, too, of how the police were trying to discover whether the murdered police officers were carrying any documents which could be of advantage to the IRA; embarrass the RUC, or both police forces, or compromise any cross-border policies which had been developed to beat the terrorists.*

*And even though he could not say for sure that the IRA had not got away with any sensitive material, it would appear that all that was taken were personal diaries. Important papers had been located in their offices; but he was not specific about that.*

*Sir John refused to divulge the police theory about how the men were tracked and set up for the ambush, in which they died in hail of high-velocity bullets fired from behind a dry stone ditch.*

*While firmly ruling out the possibility of a 'mole' within the Garda, Sir John refused to elaborate any further, emphasising that he wished to say nothing that would impede the investigation of the double murder, by the police forces on either side of the border.*

*Following an examination by British Army bomb experts which lasted until well into the afternoon to ensure that land mines or booby-trap devices had been not left at the scene, the bodies of the two men were removed for post mortem. The car, which belonged to one of them, was also removed for forensic examination.*

*The two RUC officers were unarmed: They never carried arms in the Republic. Even if they had had guns it was unlikely that they would*

*have had a chance to use them. Police experience was that in ambush cases, the victims never managed to use their guns.*<sup>430</sup>

1.254 This was followed by a third article entitled 'Joint Probe already started – King:'

*"A joint Anglo Irish investigation has begun into how and why two senior RUC officers travelled from Dundalk into the heart of so-called 'bandit country' in Armagh straight into an IRA ambush, Northern Secretary Tom King promised British MPs yesterday.*

*Mr. King and RUC Chief Constable, Sir John Hermon, yesterday ruled out any suggestions of an IRA 'mole' or sympathiser among the Gardaí.*

*Meanwhile, the clear political signal from Prime Minister Margaret Thatcher and Mr. King is that cooperation between the two forces is only likely to be enhanced by the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan.*

*Mr. King told former Labour Party Northern Secretary Merlyn Rees that cooperation between the two forces had 'never been better' and these killings could only be expected to increase their resolve.*

*He was scornful of Unionist claims that terrorist killings had doubled under the Anglo-Irish Agreement. He told MPs he was greatly reassured by Mr. Haughey's decision to personally assign Garda Commissioner Eugene Crowley - a friend of Sir John Hermon - to supervise the investigation.*

*"That investigation is likely to centre on known IRA sympathisers and suspected activists living and based in Dundalk. It is now clear that the*

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<sup>430</sup> Day 54, pages 36-37.

*ambush was arranged with the help of IRA 'spotters' who trailed the two officers."*<sup>431</sup>

1.255 On 22 March 1989, the Irish Press published a front page article entitled 'No IRA mole – Garda Chief:'

*"The Garda Commissioner said last night that he absolutely rejected allegations of an IRA mole in the Gardaí.*

*Speaking at the Association of Garda Sergeants and Inspectors annual conference in Donegal, Commissioner Eugene Crowley said that he hoped that the investigation into Monday's shooting of two RUC senior officers would secure the means of allowing security meetings between the two police forces to continue.*

*He joined with the RUC Chief Constable, Sir John Hermon, in rejecting allegations that an IRA mole in the Garda had provided the information which led to the murder of Chief Superintendent Harry Breen and Superintendent Bob Buchanan near Jonesboro on Monday."*<sup>432</sup>

1.256 The Irish Press published a second article that day entitled "Hermon dismisses all suggestions of a mole in South security forces:'

*"The double murder of senior RUC officers returning from talks with Gardaí in Dundalk is certain to be a major issue at the next meeting of the Anglo-Irish conference early next month.*

*Although the killings have shocked both Governments, officials in Dublin have noted with satisfaction the strong statements by Northern Secretary Tom King and police representatives, dismissing suggestions that a 'Garda mole' might be responsible.*

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<sup>431</sup> Day 54, pages 37-39.

<sup>432</sup> Day 54, page 51.

*Justice Minister Gerry Collins is awaiting a report from the Garda Commissioner, Mr. Crowley, who has been asked to hold an immediate and thorough investigation into the circumstances and arrangements for the ill-fated visit by the RUC men to Dundalk.*

*The killings were discussed by the Cabinet yesterday and a statement said the Government had reiterated the commitment already given by the Taoiseach that every possible cooperation would be provided to the Northern authorities investigating 'this outrage'.*

*An uncompromising RUC Chief Constable, Sir John Hermon, stressed that it was a 'lie' to suggest that there was any leak among the Republic's security forces in the hours leading up to the deaths.*

*'We have been very concerned about these statements concerning the possibility of a mole. The evidence that we have firmly confirmed is that there was no mole and we would ask that these allegations are discounted.'*

*Meanwhile, in the House of Commons, Mr. King gave a categorical assurance that he did not know how the two men were murdered and what had occurred precisely and said MPs would have to wait these answers until a full investigation was completed by the RUC and by the Gardaí.*

*He was grateful for the immediate and forthright assurance given by the Taoiseach that every possible cooperation would be forthcoming to ensure that those responsible were apprehended and brought to justice.*

*Senior Garda officers said yesterday at the AGSI meeting in Donegal that while the killings were being seen as a security disaster, they would not affect security cooperation between the two police forces. As part of the investigation ordered by the Government into the killings,*

*security arrangements for RUC officers visiting the south are to be examined.*"<sup>433</sup>

1.257 On 23 March 1989, the Irish Times published an article entitled 'RUC, army coordinate investigations into killings' which stated inter alia:

*"Both the Gardaí and the RUC have maintained that they do not suspect a leak of information from inside either Force and that the meeting was arranged by telephone earlier on Monday morning.*

*The Gardaí yesterday denied a report in a Belfast newspaper that the RUC men had been forced to leave their car parked outside the Dundalk Garda Station during the meeting with Chief Superintendent John Nolan, the Garda officer in charge of the Dundalk area.*"<sup>434</sup>

1.258 On 23 March 1989, the Irish Press published an article entitled 'IRA took secret files after RUC Killing' which stated:

*"The RUC confirmed yesterday that the personal diaries of the two senior RUC officers shot dead on the border on Monday were taken after the attack.*

*The RUC statement was followed by an IRA claim late last night that it had seized 'confidential files' on cross-border security during the ambush.*

*The claim by the Provo's south Armagh brigade came in a detailed statement on the murder of Chief Superintendent Harry Breen and Superintendent Buchanan.*

*The IRA said they had found the documents after shooting the officers, returning from security talks with senior police in Dundalk. They said*

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<sup>433</sup> Day 54, pages 51-53.

<sup>434</sup> Day 54, page 21.

*the files related to cross-border security cooperation and efforts by the security forces to apprehend them.*

*The IRA claimed the officers were shot dead after their car came to one of a number of check-points which the IRA had been operating across south Armagh.*

*They said the two RUC attempted to drive off when their car was stopped.*

*Then, according to the statement, the IRA men feared their own lives could be in danger and took what they described as 'preventative action' to stop the RUC officers getting away.*

*The Gardaí refused to comment early yesterday on claims that secret documents had been taken after the ambush near Jonesboro, County Armagh.*<sup>435</sup>

1.259 On 27 March 1989, the Irish Independent published an article entitled 'Killer Provos blocked road' which stated:

*"Several cars were halted by Provo roadblocks before the arrival of the car containing two RUC Chiefs, shot dead by the IRA, it was claimed last night.*

*At least two cars were halted by Provo gunmen on the Edenappa Road, south Armagh, where the killings took place last Monday, say local residents.*

*One motorist travelling southwards was waved down by a man in battle dress carrying an Armalite rifle and ordered to pull into the roadside.*

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<sup>435</sup> Day 54, pages 53-54.

*Another car approaching from the north was also waved down, before the red Cavalier car in which the RUC men were travelling was stopped.*

*Eye witnesses - some of whom were understood to have already talked to Gardaí - told of seeing two men on the roadway with guns before victims Chief Superintendent Harry Breen and Superintendent Bob Buchanan arrived.*

*According to one local man, who asked not to be identified, four others in combat dress ran from a white van parked along the roadway and opened fire on the Cavalier as it was being reversed onto the grass by the driver in a frantic attempt to escape the gunmen.*

*Forensic experts spent six hours yesterday examining the stretch of road, and the RUC said it is anxious to hear from anyone who saw roadblocks.*<sup>436</sup>

1.260 On the same date, the Irish Independent published a second article entitled 'Adams visit to Armagh is a boost for Provos' which stated:

*"Sinn Fein Leader, Gerry Adams, was joined on a platform by a masked man yesterday in Crossmaglen, near where two senior RUC men were murdered last week. Mr. Adams challenged the Taoiseach to tell Mrs. Thatcher that the British must withdraw from Northern Ireland.*

*Instead of attending the major Easter parade in west Belfast, supported by 2,000 people, Mr. Adams went to the small Armagh village where he praised the IRA, saying that south Armagh was often described as 'bandit country' but the only bandits and terrorists there were, 'in the uniforms of the Crown forces'.*

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<sup>436</sup> Day 54, pages 39-40.

*A hooded IRA man in battledress read a statement after the Sinn Fein President spoke. A statement referred to the murders of the two RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan, who were shot dead in their car as they returned from meeting Garda officers in Dundalk.*

*The IRA man alleged that one of the dead police officers was responsible for the murders of eight IRA men at Loughgall two years ago and for an RUC baton charge on mourners at the funeral of IRA man, Brendan Burns, in Crossmaglen last year.*

*He said the Provisionals campaign would continue in south Armagh until 'the last British soldier, UDR member and RUC man are gone'.*

*Mr. Adams drew attention to the absence of British soldiers and RUC men and remarked: 'They must have got the message at last, to keep away'.*

*His attendance at the south Armagh commemoration, instead of attending the major rally in Belfast, indicated his intention to show close links with the IRA and to minimise tensions within Republicanism on the direction their struggle is to take.*

*He launched a bitter attack on the SDLP deputy leader Seamus Mallon for calling last week for people to inform on those responsible for the killing of the two RUC officers. The Sinn Fein President told the crowd: 'We are gathered to honour those who fought and died in 1916 and also to pay homage to the men and women volunteers of the IRA of this generation, particularly the south Armagh units of the IRA'.*

*British troops and RUC men stayed out of sight in Crossmaglen as the Republican march took place through the streets and there were no check-points on any approach routes.*

*About 1,500 people attended the Sinn Fein Easter commemoration march in Derry yesterday afternoon.*<sup>437</sup>

### **C. Observations on the Press Coverage**

- 1.261 It is clear from the press coverage that speculation that a 'mole or a leak' had been involved in the murders emerged fairly quickly.
- 1.262 However, it is also clear from the text of the articles that this speculation was based on similar allegations that had been made following the murders of Lord and Lady Gibson in 1987 and the murders of the Hanna family in 1987, as well as the discovery that a Garda document containing the travel arrangements of the British Ambassador to Ireland had been leaked in 1987. In light of this it is not surprising that the suggestion that a mole or a leak had been involved had emerged so quickly.
- 1.263 It should be noted that none of the articles contain any details of a specific allegation of a leak from Dundalk Station. They are all drafted in general terms.
- 1.264 It should also be noted that none of the journalists who authored these articles was called to give evidence to the Tribunal to testify as to the basis for their speculation that a leak or a mole had been involved.
- 1.265 It should also be noted that one of the Northern politicians quoted as having suggested that *"an informant must exist in the RUC or the Gardaí"* (Irish Times, 22 March 1989), Lord Ken Maginnis, gave evidence to the Tribunal but he was not questioned about the reasoning behind his statement in March 1989.

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<sup>437</sup> Day 54, page 40-42.

## Chapter 8 The Government decision of 21 March 1989 to direct an investigation and the subsequent investigation carried out by Assistant Commissioner O’Dea

### A. The Government’s Response

1.266 Mr Gerard Collins was Minister for Justice in March 1989. He told the Tribunal that he was made aware of the murders within an hour of the incident being reported to the Gardaí. He stated that he immediately discussed the matter with the Secretary General of the Department of Justice following which he made contact with the Taoiseach, Mr Charles J Haughey. He stated that he did so *“because of the political ramifications and the relationship between the two, between ourselves and the people in London.”*<sup>438</sup>

1.267 Mr Collins stated that his main concern was the effect that the murders could have on the relationship between the British and Irish governments.

“Q. Did you have any particular concerns in relation...

A. Oh, most certainly, most certainly. This was an exceptionally very, very serious outrage, if you like. It was an effort to break down the lines of communication between the Gardaí and the police in Northern Ireland. It was something that should never have happened, but happened, and it was very, very serious. And obviously if it could have an impact on the relationship between the British and Irish Governments. And the winners of the day, obviously, would be the Sinn Fein, IRA, people.”<sup>439</sup>

1.268 Mr Collins stated that the Taoiseach asked him to be in a position to *“give the fullest update information to the members of the Government”* at the cabinet meeting organised for 21 March 1989.

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<sup>438</sup> Day 32, pages 46-47.

<sup>439</sup> Day 32, page 47

1.269 The document recording the Government's discussion of the matter at its meeting on 21 March 1989 records that the Taoiseach informed the meeting that he had asked the Garda Commissioner, Eugene Crowley to carry out an *"investigation of [the] full circumstances and report to M/J [Minister for Justice]."*<sup>440</sup>

1.270 Mr Collins told the Tribunal that what the Government wanted when it directed that an investigation be carried out was:

*"A. To get the full and exact picture and then to do whatever was necessary to do emerging from that."*<sup>441</sup>

1.271 Mr Collins stated that what made this situation different from earlier murders where no such investigation had been commissioned was the rank and positions held by the murdered RUC Officers:

*"Q. Yes. That is, indeed, so, Mr. Collins. However, whereas the Gardaí in the south in the two previous murders that had been -- that had followed a rather similar pattern, in that the parties had just gone over the border when they were murdered, on both of those occasions the Garda appeared to have assisted in inquiries, assisted the PSNI with inquiries south of the border, but there wasn't a direction that the Garda Commissioner carry out an in-depth investigation. Why was the decision made in the Breen and Buchanan murders that this now required a particular investigation from your own Force?"*

*A. The fact that the two victims, I would suggest, were of very serious rank, key players in the exchange of information system that was in operation which both sides were benefitting from, and the fact that there could very well be political ramifications,*

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<sup>440</sup> Day 25, pages 54-55.  
<sup>441</sup> Day 32, page 48.

*we wanted to know exactly the full picture. Not that one murder is less important than the other, I might add.”<sup>442</sup>*

1.272 Importantly, Mr Collins stated that the issue of a leak or a mole did not arise at the time:

“Q. Yes, of course. Indeed not. Did you feel at the time or was it talked among yourselves that there a possibility that there was a problem?

A. To my knowledge and to the very best of my recollection, I don't think that ever arose during our discussions at Government level or, indeed, within the Department of Justice.

Q. I presume, though, that you would want to eliminate the possibility that there was a leak anywhere?

A. I think the most important thing for us to do at the time was to establish the facts as best we could.<sup>443</sup>

1.273 Mr Collins stated that he was aware of the speculation in press reports that there might have been a leak or a mole but he gave them no credence. He stated:

“A. I can only say in relation to press reportage, Your Honour, that there was a propaganda war going on at the time as well as the other type of war that we have been talking about. That we often had reports in the papers that didn't stand up. Sometimes one could only guess the motives of reports and stories carried. So, again, anything to do with in-house police activity that was a matter for the Commissioner and his people to deal with those. And I would always accept their professional judgement. On the political side of things, well then obviously that would be for my judgement.”<sup>444</sup>

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<sup>442</sup> Day 32, page 49.

<sup>443</sup> Day 32, page 49.

<sup>444</sup> Day 32, page 51..

1.274 Following the Government Meeting, the Government Information Service issued the following press release:

*"The Government of today's meeting considered the killings of the two senior RUC officers on their return from a meeting with Garda officers in talk and reiterated the commitment already given that every possible cooperation would be provided to the northern authorities in relation to the investigation of this outrage. To this end, the Commissioner has been asked to conduct an immediate and thorough investigation of all the circumstances and arrangements relating to the attendance of the deceased officers in Dundalk and to report urgently to the Minister for Justice on the matter."*<sup>445</sup>

1.275 It should be noted that it was clear from the outset that the investigation was not into the murders themselves but rather into the circumstances and arrangements leading up to the attendance of Chief Superintendent Breen and Superintendent Buchanan in Dundalk Station on 20 March 1989.

## **B. The Appointment of Assistant Commissioner O'Dea to conduct the investigation, the investigation and the subsequent report**

1.276 In March 1989, Assistant-Commissioner Edward O'Dea was in charge of 'Crime & Security.'

1.277 Assistant-Commissioner O'Dea told the Tribunal that he probably received his instructions from Commissioner Crowley either in the late morning or early afternoon of 21 March 1989.<sup>446</sup> He stated that his instructions were in writing and they were *"to investigate the circumstances surrounding this meeting, who arranged it, who attended it, who knew about it."*<sup>447</sup>

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<sup>445</sup> Day 25, page 55.

<sup>446</sup> Day 25, page 63.

<sup>447</sup> Day 25, page 65.

1.278 Detective Inspector Kevin Carty told the Tribunal that he was a member of the Special Detective Unit in March 1989. He stated that he was instructed by his Chief Superintendent to accompany Assistant Commissioner O'Dea to Dundalk and to assist him with his investigation.

*“Q. Before any, sort of any of the inquiries that were made began, were you given any sort of a briefing or description by Mr. O'Dea of what the job at hand was?”*

*A. My understanding that the job in hand was to look into the matters surrounding the visits of the two RUC officers to Dundalk Station; who saw them in the station, who knew they were coming, things to that effect. It was -- I understood it to be, I think -- I wouldn't use the word "investigation", I would use a fact-finding mission rather than investigation, that would be my -- that was my understanding of what we were actually doing.*

*Q. Yes. I suppose kind of -- just to be clear about it, we call it an investigation. That was the term in fact that Mr. O'Dea had on his report, that it was --*

*A. I would just -- my understanding, I accept obviously what you are saying, but that is what I understood at that particular time.*

*Q. Yes. It wasn't -- I suppose, is what you are saying, you weren't conducting a criminal investigation?*

*A. Definitely not, definitely not.*

*Q. Mr. O'Dea gave evidence to the Tribunal that -- this, Chairman, was on Day 25, which was the 27th of July, and at page 65 he said: "I had got my instructions from the Commissioner that were written. It was to investigate the circumstances surrounding the meeting, who arranged it, who attended it, who knew about it."*

*A. That's exactly as I understood it, yes.*

*Q. That's what he said?*

A. *That's my understanding.*<sup>448</sup>

1.279 Detective Inspector Kevin Carty rejected the suggestion that any person in Dundalk was a suspect. He stated that the investigation was a fact finding mission and could well have made a critical finding about an individual Garda arising out of the investigation if the facts warranted it.

*"A. Yes, but there is a difference between a failing, where somebody might have been in neglect of duty or not doing what they were supposed to have done in a particular time as distinct from being a suspect. A suspect suggests to me that somebody was suspect for an involvement in something.*

*There is a difference, in my estimation, of a breach of a neglect of duty or a neglect to doing something or not doing, an omission, rather than being suspect. So, that's what I don't understand of the suspect aspect of it.*

*Q. Well, if you take the word "suspect" out of the proposition, that if there was to be a critical finding in relation to a member in Dundalk, through perhaps neglect of duty in relation to the visit, that it would be more appropriate to have an officer from outside the division inquire into it?*

A. *That may well be, yes.*<sup>449</sup>

1.280 Assistant-Commissioner O'Dea concluded at page 26 of his Report that:

*"I am satisfied from the investigations I have carried out that no member of An Garda Siochana leaked or passed on any information concerning the visit of the two RUC officers to Dundalk on 20 March 1989 to any person outside the Force."*<sup>450</sup>

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<sup>448</sup> Day 65, pages 116-118.

<sup>449</sup> Day 65, pages 119-120.

<sup>450</sup> Day 25, page 86..

1.281 He stated that he included this conclusion in his report because he was satisfied from his investigation that this was the case.<sup>451</sup>

1.282 One of the matters that Counsel for the Tribunal took up with Assistant-Commissioner O'Dea was the statement provide by Detective Sergeant Corrigan. Assistant Commissioner O'Dea told the Tribunal that he was happy with the Statement provided by Detective Sergeant Corrigan to Detective Inspector Kevin Carty.

*"A. Well, it's short and to the point.*

*Q. Yes. Whereas others told you what they were doing so that you could confirm that if you wished to. Do you have any way of confirming what Detective Sergeant Corrigan may or may not have been doing that day?*

*A. No, it was Kevin Carty that interviewed him.*

*Q. Yes, but he then submitted the statement to you. It's your report, isn't it?*

*A. It is, yes.*

*Q. So did you not ask Detective Inspector Carty, or indeed yourself, did you not go back to seek some clarification?*

*A. No, I did not."<sup>452</sup>*

1.283 He told the Chairperson that he was happy that Mr Carty had asked the necessary questions of Mr Corrigan:

*"CHAIRMAN: Were you happy that Mr. Carty had asked the necessary questions of him?*

*A. I was, because he was -- Carty was an experienced investigator.*

*CHAIRMAN: Yes."<sup>453</sup>*

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<sup>451</sup> Day 25, page 87..

<sup>452</sup> Day 25, page 91.

<sup>453</sup> Day 25, page 92.

1.284 Detective Inspector Kevin Carty told the Tribunal that there was nothing unusual about the statement he took from Detective Sergeant Corrigan. He stated that it followed the same pattern as all of the other statements that were taken.

*“Q. I think one of the persons whose statement you took was Detective Sergeant Corrigan, is that correct?”*

*A. That would be correct, yes.*

*Q. His statement appears to have been taken on the 23rd March, and I'm open to correction, but from what I can see, I think his was the only statement taken on the 23rd March.*

*The rest were taken mainly on the 22nd March. Can you think of any reason why that -- I don't know if particularly anything turns on it?*

*A. I cannot think of any reason, but obviously I would imagine that Detective Sergeant Corrigan was busy, he had something else on the 22nd and wasn't available. There wasn't any, as far as I was concerned, there wasn't any ulterior reason that Mr. Corrigan wasn't available on the 22nd.*

*Q. He wasn't being left to last or anything like that?*

*A. Absolutely not, no.*

*Q. Given that there were concerns -- given that, as I have suggested to you, the correspondence that had been received by Mr. O'Dea about a month before in relation to Detective Sergeant Corrigan, in advance of you interviewing him, was there any discussion in relation to that?*

*A. No discussion, Mr. Chairman.*

*Q. Do you think that if it was a matter that weighed on Mr. O'Dea's mind, would he have, do you think, interviewed Mr. Corrigan himself?*

*A. I think he probably would, Mr. Chairman. Mr. O'Dea was probably one of the most thorough officers, meticulous in everything he did, that I ever worked with, and I am sure that if*

*he had some doubts in that, whatever, himself that he would want to be present or at least give me some instructions as to what I was to specifically look for in that particular interview. But there wasn't any.*

Q. *There wasn't any?*

A. *No.*

Q. *Now, there is Mr. Corrigan's statement, and I can give you a copy of it if you'd like to have a look at it, which has been the matter of some degree of comment. Sorry, if you just bear with me while I get to the correct page. (Statement handed to the witness.) I'll also hand you a copy of the handwritten statement. You might just confirm in the first instance, the handwriting on the handwritten statement, is that your handwriting, Mr. Carty?*

A. *It is, Mr. Chairman.*

Q. *It is. And again, there appear to be two signatures at the bottom. One appears to be Mr. Corrigan's and the other is your own?*

A. *That's correct.*

Q. *And then dated the 23rd March 1989?*

A. *That's correct.*

Q. *Now, there has been -- I think you told us that what you were concerned with in the course of your investigation was the arrangements that were made in respect of the meeting, is that correct?*

A. *Yeah, that's correct -- well who knew of the presence of the people in the station.*

Q. *Who knew of the presence of the people in the station.*

A. *And the arrangements for the visit.*

Q. *And I suppose just before we move onto the statement itself, would you perhaps just explain to the Tribunal what was the significance of knowing who knew the officers were in the station on the day?*

A. *This is to do with who actually saw them in the station, who knew they were actually there, who saw them or whatever. This*

*was part of the fact-finding mission that we -- that in my understanding why we went there initially.*

Q. *And I think as part of that, the various members concerned were asked in relation to their duties, is that correct?*

A. *That's correct, yes.*

Q. *And whether their duties took them in contact with the RUC officers?*

A. *Yes, that's correct, yeah.*

Q. *Now, it was, to some degree -- and when Mr. Corrigan gave evidence, he was examined in relation to this, as to why he didn't detail his duties. What he said was: "I took up duty at 8 a.m.. I terminated duty at 4 p.m. on that date. During my tour of the duty I attended to duties in the Detective Branch office and some outdoor duty. I availed of a meal break from 12:45 p.m. to 1:30 p.m.. In the course of the day I did not see any members of the RUC in Dundalk Station. I was not aware of any meeting that was arranged between Chief Superintendent John Nolan and members of the RUC at Dundalk Station on that day." What Mr. Corrigan said, when he was cross-examined by Mr. O'Callaghan in relation to it, was that if he had been asked to elaborate, he would of course have elaborated. Was it your view that you had obtained sufficient information from Mr. Corrigan as to his activities on the day?*

A. *Yes, that was my view, Mr. Chairman. And it's still my view. I mean, if you look at -- just flicking through the other statements that were taken, they are all similar, really. So there is nothing unusual in, really, in Mr. Corrigan's statement; that it follows the pattern of all of the interviews that were actually done.*

Q. *Yes, some of the other statements, and this I suppose was one of the matters, was that detail, for example, what actual duty, the -- you know, for example, "I investigated a burglary at St. Alphonsis Road, or I...". Did you consider asking Mr. Corrigan for any further detail as to what his outdoor duty was, for*

*example, or what duties he was attending to in the Branch Office or...*

- A. *I think it was superfluous. I mean, to know what duties he was attending to in the Branch Office, he was obviously doing the normal work in the Branch Office that he would be expected to do every day. I don't think it would have added anything to this statement by listing the number of files that he actually attended to, or how many times he went to the toilet. I mean, this is a witness statement, nothing more than that. It wasn't a criminal investigation. If I was, or Mr. O'Dea had been conducting a criminal investigation, yes, we would have a lot more detail in the statements. But I think you are losing sight of the fact that this is a witness statement merely to ascertain the purpose -- to satisfy the purpose of my understanding why we were there, to find out who knew they were in the station, who knew what or saw what on that particular day. And this statement, to my mind, satisfies those questions.*
- Q. *Okay. Well, then, I suppose, when -- presumably in the ordinary course at some point that was then handed to Mr. O'Dea?*
- A. *That would be correct.*
- Q. *Did Mr. O'Dea at any stage ask you to seek elaboration or further detail from -- I suppose in the first instance from Mr. Corrigan?*
- A. *He never did, Mr. Chairman, no.*
- Q. *Did he ask you to seek elaboration or further detail from any of the witnesses that were interviewed by you?*
- A. *Not that I recall, no.*<sup>454</sup>

### **C. The Garda Commissioner's Report**

1.285 Following his receipt of Assistant Commissioner O'Dea's Report, Garda Commissioner Eugene Crowley prepared a summary of the report dated 18

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<sup>454</sup> Day 65, page 129-133.

April 1989 and forwarded it to the Secretary General of the Department of Justice. This stated *inter alia*:

*“15. There is a consensus in both forces that the RUC officers were targeted when leaving Armagh or en route and followed to Dundalk. It is stated that on one occasion Bob Buchanan mentioned to a colleague in the car, on returning from Dundalk, that he thought they were being followed...”*<sup>455</sup>

1.286 The Report concluded *inter alia*:

*“I am satisfied there was no leakage of information by the Gardaí on the proposed visit to the two officers.”*<sup>456</sup>

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<sup>455</sup> Day 25, page 103.

<sup>456</sup> Day 25, page 103.

## Chapter 9 Toby Harnden and the Publication of Bandit Country

### A. Introduction

1.287 The allegation that a mole or a leak had been involved in the murder of the two RUC Officers died down a number of weeks after the 20 March 1989 and remained dormant for a number of years until speculation was revived following the publication in 1999 of a book entitled '*Bandit Country*' by journalist, Toby Harnden.

### B. The Allegations contained in Bandit Country

1.288 In the 1999 edition of '*Bandit Country*,' Toby Harnden wrote in detail of the deaths of Chief Superintendent Breen and Superintendent Buchanan.

1.289 At pages 156-157 of the first edition, Harden wrote:

*“Senior RUC and Garda officers told the author they were certain that information passed by a Garda officer enabled the IRA to ambush them as they were returning from a meeting with Chief Superintendent John Nolan at Dundalk Garda Station. The subject of the meeting was Tom Murphy’s smuggling activities. Tom King, then Northern Ireland Secretary, had ordered the RUC to investigate how Murphy could be reined in after he had been told in an intelligence briefing that a stream of lorries carrying smuggled grain had been seen driving down Larkins Road by soldiers in Golf Three Zero watchtower at Glasdrumman. ‘King had blown a fuse and told Hermon he wanted action taken and that was the reason Harry Breen was travelling to Dundalk that day,’ said an RUC Sergeant who was one of the last to see Breen alive. Breen was uneasy about the meeting and had confided to the sergeant that he was concerned about one Garda officer, identified here as*

*'Garda X,' whom RUC Special Branch believed might be working for the IRA..."*

1.290 At pages 158-159 of the first edition, Harnden wrote

*"...Within two days, RUC CID investigators had concluded that Buchanan's visits to Dundalk had been noted previously and an ambush planned with meticulous care. The 10 or 15 IRA men involved had almost certainly been placed on standby but it had not been known Buchanan was planning to travel that day and the volunteers who took up position at the derelict [house] would have needed at least an hour's notice to do so. Analysis of video footage from cameras outside Newry station and along the A1 all but ruled out the possibility that IRA dickers had monitored the car on its way to Dundalk. There was also technical information which confirmed that the IRA had been contacted by someone within Dundalk station. RUC Special Branch then received intelligence that a Garda officer had telephoned an IRA member to tip him off. This sequence of events was confirmed by Detective Inspector L., a former member of Garda Special Branch, who said: 'I'm afraid the leak came from a guard. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved made the whole thing ten times worse..."*

*An RUC Special Branch Officer who was able to name the Garda Officer, who had told the IRA about the meeting, said "Hermon stamped on that story but it was blatantly true. [Garda X] was a well-known republican sympathiser. The question is: what else did he tell the IRA?' Garda X was later involved in laundering money for the IRA but fell out of favour after being accused of creaming off part of the profits..."*

1.291 In the revised edition of 'Bandit Country' published in 2000, Harnden repeated the allegation about Garda X and wrote that a second Garda, Garda Y, was involved in collusion with the IRA. At pages 460 to 470, he wrote:

*“For the families of Chief Superintendent Harry Breen and Superintendent Bob Buchanan the anguish of their loved ones’ deaths was exacerbated by the revelation that they had been betrayed by Garda X. Although Sir Ronnie Flanagan, the RUC Chief Constable, mounted an internal inquiry into the June 1989 [this should actually read March] killings at the request of the families there was little hope of a prosecution ever being brought. It also emerged that a second Irish police officer, Garda Y, had been working for the IRA in the border area between 1985 and 1991. According to both RUC and Garda sources, Garda X and Garda Y were responsible for the deaths of at least 12 people. Among them were Constable Tracy Doak and her three colleagues, Lord Chief Justice and Lady Gibson and the Hannah family who were all blown up at Killeen during cross-border transfers between the Garda and the RUC. Tom Oliver, a farmer from the Cooley Peninsula, who was passing information about IRA safe houses and weapons dumps to the Garda, was betrayed by Garda Y, abducted and shot dead by the IRA. Sometime later, RUC Special Branch told Dublin about Garda Y’s role and he was quietly moved to a station where he would not be dealing with sensitive information. He subsequently retired to draw his Garda pension and work for an IRA member in north Louth.”*

**C. The Involvement of Toby Harnden with the RUC Prior to Publication**

1.292 It emerged during the course of the Tribunal hearings that Mr Harnden had received considerable assistance from the RUC in writing his book.

1.293 On 10 February 1998, Mr Toby Harnden wrote to the Head of Information at the RUC in the following terms:

*"Dear X,*

*As I mentioned some time ago, I am currently working on a book about the IRA in south Armagh during the Troubles and would be extremely grateful for any assistance the RUC might be able to give me. Although much of the book would be historical in nature, some of it will attempt to deal with on-going terrorist activity, and I appreciate that there will be both constraints on what you can reveal and what I can write. You can rest assured, however, that any information given to me by the RUC would be treated responsibly. A manuscript of the book will be passed to the D Notice Committee at the Ministry of Defence before publication and I understand it will then be passed to you for comment, so any inadvertent breaches of security could be sorted out then. The army might be better placed to help me with some of this but they have asked me to respect police primacy and direct requests through you.*

*Anyway the following is a list of ideas which we could perhaps discuss:*

- a. An interview with Detective Superintendent X, head of Special Branch in southern region. Obviously this would be off the record and could be very much a case of my bouncing ideas off him and discussing broader trends and issues. This could be very valuable to me in that it would give me an up-to-date feel for how SB view south Armagh PIRA.*
- b. An interview with the Chief Constable preferably on the record, although of course I would leave this to his discretion drawing particularly on his experience as head of Special Branch. In addition, if there were any retired Special Branch or CID officers in whose direction I could be pointed, then that would be immensely useful.*
- c. Help with statistics e.g. analysis of number of bombings and shootings. security force casualties, civilian casualties et cetera.*

*It could be particularly useful if these could be represented on maps of County Armagh.*

*d. Help with information and diagrams on PIRA weapons and bombs. I understand the RUC has a weapons and explosives research centre at Carrickfergus, if possible access to photographs of incidents would be very welcome.*

*d. [sic] access to historical files on certain incidents, perhaps in the same way, for example, as Martin Dillon had access to police files for his Shankill Butchers book. Obviously I have gathered information from newspaper cuttings, et cetera, but there may well be that there is additional information which could be released now without compromising security or legal proceedings. If necessary, of course, I need not reveal the source of any information taken from police files.*

*Among the particular incidents I am interested in are:*

- murder of Constables Donaldson and Millar;*
- murder of Private Ian Armstrong near Crossmaglen;*
- shooting of Michael McVerry (IRA member) at Keady;*
- murder of four soldiers by milk churn bomb near Forkhill;*  
*Tullyvallen Orange Hall massacre;*
- murder of three in Donnelly's Bar, Silverbridge by Loyalists;*
- Kingsmills Massacre;*
- shooting of Seamus Harvey near Crossmaglen;*
- murder of Captain Nairac;*
- murder of Patrick McEntee;*
- Narrow Water massacre;*
- murder of Anthony Shields near Crossmaglen;*
- mortar bombing of Newry RUC base;*
- murder of four RUC officers by Killeen trailer;*

- *murder of Lord Chief Justice and Lady Gibson;*
- *deaths of Brendan Burns and Brendan Moley;*
- *murder of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, March '89;*
- *murder of Constable Louis Robinson;*
- *murder of Private Kenneth Newell;*
- *'Sniper' murders 1992-1996.*

*e. While of course I have my own contacts and sources of information, I would welcome any suggestions from former or serving RUC officers with particular experience of south Armagh or who were involved in any of the above incidents who might talk to them.*

*I hope to have the first draft of the book written by the end of August. While there is some time to play with, I am keen to crack on with as much as this as possible while things remain relatively quiet. I am aware that the above is asking a lot but I hope it will at least provide a basis for discussing what may or may not be possible.*

*Yours sincerely,*

*Toby Harnden*

*P.S. I forgot to mention another key subject - racketeering."<sup>457</sup>*

1.294 Mr Harnden's request was the subject of an internal RUC Memorandum entitled 'TOBY HARNDEN REQUEST' dated 19 May 1998 from the Chief Information Officer to the Assistant Chief Constable Crime. This stated:

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<sup>457</sup> 'HMG 92' This letter was read into the record on Day 118 at pages 17-20.

*“Frankly, I had hoped that this project wouldn't go ahead in view of the considerable amount of information he is requesting, but Toby now has a firm commission and is anxious to start work as quickly as possible.*

*Obviously, much of the material is crime orientated and do I believe the difficulties with some of the older files. Toby is a responsible journalist (if that isn't a contradiction in terms) and if such access is possible, he would be a prime candidate.*

*Personally, I would be keen to help him as I am confident the resulting book would be a powerful indictment of the IRA. Could you suggest a means of assisting him, perhaps through an initial meeting to determine what is practical?*

*I have raised the SB angle with Assistant Chief Constable E.”<sup>458</sup>*

1.295 It is clear from a number of internal RUC documents that Mr. Harnden received considerable assistance.

1.296 In an RUC Memorandum entitled ‘Publication, ‘Bandit Country, the IRA and South Armagh’ dated 29 November 1999 from D/C Inspector ‘H’ Division to D/C Superintendent X, D/C Inspector ‘H’ Division stated inter alia as follows:

*“I refer to the attached papers concerning the publication of photographs and the general content of the book 'Bandit Country: The IRA and South Armagh' by Toby Harnden. May I firstly say that the ACC's direction concerning verification of exactly what material was made public by way of closure/court proceedings is on-going.*

*I have perused this book in book and can say that I am astounded at the detail contained therein. There are perhaps hundreds of matters*

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<sup>458</sup> ‘HMG 93’ This document was read into the record on Day 118 at page 21.

which could be the subject of police investigations and further inquiry. I am however aware that the author received many 'off record' briefings by senior police, including SB/CID and press office, and was also in receipt of same by various military units and agencies. Therefore much of the detail will have been sanctioned and provided with due authority.

The main issues which I believe should be investigated expeditiously are:

1. The publication and source to the author of the photographs (as mentioned by ACC Crime in his report of 8 November 1999), and
2. The information concerning the murder on 20 March 1989 of Chief Superintendent Breen and Superintendent Buchanan (extract attached with salient points highlighted).

From an investigative standpoint, I believe it would be prudent to firstly interview Toby Harnden to ascertain what information he is willing to furnish on these matters. In the case of the photographs, should he tell us (on or off record) of his source of supply, this will negate a lengthy, time consuming and costly paper chase. Moreover, in the case of the information in respect to the murders of Chief Superintendent Breen and Superintendent Buchanan, we may be able to ascertain the authenticity and grade of the information referred to and importantly from where same emanated.

I fully appreciate that it may well be the case that Harnden will claim journalistic privilege. However that factor alone should not impinge on us pursuing this important line of inquiry. Furthermore, should it later be deemed necessary to seek the recovery of Harnden's records or notes through the courts, that fact that this information was primarily sought from him can be substantiated. It's interesting to note that I

*understand Harnden faced possible action by the Saville Inquiry for destroying notes made by him in respect of soldiers interviewed and whose identity he refuses to reveal to the inquiry.*

*I have made contact with Harnden by telephone in New York. He has no intention of returning to Northern Ireland and will until required to do so by the Saville Inquiry which he believes was sometime in early 2000. I explained to him the nature of my initial inquiries, photographs, information re the murders and he has indicated he is willing to be interviewed when he returns to Northern Ireland or alternatively in New York. However, during this telephone conversation he made reference to 'protecting his source of information'.*

*The family of our murdered colleague Chief Superintendent Breen, have been in contact with Detective Chief Inspector [redacted] and I have made arrangements to see them. The family of our murdered colleague Superintendent Buchanan have been in contact with Superintendent [redacted]. Both families have been informed that the matters raised by Harnden will be the subject of investigation.*

*I forward this report for your information and direction, please.”<sup>459</sup>*  
(Emphasis added)

1.297 This document clearly shows that the D/C Inspector 'H' Division was aware that Mr Harden received extensive assistance from both the RUC and military authorities as well as from individual officers.

1.298 The RUC Memorandum entitled 'Publication, 'Bandit Country, the IRA and South Armagh' dated 30 November 1999 from the Regional Head of CID, 'H' Division to the Assistant Chief Constable Crime sheds further light on the interaction between Mr Harnden and the RUC and military. This

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<sup>459</sup> 'HMG 94' This document was read into the record on Day 118 at page 22-24.

memorandum forwards the memorandum dated 28 November 1999 and states:

*“It is blatantly obvious that the material contained within the publication emanated from official sources. If I remember correctly, I was advised that Toby Harnden had the blessing of Headquarters and should be briefed by CID on specific investigations. This being the case, it is also reasonable to assume that he was briefed by both Special Branch and military. Indeed the material content including photographs could only be sourced via the security network.*”

*It therefore seems to me futile to pursue an investigation as suggested in your minutes dated 8 November 1999. However I suggest that we continue to investigate the Breen/Buchanan disclosure and advise the family accordingly.*

*You may also feel that in interview with the author would be prudent and rather have him interviewed in America; we await his return to this jurisdiction.”<sup>460</sup> (Emphasis added)*

1.299 This document clearly shows that the Regional Head of CID, ‘H’ Division, was aware that Mr Harden received extensive assistance from both the RUC and military authorities as well as from individual officers.

1.300 Further reference is made to the ‘off the record’ briefings that Mr Harnden received in an RUC Memorandum entitled ‘Publication, ‘Bandit Country, the IRA and South Armagh’ dated 26 January 2000 from D/C Inspector ‘H’ Division to D/C Superintendent X. This states:

*“I refer to the attached papers and wish to report the current position in respect of this matter. I have established that 39 official prints were made of the suspects who were photographed in police custody.*

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<sup>460</sup>

‘HMG 95’ This document was read into the record on Day 118 at page 25-26.

*Considering the extensive distribution lists of these prints and the high number of police officers having abscess to same, coupled with the points I made in the second paragraph of my report dated 29 November, I have feel that it may be prudent not to immediately further this aspect of the inquiry. Have spoken again by telephone to the author of the publication, Mr Toby Harnden. He has received no direction to date to attend the Bloody Sunday Inquiry and now anticipates that he will not be required in March or April.*

*Obviously we have a pressing duty to speak with Harnden in connection with the murder inquiry relating to Chief Superintendent Breen and Superintend Buchanan. Moreover, I have indicated that I will update the Breen family (Please see copy letter attached.) I still harbour fears that Harnden will claim journalistic privilege and frustrate our inquiries. However, considering the seriousness of this matter and also our obligation to the next of kin, I see no viable alternative other than to be seen to progress this matter expeditiously. If Harnden were to reciprocate with off record briefings, such as he was provided with, and an open line of trust and communication is established, it will would greatly assist in furthering not only these issues but also others that will no doubt arise. I therefore suggest that arrangements are made to interview Harnden in connection with the relevant matters."<sup>461</sup>*  
(Emphasis added)

1.301 On 6 April 2000, two RUC Officers interviewed Mr Harnden in Washington. The transcript of the Interview Notes records inter alia the following information:

*"He has no evidence that would assist our inquiries & states that if he had he would gladly give it to us for use in investigations.*

...

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<sup>461</sup> 'HMG 22' This document was read into the record on Day 118 at page 26-27.

*Any Garda interviewed by you – virtually known, excellent contacts with RUC/Army but not Garda.*

...

*Garda x - This information came from an RUC SB officer who he refuses to name, he did not check the veracity [sic] of this information simply accepting it & putting same into the book, he will not disclose the name of this officer,*

...

*Re ... "IRA man with CB radio" – has a recollection of being told of this by RUC/MIL source – cannot recall who*

*Re: ... "technical information which confirmed IRA had contacted ... (author believed – WITHOUT ANY CONFIRMATION OR CORROBORATION OR CHECKING!!!)*

...

*Questioned about phones – Dundalk – not sure maybe in general from SB officer*

*Questioned ref D/Insp 'L' – no information made available to us.*

*[page 157] – Breen's comments to Staff Officer – [redaction] states that he got access to the Coroners files & that in these there were matters that were blacked out but that which he could make out. This is where the additional information came from.*

*Re SB officer – same as quoted on P159*

*Author mentioned name of [redaction] as being rumoured as being 'rouge' Garda – but no evidence or information to substantiate this."*

*P156 – Information ref SNR RUC/GARDA states given confidentially but will not say more."<sup>462</sup>*

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<sup>462</sup>

HMG30. A portion of this document was read into the record on Day 118 at pages 33-34.

1.302 This document clearly shows that the individuals who told Mr Harnden that a Garda had colluded in the murders of the two RUC officers were one RUC Special Branch Officer and one Garda Detective Inspector, both of whom, Mr Harnden refused to name.

1.303 These documents will be returned to later in these submissions when analysing the veracity of Mr Harnden's allegations.

**D. Mr Harnden's Involvement with other individuals prior to the publication of Bandit Country**

**1. Sgt Alan Mains**

1.304 Mr Mains told the Tribunal that he was asked by the RUC Press Office to officially assist Mr Harnden prior to the publication of Bandit Country.

*"Q. Now, can I just ask you about the first of those events, which is the book of Toby Harnden. Can I ask you, Mr. Mains, did you assist Mr. Harnden in the writing of this book?"*

*A. I was asked by our then Press Officer to give him some assistance in south Armagh in terms of the nature of the book and what he was trying to achieve.*

*Q. And as a result of that, did you meet Mr Harnden?"*

*A. I did.*

*Q. And how many interviews did you have with him about the book?"*

*A. I can't really say because I don't know. It could have been several."<sup>463</sup>*

And:

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<sup>463</sup> Day 10, page 43.

*"A. I was asked, Mr Chairman, by the late Press Officer to assist officially with that book..."<sup>464</sup>*

1.305 Mr Mains denied that he was the RUC Special Branch Officer referred to by Mr Harnden on page 159 of the first edition of *Bandit Country* as the source of the name of the Garda Officer who told the IRA about the meeting between the two murdered RUC officers and Chief Superintendent Nolan on 20 March 1989.

*"Q. OK. I want to read out a section in it, and if you want me to get you a copy of this, Mr. Mains, I will, but it's just a paragraph which relates to the aftermath of the murders of Chief Superintendent Breen and Superintendent Buchanan. And this is what Toby Harnden says at page 159:-*

*"An RUC Special Branch officer, who was able to name the Garda officer who had told the IRA about the meeting" -that's the meeting in Dundalk -- "said 'Hermon stamped on that story but it was blatantly true. Garda X was a well-known Republican sympathiser. The question is, what else did he tell the IRA?'. Garda X was later involved in laundering money for the IRA but fell out of favour after being accused of creaming off part of the profits."*

*Do you believe, Mr. Mains, that you are the RUC officer referred to by Toby Harnden in that paragraph I have just read out?*

*A. No.*

*Q. Did you speak to Toby Harnden about the killings of Chief Superintendent Breen and Superintendent Buchanan?*

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<sup>464</sup> Day 10, page 49.

A. *I would have spoke to Toby Harnden in relation to the activity of the IRA in south Armagh in general terms.*

Q. *And did you identify for him the fact that there was a mole, or what he believed to be a mole in An Garda Siochana?*

A. *I think at that stage Toby Harnden himself had seemed to come up with a lot of information.*

Q. *But did you give him information suggesting that there was a mole in the guards in Dundalk?*

A. *As I said, I think Mr. Harnden himself had information to hand.*

Q. *I am sure he did, but I am asking you did you give information to him suggesting that there was a mole in the Gardai?*

A. *I don't believe I did, but as I said, he probably did have that information.*<sup>465</sup>

...

“Q. *I just want to read you another section of the Cory Report, which is at page 24, paragraph 280, where Judge Cory says:-*

*"In his book Harnden wrote about an RUC Special Branch officer who was supposedly able to name the Garda officer who had told the IRA about the meeting but said that Chief Constable Hermon had stamped on the story."*

*Is that a reference to you, Mr. Mains?*

A. *Well, I mean, I am not in Special Branch and never have been.*<sup>466</sup>

1.306 Mr Mains also denied telling Mr Harnden that Chief Superintendent Breen had expressed his unease about travelling to Dundalk because of his concern that a Garda Officer in Dundalk Station was working for the IRA. He suggested that Mr Harnden could have obtained that information from his deposition to the Inquest.

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<sup>465</sup> Day 10, pages 43-44.

<sup>466</sup> Day 10, pages 47-48.

1.307 However, Mr Main's Deposition to the Inquest simply states "*Mr Breen highlighted the fact that he was uneasy about travelling down to Dundalk...*" This text is crossed out with a line but is clearly legible. The Interview Notes with Mr Harnden reveal that he based his discussion of Chief Superintendent Breen's comments to his Staff Officer (Mr Mains) on the content of the Coroner's file.

*"[page 157] – Breen's comments to Staff Officer – [redaction] states that he got access to the Coroners files & that in these there were matters that were blacked out but that which he could make out. This is where the additional information came from."*

This simply cannot be correct since, while the text in Mr Mains' statement is undoubtedly blacked out, it makes no reference to a Garda, either a named one or otherwise.

1.308 Importantly, Mr Mains told the Tribunal that when Mr Harnden would come to give evidence to the Tribunal (at that stage of the hearings Mr Harnden had indicated his willingness to give evidence) he would waive any privilege he might have as a source and allow Mr Harnden to be questioned on his interactions with him. It is submitted that this is an important factor lending weight to Mr Mains' assertion that he was not the source for Mr Harnden's claims.

1.309 It is submitted that the effect of Mr Mains' evidence in this respect is to cast serious doubt on Mr Harnden's statements.

## **2. Detective Inspector Prenty**

1.310 At the back of the book, Mr Harnden lists the people he interviewed as part of research. Only one Garda was listed as having been interviewed, namely 'Detective Inspector L, former member of the Detective Branch.' Mr Prenty is

a former Detective Inspector. He told the Tribunal that he spoke with Mr Harnden prior to the publication of *Bandit Country* in 1999.<sup>467</sup>

1.311 Mr Prenty denied telling Mr Harnden that a Garda had been involved in the murder of the two RUC men.

“Q. Now, the last matter is this; you're aware there is a book called *Bandit Country* by a man called Toby Harnden. You're aware that in *Bandit Country* he attributes a statement to a man he calls "Inspector L" in which Inspector L in effect, I haven't the exact quote, but Inspector L in effect says there had been a leak from the station?

A. Yes, I read the book and I saw that.

Q. Can you tell us anything about --

A. I spoke with that gentleman and he put it to me that he had information there was and we discussed it in general terms, but I could not confirm to him there was a leak from the station or I cannot now and if I could I would.

Q. So whoever Inspector --

A. I think he was guilty of misrepresentation, that's what I think.

Q. Is it possible somebody else said that to him?

A. Quite possible, but I certainly didn't say it to him.

Q. That's more to the point, you didn't say it to him.”<sup>468</sup> (Emphasis added)

And:

“Q. I know you haven't denied speaking to him Mr. Prenty, but Detective Inspector L is the only garda mentioned in the back of the book and I just want to read out what Mr. Harnden said that I think you said is a misrepresentation if it's attributed to you or said by somebody else. "The sequence of events was

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<sup>467</sup> Day 42, page 35.

<sup>468</sup> Day 42, page 32.

confirmed by Detective Inspector L, a former member of Garda Special Branch who said 'I'm afraid the leak came from a guard. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved made the whole thing ten times worse'." Did you say that?

A. Absolutely not.<sup>469</sup> (Emphasis added)

1.312 Mr Prenty told the Tribunal that Mr Harnden had mis-represented what he had said:

“Q. *Would you agree with me that an allegation that a policeman was involved in the killing of another policeman is probably one of the most serious allegations you can levy against a serving member of any police force?*

A. *I made no such allegation.*

Q. *I'm just asking for your opinion as a former member of the Gardaí who served --*

A. *I agree with you entirely, yes.*

Q. *Would you agree with me that Inspector L must be you as Harnden spoke to nobody else and therefore Mr. Harnden is either misrepresenting you or...*

A. *Haven't I already told you that I spoke with him and he misrepresented what I said to him.*<sup>470</sup> (Emphasis added)

1.313 Mr Prenty reiterated this account when he returned to give evidence later in the public hearings:

“Q. *One thing I should put to you, as well, and it has arisen since the last occasion you were here; you are aware that the main*

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<sup>469</sup> Day 42, page 36.

<sup>470</sup> Day 42, page 36.

reason we are all here is because of the Toby Harnden book and what he said in it, isn't that correct, Mr. Prenty?

A. Yes.

Q. And, in that, he purports to quote you stating that, "I am afraid there was a leak from the Gardaí that led to the murders of Breen and Buchanan," isn't that correct?

A. No.

Q. Well, what way is it incorrect?

A. He never -- I never said any such thing.

Q. I know you didn't, I'm not disputing that, but he says in the book that Detective Inspector L gave him this information. You are aware of that, aren't you?

A. I am, yeah.

Q. And we know that you are the only Detective Inspector he spoke to. I know you dispute it. Isn't that correct, you dispute it?

A. I deny it completely and absolutely. And the evidence I gave here before, I can remember it well, I said that he came to me with that information, he came to me with that information, for me to confirm it, but I couldn't. And if I could, I would.

Q. What information did he come to you with?

A. That there was a leak, a suggested leak in Dundalk Garda Station, what you are after saying.

Q. And when he put that to you, you said that's incorrect?

A. I told him that I had no information to substantiate that suggestion.

Q. And, in fairness to you, you are aware that Mr. Harnden is not prepared to come here and stand over what he wrote?

A. Well, I have no control over what Mr. Harnden does.

CHAIRMAN: No, of course not. He promised to come here but he changed his mind.

A. I understand that.

Q. Can I ask you, why did you or how did you end up talking to Mr. Harnden, Mr. Prenty?

A. *He arrived at my door, having been -- and I asked him where he came from or how did he get my name, and he gave me the name of a guard in the station who gave him -- told him where I lived.*

Q. *And did you bring him in?*

A. *Well, I didn't see any reason why I shouldn't. Why wouldn't I?*

Q. *I am not -- I'm just trying to establish, because it's evidence that we haven't heard, since Mr. Harnden isn't here. What did he ask you and what did he discuss with you?*

A. *Well, the troubles along the border, the different incidents down the years, and whatnot, and the rest of it, and the possibility that there might have been a leak from Dundalk Garda Station. I gave him no information of a confidential nature, our discussion was in general terms, but I most certainly did not say that there was -- that I knew there was a leak from Dundalk Garda Station. I didn't know, I still don't know.*

Q. *And how long did your conversation with him continue?*

A. *Half an hour.*<sup>471</sup> (Emphasis added)

1.314 It is submitted that the effect of Mr Prenty's evidence in this respect is to cast serious doubt on Mr Harnden's statements and the reliability of the allegations made in his book.

## **E. Mr Harnden's Refusal to Attend the Tribunal**

1.315 Mr Harnden refused to attend the Tribunal to give evidence as to the allegations made by him in his book. This was notwithstanding the fact, as noted by the Tribunal in its Second Interim Report dated 8 March 2012, that:

*"... The publication of Mr Harnden's book 'Bandit Country' was one of a number of factors which reignited suggestions of collusion in the fatal*

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<sup>471</sup> Day 106, pages 47-49.

*shootings of Chief Superintendent Breen and Superintendent Buchanan in or around the year 2000...”*

1.316 Mr Harnden had previously agreed to give evidence and as noted by the Tribunal in its Second Interim Report dated 8 March 2012:

*“... he nominated a date on which he would be available to give evidence. Subsequently, however, Mr Harnden informed the Tribunal that he would not, after all, attend to give evidence...”*

1.317 The decision of Mr Harnden not to come to give evidence should be a matter of extreme concern to the Tribunal. While there was speculation at the time of the murders of the two RUC officers that there may have been Garda collusion, that speculation had died down and was only reignited by the publication of *Bandit Country*. It is submitted that his failure to give evidence and, in particular, his failure to allow himself to be cross-examined by interested parties has severely hampered the Tribunal’s investigation and the Tribunal has no choice but to draw a negative inference from his refusal to attend to stand over the allegations made in his books. The Tribunal should reach a finding, based on the uncontradicted evidence of Mr. Prenty and the absence of any evidence corroborating Mr. Harnden’s allegations in respect of the murders of Chief Superintendent Breen and Superintendent Buchanan, that the allegations of Garda collusion identified in *‘Bandit Country’* are highly unreliable and that Mr. Harnden grossly misrepresented in that book information that had been provided to him by Mr. Prenty.

## Chapter 10 Kevin Myers, 'An Irishman's Diary'

### A. Introduction

1.318 On 10 March 2000, Mr Kevin Myers published an article in the Irish Times in which he repeated the allegation that a member of the Gardaí had colluded with the IRA in relation to the murders of the two RUC Officers as well as a number of other murders.

1.319 He told the Tribunal that when he wrote the article he was writing about one individual.

*“Q. And I think if I can adapt your evidence, what you said was that you read Toby Harnden's book, it excited your interest in the area and then you did your own research and that led to your article of the 10th of March, would that be a fair assessment?”*

*A. Yes.*

*Q. And your article, you said to the Chairman, was an article that you were writing about one individual?”*

*A. That's what I believed at the time.*

*Q. And the individual you were writing about was Mr. Colton?”*

*A. I believed that, yes.*

*Q. And although you were --*

*A. I just said I believed that.*

*Q. Yeah”<sup>472</sup>*

1.320 This was the second article in an Irishman's Diary in which he had done so. In an article published on 12 November 1999, just over one month after the publication of Bandit Country, Mr Myers wrote:

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<sup>472</sup> Day 44, page 94.

*“That south Armagh has produced the most effective guerrilla army in the world is beyond doubt as Toby Harnden's recently published book Bandit Country confirmed. But to what purpose? With what moral authority? And to what degree of laxity by the Security Forces on this side of the Republic vital enabling south Armagh to run its war? This last is not a popular question to ask in the Republic. It wreaks of treason of pro-unionism, of pro Britishness. Yet to make such judgements on any question rather than trying to examine the question properly, to discover what the full answers might be as coerced the cynicism. It is to allow the multi bank to try and come up with a critic, the mob or to drown the doubts of the sceptic questions have to be asked.*

*Question one: Did a Garda officer assist the IRA to murder Chief Superintendent Harry Breen and Superintendent Bob Buchanan of the RUC ten years ago? According to Toby Harnden former Northern Ireland correspondent of the Daily Telegraph there is technical evidence that a Garda contacted the IRA while the two RUC men were on a cross-border liaison visit. The RUC Special Branch received a similar report. Detective Inspector L formally of the Garda Special Branch confirmed this. ‘I am afraid the leak came from a garda. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved made the whole thing ten times worse.’<sup>473</sup>*

## **B. The Allegations contained in the Article**

1.321 The Article stated as follows:

*“We all of us, the Garda Siochana in particular, want to see corrupt or evil Gardaí punished. So what is the Government going to do about the retired member of the Garda Siochana now contently living on a*

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<sup>473</sup> Day 44, page 109-110.

*handsome State pension, who as an agent of the IRA, was directly responsible for the murders of six RUC officers, the entire Hanna family from Northern Ireland, and Tom Oliver a citizen and resident of this Republic.*

*While in the Garda Siochana he passed vast amounts of intelligence to the IRA and even recruited for the IRA from within the Force. When evidence of 'his force' and of 'his country' was uncovered by the RUC, far from being prosecuted the man was merely given a post in which minimised the danger he posed to others.*

*Who can say what other damage he managed to do while he worked with access to sensitive information? And as extraordinary as his activities is the poor, blind institutional pride of the Garda Siochana which caused the Force honestly to believe that it had no mole and so had no need even to investigate the possibility of there being one.*

### **Cross-Border**

*And that really is perfectly amazing because so many of the killings which he in essence organised were identical essentially involving cross-border traffic in which the Garda Siochana and the RUC had information, virtually no one else.*

*The first operation took place in May 1985 when a Garda escort for Brinks security van passed responsibility of the vehicle to an unmarked RUC two car patrol. Precise information of the intended hand over had already been passed to the IRA by the rogue Garda and a bomb was detonated as an RUC vehicle passed it.*

*Four officers were killed. One was a 21 year old woman officer Tracy Doak. Her dead colleagues were Steven Rogers 19, David Birr 22 and William Wilson 28.*

*This extraordinary compromise of cross-border security did not provoke any internal inquiry with the Garda Síochána but merely a public row with the RUC about the location of the firing point with Garda authorities strongly denying it was in the Republic. In fact that is exactly where it was. But the magnificent irrelevance of the row must have assured the mole that he was safe as he was and would be by God still is.*

*Two years later the information he gave the IRA enabled them to murder Lord Justice Gibson and his wife. Very possibly Lord Gibson had made life easier for his murdered by booking a holiday through Dun Laoghaire in his own name. But, as was to be revealed within a year, the Garda mole was vital. No travel agents computer could have told the killers where precisely the Garda escort was going to hand over responsible for the Gibsons' safety to the RUC. The bomb was waiting there and the two were killed instantly when it was detonated.*

### ***Wrong car***

*Surely this have you had a start alarm bells. It didn't. A year later the IRA planned an identical murder of Judge Owen Higgins and his wife but on this occasion the IRA blew up the wrong car wiping out the entire Hanna family; Robert 45, Maureen 44, and their son David aged seven. The IRA's cover story was that its people had picked up Hannas' car at Dublin Airport and mistaken that for the Higgins' and it didn't know the precise location of the hand over. This was a cover story to protect its source who had told the IRA of the precise hand over point.*

*But the Higgins couple were unexpectedly delayed. The Hannas' car resembled the Higgins' car and passed the bomb at about the right time. Even that slaughter did not cause a hunt for the man responsible for so much murder. Two years later RUC Chief Superintendent Harry Breen and Superintendent Bob Buchanan were ambushed while*

*returning from a liaison meeting with Dundalk Gardaí. In order to comply with the law of the Republic they were unarmed and so unarmed went to their deaths in an IRA ambush set up by the Garda mole.*

### **Next Target**

*If he had felt the warm breath of investigation on his neck it does not seem to have inhibited his activities. His next target was Tom Oliver who had passed on information about IRA activities in the Cooley Peninsula to the Garda Síochána. Nine years ago this native citizen and resident of the Republic was abducted, tortured and murdered by the IRA. We can say two things about this death; one, was that no member of the Fianna Fáil Government attended his funeral. The Fianna Fáil leader John Bruton did. And the other was that even his murder did not trigger even a minor internal inquiry into the Garda.*

*That occurred only when RUC intelligence discovered the identity of the mole and informed Dublin. The traitor was then posted to a relatively harmless station. To this day he has never been before a court and was allowed to serve his time to retirement from which he can at his ease contemplate the mountain of human misery his treachery has caused. Nationalist Ireland is happy to point accusingly at complicity with terrorism in the RUC. It is strangely silent when it comes to confronting similar betrayal of duty in the ranks of the Garda Síochána.<sup>474</sup>*

## **C Mr Myers' Sources for the Article**

1.322 Mr Myers told the Tribunal that the foundation of his interest in the story was Mr Harnden's Book, 'Bandit Country'.<sup>475</sup>

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<sup>474</sup> Day 44, pages 65-69  
<sup>475</sup> Day 44, page 71.

1.323 Mr Myers stated that some of his information came from Mr Harnden's book.<sup>476</sup> He stated that while he could not be absolutely certain he believes that he also spoke to Mr Harnden by telephone before his article was published.<sup>477</sup> He told the Tribunal that he had never spoken to Mr Harnden before this although he was aware of Mr Harnden's work in Northern Ireland.<sup>478</sup> He stated that he respected Mr Harnden and that is why he took the information contained in the book to be hard information:

*"Q... Can I ask you why it was that you took the Toby Harnden's information to be hard information?"*

*A. I had respect for his work as a journalist. He was unusual for English journalists working in Northern Ireland. I could see it in his copy. He took a genuine interest in Irish affairs and he didn't just look on his time in Northern Ireland as an opportunity to advance his career or show disdain for the Irish, he was genuinely engaged. His reports from Northern Ireland were well informed and sensitive and in as much as they ever can be, and this applies to all journalists, they were balanced. So I respected him a great deal. I wasn't able to catch him out on any factual errors. So, when he said something, I would take it very, very seriously indeed.*

*Q. I see. So it was simply, it was -- you had I suppose this is a fair summation, you had previous respect for his journalistic work?"*

*A. A great deal of respect. I mean, let me just emphasise this, an unusual degree of respect."<sup>479</sup>*

1.324 Mr Myers stated that shortly before the article was published he contacted a former member of the Gardaí who told him that an IRA mole had operated in

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<sup>476</sup> Day 44, page 72.

<sup>477</sup> Day 44, page 72.

<sup>478</sup> Day 44, page 72-73.

<sup>479</sup> Day 44, pages 89-90.

Dundalk Station for some time. He said that another person, who he refused to name, had given him the Garda sources telephone number.<sup>480</sup>

*“A. And I cannot in all absolute certainty say, tell you what triggered that column to appear on the day that it did and why I began the inquiries when I did, whether it was because of somebody telephoning me or tipping me off, I can't remember. I had the background interest in it because of Toby Harnden's book. I spoke to a former member of An Garda Síochána about Dundalk and he told me of one IRA mole who had been operating in the station for some considerable time, whose activities were known by him and by his colleagues and those activities had caused much concern because that he was not believed to be an honourable man because he was working for the IRA.*

*Q. And this former member of An Garda Síochána told you that this particular officer was working for the IRA, is that correct?*

*A. Yes.*

*Q. And do you recall when you were given this information?*

*A. Not long before the publication of the article.”<sup>481</sup>*

1.325 He told the Tribunal that his Garda source told him that the name of the mole was ‘Colton.’

*“Q. And were both of those names mentioned to you by your Garda source or just one?*

*A. Just one.*

*Q. And which one was mentioned?*

*A. It was Colton.”<sup>482</sup>*

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<sup>480</sup> Day 50, page 11.

<sup>481</sup> Day 44, page 71.

<sup>482</sup> Day 44, page 74.

1.326 He said that he did not meet his source face to face prior to the publication of the article although he has met him since and he is aware of his identity.<sup>483</sup> He described their conversation as follows:

*“Q. Now, did you not -- first of all, can you recollect and tell the Chairman what did that source say to you in relation to the matters in the column?”*

*A. I will repeat what I said last week. He told me of one mole that he named as being the source of information going to the IRA. And I believed that there was just one mole, and when I made -- just to repeat this, just for the sake of the record, when I made the inquiries with a former terrorist, he referred to the mole that he knew of as 'C' and I thought this referred to the man I had been told of, whose name was given to me as Colton.*

*Q. But did you not say to this former guard: "What evidence have you got of this?"?*

*A. Well I certainly hope -- I would have asked him how good was the allegation, how sound was it. Mere tittle-tattle wouldn't have been sufficient. Had he heard third, you know, fourth down the line, was this man responsible for giving information? This guard assured me that he had very good information from within the Force that Colton was giving information. I repeat to you now that I have never introduced the name Colton into any of our conversations. I accepted it with reluctance because, having -- as a journalist, I have acquired a great deal of information over the years and that does not mean that I can compromise my position as a journalist. My duties as a citizen do not enable me to compromise my duties as a journalist. They are in conflict and the conflict causes me a great deal of unease. So I mentioned the name Colton because it was mentioned to me originally by RUC officers. I did not give it to them and I did not initially give it to investigating members of An Garda Siochana*

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<sup>483</sup> Day 50, page 9.

*because that is not my position, is to give information like that.”<sup>484</sup>*

1.327 Mr Myers told the Tribunal that he also spoke to a second source, a former terrorist.<sup>485</sup> He stated that he did not meet him face to face for the purpose of discussing the article.<sup>486</sup> He stated that this source did not mention a name, he only referred to the Garda as ‘C.’

“Q. *I see. Now, you have told us then about the information that you had obtained from your garda friend. From the ex or from the former terrorist, did he mention a name of any possible garda mole in the Garda Station in Dundalk to you?*

A. *He didn't mention any name. Throughout his conversation with me he referred to a person whom he called 'C'. He was reluctant to mention the name over the telephone.*

Q. *Yes.*

A. *And I assumed he was talking about the same man.”<sup>487</sup>*

1.328 Mr Myers told the Tribunal that he was unable to give a detailed account of what he was told. In relation to the murder of the two RUC Officers, he stated:

“Q. *I see. Did he, do you recall, give you any information specifically about the murders of Chief Superintendent Breen and Superintendent Buchanan?*

A. *Again, I don't wish to mislead you. He was very emphatic that that was done by a mole inside Dundalk Garda Station. Now, I cannot tell you if he gave me really precise information on how the mole operated.*

Q. *Yes.*

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<sup>484</sup> Day 50, pages 9-10.

<sup>485</sup> Day 44, page 73.

<sup>486</sup> Day 50, page 12.

<sup>487</sup> Day 44, page 75.

A. *But he was quite emphatic that this was a double murder that was done and could only have been done with the assistance of a mole inside the Garda Station.*"<sup>488</sup>

1.329 He provided further detail on this conversation later in his evidence:

"Q. *Now, in relation to the former terrorist, did you meet him face-to-face?*

A. *Not on that occasion, no.*

Q. *Did you ever meet him face-to-face for the purposes of discussing the contents of this article?*

A. *Not that I recall. I had met him before. You are asking me about conversations I had ten years ago. I had met him before, I have met him since. I might have met him around that time. I might have casually conversed with him at that time on this, but the basis of the information that he gave me was over the telephone.*

Q. *And doing the best you can, what do you recollect he having said -- what he said to you?*

A. *Yes, that there was -- remember it was a response my telephone inquiry -- he said yes, that there was an IRA mole in Dundalk Garda Station.*

Q. *Did you ask him that question directly?*

A. *Yes, yes, and he said -- I said, "Can you tell me his name?" And he said, "I'd rather not over the phone." I said, "Can you give me an initial?" And he said, "C."*

Q. *And is that it?*

A. *Well, it wasn't the length and the breadth of the conversation and -- but it was the length and the breadth of the identification. I settled for C being the same person as the other C. Obviously I didn't know there were two Cs.*

Q. *And was that more or less the extent of the conversation?*

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<sup>488</sup>

Day 44, page 76.

A. *No, it was -- and now I am depending on recollections about conversations of eleven years ago so you are going to have to show me some tolerance here. He was of the opinion there had been extensive leaks over a long period of time from his mole to the IRA from Dundalk Garda Station.*

Q. Did he say that he had got the leaks from the mole?

A. No.

Q. Did he give you any specific examples of what was leaked?

A. Yeah -- no -- not specific examples of what was leaked as in the nature of the phone calls that were made or what was -- the contents of the phone calls, but he certainly would have roamed and did roam over incidents where information from Dundalk Garda Station was given by a member of An Garda Siochana to the IRA, and he would have said, and I use this as an example without wanting to be precise about it, as an example, hypothetically, the Gibsons or the Brink's-MAT, in which Tracy Doak was killed. We did discuss the cases.

Q. But as I understand both your evidence to the Chairman and what you told the Gardaí who interviewed you, that he wasn't giving you and didn't give you any specific information about any specific incident other than lumping them all together?

A. That's correct. That is largely correct.

Q. So, in terms of your ability to tell the Chairman anything, you've no hard detail of any specific information in relation to any of these incidents?

A. Yes, that's correct.<sup>489</sup> (Emphasis added)

1.330 Mr Myers told the Tribunal that he had no RUC source.<sup>490</sup> He said that the note of his interview with the Gardaí which records him as having said that “I then made further inquiries from other journalists, RUC officers and Gardaí both sides of the border” is incorrect.<sup>491</sup>

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<sup>489</sup> Day 50, pages 12-14.

<sup>490</sup> Day 50, page 8.

<sup>491</sup> Day 50, page 9.

1.331 Mr Myers told the Tribunal that he was not aware:

- a. that the RUC had stated that there was no evidence or information to support the claims made by Harnden that *“there was also technical information which confirmed that the IRA had been contacted by someone within Dundalk Station.”* He accepted that this was fairly convincing evidence from the RUC.<sup>492</sup> He agreed that this raised a question in his mind about the accuracy of Mr Harnden’s assertion;<sup>493</sup>
- b. that Mr Prenty had given evidence to the Tribunal that he had met with Mr Harnden and that, as only one Garda Detective Inspector is listed as having been interviewed, Mr Prenty’s denial of having said that there was a mole cast doubt on Mr Harnden’s account – *“I may have been misled to a degree by Toby Harnden’s book;”*<sup>494</sup>
- c. that there is no evidence that the RUC uncovered the Garda mole, whom he believed to be Mr Colton, as suggested by Mr Harnden.<sup>495</sup>

#### **D Mr Myers Activities after the Article was published**

1.332 Mr Myers told the Tribunal that after the article was published several members of An Garda Siochana got in touch with him to congratulate him for the article. He stated that it was at this point he learned that there were two moles.<sup>496</sup>

1.333 Mr Myers told the Tribunal that he was also contacted by two politicians, Jim Higgins TD and Mr Charlie Flanagan TD, who were very concerned about the allegations.<sup>497</sup>

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<sup>492</sup> Day 44, page 104.

<sup>493</sup> Day 44, page 105.

<sup>494</sup> Day 44, page 108.

<sup>495</sup> Day 44, page 112.

<sup>496</sup> Day 44, page 78.

<sup>497</sup> Day 44, page 79.

1.334 Mr Myers stated that his Garda source told him that one of the moles recruited the second mole to work for the IRA.

*“Q. And you say that "he has recruited for the IRA from within the Force". Can you say or can you recollect what your basis for that was?*

*A. Well, it was one of my two sources. I suspect it must have been my Garda source who would have been in a position to know whether or not this man had suborned other Gardaí and the allegation was that he had.*

*Q. And do you know whether the allegation was that these people had been knowingly suborned or unwittingly suborned?*

*A. I don't think it was you be wittingly suborned. I think it was a clear fact of recruitment.*

*Q. And do you have any idea the degree to -- I mean, how many people were recruited?*

*A. No.*

*Q. No. And at all times are you talking about Dundalk Garda Station, or are you talking generally?*

*A. No, the column was about Dundalk Garda Station and that's all.”*

*498*

1.335 Mr Myers refused to name either his Garda source or his former terrorist source.<sup>499</sup>

**E. Myers' Acceptance that he has no evidence that Mr Corrigan was a Mole working for the IRA**

1.336 Mr Myers accepted that he had no evidence that Mr Corrigan was a Garda Mole working for the IRA:

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<sup>498</sup> Day 44, page 80.

<sup>499</sup> Day 44, page 112.

“Q. Just so there can be no ambiguity about it, your evidence to the Chairman Mr. Myers, is that my client Mr Corrigan is a Garda mole who was working for the Provisional IRA?

A. No, I have no evidence on that. I do not have evidence on that. What I have is a report to me, people told me this. I wouldn't regard that as evidence that qualifies as evidence as such. It is the basis for a newspaper article not for a trial and there is a difference.”<sup>500</sup>

1.337 Mr Myers told the Tribunal that he knows “*virtually nothing*” about Mr Corrigan.

“Q. Do you know much about my client, Owen Corrigan, can I ask you?

A. *Virtually nothing.*”<sup>501</sup>

1.338 Mr Myers also stated that he had no evidence to offer the Tribunal that there was collusion and importantly he added that his opinion should not be relied upon to come to any conclusion that there was collusion:

“Q. And you seemed to draw a very clear distinction last week, Mr. Myers, that while you have an opinion, and you have written your opinion and voiced your opinion, you have no evidence whatsoever to offer the Chairman to suggest that there was collusion in relation to the Breen and Buchanan murders?

A. I have no evidence that would be of any interest to any court anywhere, as we understand the word 'evidence', yes.

Q. And certainly, your understanding of what is evidence excludes your opinion being relied upon to come to any conclusion?

A. That is a reasonable assessment, yes.

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<sup>500</sup> Day 44, page 95.

<sup>501</sup> Day 44, page 96.

Q. *And I take it, you wouldn't want your fate or your reputation or your name damnified by a columnist's opinion without any evidence?*

A. *That is correct.*<sup>502</sup>

**F. Myers' Acceptance that his article did not tell the truth in a fair and impartial manner**

1.339 At the conclusion of his cross-examination by Counsel for Mr Corrigan, Mr Myers accepted that his article of March 2000 did not tell the truth in a fair and impartial manner.

*"Q. And do you think your article of March 2000 told the truth in fair and impartial manner?"*

A. *No, I don't believe it did.*<sup>503</sup>

**G. Conclusions on Mr Myers**

1.340 It is submitted that by reason of the foregoing, in particular Mr Myers acceptance that his article did not tell the truth in a fair or impartial manner, that no reliance can be placed on the content of his article. Unfortunately, Mr. Myers blindly followed a story he wanted to believe.

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<sup>502</sup> Day 50, page 2-3.  
<sup>503</sup> Day 44, page 144.

## Chapter 11 The Immediate Impact of Bandit Country and the Myers Article

### A. John Bruton TD's letter to the Garda Commissioner

1.341 The Kevin Myers Article had an immediate effect. The then leader of the Opposition, Mr John Bruton TD, wrote to the Garda Commissioner to express his concern:

*"I refer to a report in the Irish Times, Friday the 10th of March, which refers to a member of An Garda Siochana who allegedly passed information to the IRA which led to the death of ten people. The report suggests that the Gardaí ought to have been able on the facts of the cases in questions to have had their suspicions raised about the possibility of a leak of information internally. I am very concerned about this report and would be grateful if you could give me a briefing on the subject. I would value the opportunity of receiving a briefing from you as to whether this report is either accurate or incomplete."*<sup>504</sup>

### B. Charlie Flanagan TD's letter to the Garda Commissioner

1.342 Mr Charles Flanagan TD, Opposition Spokesman on Northern Ireland, also wrote to the Garda Commissioner in similar terms.

*"...  
I read with some alarm and disquiet an article in the Irish Times by Mr Kevin Myers under the title an 'Irishman's Diary' of the 10<sup>th</sup> of March, 2000 in which he makes a most serious allegation against a member or members of the Garda Siochana serving in the Border area in the 1980s and 90s.*

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<sup>504</sup> Day 44, page 123.

*In particular he refers to five atrocities involving the murder of 12 people carried out by terrorists.*

*As a public representative and also as a citizen of this State it is my contention that these allegations warrant an investigation at the highest level.*

*On the assumption that you have considered the content of the article, I would welcome your views on same with particular reference to whether or not the Garda Síochána might wish to consider a official response into the allegations as stated.”*

### **C. David Trimble MP’s letter to the Taoiseach**

1.343 On 25 March 2000, Mr David Trimble MP, leader of the Ulster Unionist Party, wrote to the Taoiseach Mr. Bertie Ahern TD in the following terms:

*“In particular I would refer you to the article in the Irish Times of 10 March 2000, by Kevin Myers. His allegations of direct Garda collusion in the IRA’s murder of six RUC officers -- and he identifies them -- are extremely serious. Furthermore, it seems likely that the IRA could not have murdered Lord Justice Gibson and his wife if there had not been Garda collusion. The allegations are also rehearsed in Toby Harnden’s book *Bandit Country*. The IRA mole who would appear to be responsible has never appeared before a court and was not even reprimanded. Instead, when his identity was uncovered by the RUC, he was merely posted to another Garda station. He now lives contently on a Garda pension in the Republic of Ireland.”<sup>505</sup>*

## **Chapter 12 Mr Jeffrey Donaldson’s Speech to the House of Commons**

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<sup>505</sup> Day 44, page 124

## A. Introduction

1.344 On 13 April 2000, Mr Jeffrey Donaldson MP delivered a speech to the Northern Ireland Grand Committee of the House of Commons in which he called for an independent public inquiry to examine the evidence that *“Owen Corrigan, a retired Detective Sergeant passed information to the IRA”* and that Chief Superintendent Breen had expressed concern about *“Mr Corrigan’s known IRA sympathies.”* Mr Donaldson informed the House of Commons that he based his allegations on Mr Harnden’s book and on the extensive inquiry which he had carried out into the matter since the publication of *Bandit Country*. Mr Donaldson repeated the allegation against Mr Corrigan in the House of Commons on 20 December 2000.

1.345 13 April 2000 was the first time that Mr Corrigan was identified as an alleged Garda mole. It will be recalled from Chapter 9 and Chapter 10 that neither Mr Harnden nor Mr Myers had identified Mr Corrigan. Further, it will be recalled that when Mr Myers wrote the article he was writing about a different Garda, Mr Leo Colton.

1.346 Accordingly, the circumstances which led to Mr Donaldson making these remarks are of vital importance to this inquiry. This is particularly so since it can be seen from Mr Donaldson’s evidence to the Tribunal that the only individual who mentioned Mr Corrigan to him was Mr Keeley/ Fulton.

“Q. So the basis for you putting Owen Corrigan's name out into the public domain in the House of Commons was exclusively the information you were given by Kevin Fulton?

A. Other sources referred to an unnamed Garda within Dundalk police station, **Kevin Fulton was the only person who named that individual**, which is why I took the step of checking that Kevin Fulton was who he said he was, so that I could be clear in my own mind, in coming to a judgement about how I should act

*in the public interest, that I knew who I was dealing with.*<sup>506</sup>  
(Emphasis added)

## **B. The Speech**

1.347 The relevant portions of the speech are as follows:

*“All of us in the House want to see genuine peace and reconciliation in Northern Ireland, but that can only be achieved if the truth about what has happened in the past 30 years of terrorist violence can be told. I warmly welcome the decision by Her Majesty the Queen to award the brave men and women of the Royal Ulster Constabulary the George Cross, but many questions remain to be answered about why so many officers were murdered and why their killers and, in many cases, those who set them up, remain free today.*

*Some of my colleagues will be aware of the many disturbing revelations made in a recent book called “Bandit Country” by Toby Harnden. I recommend anyone to read that book who is misty-eyed about the nature of terrorist violence, or indeed about the nature of the Sinn Fein-IRA leaders whom the Prime Minister and others are so keen to bring into Government in our country. It does not make comfortable reading.*

*I lost two of my cousins to the murderous south Armagh brigade of the IRA. Constable Samuel Donaldson, a young community policeman, was blown up in 1970 as he investigated a report of a stolen car. His brother, Chief Inspector Alex Donaldson, was killed along with eight of his colleagues in Newry police station in 1985. We hear a lot about the human rights of the terrorists. What about the human rights of my cousins, who were decent law-abiding citizens with a strong Christian*

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<sup>506</sup> Day 64, page 24.

*faith? They were murdered trying to protect the ordinary people—both Protestant and Roman Catholic.*

*Having conducted my own extensive inquiries since the book was published, I believe that there is an overwhelming case for an independent public inquiry into the reasons why Chief Superintendent Harry Breen and Superintendent Bob Buchanan, two of the most senior RUC officers to die during the troubles, were murdered near Jonesborough as they returned from a meeting with the Irish police in Dundalk on 20 March 1989. Superintendent Buchanan lived at Moira in my constituency. The meeting that he and Chief Superintendent Breen attended was arranged only on the morning of the day in question, and took place at 2 pm. How did the IRA know about a meeting involving such senior officers, and the timing of their return to Northern Ireland?*

*In particular, an independent public inquiry should examine the evidence that Eoin Corrigan, a retired Detective Sergeant now living in Drogheda, passed information to the IRA. On the morning on which he died, Chief Superintendent Breen expressed concern about Sergeant Corrigan's known IRA sympathies. Why was action not taken by the Irish police to prevent sensitive information from falling into his hands? Mr. Harnden's book alleges that the RUC had technical information gleaned—one presumes, from the watchtowers in south Armagh—that proves that the IRA was contacted from within Dundalk Garda station on the day on which Chief Superintendent Breen and Superintendent Buchanan were murdered.*

*There are questions that need to be answered about how the IRA attained the information that enabled them to murder those two senior police officers. Several other murders in south Armagh could also have involved collusion between Garda officers and the IRA. For example, Lord Chief Justice Gibson and Lady Gibson were murdered by the IRA on 25 April 1987. Their bodies were burned beyond recognition. Lord Chief Justice Gibson was the second most senior judge in Northern*

*Ireland at the time of his murder, and he and Lady Cecily lived at Drumbo, in my constituency. The attack occurred at 8.30 am. Lord and Lady Gibson had just left their Garda escort and were about to pick up their RUC escort when the bomb exploded. The precision required to detonate that bomb at just that time again raises the question of possible collusion between rogue elements in the Garda and the Provisional IRA. How did the IRA come into possession of information that enabled it to track the movements of Lord and Lady Gibson and explode the land mine that killed them both?*

*The following year, on 23 July 1988, Robert and Maureen Hanna and their six-year-old son David, who lived at Hillsborough in my constituency, were murdered when an IRA land mine exploded under their vehicle at Killeen in South Armagh, at about the same spot where the Gibson murders took place. The 1000 lb bomb had apparently been intended for High Court Judge Eoin Higgins. In a statement issued afterwards, the IRA said:*

*The wrong description was passed on to volunteers who monitored the Hannas vehicle which, by sheer coincidence, it now appears, was immediately preceded the length of the journey by an unrelated, unmarked Garda car.*

*The reference to the Garda car is extremely interesting. Who told the IRA about Judge Higgins's movements? Who gave the IRA erroneous information? Was it merely coincidence that an unmarked Garda car drove all the way from Dublin airport to the border, in front of the Hanna's vehicle? Could it be that a Garda source was driving that unmarked car and had made a mistake in identifying the Hanna's vehicle as that of Judge Higgins? Why would an unmarked Garda car drive all the way from Dublin airport to the border in that manner without an obvious purpose? Did Sergeant Corrigan have access to information relating to Judge Higgins's movements? An independent inquiry could explore such questions, which need to be answered.*

*Other examples of collusion between Irish police officers and the IRA could be cited, some of which are detailed in "Bandit Country". The special criminal court in Dublin is currently considering a case involving Sergeant Finbar Hickey, who has been charged with false possession of passports, and a man called Fox, who is allegedly a senior member of the Provisional IRA and was previously charged with the murder of Post Office worker Frank Kerr in Newry.*

*The evidence in that case suggests that Sergeant Hickey was involved in providing the Provisional IRA with false passports for use in its illegal activities. The public are entitled to know the truth about Sergeant Hickey's involvement with the IRA and who else in the Garda was associated with his activities. Although the court case will go some way towards tackling those issues, the wider implications can be fully investigated only by an independent public inquiry.*

*What about the occasions on which the Irish police have obstructed the course of justice in Northern Ireland? In 1979, Detective Chief Inspector Eric Anderson reported that the Irish authorities would not even provide a forensic report to help with an inquiry into the murder of 18 soldiers, the murders having been executed from the territory of the Irish Republic. I refer to the murder of 18 members of the Parachute Regiment, who died at Narrow Water near Warrenpoint as a result of two bombs detonated by the Provisional IRA? What about the destruction of evidence by the Irish police, which was a factor in preventing Joseph Anthony Brennan from being charged with those murders in 1994?*

*I accept that, in recent months, the Irish police have done some sterling work in limiting the activities of the so-called Real IRA. But what about the succour and comfort that some of its members gave to the Provisional IRA throughout the preceding years? One IRA member told Mr. Harnden, during his interviews when collating his book, that Irish*

*police officers would apologise when arresting him. An RUC officer noted that the border was always an open door for the escaping IRA man, but that it suddenly became an iron curtain during the bovine spongiform encephalopathy crisis. Were the Irish authorities more concerned with clamping down on cattle than terrorists? We should be told.*

*Unlike the Republican movement that has used allegations of collusion against members of the Royal Ulster Constabulary to denigrate the entire force, I am not seeking to denigrate the Irish police as a whole. I recognise the efforts that have been made by the Gardai in the fight against terrorism. While I have occasionally criticised that effort, I have acknowledged the more recent improvements in cross-border security co-operation between the RUC and the Gardai. However, an independent public inquiry would afford the Gardai the opportunity to identify the rogues, and thus restore their reputation and professional integrity.*

*I say again that I sincerely desire real peace and reconciliation in Northern Ireland, not least as a tribute to the memory of my two cousins, my constituents and all the other innocent people who have been murdered so brutally in the past three decades. The Prime Minister employed the same reasoning when he ordered an inquiry into the events of so-called Bloody Sunday in 1972. For that reason I respectfully request that a public inquiry be held into the murders of Chief Superintendent Breen and Superintendent Buchanan and the many other crimes in South Armagh, and that the allegations of collusion between elements in the Irish police and the Provisional IRA are investigated.*

*Given that the Government have conceded to demands from the Irish Government for an inquiry into the events on Bloody Sunday, will the Minister now ensure that the Government will co-operate with the Irish Government and hold an inquiry into terrorist-related deaths in South*

*Armagh since 1970? The public are entitled to know the truth. If we can spend millions of pounds on an inquiry into events that took place in Londonderry in 1972, surely it is right that the truth be sought in respect of the murders to which I referred earlier.*

*I am not talking about any old murder. I am talking about the murder of two very senior police officers. I am talking about the murder of the second most senior judge in Northern Ireland. I am also talking about the murder of three members of the Hanna family. How was the IRA able so effectively to attack our police system by murdering Chief Superintendent Breen and Superintendent Buchanan? The murder of Chief Superintendent Breen, who was in charge of counter terrorism in the whole area of South Armagh, was a major success in the IRA's campaign against the RUC and the rule of law.*

*The murder of Lord Justice Gibson and his wife was a serious blow against the criminal justice system in Northern Ireland. If there is evidence of collusion between members of the Irish police and the IRA in the execution of those murders, that is a serious matter that must be addressed. It goes to the heart of law and order and justice and fairness in Northern Ireland.*

*I hope that the Minister can give us a positive answer today and that he will not sweep the issues under the carpet or say, yet again, "Provide me with the evidence". The evidence is there. I have today provided him with names and with evidence."*

**C. Mr Donaldson's Sources: in particular his evidence that the only individual to name Mr Corrigan was Mr Peter Keeley/Kevin Fulton**

1.348 Mr Donaldson told the Tribunal that he had an interest in the shooting of the two RUC Officers because he and Superintendent Buchanan were from the same village, many of Mr Buchanan's relatives were his constituents, the two RUC officers were the two most senior RUC officers killed during the

'Troubles' and because two of his cousins who were in the RUC were murdered by the IRA.<sup>507</sup>

1.349 He stated that this interest continued over the years and was refocused by the publication of Mr Harnden's book, 'Bandit Country.'

*"Q. Which brought about, in fact, this Tribunal and several Tribunals in the North. And I take it that your concern was the Breen and Buchanan case and the Gibson case at the time, so your concern had continued over the years. Now, when did you, again, focus your attention on this particular murder?"*

*A. My interest did continue and at the time of the publication of a book by a journalist who I knew, a journalist for the Daily Telegraph, Toby Harnden, a book entitled Bandit Country, he, in that book, provided information and accounts relating to a number of incidents involving south Armagh Provisional IRA. I wasn't involved in the book prior to its publication, but I was very interested in what Mr. Harnden had covered in the publication of the book, and indeed I subsequently met with him afterwards to discuss some of the issues that he had raised in his book. So, I suppose, that refocused some of my own attention on these issues and raised concerns or reignited concerns that I had had for a long time."<sup>508</sup>*

1.350 Mr Donaldson told the Tribunal that he met with Mr Harnden prior to meeting Mr Keeley and they discussed the murders of the two RUC officers. He stated that Mr Harnden did not mention any specific Garda by name.<sup>509</sup>

1.351 Mr Donaldson told the Tribunal that soon after the publication of Bandit Country he was approached by Mr William Frazer who offered to introduce Mr Donaldson to someone who would be in a position to provide additional

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<sup>507</sup> Day 64, pages 2-3.

<sup>508</sup> Day 64, page 4.

<sup>509</sup> Day 64, page 35.

information to that contained in 'Bandit Country.' That person was Peter Keeley aka Kevin Fulton.<sup>510</sup> Mr Donaldson told the Tribunal that he had never met or heard of Peter Keeley prior to this point.<sup>511</sup>

*"A. Well, after the publication of the Harnden book I was approached by William Fraser, who is a victims' campaigner from the south Armagh area; he has lost a number of his own family members, including his father, murdered by south Armagh PIRA. I had met William many times over the course of the years to discuss issues relating to the welfare of victims in south Armagh, but he approached me and he said that he would like to introduce me to someone who may be able to provide information additional to that which had been published in the Harnden book, and so I arranged to meet this individual at the Houses of Parliament in London.*

*The individual, it transpired, was a person known publically as Kevin Fulton. I am aware of his real name and family background."*<sup>512</sup>

1.352 Mr Donaldson told the Tribunal that he agreed to meet Peter Keeley. Their first meeting took place in early 1999 not long after the publication of Bandit Country.<sup>513</sup> The second meeting took place two or three weeks after the first meeting. Both meetings took place in the Houses of Parliament, Westminster.

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1.353 He told the Tribunal that Mr Keeley spoke in general terms about the murders of Chief Superintendent Breen and Superintendent Buchanan.

*"Q. I see. And what did he tell you at the time?"*

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<sup>510</sup> Day 64, page 5.  
<sup>511</sup> Day 64, page 43.  
<sup>512</sup> Day 64, page 5.  
<sup>513</sup> Day 64, page 5.  
<sup>514</sup> Day 64, page 45.

A. *He introduced himself and his background, gave me a bit of his story. He told me that he had been recruited into, to become an agent when he had joined the British Army, the Royal Irish Rangers. He was, I think, based in Germany after his initial training in Ballymena in County Antrim, and that he had been recruited and had decided, after consideration, to become an agent and to infiltrate the IRA. He had strong family background in the Newry area and, obviously, someone in authority felt his family background would make it easier for him to infiltrate into the Provisional IRA. So he gave me that background. He then went on to talk, in general terms, about the Breen and Buchanan murders because he knew of my interest in particular in that, and the murders of Lord and Lady Gibson, and he said that he had information which would link a member of the Garda with the passing of information to the IRA at the time of the murder of the two senior police officers.<sup>515</sup> (Emphasis added)*

1.354 Mr Donaldson told the Tribunal that he contacted a senior member of the British Security Forces who confirmed that Mr Keeley had been an agent.<sup>516</sup>

1.355 Importantly, Mr Donaldson stated that he did not inquire into Mr Keeley's credibility.

*“Q. Did you inquire as to the credibility of Kevin Fulton at the time?*

*A. I did not go into the specifics of Kevin Fulton's role because I believed that to have pressed that matter at that time would have potentially compromised this member of the security forces, and in the end my interest was in determining whether or not Kevin Fulton was who he said he was. I then had to make judgements based on that and based on what Fulton was telling me, as to what was in the public interest and how I should act*

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<sup>515</sup> Day 64, page 6.

<sup>516</sup> Day 64, page 7. This individual's name was handed to the Chairman. We do not know what steps, if any, the Tribunal took to contact this Officer, or whether he gave evidence to the Tribunal.

*thereafter. I was not interested, at that stage, in probing further with the security forces because, obviously, the security forces had the task of pursuing any investigation as to criminal activity that may have arisen in terms of the allegations that were being made.”<sup>517</sup>*

1.356 Mr Donaldson told the Tribunal that the only source whom mentioned the name Owen Corrigan was Mr Keeley and that he, Mr Donaldson, did not seek any confirmation of this from the Senior Security Officer he spoke to after Mr Keeley told him this information.

“Q. *And am I to take it, Mr. Donaldson, that after you spoke to the senior member of the security forces, you got verification in respect of Kevin Fulton's bona fides, if I can put it that way?*

A. *Yes.*

Q. *Did you ask the senior member of the security forces whether he was aware of any Garda collusion in the killing of Chief Superintendent Breen and Superintendent Buchanan?*

A. *We would have had a general discussion about that.*

Q. *What did he say to you?*

A. *I cannot recall his exact words and I am not going to paraphrase what he said.*

Q. *Did he suggest to you that Fulton was probably right or did he suggest that he didn't know whether Fulton was right?*

A. *He didn't suggest either.*

Q. *OK. So, he didn't give you any corroboration in terms of what Mr. Fulton had said to you about Owen Corrigan, is that fair to say?*

A. *I didn't seek it.*

Q. *OK. But he didn't give you any corroboration?*

A. *I didn't seek it.”*

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<sup>517</sup> Day 64, page 8.

And:

*“Q. Mr. Donaldson, it's a very simple question I asked you and I am going to ask it to you again: Your only source for naming Owen Corrigan in the House of Commons was Kevin Fulton, isn't that correct?”*

*A. The only source of the name at that time that I had was Kevin Fulton.*

*Q. Yes. Thank you very much.”*

1.357 Mr Donaldson told the Tribunal that he did not believe that it was necessary to seek corroboration. He said that he saw his role as a public representative, not to analyse the information but simply to put the information he had received into the public domain as it would support calls for an inquiry.

*“Q. With the benefit of hindsight, Mr. Donaldson, do you think it might have been better had you probed the accuracy of Mr. Fulton's information as opposed to simply the reliability of Mr. Fulton as a person?”*

*A. I am a public representative, not a public prosecutor. My role is to determine what is in the public interest. It is the job of this Tribunal to probe the veracity of what Kevin Fulton told me. I have simply stated on the public record, and since, that I want these matters to be inquired into further and in the end, for the truth, hopefully, to be established.*

*Q. But, Mr. Donaldson, by naming Owen Corrigan in the House of Commons, you did become the public prosecutor of Owen Corrigan?*

*A. No, I became the public representative because I believe the information that had been given to me, it was in the public interest that this information should be made public for the purpose of supporting the case for an independent public inquiry.*

*Q. Mr. Donaldson, I don't disagree with you that it is in the public interest for you to put this information into the public domain, but where I do disagree with you is, I say to that you there was absolutely no necessity to name Owen Corrigan in your speech to the House of Commons. Would you agree with that?*

A. *No, I would not. That is a matter of judgement. It is a matter for me, as a public representative, to make a judgement. I am elected to do that. I have a mandate to do that. The people I represent expect me to make judgements on their behalf. I should point out since then I have been re-elected to the House of Commons on three occasions, so I guess I enjoy a confidence of the majority of the people whom I represent, and they make their judgement on the judgements that I make. It is a judgement that I have to make as a politician and it is not a judgement that I am making sitting in a court of law, it is not a judgement that I am making considering whether there should be a prosecution. It is a judgement as to what I believe to be in the public interest. I came to the conclusion, based on the information that was presented to me by Kevin Fulton, that it was in the public interest to make this -- bring this information into the public domain in support of the case for an independent public inquiry. I do not resile in any way from that decision.*

Q. *Mr. Donaldson, why was it necessary to name Owen Corrigan?*

A. *I believe it was necessary because there had been rumour and talk of collusion for some time surrounding this case. There had been calls over a long period of time for the matter to be further investigated, and I felt that it had reached the stage where we needed to bring into the public domain some of the evidence that was available to support the need for that inquiry. I made the judgement, and it is my judgement --*

Q. *Oh, absolutely --*

A. *-- that in naming Owen Corrigan, I was demonstrating that there was evidence that was important and relevant and strengthened the case for the holding of such an independent public inquiry. That was my judgement. I made that call. I do not regret making that call. I believe that in making that call, it enhanced the realisation of the holding of this Tribunal of Inquiry."*

#### **D. Conclusions on Mr Donaldson**

1.358 It is clear from Mr Donaldson's evidence that when he named Mr Corrigan in the House of Commons as having worked for the IRA the only source he had was Mr. Keeley/Fulton. It is also clear from his evidence that although Mr Donaldson took steps to confirm that Mr Keeley had been a British Agent he took absolutely no steps to verify Mr Keeley's account. In these circumstances, the only conclusion that can be drawn is that Mr Donaldson acted, at best, irresponsibly and, at worst, disgracefully in naming Mr Corrigan under parliamentary privilege and thereby placing his life at risk. This is aggravated by Mr Donaldson's own evidence that he named Mr Corrigan to bolster his call for the establishment of a public inquiry.

1.359 It is also telling that despite the fact that Mr Donaldson met with Mr Harnden and Mr Mains<sup>518</sup> neither mentioned Mr Corrigan to him.

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<sup>518</sup> Day 64, page 73.

## Chapter 13 Parliamentary Questions in Dáil Éireann

### A. Introduction

1.360 On 13 April 2000, the same day that Mr Donaldson delivered his speech in the House of Commons the issue was raised in Dáil Éireann by Jim Higgins TD, Opposition Justice Spokesman, and Charlie Flanagan TD, Opposition Spokesman on Northern Ireland. The questions tabled by Mr Higgins and Mr Flanagan were prompted by the article published by Mr Kevin Myers.

### B. The Parliamentary Questions

1.361 The Dáil exchange was as follows:

*“1. Mr. Higgins asked the Minister for Justice, Equality and Law Reform the reason there has been no follow-up action or arrest following a newspaper article (details supplied) which alleges that a then serving but now retired member of the Garda Síochána passed Garda intelligence to the IRA which led to the deaths of four members of the RUC, a Lord Justice and his wife, four members of a family and a County Louth farmer; and if he will make a statement on the matter. [11047/00]*

*5. Mr. Flanagan asked the Minister for Justice, Equality and Law Reform if he will order an appropriate investigation into allegations of Garda collusion with proscribed republican terrorist groups along the Border area in the 1980s and 1990s which may have been responsible for multiple atrocities causing death. [11343/00]*

*Minister for Justice, Equality and Law Reform (Mr. O'Donoghue): I propose to take Questions Nos. 1 and 5 together.*

*I am aware of the allegations raised in the newspaper article referred to by Deputy Higgins. Indeed, similar allegations have been made in the past and given coverage in the media. The murders referred to in the article were of course the subject of intensive investigations, both by the RUC in relation to those incidents which occurred in Northern Ireland and by the Garda Síochána in relation to incidents which occurred in this jurisdiction.*

*The two forces co-operated fully with each other in these investigations. I am advised by the Garda authorities that during the course of the investigations in question, and indeed other investigations into terrorist incidents in the Border area throughout the 1980s and 1990s, no tangible evidence was uncovered to show that information was passed by a Garda informant to the Provisional IRA.*

*There is no doubt, however, that the allegations raise issues of the utmost seriousness and that their recent repetition in the media has caused understandable concern. Even though there is no evidence to substantiate the allegations, every effort must be made to assure and reassure the public that they have been thoroughly investigated. The Garda Commissioner has appointed a senior officer to re-examine the files and to investigate the allegations raised.*

**Mr. Higgins:** *I thank the Minister for his reply and welcome the fact that a senior Garda officer has been appointed to investigate the allegations. I am at a loss to know why the allegations have remained uninvestigated and unexplored for so long. Does the Minister accept that rank and file gardaí could name the two people involved, one a uniformed member of the Garda and the other a plain clothes member? Even the dogs in the street know the names of the people involved. Were the individuals – we know who we are talking about – arrested, questioned or interrogated in relation to their alleged involvement in these cases?*

**Mr. O'Donoghue:** Deputy Higgins will be well aware that operational matters are a matter for the Garda Commissioner. I have already explained that investigations were carried out in [324] relation to the allegations. I again stress that what dogs or anyone else in the street know is a matter of little relevance unless one can bring forward hard evidence to a court of law or, alternatively, to anybody else who is in a position of authority and can implement some sanction or discipline. There is an old saying that everybody's business is nobody's business, and what everybody knows does not apply in the context of evidence against an individual where his or her job or liberty is concerned or where he or she may be placed at a disadvantage. Deputy Higgins is aware that one requires hard evidence.

This matter, which stretches back many years, was investigated at the time. I cannot go into the minute detail of what precisely occurred at that time other than to say that I am advised on the best authority that the allegations were investigated and as a consequence no charges were preferred.

**Mr. Flanagan:** I put it to the Minister that the investigations, if any, which have taken place to date were minimalist in nature and that that is not good enough having regard to the most serious allegations which have been made. Is the Minister aware that the allegations were published by a journalist of considerable reputation; that they concern the direct involvement by a member or members of the Garda Síochána in what amounts to 12 deaths in Northern Ireland between 1987 and 1995, including six members of the RUC, two of whom were officers of very senior rank; that this matter was raised before; and that the investigations to date have been wholly inadequate? If the Minister was satisfied with the investigations why is a new investigation being initiated? Has the Minister met the Garda Commissioner on this matter and, if not, is he prepared to do so as a matter of urgency?

**Mr. O'Donoghue:** *These matters were investigated and no tangible evidence was forthcoming to support the allegations. The RUC cooperated with the Garda Síochána in terms of the investigations. If there is further evidence to which the Deputies can point, that will very definitely be examined. The reality as of now is that the Garda Commissioner has asked a senior officer to again look at the files for the reason that the matter has been raised again in the media and the House. I have pointed out that it is of considerable importance that the public is assured and reassured in relation to this matter. These are the simple facts of the case. It is not possible and would be wholly wrong and downright unjust for a person to try to manufacture evidence on the basis of rumour. That cannot be done. Hard evidence has to be collected and collated and no tangible evidence has come forward to date. However, in deference to what the Deputies have said and to reports in the media, a senior officer has been appointed by the Garda Commissioner to again look at the files. I cannot, nor can any predecessor of mine, say anything beyond that.*

**[325]Mr. Higgins:** *Is it not a fact that we are talking about a series of instances? We are talking about four young members of the RUC, including a 21 year old woman police officer, Lord Chief Justice Gibson and his wife, Cecily, who were blown up, the entire Hanna family – Robert, aged 45, Maureen, aged 44, and David, aged seven – who were blown up on the side of the road, RUC Chief Superintendent, Barry Breen, and Superintendent Bob Buchanan who were assassinated and Tom Oliver, a farmer from County Louth who was abducted, tortured and murdered. This is a series of separate incidences. Is the Minister telling the House that there was absolutely no evidence to associate the two individuals, members of the Garda Síochána, with these incidences?*

*Will the Minister acknowledge that following the murder of Tom Oliver the RUC discovered the identity of the mole and made it known to members of the Garda Síochána at senior level and that instead of*

*being dealt with, the individual in question was posted to a relatively quiet station and now lives out his life in happy retirement? Is the Minister saying that this person, who has been involved in the assassination of innocent people north and south of the Border, should not be the subject of a detailed inquiry and that it was not possible to establish a direct link between him and the incidences I have mentioned?*

*The Minister might throw cold water on the common expression “the dogs in the street knew”, but everybody, including people in the Garda Síochána, knew the identity of this individual, but for some reason he was shielded and protected and now lives a life of relative calm on a State pension.*

**Mr. O'Donoghue:** *The Deputy will be aware that in the past I have referred to Paul Simon's song about misinformation following me like a plague. It is quite clear that either Deputy Higgins is not listening or he is trying to be mischievous. I said no tangible evidence was uncovered to show that information was passed by a Garda informant to the PIRA, I did not say “no evidence was uncovered”. That has been the position under my predecessors and it remains so. If we follow through on the logic of what the Deputy is saying, it appears he is suggesting that evidence may be available to the Garda which it is not utilising in order to charge or convict a Garda informant.*

**Mr. Higgins:** *There was.*

**Mr. O'Donoghue:** *That is a serious allegation to make. If the Deputy is stating that there was collusion within the Garda in order to subvert evidence in regard to this matter, he should make that clear.*

**Mr. Higgins:** *I will give the Minister the names of the gardaí if he wishes.*

**[326]Mr. Flanagan:** *Where does the Minister stand on this issue? Is he telling the House that he accepts that what has been put to him is mere rumour without foundation? I refer him to my earlier question, which he side-stepped and did not reply to, regarding his relationship with the Garda Commissioner on this issue. Has he discussed the matter with the Garda Commissioner since the revelations were published in a daily newspaper four weeks ago and, if not, why not? Does he propose, as guardian of the public interest, to order an official inquiry at the highest level into these allegations of the utmost seriousness?*

**Mr. O'Donoghue:** *Let us not get carried away.*

**Mr. Flanagan:** *It is a most serious matter. Is the Minister saying that it is being exaggerated?*

**Mr. O'Donoghue:** *The reality is that I must give the facts as they are presented to me, which I outlined in response to Deputy Higgins's question, and I have no more to add in that respect. What I believe or do not believe is of little relevance in terms of whether there is a sufficiency of evidence to charge any individual in regard to this matter. I am outlining to the House what I was told by the Garda authorities and I must accept what they tell me. I have stated categorically that it is a matter of the utmost seriousness and nobody is suggesting for one moment that it is not. That is why, with a view to reassuring the public, the Garda Commissioner has appointed a senior officer to examine the files again. However, that is entirely different from saying there is a sufficiency of evidence to charge a person.*

*Deputy Higgins seems to suggest that he has evidence which will be sufficient to charge an individual and that he can name names. My strong advice is that he should take that matter up with the Garda authorities, make a statement and allow it to be investigated. That is*

*the responsible action to take, not become involved in megaphone diplomacy across the floor of the House in relation to the matter.*

**Mr. Higgins:** *I will give the Minister the names.*

**Mr. Flanagan:** *Has the Minister spoken to the Garda Commissioner?"*

### **C. Mr Higgins' and Mr Flanagan's Sources**

1.362 Mr Higgins told the Tribunal that he decided to table the question after he had read the Kevin Myers article.

*"Q. Just to be quite clear on this; it was the article, and only the article, that prompted you to ask the question?"*

*A. Correct, correct.*<sup>519</sup>

1.363 Mr Higgins told the Tribunal that it caused him unease to learn that Mr Myers had told the Tribunal that he did not think his article told the truth in a fair and impartial manner because Mr Myers' article was the genesis of his question.

*"Q. ... Does the fact that Mr. Myers came in here and indicated that he doesn't believe that his article told truth in a fair and impartial manner cause you unease?"*

*A. Well, it would cause me unease because of the fact it was the genesis of the questions that both Deputy Flanagan and I raised in the Dáil at the time.*<sup>520</sup>

1.364 He told the Tribunal that he received a number of phone calls from individuals purporting to be members of An Garda Síochána after the Kevin Myers article was published.<sup>521</sup> He stated that "two or three people" rang him. He stated

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<sup>519</sup> Day 56, page 33.

<sup>520</sup> Day 56, page 58-59.

<sup>521</sup> Day 56, page 34.

that they did not say whether they were uniformed Gardaí or Detective Gardaí. They also did not give their ranks.<sup>522</sup>

1.365 Mr Higgins told the Tribunal that his source for the statement that two Gardaí had been involved in the murder of the two RUC men was the telephone calls.<sup>523</sup> He said that the Gardaí named were Owen Corrigan and Leo Colton. He stated that “both names came together” in the same call or calls.<sup>524</sup> He told the Tribunal that he could not remember the names of the individuals who telephoned him.<sup>525</sup>

1.366 Mr Flanagan was the Opposition Spokesman on Northern Ireland. He told the Tribunal that when he read the article by Kevin Myers he telephoned him to discuss the issue.<sup>526</sup> He said that questions or allegations of possible collusion would often come up on the fringes of his meetings with Unionist politicians and RUC men.<sup>527</sup> However, he said that it was the article by Mr Myers which crystallised the issue for him.

“A. *I would have also made reference to that on the basis that I would have thought on the occasion that the Kevin Myers' article merely crystallised what had been in the public arena and that it wouldn't have been fair to suggest that there was -- that there -- that there was no series of reports or rumours prior to the Kevin Myers' article, because there had been from the early '90s, and that whereas it might have been suggested that the questions were prompted by the Myers' article, it wouldn't be true to say that it was exclusively on the basis of the Myers' article that this issue was raised in Dáil Éireann.*”<sup>528</sup>

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<sup>522</sup> Day 56, page 35.

<sup>523</sup> Day 56, page 35.

<sup>524</sup> Day 56, page 37.

<sup>525</sup> Day 56, page 61

<sup>526</sup> Day 71, page 9.

<sup>527</sup> Day 71, page 9-10.

<sup>528</sup> Day 71, page 15..

1.367 Mr Flanagan told the Tribunal that around the time he tabled his question he received a telephone call at his home from a person who purported to be a member of the Gardaí telling him to follow up the allegations of collusion.<sup>529</sup>

1.368 Mr Flanagan also told the Tribunal that he was never provided with the name/names of the Garda/Gardaí who were alleged to have colluded with the IRA.<sup>530</sup>

## **D Conclusion**

1.369 It is clear from the evidence of Mr Higgins and Mr Flanagan that their questions were prompted by Mr. Myers' article. Accordingly, as Mr Myers accepted in evidence that his article did not tell the truth in a fair and impartial manner the genesis of the questions carried a fatal flaw. However what is interesting about the evidence of Mr Higgins and Mr Flanagan is their account of the phone calls they received from individuals purporting to be Gardaí around the time the Myers article was published. Mr Flanagan told the Tribunal that his caller did not name any names and simply advised him to look into the issue of collusion. However, Mr Higgins' caller or callers went considerably further. He or they named two individual Gardaí as being guilty of collusion, Owen Corrigan and Leo Colton. No basis was given for the allegation, nor was any example provided of how they were alleged to have colluded with the IRA.

1.370 The anonymous nature of the calls and the fact that the Tribunal was not able to trace the individual/individuals who made these calls must on any analysis cast serious doubt on the credibility of these callers.

1.371 This is particularly so in circumstances where the callers purported to be Gardaí. The Tribunal has heard extensive evidence from members of the

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<sup>529</sup> Day 71, page 18.

<sup>530</sup> Day 71, page 20..

Gardaí yet no individual gave evidence to the Tribunal that was consistent with the information provided by the anonymous callers.

## Chapter 14 The Camon/Kirwan Report

### A. Overview of the Report

1.372 In April 2000 the Minister for Justice, John O'Donoghue TD asked the Garda Commissioner to investigate the allegation of collusion again. On 11 April 2000, the Commissioner directed that Detective Chief Superintendent Sean Camon and Detective Inspector Peter Kirwan re-examine all available files and investigate the allegations contained in 'Bandit Country' and in the Kevin Myers article.

1.373 Detective Chief Superintendent Sean Camon and Detective Inspector Peter Kirwan interviewed Mr Harnden and Mr Myers. They did not interview Mr Trimble, Mr Donaldson, Mr Bruton, Mr Higgins and Mr Flanagan as their allegations "*... do not seem to be 'standalone' allegations but rather are based on Toby Harnden's book and Kevin Myers' article.*"<sup>531</sup>

1.374 Detective Chief Superintendent Sean Camon and Detective Inspector Peter Kirwan interviewed Mr Corrigan and Mr Leo Colton as their names had been "generally thrown about" as a result of the collusion allegations.

1.375 Detective Chief Superintendent Sean Camon and Detective Inspector Peter Kirwan also contacted the RUC who stated that "*no evidence exists nor can any documentation be located which evidences Garda collusion with subversives.*"<sup>532</sup>

1.376 The Camon/Kirwan Report concluded that:

*"There is no evidence to suggest collusion between members of the Garda Siochana and subversives in the murder of Chief*

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<sup>531</sup> Page 5 of the Report.  
<sup>532</sup> Page 6 of the Report.

*Superintendent Breen and Superintendent Buchanan or in the other cases as outlined in Toby Harnden’s book Bandit Country or in Kevin Myers Irish Times article.*<sup>533</sup>

**B. The Evidence of Sean Camon**

1.377 The Tribunal did not hear any evidence from Detective Chief Superintendent Sean Camon as he died in 2010. The Tribunal did not take any statement from Mr Camon or interview him before his death.

**C. The Evidence of Peter Kirwan**

1.378 Mr Kirwan told the Tribunal that in 2000 he was a Detective Inspector in the Security & Intelligence section of Crime and Security. He stated that he was asked to assist Detective Chief Superintendent Sean Camon in his investigation. He stated that he had never worked with Mr Camon before.<sup>534</sup>

1.379 Mr Kirwan told the Tribunal that when he carried out the investigation in 2000 both he and Mr Camon were aware of Garda Intelligence Document 542 which stated:

*“Garda information indicated by way of double hearsay, that there was a contact in the Gardaí who had passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station.”*<sup>535</sup>

1.380 Mr Kirwan told the Tribunal how he and Mr Camon approached their task:

*“Q. And, just help the Chairman with this: the two of you go together, and how did you decide to approach this task?”*

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<sup>533</sup> Page 8 of the Report.

<sup>534</sup> Day 61, page 47.

<sup>535</sup> Day 61, page 40.

A. *Well, first of all, Sean Camon, we would have met very soon after the appointment; that was in April 2000. He would have -- I was primarily his conduit into Crime and Security, to make files available to him. It was quite obvious that intelligence files and files at Crime and Security were going to form a pretty significant, or a pretty significant focus of the investigation, and I suppose the first thing that he requested was some -- the files on the incidents that were mentioned in the Myers' article, and thereafter we had to source the book "Bandit Country", we had to read the book. Thereafter, pretty soon thereafter, we would have sat down, or he would have instructed me to sit down, isolate the actual allegations that were -- and he would have constructed a series of questions that arose from the allegation and they were put into particular categories, and that was done in preparation for an interview with the two authors: Mr. Myers and Mr. Toby Harnden, and both of them interviews were conducted in May 2000. Mr. Myers, I wasn't on the first interview of Mr. Myers. I accompanied Sean Camon to one of them interviews, I forget the date, in May, and I accompanied Sean Camon to Washington to interview Toby Harnden in Washington and I took notes of that interview.*<sup>536</sup>

1.381 Mr Kirwan told the Tribunal that they looked at the O'Dea Report and the attached statements at a very early stage.<sup>537</sup> He said that the report was carefully considered.<sup>538</sup> Mr Kirwan told the Tribunal that he attached little significance to the fact that it took Mr O'Dea two days to interview everybody:

*"A. Well, I think, Chairman, from what I saw, is that he interviewed the critical people that had taken the phone calls. If he achieved that within two days, then he achieved that within two days."*<sup>539</sup>

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<sup>536</sup> Day 61, page 48.  
<sup>537</sup> Day 61, page 49.  
<sup>538</sup> Day 61, page 50..  
<sup>539</sup> Day 61, page 51.

1.382 Mr Kirwan told the Tribunal that, in his opinion, Mr O’Dea interviewed the Gardaí and civilians who were on the 6am - 2pm shift rather than the 2pm-10pm shift because the meeting was arranged in the morning.<sup>540</sup> He stated that they were tasked with investigating the allegations which were published.

1.383 Mr Kirwan stated that they did not interview Mr Donaldson or Mr Higgins because their allegations were based on the allegations contained in Bandit Country and the Kevin Myers article.<sup>541</sup>

1.384 Mr Kirwan stated that neither he nor Mr Camon used the words ‘no tangible evidence.’<sup>542</sup>

1.385 Mr Kirwan said that it was not difficult to identify Mr Prenty as ‘Detective Inspector L’ as he was the only Detective Inspector in Dundalk at the time.<sup>543</sup>

1.386 Mr Kirwan said that Mr Camon reviewed the report from Mr McHugh into Mr Corrigan’s prosecution.<sup>544</sup> He said that he did review Intelligence Doc 131;

*“Garda Information (1992) suggested that PIRA members had conveyed a threat to a witness regarding an upcoming trial in which D/Sergeant Owen Corrigan was a defendant. The information further suggested that as a result of the threat, the said witness was in fear and unlikely to appear in court.”<sup>545</sup>*

1.387 Mr Kirwan stated that the reference to Mr Corrigan on page 6 of the Camon/Kirwan Report is taken directly from Mr Mains’ second statement.<sup>546</sup> He stated that Mr McBurney never told them that he had told Mr Mains not to

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<sup>540</sup> Day 61, page 64.  
<sup>541</sup> Day 61, page 19-23.  
<sup>542</sup> Day 61, page 87.  
<sup>543</sup> Day 61, page 96-97.  
<sup>544</sup> Day 61, page 104-105.  
<sup>545</sup> Day 61, page 106.  
<sup>546</sup> Day 61, page 79-80.

name Mr Corrigan in his first statement, as was suggested by Mr. Mains in his evidence.<sup>547</sup>

1.388 Mr Kirwan told the Tribunal that he had assumed that the Garda that Mr Myers was writing about was Mr Corrigan because Mr Corrigan was the only Garda who had been named publically by Mr Donaldson in the House of Commons.<sup>548</sup>

*“Q... Just to be clear on your evidence, you only mentioned the name of my client to Mr. Mullally following his name coming into the public domain through Jeffrey Donaldson, is that right?”*

*A. Yes - well, I cannot put an exact date or time on it specific, but it would only be after it came into the public domain with Mr. Donaldson, or Mr. Harden mentioned him to me in our interviews, or Mr. Myers. In that context.”<sup>549</sup>*

1.389 Mr Lionel Mullally was a Detective Garda working in Crime & Security in the intelligence section in 2000. He told the Tribunal that when he was tasked with doing a report by Mr Kirwan he was asked to look inter alia for the name Mr. Corrigan.<sup>550</sup>

1.390 Mr Kirwan commented on this evidence as follows:

*Q. The answer is: "In general conversation, no, but when I was asked to do a report in relation to it, there was a name mentioned." In other words, this wasn't a question of him doing a report on it, or any document; it was an oral reference to Owen Corrigan?*

*A. Oh, yes, and, Chairman, I would accept that if it came up in any context, it was in that context, and it was in the context of -- I mean, if I go out of my office, I am talking to the people on the*

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<sup>547</sup> Day 61, page 116.

<sup>548</sup> Day 95, page 5

<sup>549</sup> Day 95, page 6-7.

<sup>550</sup> DAY 84, PAGE 17-18.

desks, I certainly would be likely to have said, "Are you aware that Owen Corrigan's name was mentioned in the House of Commons today?" When I came back from interviewing Kevin Myers, I certainly would have made people aware, look at, Kevin Myers has mentioned Owen Corrigan in the context of his article. And when I came back from America in May, I certainly would have said, look at, be mindful of the fact that Toby Harnden indicates that his reference to Garda X in Bandit Country is a reference to Owen Corrigan. So, certainly, them three incidents that I mentioned, I would say that, in the normal course of conversation with the people in the office, I would have mentioned that.

- Q. Fair enough. But having looked at the article, what was it that, I suppose, inspired you to think of the name of Owen Corrigan?
- A. What I'm saying, Chairman - maybe I am not making myself clear - there is nothing in the article that would have prompted me to mention the name Owen Corrigan. The only time that I would have mentioned Owen Corrigan was subsequent to his name coming into the investigation, either in the public forum in the House of Commons, or in the context of interviews with Mr. Myers or Mr. Harnden.
- Q. So you took it, therefore, from what Mr. Donaldson had to say in London in naming Mr. Corrigan in the context that he named him, that this necessarily meant that the article also referred to Owen Corrigan, is that right?
- A. Yes, I think it was direct connectivity. My memory is that Jeffrey Donaldson was talking specifically about the – I don't have it in front of me now, the statement, but he was talking specifically about Bandit Country and the serious issues that it raised from the allegations, and it was in that context that he named Owen Corrigan under the privilege of Parliament.<sup>551</sup>

1.391 Mr Kirwan said that they checked the files to see if there was any intelligence supporting Mr Mains' statement that members of the Gardaí were on Slab Murphy's payroll.<sup>552</sup> In any case, he pointed out that all Mr Breen was alleged to have had was a 'feeling' and that a feeling is not evidence.<sup>553</sup> He stated that he never heard any unease expressed about Mr Corrigan.<sup>554</sup>

1.392 Mr Kirwan stated that his review of the files showed that Corrigan was a significant contributor of intelligence:

*"Q. Now, what can you tell us from the files that you have seen in relation to Mr. Corrigan's history and contribution to the intelligence service?"*

*A. Well, I know that Mr. Corrigan, prior to 1986, was a very regular contributor. Over a two-year period, he was submitting intelligence reports of substance. The different reports for that two-year period would have amounted to in excess of 90 reports touching on Provisional IRA activities and, to a lesser extent, activities of the INLA.*

*Q. And were these reports of substance rather than mere tittle-tattle?"*

*A. The majority of the reports would have, yeah, they would have been of significant interest.*

*Q. And I think that those reports are available to the Tribunal if it wishes to see them in private, or hear evidence from them in private?"*

*A. That's correct."<sup>555</sup>*

1.393 Mr Kirwan acknowledged that the files did show that information was received suggesting that Mr Corrigan had an improper relationship with subversives but that it was clear that this was as a result of his information gathering activities :

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<sup>552</sup> Day 61, page 81.

<sup>553</sup> Day 61, page 85.

<sup>554</sup> Day 61, page 90.

<sup>555</sup> Day 62, page 98.

*“Q. I think there were various pieces of intelligence received at various stages that contra-indicated Mr. Corrigan's involvement, is that correct?”*

*A. Yeah, if I can point to one or two instances, Judge, where certain information would have been received indicating that a relationship was not proper. I can say, from what I see, that in at least one or two cases, that information was contra-balanced by information emanating from Mr. Corrigan, indicating that the relationship was properly motivated and that some intelligence dividend accrued from that relationship. I'm not too sure I have made myself clear on that now.”<sup>556</sup>*

1.394 Mr Kirwan was recalled to give further evidence in relation to this intelligence. It stated:

*“A report on a serving Garda member - 1991*

*Aspects of the report were stressed as sensitive.*

*The report stated that the named Garda member imported cars from Northern Ireland and Britain. It is alleged that the same Garda member had been making use of a body repair shop in Dundalk which was owned by a person with a conviction relative to an arms dump found in his yard and he received a five-year suspended sentence. Alleged that the same Garda was the only witness at his trial and gave character reference on his behalf. Report mentioned a traffic accident between the same Garda member and a Northern Ireland resident. Report alleged that the Garda did not hold a driving licence since 1977.”<sup>557</sup>*

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<sup>556</sup> Day 62, page 100-101.  
<sup>557</sup> Day 84, page 2-3.

1.395 Mr Kirwan also told the Tribunal in greater detail about the intelligence which counterbalanced that piece of intelligence. This intelligence was so sensitive that it could not be referred to or put up on the screen.

*“Q. Now, you also mentioned to the Chairman that it was counterbalanced by another item of intelligence which tended to show that there was a proper professional relationship between Mr. Corrigan and Mr. Dillon?”*

*A. Yes, Chairman. It was counterbalanced by other intelligence that we had predating that report by a number of years.*

*Q. Now, I think you have shown that intelligence to the Tribunal, isn't that right?”*

*A. I have, Chairman.*

*MR. DILLON: Chairman, at this point I should tell you that it is correct, the Tribunal has seen this intelligence. It is extremely sensitive and it is not proposed to even put a précis of the matter on the screen because of its sensitivity. But, this may be regarded as somewhat unsatisfactory by parties but, unfortunately, in the particular and peculiar circumstances of this matter we have no option but to proceed in this manner. We hope the parties will understand, well any party who might have a difficulty with it might understand that this decision was not taken lightly. It's an important matter and we have, as I say, I am repeating myself, we had little option to proceed in this manner.*

*Q. So I think, Mr. Kirwan, that is in summary the matters that you were referring to when you were giving evidence to the Chairman?”*

*A. That's it in summary, yes. I indicated the last time that I would go back and research just to firm up and, they are the facts, Chairman.”<sup>558</sup>*

1.396 Mr Kirwan stated that the intelligence Mr Corrigan generated in 1985 was very meaningful.<sup>559</sup>

1.397 Mr Kirwan stated that he never saw the 1985 RUC SB50.<sup>560</sup>

**D. RUC confirmation that no evidence exists nor can any documentation be located which evidences Garda collusion with subversives**

1.398 Chief Superintendent Camon in his report confirmed the full cooperation of the RUC. In response to an inquiry from Chief Superintendent Camon, the then Chief Constable of the RUC, Sir Ronnie Flanagan, had appointed the late Chief Superintendent W.A.M. Mc Burney to review RUC papers in relation to the matter. On foot of this investigation, the RUC informed Chief Superintendent Camon *“that no evidence exists nor can any documentation be located which evidences garda collusion with subversives”*.

**E. The Interviews with Mr Myers and Mr Harnden**

1.399 The investigation team interviewed both Toby Harnden and Kevin Myers in the course of his investigation.

1.400 In his conclusions, Detective Chief Superintendent Camon noted that :

*“[Harnden] refers to some relevant parts of his allegations as being ‘circumstantial, hypothesis, a belief rather than something definite, not specific or more from an overview perspective’”*.

Of Mr Myers, the Detective Chief Superintendent concluded as follows:

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<sup>559</sup> Day 62, pages 100-101.

<sup>560</sup> Day 62, page 127.

*“In response to questions he speaks of having information but no evidence. On another occasion in response to a query he stated ‘I cannot corroborate it and I don’t have anything that may be used in evidence’.*

## **F. Conclusions of the Camon/Kirwan Report**

1.401 Detective Chief Superintendent Camon concluded in his report that

*“there is no evidence to suggest collusion between members of the Garda Siochana and subversives in the murder of Chief Superintendent Breen and Superintendent Buchanan or in the other cases as outlined in Toby Harnden’s book ‘Bandit Country’ or in Kevin Myers’ Irish Times article.”*

## **Chapter 15 The Byrne Report**

1.402 Detective Chief Superintendent Camon's report was forwarded to Commissioner Byrne who prepared a synopsis of the report which was submitted to the Secretary General of the Department of Justice. Commissioner Byrne gave evidence to the Tribunal that his report was based on the findings of the Camon report and that he was happy that the Camon report was a thorough report.

## **Chapter 16 The Cory Report**

### **A. Introduction**

1.403 Pressure to establish an inquiry into allegations of collusion in the deaths of the two RUC officers continued to grow. Mr David Trimble MP, then leader of the Ulster Unionist Party, was particularly anxious that the matter be investigated. The topic was the subject matter of discussion at the Weston Park talks in the summer of 2001 and on 1 August 2001 the British and Irish Governments announced that they would appoint a judge of international standing to investigate allegations of collusion in the relation to the murders of Chief Superintendent Breen and Superintendent Buchanan, Pat Finnucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright.

1.404 On 29 May 2002, the two Governments announced that retired Canadian Supreme Court Judge, Mr Justice Cory would conduct the investigation into allegations of collusion.

### **B. The Cory Report**

1.405 Judge Cory first considered the publications alleging collusion, namely Mr Harnden's book, 'Bandit Country,' and Mr Myers article. He examined the publications themselves as well as the interviews that had been carried out with Mr Myers and Mr Harnden by the Gardaí and the conclusions of the Camon/Kirwan Report.

#### **1. Review of allegations of Harnden and Myers**

1.406 At paragraphs 2.118 to 2.120 of his Report, Judge Cory noted as follows:

*“2.118 In summary, the investigations into the book ‘Bandit Country’ and the article ‘An Irishman’s Diary’ indicate that the authors’ allegations that there was a Garda mole or that a Garda member facilitated the murder of Officers Breen and Buchanan, appear to be based upon hypothesis, speculation and a source or sources of information that the authors refuse to disclose. Statements and allegations were put forward as matters of fact when in reality they were founded upon speculation and hypothesis. It would have been preferable if the book and the article had made this clear. Fairness to the victims’ families demanded no less.*

*2.119 Every opportunity was afforded to the two journalists to assist the Gardaí with regard to an important aspect of the murders, not only of Breen and Buchanan, but of the Gibsons. Despite being given every opportunity, the authors failed to either disclose their sources of information or put forward any evidence.*

*2.120 I find that I cannot base any finding of collusion, or possible collusion, on the contents of either Harnden’s book ‘Bandit Country’ or Myers’ article ‘An Irishman’s Diary’.”*

## **2. Review of intelligence material**

1.407 At paragraphs 2.121 to 2.143, Judge Cory considered the intelligence reports indicating that there was collusion, that there was no collusion and reports by the Gardaí.

- (i) A report was received by the RUC a few years after the deaths of Chief Superintendent Breen and Superintendent Buchanan. This states that according to a source whose reliability could not be assessed, an unknown female in the Garda office at Dundalk was a PIRA contact who passed on information that facilitated the murder of the two officers. The publicly available version of the Cory report

referred to “an identifiable contact” rather than “an unknown female” (paragraph 2.121).

- (ii) The second report referred to by Judge Cory was received by the Gardaí many years after the shooting. This indicates, by way of double hearsay, that there was a contact within the Gardaí who had passed on information that ‘facilitated’ the murder of Lord Justice Gibson and the two RUC officers after their visit to Dundalk Garda station (paragraph 2.122).
- (iii) The third report referred to by Judge Cory was received by the RUC more than a decade after the murders. The source was graded ‘high’, indicating that the source was considered reliable and had provided reliable information in the past. The source reported that an administrator based in an unknown location in Ireland, who organised meetings between An Garda Síochána and the RUC in 1989, was responsible for the leak that led to the deaths of Breen and Buchanan (paragraph 2.123).
- (iv) The fourth report was received by Gardaí a few weeks after the ambush. It was assessed as probably true and emanating from a previously reliable source. It indicated that on the day of the murders, the IRA had men in position on four roads, the largest concentration being on the Carrickastrickan Road, the main Dundalk-Forkhill Road. The report stated that over 20 IRA men were involved in the operation which was in place for over one week before the killings. The report went on to provide details as to the identity of the planners and participants, material which Judge Cory considered was not relevant to the issue of whether or not there is collusion (paragraph 2.131).
- (v) The fifth report referred to by Judge Cory was received by the Gardaí four days after the shootings and records an eyewitness account (paragraph 2.132).

- (vi) The sixth report was prepared by a Garda Superintendent in Dundalk, based upon information received from a reliable source. It reported, *inter alia*, that over 20 persons were involved in the operation; that the operation had continued each day for over a week; and that the aim of the operation was to abduct and interrogate the RUC officers (paragraphs 2.133 to 2.138).
  
- (vii) The seventh document referred to by Judge Cory was held by the British Ministry of Defence and was prepared by the 1<sup>st</sup> Battalion, Royal Regiment of Fusiliers. This is a summary of the operation, written on 25<sup>th</sup> March 1989. It describes the location of the fatal shootings as “*an excellent ambush position; it is 400m north of BCP [Border Check Point] 10; in dead ground to OP [Observation Post] R21C, where the road hits a sharp rise but is covered from view from other areas by trees.*” The report then summarises eyewitness accounts of what transpired on the Edenappa Road (paragraphs 2.139 to 2.140). Judge Cory comments that, “*from this report it could be taken that the Army was impressed with the suitability of the site for an ambush*”.

### **3. Review of Factors other than Intelligence Reports**

1.408 At paragraphs 2.144 to 2.148, Judge Cory considered factors other than intelligence reports that should be taken into account in determining whether the murders of the two RUC Officers were committed with or without the assistance of Garda Officers or employees.

- (i) Judge Cory refers, in summary form, to vehicle surveillance. He notes that one Army vehicle surveillance report indicates that Superintendent Buchanan’s car was being followed by a member of the Provisional IRA on 15 March, five days before the murder (paragraph 2.147).
  
- (ii) Judge Cory also refers to a traffic analysis conducted by Army intelligence after the murders (paragraph 2.148). The analysis, dated 6

June 1989, determined that a total of four vehicles had been regularly sighted within the vicinity of Superintendent Buchanan's car. Two were eliminated as likely being due to other than terrorist reasons. One was linked to PIRA and had been seen travelling in the same direction as Buchanan's car, within a short space of time, on at least three occasions. The fourth vehicle was spotted on three separate occasions at a permanent vehicle checkpoint in the vicinity of Bob Buchanan's car and travelling in the same direction as it. In one instance, the vehicles were separated by only one minute and the report concluded that the odds against this happening at random are very high.

#### **4. The Kevin Fulton Statement**

1.409 At paragraph 2.149, Judge Cory stated that *"on 9 September Kevin Fulton accompanied by a friend delivered a statement"* to him. This is the second time Mr Keeley/Fulton appears in the narrative. The first time it will be recalled is when he met Mr Donaldson and supplied him with Mr Corrigan's name.

1.410 The *"Kevin Fulton Statement"* is set out at paragraph 2.149:

*"In 1979, I enlisted in the British Army. Within months of my posting, I was recruited by a British intelligence agency to act as an agent. In this capacity, I became a member of the Provisional IRA.*

*On one occasion in the late 1980s, I was with my senior IRA commander and another individual in my car. I knew the other individual to be Sergeant Owen Corrigan. I was introduced to Owen Corrigan. I knew that Owen Corrigan, who was stationed at Dundalk, was passing information to the Provisional IRA.*

*I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my senior IRA commander was told by a member of PIRA that Owen Corrigan had telephoned to the Provisional IRA to tell them that officers Breen and Buchanan were at Dundalk station.*

*I should add that I know nothing about the murder of Lord Justice and Lady Gibson.*

*I have read this statement and its contents are true and accurate.”*

1.411 Commenting on this statement, Judge Cory stated at paragraph 2.150:

*“... the statement could be taken to constitute evidence that Eoin Corrigan was passing information to PIRA members while he was a Garda Sergeant stationed at Dundalk. Further, that on the day of the massacre he telephoned a PIRA member to advise that Breen and Buchanan were at Dundalk Station. If this evidence is accepted by those making the findings of fact, then it could certainly be found to constitute collusion. It is a document that must be given very careful consideration...”*

1.412 It will be shown later on in these submissions that Mr Keeley/Fulton accepted that what he told Judge Cory was incorrect in a number of material respects:

- a. In response to a question from the Chairman he stated that he was not introduced to Mr Corrigan:

*“CHAIRMAN: He didn't introduce you?*

*A. He wouldn't have introduced me, no.*

*Q. MR. O'CALLAGHAN: So what you said to Judge Cory is incorrect in that respect?*

*A. Well, I wasn't introduced as an introduction, no.*

Q. When you said to Judge Cory, "I was introduced to Owen Corrigan," you weren't?  
A. No, he got into the car.<sup>561</sup>

b. In response to questioning from Counsel to Mr Corrigan he stated that he was not told that Mr Corrigan had telephoned his IRA commander to tell him that Breen and Buchanan were in Dundalk.

“Q. But you think that Mickey Collins comes back a second time and tells you that the incident was the killing of two RUC officers?

A. Yes.

Q. And are you stating on that occasion he says to you about the friend?

A. "Our friend," yes.

Q. And what words did he use?

A. Just, it was "our friend" helped out.

Q. That is all he said?

A. Something like that, yeah.

Q. OK. And --

A. I took it to be Owen Corrigan.

Q. OK. He didn't mention Owen Corrigan?

A. Not by name, no, no, no.

Q. He didn't mention that Owen Corrigan had seen the officers in the station?

A. No, he didn't say that.

Q. He didn't say that?

A. No, no.

Q. OK. This is what you said to Judge Cory: "I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware

*that, after the ambush took place, my senior IRA commander" -- presumably, 'Mooch' Blair --*

A. Yes.

Q. -- "was told by a member of PIRA" -- presumably, Mickey Collins -- "that Garda B had telephoned to the Provisional IRA to tell them that officers Breen and Buchanan were at the Dundalk Station."

A. No, well that wouldn't be totally correct, no.

Q. OK. In your statement to Judge Cory, there are two substantive paragraphs, the one about Fintan Callan's Céilí House and this one here. You are now stating that what you said to Judge Cory is incorrect?

A. I can't remember it totally. If you are saying that is what is written down on the statement --

Q. Yes, that's incorrect?

A. It's not totally correct.

Q. Yes, it's incorrect, you have said it already?

A. Yes.<sup>562</sup>

c. In response to questioning from Counsel for Mr Corrigan, Mr Kelley/Fulton stated that 'Mooch' Blair told him that he, Mooch Blair, had been told by Mickey Collins that "our friend had helped with the operation." Mr Keeley/Fulton never told Judge Cory this and this account contradicts what he told Judge Cory.

1.413 It is submitted that these admissions by Mr Keeley/Fulton in his evidence cast serious doubt on the reliability of what Mr Keeley/Fulton told Judge Cory.

## **5. The 1985 Intelligence - "The SB50"**

1.414 At paragraph 2.124, Judge Cory referred to "a fourth intelligence report" which "only came to my attention very recently, on 22 September 2003." He dealt with this report at paragraph 2.151:

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<sup>562</sup> Day 67, page75-76.

*“An intelligence report very recently provided to me by the PSNI could be taken as providing some independent confirmation of Kevin Fulton’s statement. This document contains information from an agent, other than Kevin Fulton, who was graded as “fairly reliable.” In 1985, this agent reported that Eoin Corrigan, a Sergeant in the Garda Special Branch in Dundalk was passing information to PIRA. While this report does not mention any specific PIRA operations, it could be taken to confirm Kevin Fulton’s statement that, prior to the murder of Chief Superintendent Breen and Superintendent Buchanan, Sergeant Corrigan was passing information to the Provisional IRA.”*

1.415 This SB50 was the subject of considerable evidence and will be examined in detail later in these submissions. At this point it should simply be noted that it received a ‘C6’ grading which was the lowest possible grading that could be given to information received from a reliable source.

## **6. The Recommendation to Establish the Inquiry**

1.416 It is clear from the Cory Report that what prompted Judge Cory to recommend the establishment of a public inquiry was *“the Kevin Fulton Statement”*. At paragraphs 2.159-2.160, Judge Cory stated:

*“2.159 The factors and the intelligence reports received shortly after the murder considered by themselves might be thought to point to a conclusion that PIRA did not need any information from or collusion by the Gardaí to set up the ambush and carry out the murders.*

*2.160 The statement of Kevin Fulton must now be added to the mix and carefully considered. Standing alone it could be found to constitute evidence of collusion on the part of a Garda officer. It would explain the great precision of the timing of the ambush. It would as well add credence to the second of the recent intelligence reports*

*which spoke of a Garda source in Dundalk station and, perhaps to a lesser extent, the third report which also spoke of a Garda leak.*

*2.161 The intelligence report received from the PSNI on 22 September 2003 must also be considered. It will be remembered that this report was received by the RUC in the mid 1980s from a person they considered to be a “fairly reliable” source. It indicated that Eoin Corrigan [Garda B in the publicly available version of the report] a Sergeant in the Garda was passing information to the PIRA. This might be found to constitute support for or confirmation of the statement of Kevin Fulton.*

*2.162 I have carefully considered all the relevant material, the relevant factors, the intelligence reports and the Fulton statement. I have concluded that the documents reveal evidence that, if accepted, could be found to constitute collusion. As a result there must be a public inquiry. That inquiry might well be limited to considering the activities of Eoin Corrigan from 1987 through 1992”.*

## **B. Peter Keeley/ Kevin Fulton’s Involvement with Judge Cory**

1.417 At a very late stage in the Tribunal’s proceedings, some of the detail of how Mr Keeley/Fulton came to meet Judge Cory emerged.

1.418 This is contained in a document emanating from the British Government; entitled HMG 160 which is an email dated 8 September 2003 from a redacted person to another redacted person. It will be recalled that this is the day before Mr Keeley/Fulton met with Judge Cory.

1.419 It states as follows:

*“Hi,*

*Just a very brief note to thank you for arranging to meet Kevin Fulton so quickly. I trust the meeting will be mutually beneficial. However, I must stress that I and an increasing number of others believe Fulton's life is in immediate danger. As you will soon see, the knowledge he has accumulated over two decades on various degrees of undercover activities makes him a very real threat to the republican movement and the British intelligence services.*

*At the moment he has no money, no job prospects and faces life on the streets with the removal of his safe accommodation by the Northern Ireland Office early next month. It appears to many of us that a conscious decision has been taken by the intelligence services to remove Fulton on the grounds that the problems he caused to them over the Omagh bombing information of August 1998. Perhaps Judge Cory could be made aware of Fulton's precarious position.*

*Secondly, I have sent the right material to you, and it will be delivered when you meet Fulton in the morning. I must advise that you both X and myself have been made fully aware of the content of this material. However, we have both agreed not to proceed further with the material until after Judge Cory has had time to view and assess its significance in relation to his inquiry into the murder of X.*

*I will be in London on Thursday, and if the possibility of a brief meeting is still on the cards, I would appreciate it.*

*Cheers,*

*X.*<sup>563</sup>

1.420 Mr William Frazer told the Tribunal that he, Mr Jeffrey Donaldson and a number of other individuals were involved in the decision to send Mr

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<sup>563</sup> This was read into the record on Day 118 pages 62-64.

Keeley/Fulton to meet Judge Cory.<sup>564</sup> He stated that the other individuals involved were “retired members of the security forces, there were a few lords and stuff.”<sup>565</sup> Mr Frazer stated that he did not send the e-mail dated 8 September 2003. Mr Frazer stated that he accompanied Mr Keeley/Fulton to meet Judge Cory. He stated that Mr Keeley/Fulton did not show him the statement in advance.

1.421 In his evidence to the Tribunal Mr Keeley/Fulton stated that he had not met Mr Frazer prior to meeting Judge Cory. It was only under cross-examination that this was proven to be untrue.

“Q. I appear for retired Detective Sergeant Owen Corrigan. I just want to ask you some questions. Just at the end of your evidence to Mrs. Lavery there, you said that you didn't know Willie Frazer or his victim group prior to you going to meet Judge Cory, is that correct?

A. That's correct, yes.

Q. And you wrote your letter to Judge Cory on the 9th of September 2003, isn't that correct?

A. That was actually in relation to that, that is why I knew him.

Q. And how long before that did you meet Willie Frazer?

A. I hadn't actually met Willie Frazer. I was talking to a journalist who was in touch with Willie Frazer.

Q. And you had never met Willie Frazer before that?

A. Not to my knowledge, no.

Q. Did you not meet Willie Frazer with Jeffrey Donaldson in the House of Commons in early 2000?

A. Actually, yes, I would have, yeah, I did.

Q. Why did you lie to the Chairman about --

A. I did not lie to the Chairman, sir.

Q. Why did you lie to the Chairman about not telling him that you had met Willie Frazer prior to September 2003?

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<sup>564</sup> Day 120, page 58.

<sup>565</sup> Day 120, page 59.

- A. *Was that question asked of me, was it?*
- Q. *You said in your evidence that you didn't know William Frazer or his victim group, and that when you met him sometime before the 9th of September 2003, you wrote to Judge Cory, isn't that correct, that was your evidence?*
- A. *I would have wrote to Judge Cory, yes.*
- Q. *And you had met Willie Frazer with Jeffrey Donaldson some two-and-a-half or three-and-a-half years earlier, isn't that correct?*
- A. *I would have met him at the Houses of Commons, well I hadn't realised on the dates, yeah.*
- Q. *Why didn't you tell that to the Chairman?*
- A. *Because it didn't come into my mind when I was saying it.*
- Q. *I have to suggest to you, Mr. Keeley, that that is the first of your many lies that you are going to tell me under cross-examination?*
- A. *No, sir, it's not.*<sup>566</sup> (66/129)

## Chapter 17 The Establishment of the Tribunal

1.422 The Tribunal was established on 31 May 2005 by Instrument dated 31 May 2005, by Mr Michael McDowell TD, the then Minister for Justice Equality and Law Reform pursuant to resolutions of Dáil Éireann and Seanad Éireann passed on 23 and 24 March 2005, respectively, to inquire into suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989.<sup>567</sup>

1.423 The subject matter of this inquiry is set out in the Resolution passed by Dáil Éireann on 23 March 2005 and Seanad Éireann on 24 March 2005 which states inter alia:

*“That Dáil Éireann:*<sup>568</sup>

*— noting that following agreement reached between the British and Irish Governments at Weston Park in 2001, retired Canadian Supreme Court Judge Mr. Peter Cory was appointed to undertake a thorough investigation of allegations of collusion between British and Irish security forces and paramilitaries in six incidents;*

*— noting that the aim of this process was to determine whether there is sufficient evidence of collusion between State security forces and those responsible for the killings in each case to warrant a public inquiry;*

*— noting that, as part of the Weston Park agreement, the two Governments committed themselves that in the event that a public inquiry is recommended in any case, the relevant Government will implement that recommendation;*

<sup>567</sup>

<sup>568</sup>

Tribunals of Inquiry (Evidence) Act 1921 (Establishment of Tribunal) Instrument 2005.  
Seanad Éireann in the Seanad Resolution.

— noting that having completed his investigation into the murder of Chief Superintendent Harry Breen and Superintendent Robert Buchanan, both of the Royal Ulster Constabulary RUC, Mr. Peter Cory concluded that evidence was revealed that, if accepted, could be found to constitute collusion;

— mindful that certain incidents from the past in Northern Ireland giving rise to serious allegations of collusion by security forces in each jurisdiction remain a source of grave public concern;

resolves that it is expedient that a tribunal established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 to inquire into the following definite matter of urgent public importance:

— Suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989;

and to report to the Clerk of Dáil Éireann and to make such findings and recommendations as it sees fit in relation to these matters;”  
(Emphasis added).

1.424 Moving the motion to establish the Tribunal, the then Minister for Justice Michael McDowell SC TD stated:

*“The background to this motion originates as far back as August 2001 when, following discussions with the Northern Ireland parties at Weston Park, the Irish and British Governments committed themselves to the appointment of a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion between British and Irish security forces and paramilitaries in six cases. The six cases are the murders of Mr. Pat Finucane, Mr. Robert Hamill, Ms Rosemary Nelson, Mr. Billy Wright, the two RUC officers and Northern Ireland Lord Justice Maurice Gibson and Lady Cecily Gibson. The first four of these cases relate to allegations of collusion by British security forces while the other two cases relate to*

*allegations of collusion by the Garda. Arising from the Weston Park agreement, Mr. Peter Cory, an eminent retired Canadian Supreme Court judge, was asked by the two Governments to investigate and report on the allegations of collusion. Judge Cory was appointed by the Governments in May 2002.*

*The aim of the inquiry process under Judge Cory was to determine whether there is sufficient evidence of collusion between State security forces and those responsible for the killings in [1631]each case to warrant a public inquiry. The resultant reports into the six cases were submitted to the Governments by Judge Cory in October 2003. On behalf of the Government, I thank and commend Judge Cory once again for his diligent and painstaking work in producing these reports. In December 2003, following Government approval, I published redacted versions of the two reports to the Government. All the redactions to the two reports were performed with the explicit consent and approval of Judge Cory and occurred solely on the basis of the Government's obligations to ensure justice.*

*The two reports make grim reading for anyone with even an ounce of humanity. Both Lord Justice and Lady Gibson were cruelly killed in a carefully planned and executed bombing attack on the morning of 25 April 1987. The south Armagh brigade of the Provisional IRA claimed responsibility for the killings. The IRA also issued other public statements indicating that the murders had been planned in advance. Suggestions of collusion related to claims that a member or members of the Garda advised those directly responsible for the killings or members of their organisation of the Gibsons' itinerary on that fateful day.*

*Judge Cory concluded in his report on this appalling crime that there is no evidence of collusion by the Garda or other Government agency that would warrant the holding of an inquiry. I welcome this finding in that it removes doubt or suspicion that a member or members of the*

*Garda committed a gross act of treachery in colluding in the murder of two innocents. I fully realise that is cold comfort to the victims' families. The other case relevant to this jurisdiction examined by Judge Cory is different, but it involved an equally horrific act of callous murder. While I appreciate that the detail I am about to relate concerning this appalling act of savagery is distressing, it is worth recalling, if only to demonstrate the sheer depravity of those who perpetrated it. On the afternoon of 20 March 1989, Chief Superintendent Harry Breen and Superintendent Bob Buchanan were shot dead in an ambush just north of the Border as they returned from a prearranged meeting with a senior Garda officer in Dundalk Garda station. The Provisional IRA subsequently claimed responsibility for this double murder. The location of the ambush, on the Edenappa road, was found by Judge Cory to have been well chosen in terms of topography and tree cover with respect to a nearby British army observation post. The ambush involved PIRA members establishing a checkpoint on the road only minutes before the arrival of Superintendent Buchanan's private car carrying the two RUC officers. The two officers were unarmed, as was required at the time, and the perpetrators of this act knew that.*

*From the available information, it appears that two armed men, dressed in army style fatigues [1632] and with camouflage on their faces, stopped southbound cars and strategically placed them so as to funnel northbound traffic into a single lane. Shortly after the last southbound vehicle was stopped and in place, Superintendent Buchanan's car appeared, driving northwards. It was also flagged down by the armed men in the middle of the road. As the car slowed, a van, which had been following, overtook Superintendent Buchanan's car and pulled into a nearby laneway. Four armed men, wearing camouflage and balaclavas, emerged from the van and started firing immediately. Superintendent Buchanan attempted to reverse his car to escape but the car apparently stalled and he was unsuccessful.*

*Both Chief Superintendent Harry Breen and Superintendent Bob Buchanan, while still in the car, were hit several times by a hail of bullets. Examination of the vehicle the following day indicated no less than 25 strike marks from bullets along both sides of the car, with the majority aimed at the driver's side. The autopsy performed on Superintendent Buchanan revealed that he had suffered many fragment wounds in the head and upper body, and it is probable that he was dead by the time his car came to a halt. He had also been shot in the head at close range, almost certainly after he had died.*

*Chief Superintendent Breen had been wounded in the abdomen, the upper right shoulder and the arm, and had sustained wounds to his head. It appears he had left the car after it came to a stop, waving a white handkerchief. It was obvious he had suffered several gunshot wounds before he left the car which, although severe, did not appear to have been fatal. Eyewitness accounts indicated that a member of the Provisional IRA murder squad walked up to him and shot him in the back of the head. It is worth restating that these were two unarmed RUC officers returning from a meeting with their colleagues in an Garda Síochána. They were, in short, two policemen doing their duty and attempting to achieve peace on both sides of the Border.*

*That, then, is the appalling scene which Judge Cory paints of the last moments of these two men's lives. As he says himself in his report, those shootings were brutal, cowardly and demonstrated a callous insensitivity to both the suffering of individuals and to life itself. Nobody who could describe himself or herself as interested in peace in Ireland, a united Ireland, justice, human rights or any value asserted in the Proclamation of 1916 could have done that to two unarmed policemen in such a cruel and cowardly way. It is a great shame that the Provisional IRA should do such a thing to two men in those circumstances.*

*I now turn to suggestions of collusion. Those relate to claims that a member of the Garda Síochána, or a civilian employed within the Garda, advised either those directly responsible for the killings or members of their organisation of the visit of the two RUC officers and, in particular, of the time they left Dundalk Garda [1633]station. In his report, Judge Cory examined the known circumstances, the intelligence reports and other matters in drawing conclusions about the case. From a review of the relevant factors, Judge Cory stated that it might be said that the Provisional IRA did not need any assistance from within the Garda to carry out the ambush. Moreover, Judge Cory suggests that the intelligence reports received shortly after the murders, considered by themselves, might be thought to point to a similar conclusion.*

*However, Judge Cory considered that a statement made by one Kevin Fulton could be found to constitute evidence of collusion on the part of a Garda officer, referred to as Garda B in the report. Kevin Fulton is the pseudonym of a former agent with a British intelligence agency who, in that capacity, is supposed to have become a member of the Provisional IRA. In a statement delivered to Judge Cory, Kevin Fulton claims that, on the day of the ambush of the two RUC officers, his senior IRA commander was told by another member of the IRA that Garda B had informed the Provisional IRA that the two officers were at Dundalk Garda station.*

*Judge Cory goes on to state that this statement would add credence to two intelligence reports which spoke of a Garda leak. In all this, it should be noted that Judge Cory does not make findings of fact. Rather, he states that if that evidence were accepted by those eventually making the findings of fact, it could be found to constitute collusion. Accordingly, on that basis, Judge Cory concluded that there must be a public inquiry in this case.*

*As part of the Weston Park agreement, the two Governments committed themselves that, in the event that a public inquiry is recommended in any case, the relevant Government will implement that recommendation. Accordingly, the Government is committed to holding a public inquiry in respect of allegations of Garda collusion in the killings of the two RUC officers. In the light of Judge Cory's recommendations, I secured Government approval to hold a public inquiry into the murders, to take the form of a tribunal of inquiry pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002. I sought that type of public inquiry because it meets all the essential criteria set down by Judge Cory for a public inquiry. I subsequently secured the authorisation of Government to lay the necessary resolutions before both Houses of the Oireachtas to enable the establishment of the tribunal of inquiry, according to the formulation contained in the motion before the House, which constitutes the tribunal's terms of reference.*

*I briefly draw the House's attention to some of the more important aspects of the terms of reference. After a straightforward recitation, the main operative section is, of course, that a tribunal shall be established to inquire into suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry [1634]Breen and RUC Superintendent Robert Buchanan on 20 March 1989. By any stretch of the imagination, this is the broadest possible interpretation of the findings of the relevant Cory report, and it delimits in no way whatsoever the tribunal's latitude to inquire into whatever organisations and individuals that it sees fit.*

*The other notable feature of the terms of reference is paragraph (II), which states that if the tribunal finds that there is insufficient co-operation from any person not compellable to give evidence, that fact should be reported to the Clerk of the Dáil for consideration by the Houses of the Oireachtas, in conjunction with myself, having regard to the public interest. The thinking here is simple: it is a fact that likely key*

witnesses reside outside the jurisdiction. As with domestic legislation in general, the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 apply only within this jurisdiction. Hence, the statutory provisions relating to compellability to give evidence would not apply to likely key witnesses. Accordingly, it is anticipated that the tribunal of inquiry would be obliged to rely on the goodwill and co-operation of non-compellable persons to make progress with aspects of its work. Paragraph (II) of the terms of reference provides a mechanism by which the tribunal can report back to the Houses of the Oireachtas, should non-compellable persons decline to co-operate with the tribunal.

That is an important element of the terms of reference of the tribunal. In the normal course of events, if co-operation from outside the jurisdiction necessary for the tribunal to complete its work were not forthcoming, we would be left with the prospect of the tribunal reporting in an incomplete way. By virtue of this provision, however, the tribunal can report that fact to the Oireachtas. By that means, the problem of securing co-operation from non-compellable persons can be elevated to the political sphere, where I, the Government and the Members of the Houses of the Oireachtas can determine the best way forward. In particular, it provides an opportunity for formal approaches to be made to the British Government, should the need arise, to seek to secure the co-operation of persons residing in either Britain or Northern Ireland, whether they be British citizens or otherwise. It provides a form of political leverage, grounded in the restated will of the Oireachtas, that can be used, should the need arise, to ensure the tribunal is given every opportunity to secure the cooperation of all those who might be able to shed light on this appalling act of barbarism.

The House will be aware that the sole member of the tribunal will be appointed by the Government, and I hope to be able to announce that person's identity later today. I know this House will join with me in advising everyone involved to co-operate fully with the tribunal. I have full confidence that the Garda Síochána, as well as any other institution

*of the State, will be forthcoming in its engagement with the tribunal. Nothing less than full co-operation is demanded, and nothing [1635]less should be expected from the guardians of the State.*

*There is, however, one organisation that could provide full answers to the tribunal, and that, of course, is the IRA. I challenge that organisation, and Sinn Féin in the House, to state clearly that there will be co-operation with the tribunal. Sinn Féin and the IRA cannot have it both ways: they cannot clamour for justice and truth regarding other barbaric acts that Judge Cory has reported on and in respect of which he has recommended tribunals and not co-operate on this one. Judge Cory's recommendations are not an à la carte menu from which one may choose at will. If those who describe themselves as the republican movement have any intention of demanding full co-operation and delivery on Judge Cory's recommendations by the British Government in so far as it lies within its remit in respect of institutions and persons in Northern Ireland in respect of those other inquiries, they must be willing to deliver to this inquiry a full and complete answer regarding whether this act involved collusion on the part of a member of the Garda Síochána. I say that conscious of the fact that testimony given to a tribunal by definition cannot be used in criminal proceedings against a person who so testifies. Persons who testify to the tribunal which I propose should be established will be in the unique position that they will be able to give the tribunal evidence on a very serious crime knowing that their testimony cannot be used to incriminate them.*

*This tribunal is being established by the will of the people assembled here in the Houses of the Oireachtas and on foot of an all-party understanding at Weston Park. I ask those in particular who describe themselves as the republican movement to remember that fact because it is the will of the people that savage acts such as the brutal murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan by the Provisional IRA in 1989 should have no place in this Republic.*

*Pursuant to the Weston Park agreement the State is under an obligation to establish a public inquiry into the brutal murders of these two RUC officers. We do so not just out of an obligation imposed morally upon us by Judge Cory's report but out of a genuine desire to see justice done. If there was collusion by officers or an officer of the Garda Síochána in this crime, the least the relatives of those two members of the RUC are entitled to is to have that fact established, just as much as the victims of other alleged acts of collusion are entitled to have justice and the truth established in their cases.*

*I must tell the House that I considered going down the road of a commission of inquiry but I found it did not match up to the criteria laid down by Judge Cory. The form of public inquiry proposed and its proposed terms of reference constitute the most open, potentially expansive and powerful form of public inquiry available under[1636]our law here or anywhere else to ensure that the full truth emerges. We owe it to the families of the late Chief Superintendent Breen and Superintendent Buchanan, the people of Northern Ireland and the people of this State, given the concerns raised about organs of this State. I commend the motion to the House.” (Emphasis added).*

## Chapter 18 The Tribunal's Inquiry into the Fulton/Keeley Allegation

### A. Introduction

1.425 It should be clear from the foregoing that the primary matter which led to the establishment of the Tribunal was the Statement provided by Mr Keeley/Fulton to Judge Cory.

1.426 As Judge Cory stated at paragraph 2.150:

*“... the statement could be taken to constitute evidence that Eoin Corrigan was passing information to PIRA members while he was a Garda Sergeant stationed at Dundalk. Further, that on the day of the massacre he telephoned a PIRA member to advise that Breen and Buchanan were at Dundalk Station. If this evidence is accepted by those making the findings of fact, then it could certainly be found to constitute collusion. It is a document that must be given very careful consideration...”*

1.427 Accordingly, the credibility or otherwise of Mr Keeley/Fulton is of paramount importance to the Tribunal's investigation.

### B. Preliminary Matter: Mr Keeley/Fulton's book 'Unsung Hero- How I Saved Dozens of Lives as a Secret Agent inside the IRA

1.428 In 2006, Mr Keeley/Fulton published a book entitled '*Unsung Hero-How I saved Dozens of Lives as a Secret Agent inside the IRA.*'

1.429 In that Book, Mr Keeley/Fulton did not mention that there was a Mole in Dundalk Garda Station. This was notwithstanding the fact that the book was published in 2006, six years after Mr Keeley/Fulton had made that allegation

to Mr Donaldson MP and three years after Mr Keeley/Fulton had made that allegation to Judge Cory.

1.430 Mr Keeley/Fulton's failure to mention this allegation in his book was a matter of comment from the Chairperson who asked:

*"CHAIRMAN: Yes. What I think Mr. O'Callaghan is getting at is, that here was a very valuable piece of work you had done for your -- the people to whom you were providing information. Wasn't this a star part of your life and why didn't you refer to it?"<sup>569</sup>*

1.431 Mr Keeley/Fulton attributed this omission to the ghost writers who he stated wrote his book:

*"A. I am sure the ghost writers do know about it, but I have no editorial control of what went into that book. You are all saying this is astonishing news. It's not really astonishing news. I mean, I have come across it with RUC men helping to IRA to set up their colleagues, you know. A guard -- I know to yous maybe it is massively important and big, but in the field of things that we were doing, you know, there was actually more important -- it's wrong to say important things; there was more horrible things going on. You know, it's very hard for yous to understand."<sup>570</sup>*

1.432 It is submitted that this is not a credible explanation in light of the enormous interest that the reading public would have in information relating to Garda collusion, particularly when the matter was already well established in the public domain.

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<sup>569</sup> Day 67, page 35.  
<sup>570</sup> Day 67, page 35.

## C. The Evidence of Peter Keeley/Kevin Fulton

1.433 In light of the importance of Mr Keeley/Fulton's evidence to the inquiry combined with the number of discrepancies between his evidence in chief and previous accounts it is proposed to set out his examination in chief in some considerable detail so that the reader can have a detailed account of what Mr Keeley/Fulton said before he was cross-examined. This, it is submitted, will highlight the many inconsistencies in his evidence and show that absolutely no credence can be placed on his account.

### 1. The Allegations

1.434 In his Witness Statement, Mr Keeley/Fulton's made the following allegations concerning Mr Corrigan:

- a. That Mr Corrigan was a Garda who was friendly with the IRA, that this was well known secret amongst IRA men in Dundalk, and that Mr Corrigan was a friend of Patrick 'Patsy' O'Callaghan;
- b. That the Gardaí raided a bomb making factory in Omeath, Co Louth and that Patsy O'Callaghan told him that "*our friend*" had given him the all clear. Mr Keeley/Fulton understood "*our friend*" to be Mr Corrigan because of what happened later with Tom Oliver;
- c. That Owen Corrigan got into a car with Patrick Mooch Blair and Mr Keeley/Fulton in the car park of Fintan Callan's ceili house and told them that Mr Tom Oliver was a Garda Informer;
- d. That Mickey Collins told him that "*our friend had been involved in the operation*" to kill Chief Superintendent Breen and Superintendent Buchanan;
- e. That Mooch Blair told him that "*our friend*" had destroyed evidence in relation to the Narrow Water Bomb;

1.435 In his Witness Statement, Mr Keeley/Fulton stated that he passed on Mr Corrigan's name to his MI5 handlers and that he passed on the information he

had received about Mr Corrigan's alleged involvement in the murder of the two RUC Officers and the other matters to his handlers. No evidence supporting this contention was made available to the Tribunal by any of the British authorities.

## 2. The Evidence in Chief

1.436 Mr. Keeley/Fulton stated that he joined the British Army in 1979. He stated that four weeks into his basic training his Platoon Sergeant approached him and told him that "*people from British Army Intelligence wanted to speak to him.*"<sup>571</sup> He stated that there were two of them and they asked him to identify people in photographs taken outside the Dole Office in Newry.<sup>572</sup> He stated that this happened every few weeks or so. He stated that they asked him whether he would leave the army and come and help them.<sup>573</sup> He stated that they asked him to recruit friends from Newry to work for them.<sup>574</sup> He stated that when his Regiment went to Berlin he was assigned a 'babysitter' from the Intelligence Corps who acted as his mentor.<sup>575</sup> He stated that he worked with this man until 1981 and that when he went on leave he would meet up with his two original handlers.<sup>576</sup>

1.437 He stated that at the end of his time in Berlin, there was a lot of trouble in Northern Ireland as a result of the Hunger Strikes and his two handlers suggested that they would give him a false discharge from the Army to provide him with a cover and send him back to the North to infiltrate the IRA.<sup>577</sup> He stated that he was discharged in 1981.<sup>578</sup> He stated that his two handlers taught him how to drive, as well as one of the friends who he had recruited.<sup>579</sup> He stated that they gave him a car which was fitted with a switch

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<sup>571</sup> Day 66, page 31.  
<sup>572</sup> Day 66, page 31.  
<sup>573</sup> Day 66, page 32.  
<sup>574</sup> Day 66, page 33.  
<sup>575</sup> Day 66, page 34.  
<sup>576</sup> Day 66, page 35.  
<sup>577</sup> Day 66, page 40..  
<sup>578</sup> Day 66, page 43.  
<sup>579</sup> Day 66, page 40-41.

and tasked him to drive around the border and when he came upon an IRA check point he would push the button alerting the Army who would later arrive in a helicopter and destroy the checkpoint.<sup>580</sup> He stated that when he returned he got a job in a meat packing factory in Newry where he worked for a few years, and then he worked as a painter with his father.<sup>581</sup> He stated that all the while he was supplying low grade 'eyes and ears' intelligence and getting his army wages in cash.<sup>582</sup>

1.438 He stated that he started going to the Sinn Fein Job Centre 'Eireann Nua/New Ireland' in Dundalk where he ingratiated himself with the people there.<sup>583</sup> He stated that he and another person there tried to join the IRA. They were told to go to the top room, where a few men in masks with a gun burst in and started shouting "You're a Brit spy" which he denied. He stated that he demanded a hearing (he said Joe Cahill was close to one of his uncles) and that they threatened to kill him before letting him go and saying 'Come back another night.'<sup>584</sup> He stated that around this time he found a sub machine gun which he recovered alongside another British operative, a civilian.<sup>585</sup> He said that all the while he was still living in Newry and that he was hanging around a lot with a Sinn Fein Councillor.

1.439 He stated that one day in 1982/1983 while he was in conversation with the Councillor a man approached them who he knew by sight and whose name was Mooch Blair. He said that Blair said that *'a friend from Dundalk was asking about you and asked him to "give me a shout.'*<sup>586</sup> He stated that initially he drove Mooch Blair around a lot.<sup>587</sup>

1.440 He stated that he had a B&B at this stage and one of the girls staying in it had a boyfriend who was a lorry driver. He stated that the driver was taking

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<sup>580</sup> Day 66, page 41.

<sup>581</sup> Day 66, page 43.

<sup>582</sup> Day 66, page 43-46.

<sup>583</sup> Day 66, page 46-47.

<sup>584</sup> Day 66, page 46-48.

<sup>585</sup> Day 66, page 48-49..

<sup>586</sup> Day 66, page 49.

<sup>587</sup> Day 66, page 51.

containers from the docks which included TVs and videos and he arranged with the driver that the IRA (Mooch Blair and the Sinn Fein Councillor) would pay them if he allowed them to hijack the lorry. They did so but the lorry driver was arrested and informed on him and he was arrested and got 2 years in gaol.<sup>588</sup> He stated that his handlers gave him a lump sum when he got out.<sup>589</sup> He stated that the incident gave him stature with the IRA.<sup>590</sup>

1.441 He stated that when he was released he went back to Dundalk where Mooch Blair was living after the Newry mortar attack.<sup>591</sup> He said that he got an ice cream van and that he used to leave ice cream and flakes in Mooch's house. The van cost £1,500-£2,000. He said that he started driving Mooch around again. He said that Mooch wanted him to take a bomb into an Air Show but that it didn't work out.<sup>592</sup>

1.442 He stated that the IRA introduced a rule that anyone who was helping them had to be 'Green Booked' i.e. formally initiated into the organisation.<sup>593</sup> He said that it took 1-2 months to learn about history and politics before you could be sworn in and that he was sworn in by Mooch Blair and Mickey Collins. He stated that Mooch Blair was the Officer Commanding and that they were in the South Down Brigade of the IRA.<sup>594</sup> He said that there were 7/8 people in his Unit and that others would help. He said that Mooch Blair was a Bomb Maker and that he learned how to be one as well. He said that they would supply the bombs to different units. He refused to say which of his bombs were used for fear of prosecution.<sup>595</sup>

1.443 He stated that Freddie Scappaticci was in the IRA Internal Security Unit (ISU).<sup>596</sup> He stated that he would drive people to be interrogated by the ISU.<sup>597</sup> He

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<sup>588</sup> Day 66, page 51-52.  
<sup>589</sup> Day 66, page 54.  
<sup>590</sup> Day 66, page 54.  
<sup>591</sup> Day 66, page 54.  
<sup>592</sup> Day 66, page 56.  
<sup>593</sup> Day 66, page 56.  
<sup>594</sup> Day 66, page 57-59..  
<sup>595</sup> Day 66, page 61.  
<sup>596</sup> Day 66, page 62..  
<sup>597</sup> Day 66, page 63-64..

said that he never interrogated anybody but that the ISU used a Voice Stress Analyser when interrogating.

1.444 He said that he was in a couple of operations that went wrong and that he felt he needed a break so he went to Eurodisney in 1991. He said that he wasn't there long when the Sunday Express outed him and another man.<sup>598</sup> He stated that when he came back he was handled by the Army and MI5 from 1992-94.<sup>599</sup> He stated that from 1994-96 he was with Customs. He stated that he never worked for Special Branch because when he tried to give up years earlier they tried to black mail him.<sup>600</sup>

1.445 He stated that on 20 March 1989 he was in Mooch Blair's house.

*“Q. Now, do you recall the day of the Breen and Buchanan murders which, of course, is why we are here today?”*

*A. Yes.*

*Q. And where were you on that particular day?”*

*A. I was down at 'Mooch's house. Most days I was down in 'Mooch' Blair's house.*

*Q. When you say "down," that means you would have travelled from Newry?”*

*A. Yes, from Newry; I would call it going down to Dundalk.*

*Q. Yes. OK. And was he there himself?”*

*A. He was there, yes.*

*Q. He actually told us that he was gone out of the house for several hours, four hours, I think, that day?”*

*A. No, no, he was in the house. Most times when I would be down he would be with me.*

*Q. Had you any reason to be there if he wasn't there?”*

*A. No, if he wasn't there I would have no reason to be there at all.*

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<sup>598</sup> Day 66, page 72.

<sup>599</sup> Day 66, page 72.

<sup>600</sup> Day 66, page 73..

- Q. Yes. And when you were there, were you working together or talking or what were you doing?
- A. We'd always be talking. Sometimes we would be in his kitchen, he would be soldering things, he would be making things with plastic tubing.
- Q. And on this particular day, was it any different to any other day, as far as you were concerned?
- A. At the time I was down, no, it was no different than any other day until then, A [Mickey Collins] came over and basically say "reports coming in".
- Q. Was A living nearby?
- A. A lived in the next square, it was, like, across the road and in another street.
- Q. And he was part of your unit, is that right?
- A. He was part of that unit, yes.
- Q. Yes, and he came over and he said?
- A. Well, we always nicknamed him "reports coming in" because he had the phone, he always watched the TV and people would ring him.
- Q. Did 'Mooch' Blair have a phone?
- A. No, not at that time, no.
- Q. And he didn't have a car either?
- A. He didn't have a car either, no.
- Q. So "reports coming in"?
- A. Yes, it was a nickname we gave him because usually when TV channels and things happen, reports are coming in of a shooting or bombing so we nicknamed 'A' that: "reports coming in".
- Q. A when did he come over to the house, do you think?
- A. **He came over, basically, after the incident had happened.**
- Q. **So this would have been sort of late afternoon?**
- A. **Yes.**
- Q. **About perhaps after five?**
- A. **At tea time, yes.**
- Q. Yes. And did you know anything in advance about this?

- A. *No, absolutely not, no.*
- Q. *Did any of you know anything about this?*
- A. *No, I don't think he knew anything about it either. None of us did. The thing is, South Armagh was a different unit than us in Dundalk...*<sup>601</sup>
- ...
- Q. *So on the 30th -- the 20th of March 1989, your unit didn't know anything about the murders of Breen and Buchanan?*
- A. *Not that I knew of in advance and not from my -- not from A or 'Mooch'.*
- Q. ***Yes. Well when Man A came in, what was the information that he had?***
- A. ***Well, basically, that there was this shooting and "our friend" -- sometimes we would use the thing as "our friend". "Our friend" at that time, which was the Garda, there was only one garda that I knew as "our friend".***<sup>602</sup> *(Emphasis added)*

1.446 He elaborated on “our friend.” He stated that it was the worst kept secret in his Unit that the IRA had a friend in the Garda in Dundalk:

- “Q. *So, just be very careful with this now. You are saying that there was a member of the Garda who was a friend?*
- A. *Yes.*
- Q. *Of the IRA or of your unit?*
- A. *No, no, of the IRA. It wasn't actually our unit. This Garda was a friend of, it would have been that man from -- I am allowed to say his name, aren't I?*
- Q. *Yes, you are indeed?*
- A. *Patrick O'Callaghan. [O'Callaghan denies this]”*<sup>603</sup>

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<sup>601</sup> Day 66, page 79-81.

<sup>602</sup> Day 66, page 82.

<sup>603</sup> Day 66, page 82-83.

1.447 He stated that Collins gave further detail:

“Q. Now, the -- on the day of the murders, was there – besides the notification that there had been murders, was there any other communication from the neighbour?

A. The neighbour: basically after that had happened, when they had spoke a bit more, it was actually turned out that the IRA had planned, well this was what I was told by them, by 'Mooch' and that, they had planned to actually abduct the two officers and take their notes and I think after that actual thing, the IRA issued a thing to all IRA volunteers, I think they gave them 48 hours or something amnesty, that they had taken the notes from these policemen and got information of it. They give volunteers an amnesty to come forward and that they wouldn't be shot down if anyone gave themselves up....<sup>604</sup>

...

Q. Well, was there any other chat the day of the murders about how it might have taken place or who was involved?

A. Yeah, well actually what was said to me was that the IRA had actually closed, that they had volunteers on every route coming from Dundalk. That was every main road was covered. **Now that would have took a lot of men and a lot of planning to do that. I don't believe that that could have been done in an hour. You know, this would have took a lot of planning, preplanning as well.** I mean --

Q. How come you didn't hear about it then?

A. Because our unit wasn't involved in it.<sup>605</sup>

...

Q. And was there any other reference the day of the murders by volunteer A?

A. **Just that "our friend" had helped on the operation.**

Q. **He said that on the day?**

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<sup>604</sup> DAY 66, PAGES 85-86.

<sup>605</sup> DAY 66, PAGE 86.

- A. *That "our friend" had helped, that is -- "our friend", yes.*
- Q. *Yes. And what did that suggest to you?*
- A. *Well, it would suggest to me someone would have to tell the people on the operation that -- it's like somebody has to tell that you your target is there. You know, normally people don't sit for days watching a place. You'd be tipped off. I mean --*
- Q. *Would the car be enough? The fact that a car had arrived, would that be sufficient?*
- A. *I can't say that. I don't know.*<sup>606</sup>
- ....
- A. *Well the thing is, an ordinary volunteer -- who has the credibility? You need pure credibility to put a unit out like that there. I mean, if someone had have went to 'Mooch' or anybody, if they have no credibility, you wouldn't put an active service unit out.*
- Q. *So it would have to be somebody who was very trusted, is that right? A. I would say very, very trusted, yeah.*
- Q. *And are you suggesting that this person referred to so far as "our friend", was involved in this?*
- A. *Well **that's what I took it to be**, "our friend" and there was only one person I knew as "our friend" in the Garda.*
- Q. *And who was that?*
- A. *That was Owen Corrigan.*
- Q. *And did you know who Owen Corrigan was?*
- A. *I had seen him before, as well, yes."*
- Q. *So, was the reference specifically to Owen Corrigan that day or was the reference to "our friend"?*
- A. *"Our friend".*
- Q. *So it might not necessarily have been Owen Corrigan?*
- A. *Well I took it that it was Owen Corrigan.*
- Q. *And that is because you didn't know of anyone else?*

A. I didn't know of anyone else in the Garda, no.

Q. Could there have been someone else in the Garda?

**A. I did not know of anyone else. Could there be? Of course there could be anybody but I only knew of "our friend".**

Q. So, because we have to be obviously -- obviously we are trying to find the truth here --

A. Yes.

Q. -- Mr. Fulton. There was a reference on that particular day to "our friend" --

A. Yes.

Q. -- lending assistance to the operation?

A. Yes.

**Q. Was there -- there wasn't mention of his name on the day?**

**A. No, it was "our friend."**

Q. "Our friend". And you took that to mean Owen Corrigan?

A. Absolutely, yes.<sup>607</sup> (Emphasis added)

1.448 He stated that the 'Friend' had helped them on a number of occasions. He said that he helped them when a bomb making factory was raided in Omeath on 28 August 1989. He said that they all had to go on the run until the all clear was sounded --

"Q. And when did you -- when did you get the all-clear that you could come back again?

A. I think it could have been about 24, 48 hours later word came a back from Mr. O'Callaghan that everything is clear, it's OK, go back home, there is nothing, it's all cleared up.

Q. Did he give a reason why it was all cleared up?

A. Well basically "our friend" had cleared it up. I don't know how he cleared it but there were fingerprints on the equipment inside it.<sup>608</sup>

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<sup>607</sup> Day 66, Pages 88-89.  
<sup>608</sup> Day 66, Page 85.

1.449 He stated that he was always of the impression that 'our friend' was Mr Corrigan:

A. *No, it was actually one of the worst -- we all knew who "our friend" was in the Garda. When I say "our friend", he wasn't anybody in our unit, nobody there was working with him, he always worked with Patsy O'Callaghan.*

Q. *And you knew that from?*

A. *I knew it from 'Mooch' and the people in our unit. I mean, it was one of the worst kept secrets. It wasn't even -- I mean people say "Oh God, how would you know that?" It was -- you had people from different backgrounds everywhere helping people. It was nothing -- you know, I didn't see it as --*

Q. *Well, do you think that this was -- I mean, did you get the impression that this was because of political conviction or was it for money or what was the impression you were getting about the assistance of "our friend"?*

A. *Well, we all knew he sold cars, he sold cars, he done wheeling and dealing, do you know what I mean? It's normal around the border.*

Q. *Mm-hmm.*

A. *Was he doing it for money? I don't know. Was he doing it for political conviction? I don't know. I wouldn't ask.*

Q. *But in any event, you don't specifically remember his name being mentioned on both -- on either of those occasions; it was just "our friend"?*

A. *It was just "our friend", and I took that to be Owen Corrigan.*

Q. *You took it to mean Owen Corrigan?*

A. *Yeah.*"<sup>609</sup>

1.450 He stated that he met Mr Corrigan once while he was driving Mooch Blair. He stated that Mr. Blair was covering for Patsy O'Callaghan and that he drove him to Fintan Callan's Ceili House:

*“Q. And what happened when you got there?”*

*A. I stayed in the car. I just -- as I always did, 'Mooch' got out and walked in and then came out and Owen Corrigan came out behind him, got into the back of the car and 'Mooch' got in. They were talking about, it was Tom Oliver who was working as an informant, he had been caught with an unlicensed shotgun and again, I sat there. I never, ever spoke, I just sat and listened and looked out.*

*Q. Did you know who Tom Oliver was?*

*A. At that stage, no.*

*Q. Was the name mentioned at the time?*

*A. In the car?*

*Q. Yes.*

*A. Yes, his name was mentioned but I did not know who Tom Oliver was.*

*Q. Mm-hmm. And go back over the conversation again.*

*A. Yeah, it was basically that he had been caught with an unlicensed shotgun and he had agreed to give the guards -- he was giving the guards information.*

*Q. And who was telling that to whom?*

*A. Owen Corrigan was telling that to 'Mooch'.*

*Q. And what was the purpose of the conversation, do you know?*

*A. Well, he was actually telling 'Mooch' who an informant was.*

*Q. And did 'Mooch' respond? Do you remember him responding to the conversation?*

*A. Well, he was talking to Corrigan. The conversation was very short and sweet. He got out. On the way back in the road he said "I'll blow the f-ing back out of him with an AK."*

*Q. This was his comment?*

- A. *But that would be a normal comment to make, you know, with that type of thing.*
- Q. *I see. So when -- where did you drive back to? Did you drive 'Mooch' back home was there other --*
- A. *No, just back into Dundalk, back to his house. We would always drive --*
- Q. *Did he explain to you what this was about?*
- A. *No, it was quite clear what it was about. It was somebody who was working as an informant. I mean, that's what 'Mooch's job was as well, he worked with Internal Security.'*<sup>610</sup>

1.451 He stated that this was the first and only time he encountered Mr Corrigan in that kind of role.<sup>611</sup>

1.452 He stated that subsequently he was told to get a van and the unit got together to arrest Tom Oliver. He said that there were 8 of them. He drove the van, there was another car with them, and they drove to a hotel. They then drove down to Mr Oliver's house and arrested him. He stated that Freddie Scappaticci was in the group and that they lifted Mr Oliver out of the van and put him in the boot of the car. He said that Mr Oliver was tied up. He stated that he was told that Mr Oliver was not coming back. He said that Mr Oliver's wellington was left in the van and he had to throw it away. He said that they released Mr Oliver. He said that he wasn't involved in the release.<sup>612</sup>

1.453 He said that Mr Oliver was released before he went to Euro Disney<sup>613</sup> and that Mr Oliver was shot while he was in Euro Disney (July 1991). He said that he told his handlers about all of this.<sup>614</sup>

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<sup>610</sup> Day 66, page 92-93.

<sup>611</sup> Day 66, page 94.

<sup>612</sup> Day 66, page 99-100.

<sup>613</sup> Day 66, page 100.

<sup>614</sup> Day 66, page 102.

### 3. Mr Keeley/Fulton lies about when he met Mr William Frazer

1.454 He said that he first met Mr Frazer in 2000. It was put to him that he had met Mr Frazer before, with Mr Donaldson in early 2000. He accepted that this was correct. He said that he hadn't realised the dates:

*“Q. I appear for retired Detective Sergeant Owen Corrigan. I just want to ask you some questions. Just at the end of your evidence to Mrs. Lavery there, you said that you didn't know Willie Frazer or his victim group prior to you going to meet Judge Cory, is that correct?”*

*A. That's correct, yes.*

*Q. And you wrote your letter to Judge Cory on the 9th of September 2003, isn't that correct?*

*A. That was actually in relation to that, that is why I knew him.*

*Q. And how long before that did you meet Willie Frazer?*

*A. I hadn't actually met Willie Frazer. I was talking to a journalist who was in touch with Willie Frazer.*

*Q. And you had never met Willie Frazer before that?*

*A. Not to my knowledge, no.*

*Q. Did you not meet Willie Frazer with Jeffrey Donaldson in the House of Commons in early 2000?*

*A. Actually, yes, I would have, yeah, I did.*

*Q. Why did you lie to the Chairman about --*

*A. I did not lie to the Chairman, sir.*

*Q. Why did you lie to the Chairman about not telling him that you had met Willie Frazer prior to September 2003?*

*A. Was that question asked of me, was it?*

*Q. You said in your evidence that you didn't know William Frazer or his victim group, and that when you met him sometime before the 9th of September 2003, you wrote to Judge Cory, isn't that correct, that was your evidence?*

*A. I would have wrote to Judge Cory, yes.*

- Q. *And you had met Willie Frazer with Jeffrey Donaldson some two-and-a-half or three-and-a-half years earlier, isn't that correct?*
- A. *I would have met him at the Houses of Commons, well I hadn't realised on the dates, yeah.*
- Q. *Why didn't you tell that to the Chairman?*
- A. *Because it didn't come into my mind when I was saying it.*
- Q. *I have to suggest to you, Mr. Keeley, that that is the first of your many lies that you are going to tell me under cross-examination?*
- A. *No, sir, it's not.*<sup>615</sup>(66/129)

#### **4. Mr Keeley/Fulton admits lying to his handlers**

1.455 He said that he had never heard of Paddy Shanaghan. Mr Shanaghan was murdered in Dublin in 1993. However, Mr Fulton had told the RUC that he knew where the murder weapon was being kept. When this was put to him he said that he did not recall the name but he recalled the incident. He said that the RUC wanted the Gardai to arrest him for the murder. He said that the motorbike was hidden at the bottom of a block of flats in Ballymun. He travelled down with RUC Special Branch. He said that he didn't know at the time the Gardai were following. He accepted that he lied to his handlers but he said that he did so because he was having difficulties with his handlers.

- "Q. And tell the Chairman, what did you point out to the RUC and the member of An Garda Síochána?*
- A. I pointed out a doorway at the bottom of a block of flats, a big high block of flats, because it was a on a Saturday that my handlers had bumped me and said "Come on with us, we were going down to look at" because I had already told them it and they knew I had lied and I said, "Yes, I have lied to you because*

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<sup>615</sup> Day 66, page 129

*you have lied to me." They had actually sacrificed my life on other things as well, so I did it exactly on them.*

*Q. And you pointed to the premises of a senior Dublin politician, isn't that correct?*

*A. No, I had never even seen the Dublin politician thing. It was a door at the bottom of a high-rise block of flats, a small door, because I remember when we got back to Belfast my handlers were able to tell me the next day that you couldn't put anything in there, it's such a small room.*

*Q. Mr. Egan gave evidence to the Chairman yesterday that the premises that were pointed out were the constituency office of a senior politician in Dublin. Are you saying that he was giving false evidence to the Chairman?*

*A. Well I don't know any senior politicians in Dublin that were there. I did not see any names of a doorway, we actually drove past it on a roundabout and I pointed a door, there was no sign on it, I didn't know any politician's office there.*

*Q. But you pointed to a premises that was occupied, isn't that so?*

*A. It was a doorway in a multi-storey block of flats, a doorway with no sign on it.*

*Q. So you were prepared to incriminate the wholly innocent people who were behind that doorway, isn't that correct?*

*A. Oh, get away. I was showing my handlers where the doorway, I pointed any doorway out to where it was. I lied to my handlers because they lied to me. My handlers had set me up to be murdered, yeah.*

**Q. And you were prepared to incriminate the individual who resided behind that doorway in order to facilitate and uphold your lies, isn't that correct?**

**A. No, sir, that is not correct.**

**Q. You subsequently retracted the story to the RUC. When did you tell them that your story was a tissue of lies?**

**A. They knew the next day.**

**Q. How did they know?**

**A. Because they had a meeting and we thrashed it out. They had lied to me and I had lied back to them.**

**Q. And you admitted to them that this was all a lie?**

**A. Absolutely, yes.**<sup>616</sup> (Emphasis added)

**5. Mr Keeley/Fulton lies about not knowing Witness 64, even though Witness 64 was his Handler**

1.456 Mr Keeley/Fulton said that he had never heard of Witness 64 even though he said that he was in charge of the team that handled Mr Keeley/Fulton.<sup>617</sup> He said that Witness 64 was not one of his handlers and that Witness 64 was lying to the Chairman.<sup>618</sup>

**6. Mr Keeley/Fulton lies to Witness 64 about an IRA operation**

1.457 Witness 64 was the Detective Inspector in charge of Special Branch in Newry from 1988 to 1994. He told the Chairman that he was in charge of the team that handled Mr Keeley/Fulton.<sup>619</sup>

1.458 He stated that Mr Keeley/Fulton's information mixed some useful truthful information with some false and misleading information.<sup>620</sup> He stated that Mr Keeley/Fulton was an intelligence nuisance.<sup>621</sup> He stated that Mr Keeley/Fulton gave false information about a planned IRA attack in UK which wasted a lot of police effort and that he subsequently admitted making it up.

*“Q. You mentioned that there were occasions when Kevin Fulton gave you information which you were aware was misleading information. Without identifying any individuals, could you give*

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<sup>616</sup> Day 66, pages 133-135.

<sup>617</sup> Day 66, page 135.

<sup>618</sup> Day 66, page 136.

<sup>619</sup> Day 53, page 36.

<sup>620</sup> Day 53, page 8.

<sup>621</sup> Day 53, page 62.

*an example to the Chairman of -- maybe you can't recall it, but if you can, can you give an example of the type of misleading information he gave to you which clearly was false?*

- A. *Well, there was probably a number I could give, but one particularly interesting one was we were given intelligence about an IRA active service unit planning to travel to Great Britain to carry out a series of attacks there, and Mr. Fulton told us that he had been asked to prepare weapons hides in Great Britain to facilitate the logistics of that unit travelling to Great Britain. Police operations were put in place in England and Scotland, and quite considerable police time, effort, resources, went into carrying out preparatory work to try and catch the alleged active service unit, only for Mr. Fulton to subsequently state that it was something he had made up, and, as you can appreciate, it caused us considerable embarrassment because the intelligence had been relayed across to Great Britain. Various people over there were quite exercised about the thoughts of IRA attacks being carried out in Great Britain. A lot, as I say, time, police effort, resource, a lot of money from the public purse had been spent in police operations, all for it to be disclosed as a work of fiction.*
- Q. *And could I ask you, sir, did he give any explanation or excuse to you as to why he had created or made up this bit of intelligence?*
- A. *No, we never got a satisfactory explanation to that or to other things we were told.*
- Q. *And from your assessment of him, did you think he was doing it because he was interested in fantasy or was he trying to generate publicity for himself subsequently, or why do you think he did it?*
- A. *I think it was probably a complex mixture of things. There was obviously financial reward, and sometimes greed can triumph over common sense. I think, also, attention-seeking ego. There are lots of factors that could play in there, but you would really*

*need a good psychiatrist or psychologist to give those answers.*<sup>622</sup>

1.459 Mr Keeley/Fulton told the Chairman that he did not tell Witness 64 that he made the whole thing up.<sup>623</sup>

*“Q. OK. But the important point, from the Chairman's point of view, Mr. Keeley, and from my point of view, is that you are stating to the Chairman that you didn't state to him that you made the whole thing up?”*

*A. No, I did not state that I made the whole thing up. They knew that I was there to buy the firearms, they knew who the person was to ask me, who was 'Whitey' Bradley, Gerry Bradley who was dead, the same person involved in the Martin Dale stuff.*

*Q. And I asked him why it was that somebody would make such a story up, and in response, he said the following, he said:*

*"I think it was probably a complex mixture of things. There was obviously financial reward, and sometimes greed can triumph over common sense. I think also attention seeking ego, there are lots of factors that could play in there but you would really need a good psychiatrist or psychologist to give those answers." Do you agree with that assessment of you provided by Witness 64?*

*A. No, sir, I don't, because, number one, you get your basic wage from your department, whether it be MI5 or Special Branch. There would be no financial gain for something that did not happen. This is a nonsense. I mean you don't get a bonus for the work that didn't turn up, so that is absolute rubbish.*<sup>624</sup>(66/139/140)

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<sup>622</sup> Day 53, pages 37-38.

<sup>623</sup> Day 53, page 139.

<sup>624</sup> Day 66, pages 139-140.

## 7. Mr Keeley/Fulton lies about a Bomb Making Factory

1.460 W62 was a Detective Inspector in the Special Branch Offices in Gough Barracks. He stated that Mr Keeley/Fulton lied about a bomb making factory.

*“Q. Could you give an example to the Chairman of intelligence that Mr. Keeley invented, without obviously going into naming individuals?”*

*A. Yes, I can. I can recall very clearly on one occasion his, one of his handlers coming to the regional headquarters and explaining that he had intelligence to the effect that Keeley had taken part in the grinding of explosives where fertilizers were ground down into a fine powder to be made into a large bomb, and he then described to his handlers where the journey had started and where it had ended up, and it was a series of left turns, right turns, drove half mile, drove a mile, drove a mile and a half, crossroads, T-Junctions etc, etc. We then spent the best part of an hour of pouring over a map of north Louth starting at where he said he started and trying to work out where this farmhouse would have been where they ground the explosives. Our intention was to pass this intelligence to Garda Siochana so that they could mount a raid, a disruptive raid on this. It all turned out to be fantasy. We couldn't work it out and later on we found out it was purely invented by him.*

*Q. And do you have any explanation to give to the Chairman as to why Peter Keeley was making up this intelligence?”*

*A. A possible explanation was simply that he wanted to, he wanted to remain in the big picture. He didn't have any more good intelligence to provide so he just made up something that he knew that his handlers would be very interested in and would justify his position as a source and perhaps to get money. I*

*don't know if money was a big motivating factor with him, but that would be a possible explanation.*"<sup>625</sup>

**8. Mr Keeley/Fulton accuses those RUC Officers who were critical of him as liars**

1.461 He said that RUC people may be trying to discredit him to protect themselves:

*"A. Maybe it's a reason because maybe some of those officers who I didn't know were Special Branch handled the people that handled me, and as I have said before on the record, sir, I have done things that I am not proud of, things that my handlers know that I have done and are party to it. Maybe it's a case of if I go down the road they are coming with me. So in everybody's case, it's actually good to discredit someone who can do them harm. Maybe that is the reason for doing so."*<sup>626</sup>

1.462 He said that those RUC men had lied to the Tribunal.

*"A. But what I am saying is under oath, these same people told you lies.*

*Q. OK. So your evidence to the Chairman is that the members of the RUC who described you as an intelligence nuisance, fantasist, and who gave the examples of you misleading them, that they were lying to the Chairman of this Tribunal?*

*A. They did lie in their evidence to you, sir, yes."*<sup>627</sup>

**9. None of Mr Keeley/Fulton's Handlers gave evidence that he told them anything about Mr Corrigan**

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<sup>625</sup> Day 51, pages 120-121.

<sup>626</sup> Day 67, page 7.

<sup>627</sup> Day 67, page 7-8.

1.463 Witness 64 said that Mr Fulton/Keeley never mentioned Mr Corrigan.<sup>628</sup>

*“Q. Yes. And in relation to Mr. Corrigan, did Mr. Fulton ever say anything to you or your colleagues?”*

*A. I am aware of no intelligence that was ever passed from Mr. Fulton about Mr. Corrigan.*

*Q. And I think that you are also aware of one 'Mooch' Blair?”*

*A. Yes, sir.*

*Q. He was a member of the Provisional IRA, is that right?”*

*A. Yes, an active member of the Provisional IRA.*

*Q. At that time?”*

*A. Yes.*

*Q. Yes. And did Mr. Fulton ever tell you anything about a connection between Mr. Blair and Detective Sergeant Corrigan?”*

*A. No.”<sup>629</sup>*

**10. Mr Keeley/Fulton was unable to tell the Tribunal when he first became aware that Mr Corrigan was allegedly ‘Our Friend.’**

1.464 Mr Keeley/Fulton said that he had heard that Mr Corrigan was assisting the IRA “many years” before meeting him in the car park. He stated that he heard his name mentioned with the unit in Dundalk as a Garda who helped the IRA. However, when pressed he could not put a date on it. He initially tried to say that it was after the Narrow Water bombing.

*“Q. Will you tell the Chairman when did you first become aware that Mr. Corrigan was assisting the IRA?”*

*A. Many years even before that, I had met him in the car park, I had heard his name mentioned with the unit in Dundalk, that he had helped the unit.*

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<sup>628</sup> Day 53, pages 36-37.  
<sup>629</sup> DAY 53, PAGES 7-8,

Q. *Could you try and be more specific, Mr. Keeley, as to when, by date, you first became aware that Owen Corrigan was assisting the IRA?*

A. *By date, I couldn't, sir, but one instance I was told of as well many years ago was after the Narrow Water bombing, that it was said that Owen Corrigan had helped the IRA at that time.*<sup>630</sup>

1.465 However, Mr Keeley/Fulton was not in the IRA at the time of the Narrow Water Bombing. When challenged on this fact he changed tack and pleaded that *"I can't remember the exact date."*<sup>631</sup> Various dates were then suggested to him, when he started to hang around with Mooch Blair in 1980/1981 or when he got out of prison in 1986. However, Mr Keeley/Fulton refused to be pinned down.

*"Q. Now, Mr. Keeley, you weren't in the IRA at the time of the Narrow Water bombing?*

A. *No, but I had heard it after that, yes.*

Q. *OK. So when did you hear that?*

A. *I can't remember the exact date, sir.*

Q. *The Narrow Water bombing was in August 1979, isn't that correct?*

A. *Yes.*

Q. *You got involved with the IRA or you started to, I think your language was hang around with 'Mooch' Blair in around 1981 or 1982, isn't that so?*

A. *That is correct, yes.*

Q. *Did you become aware of Owen Corrigan's alleged assistance at that time?*

A. *It would have been around that time, and while I was hanging around with 'Mooch' Blair and people like that in Dundalk.*

Q. *OK. So you would date it to 1981 or 1982?*

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<sup>630</sup> Day 67, page 8.

<sup>631</sup> Day 67, pages 8-9.

- A. *I wouldn't put an exact date on it, sir.*
- Q. *I am asking you to do your best to put a general --*
- A. *I am just saying to you I can't put an exact date on it.*
- Q. *Well, was it before you went to prison in November 1985?*
- A. *Again, I can't exactly remember the date.*
- Q. *Was it after you came out of prison in November 1986?*
- A. *Again, we can go on all day like this; I cannot remember the exact date, sir.*<sup>632</sup>

1.466 Mr Keeley/Fulton tried to explain away his inability to put even an approximate date on when he became aware of this information by telling the Tribunal that intelligence that the IRA had a double agent inside the Garda Siochana in Dundalk was simply not big news.

- “Q. *So you can't recall the date upon which you first became aware that Owen Corrigan was assisting the IRA, is that correct?*
- A. *Why would I need to remember an exact date for something? It was not so big in my eyes or important, you know. I have come across where even RUC men have helped the IRA as well, you know. So why would I remember one date for Owen Corrigan? It was not a big thing in my calender.*
- Q. *Well, I have to suggest to you, Mr. Keeley, that you at the time, according to you, were working as a double agent for British military intelligence, isn't that so?*
- A. *Yes.*
- Q. *Would you not agree with me that for you to find out, in 1981 or 1982, before you were officially a member, that there was a guard in Dundalk who was working for the Provisional IRA, that was astonishing information that you had?*
- A. *It may be astonishing to you. I mean, people keep saying oh, this is astonishing, it's not. When it becomes a day-to-day thing with people, there's no big thing. It's the same with gun and*

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<sup>632</sup> Day 67, page 9.

*bomb attacks; it is no big thing when you are dealing with it daily.*<sup>633</sup>

1.467 It was pointed out to him that this was simply not credible in light of the importance of the information and the meetings it would have generated with his handlers:

- Q. *When you became aware of it for the first time, did you go back to your handlers and inform them: By the way, I have got a piece of fascinating information for you, there is a guard in Dundalk called Corrigan who is an IRA mole, did you do that?*
- A. *I would have mentioned that to handlers, yes, there is no doubt about it. And again, I would have mentioned it years ago -- years in another debrief when MI5 took over in England, because they took me back through everything that I had done with other people as well.*
- Q. *Can we stick at the time, because when you became involved with 'Mooch' Blair, you regularly reported back to your handlers as to what is happening?*
- A. *I would have, yes.*
- Q. *So can we take it that at some stage, you can't specify the date, at some stage you would have reported back to them, by the way there is a guard in Dundalk who is an IRA mole?*
- A. *That would have been, yes.*
- Q. *And you reported that to your handler?*
- A. *I would have reported that at some stage to my handler, yes.*
- Q. *Could you write down the name of the handler on a piece of paper, please?*
- A. *Do you want me to do all the handlers?*
- Q. *No, I just want you to identify the man to whom you identified in the first instance that Owen Corrigan was working as an IRA mole. The gentleman whose name or the person whose name*

*you wrote down, was he a member of British military intelligence?*

*A. He would have been army intelligence.*

*Q. Army intelligence at the time?*

*A. Yes.*

*Q. When you brought this to his attention, what was his reaction?*

*A. Just like any time you give them any information, they take it and that is it. Why would they give a big -- there's no big thing with it.*

*Q. I have to suggest to you this was an enormous achievement; within a couple of years of you involving yourself with 'Mooch' Blair, you were able to report back to your handlers that you'd effectively identified a double agent, isn't that so?*

*A. You might think it's a big thing. It's just someone who helped the IRA, it's like anything else.*

*Q. And you didn't think it was a big thing that there was a guard in Dundalk helping the IRA?*

*A. No, because there was policemen in the North helping the IRA as well.*

*Q. We will come to that in due course as well.*

*A. I am just saying to you, it's no big thing. Maybe to people not within the IRA or intelligence, it may be a big thing, but it's not.*

*Q. Did your handlers ask you to get more information on this Garda mole?*

*A. I would be instructed to get any information on anything, not specific things, just anything at all that comes up, tell them what happened.*

*Q. Did they ask you to follow up Corrigan and get more information about him?*

*A. No, because how could you follow him up? As I said from the start, I never asked questions of nobody, and that is how I got on well with the IRA and that is how I moved into it. If you start asking questions when you are going about with people like that,*

*you are going to end up at the side of the road. You will be murdered.*

- Q. *In your book, you write about how your handlers expressed great satisfaction when you had an achievement in getting closer to the IRA, isn't that so?*
- A. *Again, there was two ghost writers did the book. For legal reasons, I don't want to answer questions on the book because of ongoing inquiries by the PSNI. There are a number of lines of inquiry and the book is one of those lines.*
- Q. *You have nothing to worry about that, Mr. Keeley, because the Attorney General of Great Britain and Northern Ireland has written a letter to the Chairman of this Tribunal stating that you have complete immunity in respect of what you state in the witness-box, so you have nothing to worry about that.*
- A. *I know there is a letter of that, but also the Tribunal may be aware that three journalists, two from England and one from Northern Ireland, one a former editor of a newspaper who was a registered Special Branch informant, has passed information on to the PSNI without a court order, that may harm my defence in any future case, sir, and at the start I would love to have been able to speak quite openly about everything with immunity from prosecution, but unfortunately, I don't believe that is the case anymore....”<sup>634</sup>*

**11. Mr Keeley/Fulton unable to provide any detail about when or from whom he heard that Mr Corrigan had helped the IRA in respect of Narrow Water**

1.468 Mr Keeley/Fulton was unable to remember who told him about Mr Corrigan's alleged involvement in Narrow Water or when he heard about it.

“Q. *Mr. Keeley, I now want to ask you about the type of assistance that you allege Owen Corrigan provided to the IRA. You said a*

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<sup>634</sup> Day 67, pages 10-13.

*few moments ago that you heard he had provided assistance in respect of the Narrow Water investigation, is that correct?*

A. *That is correct, yes.*

Q. *That was in August 1979, you had no involvement with the IRA at that time?*

A. *Absolutely none, no.*

Q. *You had just joined up in the British Army at that time?*

A. *Yes, yes.*

Q. *What did you hear about his involvement in Narrow Water?*

A. *I had heard that some of the evidence that was held by the garda was something to do with a motorbike or something or firing mechanism or something went missing after the garda had got evidence.*

Q. *OK.*

A. *Whether it's true or not, I don't know, but that is what I heard.*

Q. *I just want to try and be specific with you. So what you heard was that a piece of evidence, you think perhaps a motorbike?*

A. *Something to do with a motorbike or a firing line, you know a firing pack, yes.*

Q. *And that this had been a piece of evidence that had been obtained at the scene by An Garda Siochana?*

A. *Must have been.*

Q. *Is that what you believe it to be, because you are the person who heard this now?*

A. *You have never heard this before?*

Q. *I've never heard it from you before.*

A. *But I have heard that, yes.*

Q. *Can you be detailed? You have no difficulty in talking when you want to talk about certain matters, I'd like you to elaborate and be articulate about this?*

A. *That is all I have heard. How can I elaborate anymore? Either part of a motorbike or firing pack, evidence had went missing, that is the easiest way to put that.*

Q. *Who did you hear this from?*

- A. *I can't remember who I heard that from.*
- Q. *Did you hear it from a member of the Provisional IRA?*
- A. *More than likely it would have been, yes. I can't remember the exact person. There is lots of things were said.*
- Q. *OK. So you think you heard from a member of the Provisional IRA that Owen Corrigan had assisted in destroying evidence, is that correct?*
- A. *Yes.*
- Q. *When did you hear that?*
- A. *Again, sir, I am not great on dates. I can't remember the exact date. Can you remember what you did two weeks ago, can you, at 9:30 a.m. on Monday morning?*
- Q. *I am sure I could.*
- A. *Well, you are very good.*<sup>635</sup>

1.469 Interestingly, Mr Fulton later changed tack and when it was suggested that it might have been Mooch Blair who told him - the suggestion being drawn from his statement where he said so - he agreed, notwithstanding the fact that he had previously been unable to name his source .<sup>636</sup>

**12. Mr Keeley/Fulton accepts that he is unable to give any specific examples of Mr Corrigan helping the IRA prior to 20 March 1989**

1.470 Notwithstanding the fact that in his evidence in chief he said that it was an open secret that Mr Corrigan was assisting the IRA and he had been aware of it for years, Mr Keeley/Fulton was unable to provide any specific examples of assistance given by Mr Corrigan to the IRA prior to 20 March 1989:

- “Q. *You told the Chairman yesterday about three alleged events in which you say Owen Corrigan provided assistance to the IRA: The first being the murder of Chief Superintendent Breen and*

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<sup>635</sup> Day 67, pages 14-15  
<sup>636</sup> Day 67, page 19.

*Superintendent Buchanan; the second being the seizure of explosives in Omeath; the third being the setting-up of Tom Oliver. Now, what other type of assistance, leaving aside those three, but by the time of the murder of the two RUC officers in March 1989, when Owen Corrigan -- when the name "our friend helped us out" was mentioned to you by Mr. A, you were aware that was Owen Corrigan, weren't you?*

*Q. Tell the Chairman specifically what assistance Owen Corrigan had given the IRA prior to the 20th of March, 1989?*

*...*

*A. I can't give specifics or -- just going through it again. We can knock about this all the time.*

*....*

*Q. And aside from the Narrow Water matter which happened in 1979, at a time when you weren't even out of the British Army in the IRA, give the Chairman another example of assistance that Owen Corrigan gave the IRA?*

*A. I can't actually give the Chairman anything because I don't have any of those.*

*Q. Of course you don't?*

*A. No, I know I don't, but I never said I did, did I?*

*Q. You have come in and you've said that Owen Corrigan assisted the IRA?*

*A. Yes.*

**Q. And you can't give one example to the Chairman during your time in the IRA of that happening?**

**A. I can't give any extra because I don't know of any other times.**

*Q. And you are absolutely correct, and the reason you don't know of any other times is because Owen Corrigan didn't assist the PIRA?*

*A. Well, I can say Owen Corrigan did assist the PIRA.*

*Q. Give the Chairman an example prior to the 20th of March?*

A. *You are saying prior to dates. I will give you exactly what there was there, the things I have heard. I can't give you any more because I don't have any more. He can bang on about dates and prior to this and prior to that. I gave you what I have heard about the involvement with Owen Corrigan. I cannot give you any more because I don't have any anymore.*

Q. **And we will come to look at the Fintan Callan Céilí House and the 20th of March, the day of the murders. But just to conclude, is it your evidence to the Chairman that you cannot give him any specific examples of Owen Corrigan assisting the IRA prior to the 20th of March, 1989?**

A. **That would be correct, yes.** <sup>637</sup> (Emphasis added)

### 13. Mr Keeley/Fulton lies about Mr Corrigan interrogating him

1.471 Mr Keeley/Fulton told the Tribunal that he met Mr Corrigan in Dundalk Station. He was unable to remember the year but Garda records show that he was arrested on the 30 June 1989. He told the Tribunal that this was the only time that he met Mr Corrigan in the Garda Station. Mr Keeley/Fulton was extremely evasive when he was asked did Mr Corrigan interrogate him. His position eventually became that he could not remember:

“Q. *Did he interrogate you?*

A. *He came into the interrogation room because I remember him coming into it.*

Q. *Did he interrogate you?*

A. *He was in the interrogation room when I was getting interrogated, well spoken to, it wasn't even an interrogation.*

Q. *Did he interrogate you?*

A. *He came into the room and the detectives were in the interrogation room.*

Q. *Mr. Keeley, it's a very simple question: Was the retired Detective Sergeant one of the people who interrogated you when you were arrested and held in Dundalk Garda Station on the 30th of June, 1989?*

A. *He came into the room when I was interrogated, being interrogated by --*

CHAIRMAN: *Did he interrogate you himself?*

A. *He was in the room when other detectives were talking to me, but I would count those people in the room --*

CHAIRMAN: *Did he not take part in the interrogation?*

A. *I can't remember, but he was in the room.*

Q. MR. O'CALLAGHAN: *Your evidence is you can't remember whether he interrogated you or not?*

A. *Well, he was in the room, he came into the room.*

Q. OK. *But you can't remember whether he interrogated you or not?*

A. *I can't remember the names of the other people, either.*

Q. *I am not asking you that question. You can't remember whether Owen Corrigan interrogated you or not, is that correct?*

A. *No, that's correct.*<sup>638</sup>

1.472 The reason for this evasiveness became clear when the text of an article written by Henry McDonald and published in the Observer Newspaper on 14 November 2004 was put to Mr Keeley/Fulton.

“Q. *OK. Why, then, did you tell Henry McDonald of The Observer in November 2004, that Owen Corrigan had interrogated you?*

A. *Again, I am not responsible for editorial control. I would have said that he came into the room, he was in the garda station when I was interrogated. I didn't write the story.*

Q. *I know you didn't. I will just read out what Henry McDonald quotes you as stating. On the 14th of November, 2004, Mr.*

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<sup>638</sup> Day 67, pages 25-26.

McDonald wrote a story that was published in *The Observer* called "Garda knew of IRA Mole in Force," and it says the following: "Fulton has been interviewed by Cory and has provided the name of the IRA mole working inside the Garda. The Observer is aware of the name but cannot print it for legal reasons. In the programme" - that is a television programme that was due to be broadcast called *Cross-Border Murder* - "Fulton says 'On one occasion, I was along with Patrick Joseph Blair, my commanding officer in the IRA, and we had to go out and meet a garda who usually met another man from south Armagh who was in the Internal Security team. But this person wasn't there that day, so at some stage I worked with the Internal Security Unit along with Patrick Joseph Blair. We went out to a pub along the border and the person we met was X," presumably that's Mr. Corrigan?

A. Yes.

Q. "The reason I knew him was I had been arrested. I was interrogated by him in Dundalk Garda Station at one stage. We all knew about Corrigan, it was basically the worst-kept secret within a certain group of IRA men, but to me there was nothing extraordinary about that."

Now, is what you said to *The Observer* correct or is what you said to the Chairman correct?

A. Well, I have just said there now he came into the room. Did he speak to me and actually ask questions? I can't remember, but he was part of the team of detectives.

**CHAIRMAN: All right, I understood that correctly. But what about this Observer journalist. Did you tell him that Corrigan had investigated you?**

**A. Some of them say like I was interrogated. There was three policemen in the room, you count all three of them as interrogating you.**

**CHAIRMAN: I see.**

**Q. MR. O'CALLAGHAN: You told me that Owen Corrigan did not interrogate you?**

**A. You asked me did he actually interrogate me. He was there in the room with the other detectives.**

**Q. know --**

A. *But to me you are twisting my words. I know you maybe look at things differently than me.*

Q. *Do you not see the inconsistency between what you told The Observer and what you are telling the Chairman?*

A. *Tell me the inconsistency.*

Q. *You told The Observer that, "I was interrogated by Owen Corrigan in Dundalk Garda Station at one stage"?*

A. *Yes.*

Q. *Are you now saying that is correct?*

A. *No. What is the difference? I am saying to the Chairman that he was in the room when I was being interrogated. To me that is the exact same thing.*

Q. *I asked you if you could recall whether or not he interrogated you and you said you couldn't?*

A. *What do you call by interrogating? You physically asking questions?*

Q. *Yes.*

A. *If I am sitting here and there is three detectives and one is doing all the asking, in my eye the three of them is still interrogating me.*

Q. *I wouldn't seek to raise myself up to the level of a garda investigator, but at present I think it's fair to say that I am interrogating you, isn't that correct?*

A. *Absolutely, yes.*

Q. *Now, the other individuals in the room, are they interrogating you as well?*

A. *Well, I mean part of your team is this gentleman here. Well, I can't see any more.*

Q. *Do you think these other people are interrogating you at the same time?*

A. *I can't see them. Are they part of your team?*

**Q. *I have to suggest to you that either what you told The Observer is incorrect or what you told the Chairman is incorrect?***

**A. *No, sir, what I have told you is not incorrect.*<sup>639</sup> (Emphasis added)**

#### **14. Mr Keeley/Fulton lies about meeting Mr Corrigan for the first time at Fintan Callan's Ceili House**

1.473 In his Statement to the Tribunal, Mr Keeley/Fulton stated that the only time he met Mr Corrigan was in the car park outside Fintan Callan's Ceili house. But this is contradicted by his evidence that he also met him when he was being interviewed by the Gardaí in June 1989. When this was pointed out, Mr Keeley/Fulton tried to blame the Tribunal staff for the way in which they prepared his statement. This is notwithstanding the fact that he read it over and signed it.<sup>640</sup>

#### **15. Mr Keeley/Fulton contradicts himself in relation to the identity of the individual who told him 'our friend' had helped out in relation to the Omeath Bomb factory**

1.474 It will be recalled from paragraph 1.448 that in his evidence in chief Mr Keeley/Fulton told the Tribunal that Patsy O'Callaghan told them that "*our friend*" had cleared everything up in relation to the Omeath bomb factory and they could go back home.

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<sup>639</sup> Day 67, pages 26-28  
<sup>640</sup> Day 67, page 32-33.

1.475 However, under cross-examination, Mr Keeley/Fulton stated that it was Mickey Collins who told him:

*“Q. Who gave you that information?”*

*A. It would have been Mickey Collins.*

*Q. And did he give it to you or to 'Mooch' Blair?”*

*A. I would have heard it from him, but I also heard it from 'Mooch' as well. So he would have got a call to the place where he was staying.*

*Q. And what did he say to you?”*

*A. Just that "our friend" -- it's safe to go back, all the stuff is gone, "our friend" had helped. Don't pin me down to exact words. But it worked out that basically "our friend" had looked after things, the stuff is gone, the evidence.*

*Q. So Mickey Collins tipped you off --*

*A. Yes.*

*Q. -- that things were okay?”*

*A. Yes.”<sup>641</sup>*

1.476 When it was pointed out to him that in his statement he had said that they got word from Patsy O’Callaghan, which was also what he said in his evidence in chief, Mr Keeley/Fulton said that Mickey Collins would have got it through Patsy O’Callaghan.<sup>642</sup> It is submitted that this is another example of Mr Keeley/Fulton being caught out on the detail

## **16. Mr Keeley/Fulton lies to Judge Cory about being introduced to Mr Corrigan at Fintan Callan’s Ceili House**

1.477 In his Statement to Judge Cory, Mr Keeley/Fulton stated inter alia:

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<sup>641</sup> Day 67, page 39.

<sup>642</sup> Day 67, pages 39-40.

*"On one occasion in the late 1980s, I was with my senior IRA commander and another individual in my car. I knew the other individual to be Sergeant Owen Corrigan. I was introduced to Owen Corrigan. I knew that Owen Corrigan, who was stationed at Dundalk, was passing information to the Provisional IRA."*

1.478 However, in his evidence to the Tribunal he stated that he was not introduced to Mr Corrigan:

Q. Did 'Mooch' introduce you to Owen Corrigan?

A. No, he didn't. I was, basically, a shadow sitting there. I never spoke, never did anything.

Q. You weren't introduced to Corrigan?

A. Not introduced, no.

Q. OK. You wrote to Judge Cory on the 9th of September, 2003, and you stated the following:

*"On one occasion in the late 1980s" -- and you are wrong about that -- "I was with my senior IRA commander and another individual in my car. I knew the other individual to be Garda B" -- that is Corrigan -- "I was introduced to Garda B. I knew that Garda B, who was stationed at Dundalk, was passing information to the Provisional IRA."*

*Now, which is correct, Mr. Keeley?*

A. Well, 'Mooch' didn't say "this is Owen Corrigan". He just got into the car and started talking to 'Mooch'.

CHAIRMAN: He didn't introduce you?

A. He wouldn't have introduced me, no.

Q. MR. O'CALLAGHAN: So what you said to Judge Cory is incorrect in that respect?

A. Well, I wasn't introduced as an introduction, no.

Q. When you said to Judge Cory, "I was introduced to Owen Corrigan," you weren't?

A. No, he got into the car.<sup>643</sup> (Emphasis added)

**17. Mr Keeley/Fulton's evidence that he never reported the threat to Mr Oliver's life to his handlers**

1.479 In his evidence, Mr Keeley/Fulton was extremely vague about when he reported the information he had allegedly received, namely that a Garda source had passed information to the IRA putting Mr Oliver's life at risk. Eventually he stated that he did not tell them until after Mr Oliver was murdered yet he was unable to remember the name of the handler to whom he gave this information.

*“Q. When you heard Owen Corrigan pass on this information about Tom Oliver, what did you do?”*

*A. I drove 'Mooch' back to Dundalk.*

*Q. When did you report this significant intelligence to your employers?”*

*A. It would have been reported shortly after it and again then in -- again in another debrief, after that, with MI5, it was mentioned then as well.*

*Q. At the time, is what I am interested in?”*

*A. I can't remember who I gave it to --*

*Q. Would it have been shortly after this alleged incident?”*

*A. No, it would have been a while after it. I just never bothered with it.*

*Q. You never bothered with it?”*

*A. No.*

*Q. This is crucial information about a member of An Garda Siochana tipping off the IRA in order that they could murder a decent man from County Louth, and you did nothing about it?”*

*A. There is nothing I could do about it.*

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<sup>643</sup> Day 67, page 52-53.

- Q. *You could have tipped off your employers, your handlers. Why didn't you tell your handlers about it?*
- A. *They were told a while after it, so they were.*
- Q. *How long afterwards?*
- A. *I can't remember how long afterwards.*
- Q. *A week?*
- A. *I can't --*
- Q. *A month?*
- A. *I can't remember how long after it.*
- Q. *You can't remember how long after it?*
- A. *No.*
- Q. *What was the name of the handler? Do you know the name of the handler to whom you reported?*
- A. *No. I can remember one of the debriefs, the people that were present at that.*
- Q. *I am asking you can you remember --*
- A. *Yeah, but I'm just after telling you I can remember the debrief and some of the handlers there, yeah.*
- Q. *I'll ask his name. Can you remember the name of the handler to whom you reported this information afterwards?*
- A. *Afterwards, yeah. I can give you a couple of names.*
- Q. *Write down the names and give them to the Chairman. And you are stating you've told these people in the period after this information was given to you in Fintan Callan's Céilí House?*
- A. *They would have got it after that and then after his death.*
- Q. *How long after it?*
- A. *I can't remember how long after it.*
- Q. *Are we talking months?*
- A. *I can't remember how long. Sorry.*
- Q. *Did you tell them before he was murdered?*
- A. *No, because he wasn't murdered at that time.*
- Q. *I know, but did you tell -- you were told this a number of months before Mr. Oliver was murdered?*
- A. *Yeah.*

Q. Did you tell your handlers, before Mr. Oliver was murdered, what had been said to you?

A. No, I told them afterwards.

Q. What use was that to Mr. Oliver?

A. When I had left the country, Mr. Oliver was still alive.

Q. Write down those names.

A. There is another one, I can't think of his name."<sup>644</sup> (Emphasis added)

## **18. Mr Keeley/Fulton lies about being out of the country when Mr Oliver was killed**

1.480 In his evidence, Mr Keeley/Fulton stated that he was in Paris when Mr Oliver was murdered. However this was a clear lie because Mr Oliver was murdered on 19 July 1991 and he stated in his book that he did leave for Paris until August 1991. Mr Keeley/Fulton attempted to shrug this off by blaming the ghost writers.<sup>645</sup>

1.481 The attempt to blame the ghost writers proved futile because Mr Keeley/Fulton tangled himself on the detail. In his evidence he stated that he was in Paris for approximately two weeks when the Sunday Express published a story outing him as an IRA man.

*"Q. Here is something else you state in the book: You state that, after you arrived in Eurodisney, that about two weeks into your contract, you heard that the Sunday Express ran a story?"*

*A. Yeah.*

*Q. What did that story say?"*

*A. The headline was "IRA Gangs in Eurodisney."<sup>646</sup>*

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<sup>644</sup> Day 67, pages 62-64.

<sup>645</sup> Day 67, pages 66-68.

<sup>646</sup> Day 67, page 68-69.

1.482 The Tribunal obtained the Sunday Express article and the publication date was 29 September 1991 which, if Mr Keeley/Fulton is correct, would only have him arriving in Paris in early September.

*“MR. HAYES: But subsequent to it, we asked Mr. McAtamney, Mr. Fulton's solicitor, to furnish us with a copy of the article, and he has now done so. It is an article, Chairman, that comes from the Sunday Express from the **29<sup>th</sup> of September, 1991**, and there is a front-page main headline that says "IRA Gangs Move Into Euro Disney," with a sub-headline "Convicted terrorists found among workers on big building sites". It is labelled as an exclusive by Barry Penrose. The article reports:-*

*"The Provisional IRA has infiltrated members on to major construction projects in Europe, including the massive Euro Disney resort.*

*"The terrorists have also visited sensitive Ministry of Defence building sites in Gibraltar and one for next year's international Expo exhibition in Seville, Spain.*

*"A Sunday Express investigation has identified prominent IRA men - some with convictions for serious terrorist offences - among the 600 workers supplied to the Euro Disney site near Paris."*

*And under a paragraph headlined "Target," it reports:*

*"They come from Ulster-based Mivan Overseas, which is now the single largest contractor of the multi-million pound project to build a Walt Disney theme park.*

*"It will open to 11 million visitors a year next April.*

*"The company is also supplying Ulster workers to the Ministry of Defence in Gibraltar and Expo.*

*"Last night, a spokesman for the well-regarded Mivan and Disney companies said that they had no inkling the IRA had penetrated vetting and security procedures."*

*Then, with a sub-headline of "Rackets", it continues:*

*"Although Euro Disney is not an IRA target, MI6 fears the Provisionals are smuggling weapons to the Continent in vehicles taking building materials to the projects.*

*"It also believes the IRA disguises 'active service units' as building workers to get them overseas easily.*

*"Last night, a Special Branch officer said, 'We are very concerned about this crowd. They are a hard crew. The potential is enormous because the IRA has always penetrated the building industry for money-making rackets'.*

*"Among the leading IRA men at Euro Disney are: Joe Haughey, 38, a high-ranking IRA intelligence officer convicted of kidnapping a driver whose taxi was then used in the murder of a deputy prisoner governor; Jim Gillan, 46, once jailed for 12 years after police captured him with a submachine gun; Peter Keeley, a prominent Provisional from Newry; and then, finally, the IRA's operations officer in Belfast.*

*"Last week, Haughey and a number of other Provisionals could be seen working on the 'Thunder Mountain' ride, one of the main attractions.*

*"Gillan, whose terrorist tasks have included identifying IRA targets, returned to Belfast recently to visit his family. Last night, Ivan McCabrey, Mivan's Chairman, said his company had no record of the IRA making threats over their current sites abroad.*

*"However, he added, 'It has received threats in the past and the company no longer undertakes work for the Ministry of Defence in the province'."*

*Then, with a sub-headline of "Bullet":*

*"Two years ago, one of its directors escaped death when a bomb left beneath his car was noticed.*

*"Not only has the IRA infiltrated the sites, but it has allegedly prevented some men from working on them. Simon Treanor and Gervase Henry were stopped from taking up labouring jobs Mivan gave them at Euro Disney after they fell foul of the IRA.*

*"Threatened that they 'would get a bullet' if they did not leave Ulster, they were offered jobs in France.*

*"When they went home to collect their passports, they were spotted by IRA men.*

*"At the airport, they received a message from Mivan saying they were unable to provide them with security passes.*

*"The IRA is running that site as a closed shop', said one relative."<sup>647</sup>*

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<sup>647</sup> This was read into the record on Day 72.

**19. Mr Keeley/Fulton lies to Judge Cory about being told that Mr Corrigan telephoned the IRA to tell them that the two RUC Officers were in Dundalk station**

1.483 It will be recalled that in his statement to Judge Cory, Mr Keeley/Fulton stated:

*I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my senior IRA commander was told by a member of PIRA that Owen Corrigan had telephoned to the Provisional IRA to tell them that officers Breen and Buchanan were at Dundalk station.*

1.484 It will also be recalled, commenting on this statement, Judge Cory stated at paragraph 2.150:

*“... the statement could be taken to constitute evidence that Eoin Corrigan was passing information to PIRA members while he was a Garda Sergeant stationed at Dundalk. Further, that on the day of the massacre he telephoned a PIRA member to advise that Breen and Buchanan were at Dundalk Station. If this evidence is accepted by those making the findings of fact, then it could certainly be found to constitute collusion. It is a document that must be given very careful consideration...”*

1.485 However, in response to questioning from Counsel for Mr Corrigan he stated that he was not told that Mr Corrigan had telephoned his IRA commander to tell him that Breen and Buchanan were in Dundalk.

*“Q. But you think that Mickey Collins comes back a second time and tells you that the incident was the killing of two RUC officers?”*

*A. Yes.*

*Q. And are you stating on that occasion he says to you about the friend?”*

- A. *"Our friend," yes.*
- Q. *And what words did he use?*
- A. *Just, it was "our friend" helped out.*
- Q. *That is all he said?*
- A. *Something like that, yeah.*
- Q. *OK. And --*
- A. *I took it to be Owen Corrigan.*
- Q. *OK. He didn't mention Owen Corrigan?*
- A. *Not by name, no, no, no.*
- Q. *He didn't mention that Owen Corrigan had seen the officers in the station?*
- A. *No, he didn't say that.*
- Q. *He didn't say that?*
- A. *No, no.*
- Q. *OK. This is what you said to Judge Cory: "I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my senior IRA commander" -- presumably, 'Mooch' Blair --*
- A. *Yes.*
- Q. *-- "was told by a member of PIRA" -- presumably, Mickey Collins -- "that Garda B had telephoned to the Provisional IRA to tell them that officers Breen and Buchanan were at the Dundalk Station."*
- A. *No, well that wouldn't be totally correct, no.*
- Q. *OK. In your statement to Judge Cory, there are two substantive paragraphs, the one about Fintan Callan's Céilí House and this one here. You are now stating that what you said to Judge Cory is incorrect?*
- A. *I can't remember it totally. If you are saying that is what is written down on the statement --*
- Q. *Yes, that's incorrect?*
- A. *It's not totally correct.*
- Q. *Yes, it's incorrect, you have said it already?*

A. Yes.<sup>648</sup>

**20. Mr Keeley/Fulton accepts that he has no direct knowledge of Mr Corrigan's involvement and his evidence is based on assumption and speculation as to the identity of "our friend"**

1.486 Mr Keeley/Fulton accepted that he had no direct knowledge of Mr Corrigan having an involvement in the operation to murder the two officers and that his evidence was based on his assumption or speculation that Mr Corrigan was 'our friend.'

*"Q. And just so as we can recount, your evidence is that on the 20th of March, 1989, you were in 'Mooch' Blair's house?*

*A. House in Dundalk, yes.*

*Q. Tell us what happened?*

*A. It was just we were in the house, we would have been talking about stuff, and Mickey came over, reports coming in there has been a shooting, and then we found out that it was the police, and this is when it was said "our friend," so that is why I took it that it was "our friend," Owen Corrigan.<sup>649</sup>*

**21. Mr Keeley/Fulton is still in the pay of M15**

1.487 It should be noted that, according to his own evidence, MI5 still pay Mr Keeley/Fulton and pay for his accommodation.

**21. The absence of any documentary corroboration of Mr Keeley/Fulton's claims that he filed intelligence reports on Mr Corrigan**

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<sup>648</sup> Day 67, page 75-76.

<sup>649</sup> Day 67, page 75.

1.488 Absolutely no documentary corroboration in the form of SB50s, MISRS or MI5 reports have been provided to the Tribunal which were filed by Mr Keeley/Fulton or which were based on information he provided regarding Mr Corrigan.

## Chapter 19 The Tribunal's Inquiry into the 1985 RUC SB50

### A. Text of the SB50

1.489 The SB50 stated:

#### *"PIRA ACTIVITY*

*[Redacted] Owen Corrigan a Sergeant in the Garda Special Branch in Dundalk is helping out the PIRA. [Redacted] Corrigan is keeping both the boys and the organisation well informed and he lets the boys know what the Security Forces are doing in the North when he can.*

#### COMMENT

*There is a Sergeant Owen Corrigan attached to the Garda Special Branch stationed in Dundalk.*

*[Handwritten]*

- 1. Ensure that Corrigan has been recorded on W/Slip.*
- 2. Copy to [Redacted] N.D.D [No downward dissemination.]"*

### B. Evidence of the RUC Officers who collected and graded the SB50

1.490 The Tribunal heard evidence from the two RUC Officers who compiled the SB50, Witnesses Q and Z, and from their Supervising Officer, Witness X.

1.491 Witness Z was a Detective Sergeant attached to Newry Special Branch in June 1985.<sup>650</sup> He, along with another former member of the RUC, Witness Q, was the author of an SB50 dated June 1985.<sup>651</sup>

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<sup>650</sup> Day 98 page 3.

<sup>651</sup> Day 98 pages 1 & 14.

1.492 Witness Z stated that he received this information from the late Mr John McNulty. He stated that Mr McNulty was a businessman who was involved in grain smuggling and who had previously provided information to the RUC. He was not a registered informant. He was not, as far as Witness Z was aware, a member of the PIRA.<sup>652</sup> He stated that Mr McNulty was classified as a “casual contact” and was rarely paid for his information.<sup>653</sup> He stated that Mr McNulty “... was not of the calibre of person to grade the intelligence B2 ... I believe that this person was a person who supplied intelligence of what we would term a medium grading.”<sup>654</sup> He accepted under cross-examination by Counsel for Mr Corrigan that it was possible that the information that Mr McNulty had received was motivated by a desire to discredit Mr Corrigan.

“Q. *I appreciate that, sir. But isn't it a possibility that the Chairman has to consider that the ultimate source of this information may have been going out of their way to damage a guard who was investigating illegal smuggling they were involved in, isn't that a possibility, sir?*

A. *You are suggesting it's a possibility. Unfortunately, I can't make that assumption. I don't know. If I could remember the circumstances, I would know if there was a conflict of interest between Mr. Corrigan and, possibly, the person who told the source. That, certainly that would make a fair assumption, that I could make a fair comment on that. You can make that suggestion. I can't deny it, but I can't say either one way or the other, I am sorry, but, you know, it has to be a possibility.”<sup>655</sup>*

1.493 He stated that Mr McNulty telephoned them and told them he needed to see them “... about something important.”<sup>656</sup>

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<sup>652</sup> Day 98 (11 May 2012) page 60.

<sup>653</sup> 98/18.

<sup>654</sup> Day 98 (11 May 2012) page 36.

<sup>655</sup> Day 98 (11 May 2012) page 61-62.

<sup>656</sup> 98/16.

1.494 Under cross-examination by Counsel for the Garda Commissioner, Witness Z accepted that the information recorded on the SB50 was not a verbatim account of what Mr McNulty told him.<sup>657</sup> In particular, Witness Z accepted that Mr McNulty did not use the words “*the security forces*” but stated that he was satisfied that the SB50 “*fairly reflects what he [McNulty] inferred.*”<sup>658</sup>

1.495 Witness Z stated that the information was hearsay:

“Q. Yes. Now, I think to put it in context, as well, my understanding is that what you heard was something which your source, in turn, had heard, isn't that right?

A. Correct.

Q. So, in terms it might be described as hearsay, is that right?

A. Correct.”<sup>659</sup>

1.496 He said that he was unable to remember the context of how Mr McNulty had received the information but stated that it was second hand information.

“Q. I said we know that it's second hand information, isn't it? That he heard it from somebody else?

A. He got it from somebody else in another context, yes.

Q. And clearly, it would be relevant to your consideration of it, the circumstances in which he got it?

A. Yes.

Q. Now, can you tell us about that?

A. I can't. I have already explained that to you, that I can't recall the circumstances under which he actually obtained that intelligence. I can't, for the life of me, remember. I wish I could. It would certainly be helpful to you, to the Tribunal, it would be helpful to me, but, unfortunately, I have tried to bury these things for the last eleven years. I didn't really want to be here, I have to

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<sup>657</sup> 98/25-26.

<sup>658</sup> Day 98 (11 May 2012) page 27.

<sup>659</sup> 98/15.

*say that, but I think I have come here for the sake of justice, sort of to get this out of my system once and for all, and never have to talk about it again.*

Q. *Certainly, it would be very important to consider whether he got it at half three in the morning in a public house or whether he got it from somebody who was reliable?*

A. *I wish I could tell you that, but I can't, I can't recall how he came about it.*<sup>660</sup>

1.497 He stated that he regarded this information as believable and of medium grade.<sup>661</sup> He stated that he was unable to remember the precise content of the SB50 and the grading the information received due to the passage of time. This was not helped by the fact that he had not been able to refresh his memory by having sight of the original SB50 or an un-redacted copy of the SB50. Under cross-examination by Counsel for Mr Corrigan, Witness Z accepted that he was unable to dispute the evidence that had been given to the Tribunal by Witness X to the effect that the intelligence was more like gossip than intelligence.<sup>662</sup>

1.498 Under cross-examination by Counsel for Mr Corrigan, Witness Z accepted that he had a duty to record information of this sort regardless of his belief as to its credibility.<sup>663</sup>

1.499 Witness Z stated that they asked Mr McNulty to tell them if he ever heard anything like this again:

*“Q. Now, in your circumstances when you were filling out the form, did you ask him, your source, to provide you with more detail?”*

*A. We asked him in the sense that how he came about the intelligence, and we based the report on that. Also, yes, we would have suggested to him if anything ever came to light*

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<sup>660</sup> Day 98 (11 May 2012) page 38. Cf. Pages 38-39.

<sup>661</sup> Day 98 page 15.

<sup>662</sup> Day 98 (11 May 2012) page 60.

<sup>663</sup> Day 98 (11 May 2012) page 55.

*again in the context of hearing any further in relation to that man, yes, we would have asked him to come back to us on it.*<sup>664</sup>

1.500 He stated that Mr McNulty never came to them with additional information or information which substantiated the earlier information.

*“Q. Okay. Now, in the four years after this document was generated and before Mr. McNulty tragically was murdered, did he ever come to you again with any information about Owen Corrigan, substantiating this?*

*A. No, he did not.*

*Q. Did you ever seek information from him in respect of Owen Corrigan?*

*A. He was asked if he learnt of anything further that would corroborate it or substantiate it or make it -- if anything else came to light, yes, he would have been asked to come forward and make that available to us. I can say now that he did not do that.*<sup>665</sup>

1.501 Witness Z stated that he met with Detective Sergeant Corrigan on a number of occasions. Witness Z stated that he often received telephone calls from Detective Sergeant Corrigan. These calls generally related to vehicle checks which were required for security inquiries.<sup>666</sup> He stated that, notwithstanding the SB50, he had no difficulty in providing any such information to Mr Corrigan.<sup>667</sup> The witness disagreed with the suggestion that this indicated that he didn't really consider Corrigan to be a security risk but there really is no other construction you can put on it. Witness Z accepted that any positive reports concerning Detective Sergeant Corrigan would have been relevant.

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<sup>664</sup> Day 98 (11 May 2012) pages 41-42.

<sup>665</sup> Day 98 (11 May 2012) pages 63-64.

<sup>666</sup> Day 98 page 21.

<sup>667</sup> Day 98 (11 May 2012) page 65.

“Q. I suppose it would be relevant also to consider whether this -- these allegations or rumours, or whatever they are, whether they were contradicted by any other reporting, isn't that right; you'd have to consider that?

A. Yes, absolutely, yes.”<sup>668</sup>

1.502 Witness Z stated that the first time he met Detective Sergeant Corrigan was when he visited Dundalk Station with two other RUC Officers to meet Dan Prenty. He stated that Dan Prenty “... sort of made the notion at the table, you know, don't say anything. You know.”<sup>669</sup> He stated that he had heard about Detective Sergeant Corrigan prior to that meeting. He said that when he arrived as a Detective Constable in Newry he was told by his Detective Inspector that “as far as Dundalk was concerned, Owen Corrigan was not to be trusted and nothing sensitive was to be passed to him.”<sup>670</sup> He said that this was common knowledge amongst all his colleagues in Special Branch in Newry Station.<sup>671</sup> He said that he discussed this information with his own colleagues.<sup>672</sup> He said that he never discussed the information with members of the Gardaí.<sup>673</sup>

1.503 Witness Z stated that the fact that the SB50 stated that “Ensure Corrigan has been recorded on W/Slip” meant that in June 1985 there was no file on Mr Corrigan.<sup>674</sup> He described the procedure that would be followed after he submitted the SB50 as follows:

“A. No, it's not. No, that would be a function performed up in Headquarters. The way it would -- the 50 would have went up to Headquarters, it would have been checked against known records. If there was no record of the individual names on the report, then there was a White Slip created and you start a

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<sup>668</sup> Day 98 (11 May 2012) page 42.

<sup>669</sup> Day 98 page 19.

<sup>670</sup> Day 98 page 19. Cf. page 41.

<sup>671</sup> Day 98 page 20.

<sup>672</sup> Day 98 (11 May 2012) page 50.

<sup>673</sup> Day 98 (11 May 2012) page 50.

<sup>674</sup> Day 98 (11 May 2012) page 47.

*record and make reference to where the SB50 could be found. If, ever, somebody came to make inquiries, then they would have known in Headquarters, yes, this person, and they could have turned up the original document. That was the reason for that. That was done by people in Headquarters, not by me.*"<sup>675</sup>

1.504 Witness Z stated that if any further information or intelligence concerning Detective Sergeant Corrigan had been provided to the RUC a file would have been created. He agreed with the suggestion of Counsel for Mr Corrigan that since no such file or documentation had been provided to the Tribunal it would be fair to assume that no such file or documentation exists.

*"Q. Okay. And because of that, sir, we can take it that a file was never opened on Owen Corrigan, because if there had been a White Slip and more information came in, a file would have been created on him, isn't that correct?*

*A. Well, certainly, all I can say in relation to records is that when this document went to Headquarters, there was a White Slip opened on Mr. Corrigan, which would indicate that there was no other record held in Headquarters in relation to him. That would be available to anybody who wanted to registry and check -- any Special Branch member who would want to go to Registry and check an individual out. If there was anything further came in after creating a file on Mr. Corrigan, I would not necessarily be aware of it unless I actually physically went to Headquarters and went into Registry and checked to see if Mr. Corrigan had any further record.*

*Q. No one has been provided with any such documents or file, so we have to assume, sir, that they don't exist, isn't that so?*

*A. Yes, that is a fair assumption.*"<sup>676</sup>

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<sup>675</sup> Day 98 (11 May 2012) page 63.

<sup>676</sup> Day 98 (11 May 2012) page 64.

- 1.505 Witness Z stated that the Gardaí he dealt with in Dundalk preferred to meet outside the Station. He stated that sometimes they met in car parks.<sup>677</sup>
- 1.506 Witness Z stated that he consulted with senior officers and he was advised to commit the information to paper and forward it through the normal channels.<sup>678</sup>
- 1.507 Witness Z stated that Mr McNulty was involved in the smuggling of grain.<sup>679</sup> He provided them with information which fed into a joint RUC and Customs Operation entitled “OPS AMAZING” which took place in May 1987.
- 1.508 Witness Z stated that Mr McNulty had previously provided information to an RUC colleague who had been transferred. He stated that Mr McNulty had ceased to provide information after his RUC colleague had been transferred. Witness Z stated that he renewed contact with Mr McNulty on behalf of the RUC after receiving a recommendation to that effect. He stated that he dealt with Mr McNulty on a “*face to face*” basis and that they met in a variety of locations.
- 1.509 Witness Z stated that he had no evidence or information that Detective Sergeant Corrigan, or any other member of An Garda Síochána, colluded with the PIRA in the deaths of Officers Breen and Buchanan.<sup>680</sup> He said that he did not mention his earlier SB50 to his superiors in the aftermath of the killings.<sup>681</sup>
- 1.510 It is submitted that this shows that he didn’t give the information a lot of credibility.
- 1.511 Witness Z outlines the circumstances in which he came to give evidence to the Tribunal as follows. He stated that he had initially decided not to give to

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<sup>677</sup>

98/20.

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98/16.

<sup>680</sup>

Day 98 (11 May 2012) page 52.

<sup>681</sup>

Day 98 (11 May 2012) page 54.

give evidence to the Tribunal but only changed his mind on being told that Mr Corrigan, who was the Senior Detective on duty, went missing from his post on the night his informant Mr McNulty was killed. He said that he was told this by the solicitor for the Breen Family. He said that the solicitor had told him that Mr Corrigan had faced disciplinary proceedings as a result. He later corrected this evidence to say that it was a member of the Smithwick Inquiry Team who provided him with this information.<sup>682</sup>

*“Q. And what did he say to you about Mr. Corrigan on the night of Mr. McNulty's murder?”*

*A. He made me aware that there had been disciplinary hearings instigated against him in relation to the night of the murder.*

*Q. He said to you that disciplinary hearings had been instigated against Mr. Corrigan for what happened on the 17th of July, 1989?”*

*A. Yes.*

*Q. What else did he say to you?”*

*A. He just made me aware of that.”<sup>683</sup>*

1.512 Counsel for Mr Corrigan informed Witness Z that Mr Corrigan had never been the subject of disciplinary proceedings for being absent on 17 July 1989.<sup>684</sup> On being so informed Witness Z stated *“I am sorry if I made a mistake.”<sup>685</sup>*

1.513 It is important to note that Witness Z stated categorically that he was not suggesting that Mr Corrigan was involved in the murder of Mr McNulty:

*“Q. And am I to take it that Mr. McBurney was trying to suggest to you that, in some respect, Detective Sergeant Corrigan had been involved in the murder of John McAnulty?”*

***A. Oh, no, no, he was not suggesting that. Absolutely not.**  
*What he was making available to me was that there was**

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<sup>682</sup> Day 98 (11 May 2012) page 85.

<sup>683</sup> Day 98 (11 May 2012) page 67.

<sup>684</sup> Day 98 (11 May 2012) page 85.

<sup>685</sup> Day 98 (11 May 2012) page 85.

*something not right about a person who was supposed to be on duty, then had not made available any -- and to this day has not made available -- on the night that the PIRA abducted a person who was the original author of the report that said he was involved with the IRA. I'm not suggesting that Mr. Corrigan was involved in that, I'm not saying that; I am just saying that he needs to give a reasonable explanation as to where he was.*"<sup>686</sup>  
(Emphasis added)

1.514 The IRA stated that they killed Mr McNulty because he was an informant. Witness Z stated that he believed that the Unit that carried out the killing was the South Armagh Brigade.<sup>687</sup>

1.515 At the conclusion of Witness Z's evidence, Counsel for the Tribunal Mrs Lavery stated:

*"Chairman, I am stunned that it has taken this length of time to find out that there weren't two murders associated with 'Ops Amazing', there were three murders, because the unfortunate Mr. McAnulty, as we have heard from the witness, his belief was that it was because of some involvement with 'Ops Amazing', and you will recall that 'Ops Amazing' is what brought Harry Breen and Bob Buchanan down to Dundalk in the first place.*"<sup>688</sup>

1.516 In response to objections from Counsel for the Gardaí and the PSNI, Mrs Lavery went on to say:

*"MRS. LAVERTY: It is coming out today, Chairman, that John McAnulty's murder may have been part of this, the kickback from 'Ops Amazing' which, we were told and the evidence has been, was what precipitated*

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<sup>686</sup> Day 98 (11 May 2012) page 69.

<sup>687</sup> Day 98 (11 May 2012) page 78.

<sup>688</sup> Day 98 (11 May 2012) page 93.

*the trip to Dundalk by Harry Breen and Bob Buchanan. So here is somebody else that you have heard today may well have been touched by the same unit and by the same*

...

*And as well as that, it was evidence that wasn't led by the Tribunal but the Tribunal was aware of it. It was in response to Mr. O'Callaghan that the witness gave evidence that it was the same night that Mr. Corrigan was absent without leave from his post. So that's obviously a matter that needs to be inquired into and answers need to be given to you as a result of that, Chairman. But the PSNI would have known this information since the very beginning and it's only in the latter stages now that the Tribunal has been made aware of the, of who the source was and the significance for other reasons and its connection to the Tribunal. So I resist the criticism. Our job, be it -- is not to win friends and influence people, Chairman. It's to, as best as possible, expedite your inquiries, whether that gains popularity or not.<sup>689</sup>*

1.517 Witness Q was a Detective Constable in Special Branch attached to Regional Crime Squad CID in Newry in 1985. He told the Tribunal that in early 1985 terrorists carried out two high profile attacks as a result of which he and his colleagues were directed to go out into the field and gather intelligence. He told the Tribunal that he and Witness Z contacted one of their sources (whom we know was John McAnulty), known by the nickname 'Big Note,' in order to see if he had, or could find out, any information relating to the two attacks.<sup>690</sup>

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<sup>689</sup> Day 98 (11 May 2012) page 94-95.

<sup>690</sup> Day 100 (23 May 2012) page 3.

1.518 Witness Q told the Tribunal that 'Big Note' was a businessman involved in the transportation business. He stated that 'Big Note' had been one of his sources for approximately two years prior to 1985.<sup>691</sup> He could not remember how many times he met with 'Big Note' over this two year period but indicated that *"it would have been a number of times."*<sup>692</sup> He stated that 'Big Note' "circulated" with high and low ranking members of the Provisional IRA and that he had no reason to *"discount what he had told us. And [he] did give us information of note."*<sup>693</sup> He stated that 'Big Note' was not paid for his information and only received expenses *"if we spoke to him outside or far from his own abode."*<sup>694</sup>

1.519 Witness Q told the Tribunal that 'Big Note' came back to them with information in relation to two IRA bomb attacks on the RUC and that he also gave them certain information about Detective Sergeant Owen Corrigan.<sup>695</sup> He said that 'Big Note' imparted this information orally and that it was transcribed by Witness Z.<sup>696</sup> Witness Q told the Tribunal that he was satisfied that the SB50 document accurately reflected what 'Big Note' told them.<sup>697</sup>

1.520 Under cross-examination by Counsel for An Garda Síochána, Witness Q stated that he was unable to remember who contacted who initially: *"He may have contacted us, sir. It's so long ago, it's very difficult to remember. I think, in this instance, he may have contacted us."*<sup>698</sup>

1.521 Witness Q stated that the information provided by 'Big Note,' and recorded on the SB50, was assessed as *"of medium value and believable."*

1.522 Witness Q told the Tribunal that he could not recall what was his reaction to the information concerning Detective Sergeant Corrigan. He speculated that

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<sup>691</sup> Day 100 (23 May 2012) page 5.

<sup>692</sup> Day 100 (23 May 2012) page 6.

<sup>693</sup> Day 100 (23 May 2012) page 6.

<sup>694</sup> Day 100 (23 May 2012) page 5-6.

<sup>695</sup> Day 100 (23 May 2012) page 3-4.

<sup>696</sup> Day 100 (23 May 2012) page 4.

<sup>697</sup> Day 100 (23 May 2012) page 10.

<sup>698</sup> Day 100 (23 May 2012) page 18.

it might have been surprise but he doubted that this was the case.<sup>699</sup> He stated that he and Witness Z discussed the matter with the Inspector in charge of their office *“and possibly among those who worked in our office”*.<sup>700</sup>

1.523 Witness Q told the Tribunal that he did have dealings with members of An Garda Síochána from Dundalk Station when he was stationed in Newry. He stated that he met Gardaí in Dundalk Station and elsewhere. He stated that the decision to meet Dundalk Gardaí at locations other than Dundalk Station would *“most likely”* have been at the initiative of the Gardaí.<sup>701</sup> He told the Tribunal that he used to exchange low level information with the Gardaí at these meetings – a process which he described as *“sword fencing”* or *“horse trading.”* He stated that they would not have spoken of any matters that were particularly sensitive as such matters would have been dealt with at Headquarters level.<sup>702</sup>

1.524 Witness Q told the Tribunal that he met with Detective Sergeant Corrigan *“a couple of times”* during the course of these meetings and that he engaged in the *“sword fencing”* or *“horse trading”* exercise with Detective Sergeant Corrigan.<sup>703</sup> He described Detective Sergeant Corrigan as *“a person who had an air of authority about him”* and indicated that it may have been Detective Sergeant Corrigan who warned him against discussing sensitive information in Dundalk Station and that such information should more properly be passed at headquarters level.

“Q. *And turning now to the last name I am going to put to you, did you meet Detective Sergeant Owen Corrigan?*

A. *I did.*

Q. *How many times do you think you met Sergeant Corrigan?*

A. *No more than a couple of times.*

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<sup>699</sup> Day 100 (23 May 2012) page 4.

<sup>700</sup> Day 100 (23 May 2012) page 4.

<sup>701</sup> Day 100 (23 May 2012) page 7.

<sup>702</sup> Day 100 (23 May 2012) page 8.

<sup>703</sup> Day 100 (23 May 2012) page 9.

Q. *And how did you find him?*

A. *Well, I found him a person who had an air of authority about him.*

Q. *Did you do any of the sword-fencing or horse-trading with him?*

A. *Yes, I did.*

Q. *And how did that go?*

A. *We think it may have been him. It may have been him who was talking about sensitive information being passed through his Headquarters, rather than speaking about it within the context of Dundalk Station.”<sup>704</sup>*

1.525 In 1985 Witness X was the Deputy Head of Special Branch in South Region East. This Region covered Newry, Armagh, Lurgan and Portadown.<sup>705</sup> The SB50 was submitted to him by Witnesses Z and Q.<sup>706</sup> He said that their informant was a medium grade contact.<sup>707</sup> He said that as far as he could recall the information being relayed by the informant was second hand information – hearsay.

“Q. MR. VALENTINE: *Witness X, do you recall whether the intelligence information recorded here was first-hand knowledge; in other words, did the source perceive with his own eyes Mr. Corrigan helping out the boys or was it a second hand knowledge?*

A. *As far as I would have been aware, it would have been second hand.*

Q. *And by that, do you mean that he heard someone else say that -*  
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A. *Yes, like --*

Q. -- *that this was the case?*

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<sup>704</sup> Day 100 (23 May 2012) page 9.

<sup>705</sup> Day 93 (25 April 2012) page 89.

<sup>706</sup> Day 93 (25 April 2012) page 90.

<sup>707</sup> Day 93 (25 April 2012) page 91.

- A. *Like hearsay, the same category as hearsay evidence, yeah.*
- Q. *In the same category as hearsay evidence?*
- A. *Yes.*
- Q. *In other words, the source who provided this information to your officers had heard someone else say that "Owen Corrigan, a Sergeant in Garda Special Branch in Dundalk, is helping out the Provisional IRA"?*
- A. *In all probability, yeah.*<sup>708</sup>

1.526 Witness X told the Tribunal that he dealt with 50-60 SB50s per day and that the normal procedure was that if the intelligence received merited any immediate action it was his responsibility to ensure that such action was taken.<sup>709</sup> He simply directed that a white slip be prepared.

1.527 He said that he did not brief his own officers who were dealing with the Gardaí about the contents of the SB50 because any contact between the two forces was a matter to be conducted at HQ level.<sup>710</sup> He had heard rumours like the subject matter of the SB50 before<sup>711</sup> but it did not cause him any concern because he knew Corrigan well meeting him once a month.<sup>712</sup> He did not believe the allegation that Corrigan was assisting the IRA.<sup>713</sup>

- “Q. *When you received this intelligence in 1985 that indicated that Detective Sergeant Corrigan was helping out the Provisional IRA, did you believe it?*
- A. *To be quite honest, it didn't really -- it didn't concern me. From my own point of view, I didn't believe it.*
- Q. *How would you have -- how did you characterise the intelligence in your own -- I know the grading was medium, but why did you not believe it?*

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<sup>708</sup> Day 93 (25 April 2012) page 93.  
<sup>709</sup> Day 93 (25 April 2012) page 94.  
<sup>710</sup> Day 93 (25 April 2012) page 95.  
<sup>711</sup> Day 93 (25 April 2012) page 96-97.  
<sup>712</sup> Day 93 (25 April 2012) page 97.  
<sup>713</sup> Day 93 (25 April 2012) page 98.

- A. *Well, again, as I say, like, it just seemed to me like gossip more than intelligence.”* Q. *When you received this intelligence in 1985 that indicated that Detective Sergeant Corrigan was helping out the Provisional IRA, did you believe it?*
- A. *To be quite honest, it didn't really -- it didn't concern me. From my own point of view, I didn't believe it.*
- Q. *How would you have -- how did you characterise the intelligence in your own -- I know the grading was medium, but why did you not believe it?*
- A. *Well, again, as I say, like, it just seemed to me like gossip more than intelligence.*<sup>714</sup>

1.528 Witness X told the Tribunal that he was wary of travelling to Dundalk Station because Corrigan had warned him that it was dangerous for him to do so. He recalled one particular occasion in 1983/1984 when he was in Dundalk Station and Corrigan told him to “*hang around*” for a while as there were suspected subversives downstairs in the Station.<sup>715</sup> He said that afterwards Corrigan suggested that in future they meet in places other than the station, to be arranged between them over the telephone.<sup>716</sup>

### **C. The Grading of the SB50**

1.529 The SB50 was graded C6, C for the source and 6 for the information. A ‘6’ was the lowest grade that information could receive. It could not therefore be regarded as reliable.

### **D. Awareness of the SB50 by other RUC Officers**

1.530 None of the other RUC Officers gave evidence that they were aware of the SB50.

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<sup>714</sup> Day 93 (25 April 2012) page 98-99.

<sup>715</sup> Day 93 (25 April 2012) page 99-100.

<sup>716</sup> Day 93 (25 April 2012) page 100.

1. Witness 6 said that he was not aware of any intelligence.<sup>717</sup>
2. Inspector Day said that he was never warned about travelling to Dundalk and if there was intelligence he would expect to have been told about it.<sup>718</sup>
3. Witness 36 gave no evidence in relation to the 1985 Intelligence/ SB50.
4. David Cushley said that he did not recall any intelligence in relation to a mole in Dundalk Station.<sup>719</sup>
5. Alan Mains gave no evidence in relation to the 1985 Intelligence/ SB50.
6. David McConville gave no evidence in relation to the 1985 Intelligence/ SB50.
7. Witness 9 gave no evidence in relation to the 1985 Intelligence/ SB50.
8. Witness 27 said that he did not see any intelligence from 1985 suggesting any concern in relation to Dundalk or Detective Sergeant Corrigan.<sup>720</sup>
9. Witness 33 gave no evidence in relation to the 1985 Intelligence/ SB50.
10. Brian Lally said that he did not see any intelligence suggesting any concern about Dundalk.<sup>721</sup>
11. Witness 60 said that he did not see any intelligence from 1985 suggesting any concern in relation to Dundalk or a particular Garda.<sup>722</sup>

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<sup>717</sup> Day 6, page 98.

<sup>718</sup> Day 6, pages 149-150.

<sup>719</sup> Day 7, pages 34-35.

<sup>720</sup> Day 30, pages 126-127.

<sup>721</sup> Day 35, pages 63-64.

12. Witness 61 said that he was not aware of any intelligence or SB50 from 1985 suggesting any concern in relation to Dundalk or a particular Garda.<sup>723</sup>
13. Harmon Nesbitt said that he was not aware of any concern that existed within the RUC in relation to Dundalk Station.<sup>724</sup>
14. Witness 24 (Day 41) was the Superintendent in Charge of the Republican/ Loyalist and Communist Desks in 1985. He had no recollection of seeing or hearing about the 1985 Intelligence/ SB50. He is not surprised at this as there were hundreds of pieces of intelligence coming through.
15. Witness 29 (Day 41) gave no evidence in relation to the 1985 Intelligence/ SB50.
16. Witness 41 was serving in Newry in 1985 and he said that he never saw or heard about the 1985 Intelligence/ SB50.<sup>725</sup>
17. Witness 62 said that in 1985 he was a sergeant in a surveillance team in the area but he never saw or heard about the 1985 Intelligence/ SB50.<sup>726</sup>
18. Witness 64 (Day 53) gave no evidence in relation to the 1985 Intelligence/ SB50.
19. Witness 64 said that he was never aware of any intelligence generated in relation to Owen Corrigan whether by means of SB50 or otherwise.  
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<sup>722</sup> Day 40, pages 10-11 and 18.

<sup>723</sup> Day 40, pages 28 and 35.

<sup>724</sup> Day 40, pages 76-77.

<sup>725</sup> Day 44, Pages 38-39.

<sup>726</sup> Day 51, Page 90.

20. Blair Wallace (Day 60) said that in 1985 he was ACC Operations. He said that he never saw or heard anything about the 1985 intelligence or SB50 in relation to Corrigan.

21. Witness 70 said that he did not see or hear about any intelligence from 1985 suggesting any concern in relation to Dundalk or a particular Garda.<sup>728</sup>

22. Witness 71 said that he was not aware of any “*information, intelligence, rumour, innuendo*” or anything else in relation to Corrigan or Dundalk Station.<sup>729</sup>

23. Witness 39 said that he was never aware of any intelligence that suggested a concern over Dundalk Station. He was never made aware of the 1985 intelligence.<sup>730</sup>

24. Raymond White (Day 71) said that he had no recollection of the 1985 Intelligence/ SB50.

## **E. Garda Awareness of the SB50**

1.531 An Garda Síochána have indicated that no record exists of the SB50 being received, or of the contents of that report being received, by it from the RUC. Not one of the Garda Officers who gave evidence to the Tribunal testified that they were aware of the SB50 or its contents.

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<sup>727</sup> Day 53, page 93.

<sup>728</sup> Day 65, page 51.

<sup>729</sup> Day 65, Page 122

<sup>730</sup> Day 69, Page 40.

## Chapter 20 The Tribunal's Inquiry into Ian Hurst aka Martin Ingram

### A. Introduction

1.532 Ian Hurst is also known as Martin Ingram.

1.533 Mr Hurst/Ingram told the Tribunal that he had been a member of the British Army and had served in the Force Research Unit (FRU) in Northern Ireland.

1.534 He stated that he was sent to Northern Ireland in 1981. He stated that he was attached to a unit called '3SCT' which was attached to 12 Intelligence Company. He stated that his job was to input data into a computer intelligence system called '3702.' He stated that the data was collected from documents known as 'RUCIRACs' and 'MISRS.' He stated that 'RUCIRACS' was the army term for RUC SB50s. He stated that he spent approximately 3 months in this unit and he was then promoted to Lance-Corporal and transferred to '121 Intelligence Section' where he worked as a collator of intelligence. He stated that in 1982 he was transferred to the Force Research Unit.

1.535 He stated that the Force Research Unit operated outside the normal chain of command and reported directly to the Director of Special Forces.<sup>731</sup> He stated that he was subsequently promoted to Sergeant and that he was involved in the resettlement of exposed agents. He stated that he returned to England in 1987 where he completed an FRU Handler Course. He stated that he then returned to Northern Ireland where he worked as an Agent Handler in Enniskillen. He stated that he left the Force Research Unit in 1990.

1.536 Mr Hurst/Ingram has considerable experience of inquiries. He appeared as a witness at the Saville inquiry and Lord Saville rejected his evidence.<sup>732</sup> He met Mr Justice Barron as part of his inquiry into the Dublin Monaghan bombings. This is interesting because Mr Hurst/Ingram initially denied

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<sup>731</sup> Day 93, page 26.

<sup>732</sup> Day 92, page 189-195.

meeting Judge Barron and only admitted it when an internet article he wrote referring to the meeting was put to him.<sup>733</sup> It is also noteworthy that Judge Barron did not refer to Mr Hurst/Ingram in his reports – a fact which could be taken to show that he did not believe him or could not place reliance upon him. He also appeared before the Levenson Inquiry where he alleged that the security services were hiding documents from the inquiry and was forced to admit that he did not have the documents he was referring to.<sup>734</sup> He also went to the Stevens Inquiry.

1.537 It is submitted that Mr Hurst/Ingram's enthusiasm for inquiries together with the fact that he put his Tribunal statement on the internet and thereby put people's lives at risk shows that he is a publicity seeker.<sup>735</sup>

**B. Mr Hurst/Ingram states he has no evidence linking Mr Corrigan to the murders of the two RUC Officers**

1.538 It should be noted that at the outset of his evidence Mr Hurst/Ingram told the Tribunal that he had no evidence to suggest that Mr Owen Corrigan colluded with the IRA in the killing of Chief Superintendent Breen and Superintendent Buchanan.

*“Q. I appear for Mr. Corrigan. You're aware, Mr. Hurst, the purpose of this Tribunal, are you?”*

*A. I have read the terms of reference.*

*Q. It is to inquire into whether any members of An Garda Síochána colluded with the IRA in the murders of Chief Superintendent Breen and Superintendent Buchanan?”*

*A. Yes.*

*Q. Do you have any evidence linking Owen Corrigan in colluding with the IRA in the murder of those two RUC officers?”*

*A. No, not directly.”<sup>736</sup>*

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<sup>733</sup> Day 92, page 195-196

<sup>734</sup> Day 92, page 1989

<sup>735</sup> Day 92, page 200-201,

<sup>736</sup> Day 92, pages 88-89.

**C. Mr Hurst/Ingram accepts that his allegation against Mr Corrigan is based solely on what he states he was told by Witness 82**

1.539 It should also be noted that the extent of Mr Hurts/Ingram's evidence in respect of Mr Corrigan's involvement in the murders of the two RUC Officers is based solely on what he states he was told by Witness 82.

*"Q. Do you have any information linking Owen Corrigan in colluding with the IRA in the killing of those two RUC officers?"*

*A. Only what the cipher 82, we have discussed.*

*Q. Okay. Are you stating that Witness 82 said to you that Owen Corrigan leaked information to the IRA that assisted them in murdering the two officers?"*

*A. I think that would be a general description of that conversation, yeah.*

*Q. What did Witness 82 say to you?"*

*A. That's what I have just explained to you, that we had a general discussion that Mr Scappaticci and Owen Corrigan had been involved and had relayed information to Witness 82 via Scappaticci that there had been some involvement with Mr Corrigan."<sup>737</sup>*

...

*"A. Okay. Sir, cipher 82 told me that Mr. Corrigan was being handled by Mr. Scappaticci and had admitted or passed information to the IRA which was used in the attack upon Mr. Breen and Mr. Buchanan, and it was the communication. There were no specific details because it wasn't in the context that we were discussing it.*

*Q. Did you take it from that Mr. Scappaticci had told Witness 82 that Mr. Corrigan had given him this information?"*

*A. Yes.*

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<sup>737</sup> Day 92, page 89.

- Q. *So your evidence is that Owen Corrigan leaked information to Freddie Scappaticci, which had the effect of resulting in the death of these two officers?*
- A. *No, no, no, no. I am not saying the information was leaked to Mr. Scappaticci, what I am saying to you is that Mr. Scappaticci was making it aware that Mr. Corrigan had leaked it to the IRA.*
- Q. *And what specifically had been leaked, according to...*
- A. *I don't know, I don't know.*" <sup>738</sup>

1.540 He stated that he discussed Mr Corrigan with Witness 82 on two or three occasions.<sup>739</sup>

**D Mr Hurst/Ingram's evidence that he saw documents stating that Mr Corrigan was passing information to the IRA**

1.541 Mr Hurst/Ingram stated that he saw documents which recorded that Mr Corrigan was colluding with the IRA.<sup>740</sup>

- "Q. *Well, you haven't told us anything about that yet and I don't want to put words in your mouth so perhaps if there is some connection that you saw there that you want to tell us about, you can tell us now?*
- A. *In specifics?*
- Q. *Yes.*
- A. *Well, just that the documents would record Mr. Corrigan as being one.*
- Q. *Did you know Mr. Corrigan?*
- A. *No.*
- Q. *How did you come across his name?*
- A. *In documents, FRU. Again we would look at the whole province no matter where you are in the province because you could be*

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<sup>738</sup> Day 92, page 90.

<sup>739</sup> Day 92, page 52.

<sup>740</sup> Day 93, page 43.

*moved at very short notice and we would have an overall view. Rogue elements within the Irish Army, rogue elements within the RUC.”<sup>741</sup>*

...

*“Q. Are you saying that the intelligence documents that you saw suggested that Mr. Corrigan was leaking information to the IRA?*

*A. Yes, yes.”<sup>742</sup>*

1.542 Mr Hurst/Ingram was unable to provide any great detail as to what these documents contained. When probed, he moved from a position of saying that he saw documents which stated that Mr Corrigan associated with the IRA to a position in which he stated that he deduced that Mr Corrigan was passing information to the IRA because he was described as a ‘rogue’ Garda.

*“Q. I am just asking you, the type of information that you said you saw?*

*A. That he would be associating with known member of PIRA and would be passing information on. I can’t remember in specifics. Again, as I say, it is not really of any great significance to us.”<sup>743</sup>*

...

*“Q. What gave you the distinct impression or is it a distinct impression, I am just trying to tease this out, that he was leaking information to the IRA”*

*A. The word “rogue”.<sup>744</sup>*

...

*“Q. Do you recall any specifics about who you say he may have met?*

*A. No, I don’t. I can’t remember if it’s from the report or the desk’s been reported previously, but people like Patsy O’Callaghan*

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<sup>741</sup> Day 93, pages 43-44.

<sup>742</sup> Day 93, page 44-45.

<sup>743</sup> Day 93, Page 45.

<sup>744</sup> Day 93, page 47.

*were the type of people. Certainly Mr. Scappaticci, if that is what you are referring to?”<sup>745</sup>*

1.543 This was a very significant movement because it represented a very substantial dilution of the allegation being levelled by Mr Hurst/Ingram against Mr Corrigan.

1.544 Mr Hurst/Ingram was also quite vague in relation to the number of documents that he saw mentioning Mr Corrigan and the dates upon which he saw them.

*“Q. So, how often would you see documents that referred to Owen Corrigan?*

*A. I think as I have already explained, I think I probably saw from 1987, when I went back, maybe --- certainly more than anybody else but probably less than ten.*

*Q. Less than ten?*

*A. In regards to him, yes.*

*Q. Yes. And that would be over a period of what, a yea, two years?*

*A. No, I was there from '87 to '91, yeah '90, late '90.”<sup>746</sup>*

**E Witness 82 rejects Mr Hurst/Ingram’s evidence that he told Mr Hurst/Ingram that Mr Corrigan was passing information to the IRA or that there were documents suggesting Mr Corrigan was a rogue Garda or that he was passing information to the IRA**

1.545 Witness 82 told the Tribunal that he worked in the Force Research Unit in Northern Ireland. He stated that he worked in the same Unit as Mr Hurst/Ingram and that he knows Mr Hurst/Ingram. Witness 82 handled ‘Agent Steak Knife.’

1.546 Witness 82 told the Tribunal that he never saw any document referring to a Mr Corrigan during his time in the Force Research Unit.

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<sup>745</sup> Day 93, page 54.

<sup>746</sup> Day 93, page 50-51.

“Q. Very good. Okay. Then I will pass over, since you are not familiar I will pass over the remainder of that. Now, if you go to page 42, please, where Mr. Hurst was asked about what he could contribute to the Tribunal's investigation of the allegation of collusion. And you see there at line 20, he refers to "documents would record Mr. Corrigan as being one". Now, that is what he says, but I'll carry on then. He was asked: "How did you come across his name?" And he said "in documents FRU. Again, we would look at the whole province, no matter where you are in the province because you could be moved at very short notice and we would have an overall view." Then he went on to speak about rogue elements within the Irish Army, rogue elements within the RUC. I just stop there at that point. Are you aware of any document of that nature referring to Mr. Corrigan?

A. I've never seen a document referring to Mr. Corrigan, as far as I can recall.<sup>747</sup>

...

“Q. Further down, page 43, line 25, he was asked: “Are you saying that the intelligence documents that you saw suggested that Mr. Corrigan was leaking information to the IRA?” To which he said “Yes, yes”. I think you have made it clear to the chairman that you haven't seen any such documents?

A. I have seen no such documents.<sup>748</sup>

1.547 Witness 82 told the Tribunal that any intelligence which suggested collusion between the security forces, either north or south of the border, and the IRA would have been paid a great deal of attention.<sup>749</sup> He stated that such information would most certainly have gone into a specific folder.<sup>750</sup>

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<sup>747</sup> Day 93, pages 156-157.

<sup>748</sup> Day 93, page 158.

<sup>749</sup> Day 93, page 157.

<sup>750</sup> Day 93, page 157-158.

1.548 Witness 82 stated that he never saw any documents which referred to Mr Corrigan as a “rogue” officer.<sup>751</sup>

1.549 Witness 82 denied speaking to Mr Hurst/Ingram about Mr Corrigan.

“Q. Yes. Now, if you wouldn't mind going to page 50, I think it is this point you begin to come into the process, if I can put it that way. Line 18: "Did you make any inquiries about who Owen Corrigan was when you saw his name turning up from time to time being a member of the Garda Síochána." Then he says, "Well, he came up in conversation with 82." You see further down at line 26 that is yourself. If you wouldn't mind just before we deal with that, if you go to page 51 at line 7: "How many times you may have discussed him it would have been a rough guess, but probably two or three at the most." Did you have conversations with Mr. Hurst about Mr. Corrigan?

A. Well, I had no information about Mr. Corrigan, so, to the best of my knowledge, I don't see how I could have had that conversation with Mr. Hurst.”<sup>752</sup>

1.550 Witness 82 stated that he was not aware of any link between Mr Corrigan and Mr Scappaticci.

“Q. Now, if you wouldn't mind going to page 53. Line 26, question 278: "What connection was there between Mr. Scappaticci and Mr. Corrigan?" Then he said that you Witness 82, told him that Mr. Scappaticci effectively acted as a conduit for information, in other words the handler of Corrigan. Again, can you comment on that?

A. I'm not aware of any relationship between any of the individuals mentioned there.”<sup>753</sup>

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<sup>751</sup> Day 93, page 159.

<sup>752</sup> Day 93, page 160.

<sup>753</sup> Day 93, page 160-161.

....

"A. *No, I have got no -- I don't believe I have ever seen any information linking -- I don't think I have seen any information about Colton or Corrigan and I certainly, as far as I can recall, see no information linking Mr. Scappaticci and the two individuals, the two garda officers, to the best of my knowledge.*"<sup>754</sup>

...

"Q. *Now, page 89, question 442, it starts at line 8, he was asked: "Do you have any information linking Owen Corrigan in colluding with the IRA in the killing of those two RUC officers?" Then he said only that yourself and he discussed it and then it was put to him: "Are you stating that you and Witness 82 said that Owen Corrigan had leaked information to the IRA that assisted them in murdering the two officers?" And he said: "I think that would be a general description of that conversation." And he said: "that is just what I explained to you. We had a general discussion that Mr. Scappaticci and Owen Corrigan had been involved and had relayed information to yourself via Scappaticci and there had been some involvement with Mr. Corrigan." Now, did you have such a conversation?*

A. *No, no, not that I can recall. I am not aware of any such relationship, as I have said, between the individuals mentioned and therefore I can't see how I could have had that conversation with him.*"<sup>755</sup>

1.551 Witness 82 refused to reveal the identity of 'Agent Steak knife' but he did confirm that he never saw any intelligence suggesting or evidencing a link between Mr Corrigan and 'Agent Steak knife.'

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<sup>754</sup> Day 93, page 160-161.

<sup>755</sup> Day 93, page 165.

“Q. *The rest is repetition of matters you have already dealt with. Now, if I could just turn to your statement very briefly. A lot of the matters you have already dealt with in dealing with the evidence of Mr. Hurst. Now, I think it is the case that, as one of your functions in the army, you handled an agent called 'Stakeknife'?*

A. *Correct.*

Q. *I think it is the case that you never saw intelligence linking 'Stakeknife' to Detective Guard Corrigan, is that right?*

A. *Correct.*<sup>756</sup>

1.552 Witness 82 stated that he never saw any intelligence, in the form of RUCIRACs or SB50s or otherwise, that implicated any Gardaí in the murder of the two RUC Officers.

“Q. *Okay. Apart from contact forms that you might have seen or records relating to an agent's information, did you ever see any RUC RUCIRACs or SB50s which implicated any member of An Garda Síochána in connection with these murders?*

A. *Not that I can recall.*<sup>757</sup>

1.553 Witness 82 told the Tribunal that he was aware of intelligence surrounding the murders. He stated that there was intelligence that Patrick ‘Patsy’ O’Callaghan was in charge of the operation.

“Q. *... that there is intelligence that Patsy O’Callaghan set up this operation?*

A. *That was the information that I received, yes.”*

1.554 Witness 82 stated that in his opinion Mr Hurst/Ingram was exaggerating his role and information to make money:

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<sup>756</sup> Day 93, page 167.

<sup>757</sup> Day 93, page 77.

“Q. What do you believe, and it is only your opinion, [redacted],, what do you believe is Mr. Hurst's motivation for his career whereby he is writing about his position in the FRU and his telling, publicly, information he has about intelligence, what do you believe is his motivation in all of this?

A. Well, I think he has made a career out of it, so I can only assume that it's because of that. He has got a career in it. He is earning money out of it.”<sup>758</sup>

1.555 Mr. Hurst/Ingram also told the Tribunal that the Force Research Unit destroyed intelligence documentation when the Stevens Inquiry commenced its investigation.<sup>759</sup> He stated that he participated in this destruction:

“When Lord Stevens started to inquire we had a few mad days with shredders and things like that and he makes reference to that in his report where we wilfully destroyed documents which were required for his investigations.”<sup>760</sup>

1.556 He stated that this was just one of a number of attempts that the Force Research Unit took to frustrate the inquiry.

“Q. And can you tell the Chairman about any episode that you are aware of?

A. We have the fire in C gate. We have the gluing of locks on physical cabinets. There was an orchestration of trying to make it difficult. I think at some stage over the next couple of days we may be introducing some evidence which may demonstrate that sort of difficulty.”<sup>761</sup>

1.557 Ian Hurst stated that Freddie Scappaticci was ‘Agent Stake knife.’<sup>762</sup>

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<sup>758</sup> Day 93, page 183.

<sup>759</sup> Day 93, page 34.

<sup>760</sup> Day 93, page 34.

<sup>761</sup> Day 93, page 34-35.

<sup>762</sup> Day 93, page 37-40.

## **F Conclusion**

1.558 It is submitted that by reason of the foregoing that no reliance can be placed on Mr Ingram/Hurst's evidence. It is undoubtedly the case that he worked in the Force Research Unit and that he had access to intelligence information. But it is clear from the vagueness of his evidence and, in particular, his inability to recall any detail of the documents that allegedly mentioned Mr Corrigan that he did not see any such documentation. This conclusion is supported by the fact that Witness 82, a senior member of the FRU, stated that he never saw any documentation mentioning Mr Corrigan or linking Mr Corrigan to Agent Steak knife. As Witness 82 was Agent Steak knife's handler he was in the best position to give evidence to the Tribunal in this respect. It is submitted that Mr Hurst/Ingram's evidence that Witness 82 told him that Mr Corrigan was involved in the murders of the two RUC officers is wholly undermined by the evidence given to the Tribunal in this respect. It is submitted that the Tribunal should conclude, like Lord Saville, that no reliance can be placed on the evidence of Mr. Hurst/Ingram.

## Chapter 21 Concerns Expressed by Superintendent Buchanan and Evidence of a Threat to Bob Buchanan

### A. Intelligence received by the Gardaí of an IRA plan to shoot Mr Buchanan

1.559 The most startling piece of evidence which was given to the Tribunal during the course of the Public Sittings of a threat to the life of RUC Superintendent Bob Buchanan was given by Retired Garda Chief Superintendent Tom Curran on 29 June 2011. Chief Superintendent Curran said that he was told, approximately nine months prior to the fatal shootings, by a man whom he believed to be a member of the IRA that RUC Superintendent Bob Buchanan was going to be shot.

1.560 This evidence was all the more startling because the Tribunal heard evidence from Retired RUC Chief Superintendent, Harmon Nesbitt, that prior to the fatal shootings on 20 March 1989 that there was a suspicion in the RUC that “... *the IRA had a target in South Armagh ...*”<sup>763</sup> although the identity of the RUC target was unknown.

1.561 Mr Curran served in Monaghan for 21 years, from 1973 to 1994, at the ranks of Inspector, Superintendent and Chief Superintendent. He told the Tribunal that he knew Mr Buchanan “*for probably four or five years*”<sup>764</sup> and that Mr Buchanan was his opposite number in the RUC as Border Superintendent. As such he said that he met Mr Buchanan regularly, sometimes as often as “*three times a week.*”<sup>765</sup> He told the Tribunal “*he developed a friendship*” with Mr Buchanan through their work together.<sup>766</sup>

1.562 Mr Curran told the Tribunal that:

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<sup>763</sup> Day 40 (5 October 2011) page 57.

<sup>764</sup> Day 14 (29 June 2011) page 5.

<sup>765</sup> Day 14 (29 June 2011) page 5.

<sup>766</sup> Day 14 (29 June 2011) page 5.

*“... at one stage in my service in Monaghan during Bob Buchanan's time there I was speaking to a man whom I believed was a member of the IRA, and he told me that Bob Buchanan was going to be shot. And the words that he used, he says, "There's a fella crossing the border there to see you, and he's going to be shot; he's on the list to be shot". You're never sure about the validity of stories like that from informants, but it was a serious matter as far as I was concerned...”*<sup>767</sup>

1.563 Mr Curran said that he believed his source adding:

*“It was understandable that it might happen anyway because every RUC man at that time was a target, so he would be the same as everybody else, only he was more vulnerable because he came across the border a bit more often than anybody else. So I did believe him that it was possible that he was right...”*<sup>768</sup>

1.564 He told the Tribunal that:

*“... I never [in my entire career] encountered as direct information as that in relation to a life...”*<sup>769</sup>

1.565 Mr Curran said that he prepared a type written report stating that *“... I had received confidential information from a reliable source that Superintendent Bob Buchanan was going to be shot by the IRA...”*<sup>770</sup> Notwithstanding the fact that he was relaying intelligence, he did not complete a C77 which was the usual mechanism by which intelligence information would be relayed to Crime & Security.<sup>771</sup> He offered no explanation as to why he did not use a C77 on this occasion.

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<sup>767</sup> Day 14 (29 June 2011) page 15.

<sup>768</sup> Day 14 (29 June 2011) page 15-16.

<sup>769</sup> Day 14 (29 June 2011) page 21.

<sup>770</sup> Day 14 (29 June 2011) page 20.

<sup>771</sup> Day 14 (29 June 2011) page 35.

1.566 Mr Curran said that he then sent this report to the Assistant Commissioner, Crime and Security. He described how he did this as follows:

*“Q. Did you put a general address? How did you address the envelope?”*

*A. Well, you just address the general address, Assistant Commissioner Crime and Security, Garda Headquarters, and you put that in another envelope and it is addressed to the Commissioner. So all letters then are sorted in Headquarters and divided up into the various offices.*

*Q. Do you recall if you addressed yours to the Commissioner in the inside envelope?”*

*A. I addressed it to the Assistant Commissioner, but I didn't address it to him personally.*

*Q. So, therefore, it would, presumably, be opened in the office in Crime and Security?”*

*A. Oh, it would be opened, yes.”<sup>772</sup>*

1.567 Mr Curran told the Tribunal that he did not provide a copy of this report to his superior, Garda Chief Superintendent Bernard King.

*“... The reason I did that was I saw copies of intelligence reports in his office that I thought were carelessly handled and they weren't suitable for common reading, so I decided for that reason I wouldn't supply a report to him.”<sup>773</sup>*

1.568 Mr Curran told the Tribunal that he did not receive any response from Crime & Security in relation to his report. This did not surprise him as he said *“... normally you do not get a response from Crime and Security about any matter, in my experience.”<sup>774</sup>* Mr Curran said that he never followed his report up:

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<sup>772</sup> Day 14 (29 June 2011) page 19.

<sup>773</sup> Day 14 (29 June 2011) page 20. See also page 32,

<sup>774</sup> Day 14 (29 June 2011) page 20.

*“... because I had been led to believe, at least that's what I used to be told, that when a report is submitted to Crime and Security, it is examined and collated and compared with other reports of a similar nature, and that is all done in Crime and Security. That wouldn't be discussed with the writer of the report. In the end they might decide after having examined it and compared it with other documents that it wasn't as important as probably the writer might imagine. So it was never discussed or ever referred back, very seldom anyway.”<sup>775</sup>*

1.569 Mr Curran told the Tribunal that he did not keep a copy of the report himself and that he could not remember whether he recorded the information in his journals although he pointed out that in any event he had not kept his journals.<sup>776</sup>

1.570 Despite their close working relationship and friendship, Mr Curran did not tell Mr Buchanan that he had received credible information that the IRA were planning to kill Mr Buchanan. This matter was not addressed by Counsel for the Tribunal either during the course of her examination-in-chief or re-examination but was dealt with extensively by Counsel for An Garda Síochána and Counsel for Mr Corrigan.

1.571 Counsel for An Garda Síochána dealt with the issue as follows:

*“Q. You didn't in fact even tell Mr. Buchanan?”*

*A. I didn't tell him he was going to be shot, but it was after that I suggested to him maybe he should get security or we will provide it if he wanted it.*

*Q. Would you not have thought it significant if you were concerned and believed your information you would have told him to be particularly careful and perhaps reduce the number of his trips south?”*

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<sup>775</sup> Day 14 (29 June 2011) page 21.

<sup>776</sup> Day 14 (29 June 2011) page 23.

- A. *Well, it's not that easy done in that situation. I was hoping that that would be done at a higher level, because I didn't want him to get the impression that we were trying to prevent him from coming over. We all knew that every RUC man was a target, so I didn't want to – sometimes these people can be sensitive enough about their security, and sometimes they can be maybe slightly critical of our systems, so I didn't want him to get the impression I didn't want to see him. So that's why I didn't mention it him.*
- Q. *But this was a man who you had grown to be friendly with, you had a good relationship with?*
- A. *Yes.*
- Q. *And who, on your evidence, you had a belief he was at more serious risk than others?*
- A. *Yes.*
- Q. *But yet you didn't think it appropriate to tell him?*
- A. *No.*
- Q. *Why would you not tell him that you had heard this information or had this information?*
- A. *Well, I'm just after saying it was, to me, not my place, it was too sensitive in relation to my relationship with him, and I was reporting it in the hope it would be taken up at higher level, because if I told him he was going to be shot he might form the opinion that our lack of security wouldn't be able to protect him. I didn't want to give him that impression either.*
- Q. *You were content to leave him at what you perceived to be a higher risk?*
- A. *Well, that's the way it was done.*
- Q. *Might it not be that different arrangements could have been made if you were aware of his heightened risk?*
- A. *I don't know now.”<sup>777</sup>*

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<sup>777</sup> Day 14 (29 June 2011) page 32 – 34.

1.572 Counsel for Mr. Corrigan dealt further with the issue as follows:

- “Q. I want to also return to the question Mr. Durack asked you. You say you didn't mention it to Bob Buchanan, isn't that correct?
- A. That's correct.
- Q. And was the reason for that that you were concerned he would have got the impression that our security wasn't effective if you did mention it to him?
- A. That was one of the reasons.
- Q. Was there other reasons?
- A. Well, there was the reason I already stated, that I was afraid he might get the impression we didn't want to see him. And when I was reporting it to Crime and Security and I expected the procedure that you have outlined there would take place.
- Q. But you obviously took this threat to Bob Buchanan seriously?
- A. Pardon?
- Q. You obviously took the threat to Bob Buchanan seriously?
- A. I took it seriously, yes.
- Q. And I still can't understand why it is you didn't tell him directly that there is a threat to your life?
- A. Well, I'm after stating that I expected Crime and Security to do that, and that's why I didn't do it.
- Q. Would you agree with me it was grossly negligent of you, Mr. Curran, not to tell this officer that you had information which you believed -- which suggested his life was under threat?
- A. No, I would not.
- Q. You say you didn't report it to your Chief Superintendent, isn't that correct?
- A. Yes.
- Q. Was there a particular reason you didn't report it to him?
- A. The only reason was as I have stated, that I didn't want a copy of my report to be read by a lot of people.
- Q. Why not?

A. *Because in the staff and division office there are Gardaí and civilians, and I didn't think it was suitable to have copies of intelligence reports being thrown about the table for everybody to read. That's why I didn't report it to him.*<sup>778</sup>

1.573 Mr Curran told the Tribunal that he was shocked when the murders occurred.<sup>779</sup> He stated that he did not tell anybody about the report that he had prepared.<sup>780</sup> He said that while he did not think that there was anything more that he could have done, he regretted not drawing the attention of his superiors to his earlier report in the hope that his informant might have had information that could have been of use to the investigation.

“Q. *Did you feel there was any more you could have done?*

A. *No, I don't think so. In relation to the report, I don't think so, but I regret I didn't refer back to them after he was murdered, because at that time my informant had fled the scene and I didn't know where he was, but in the slim chance that if I had met him that I might have or he might have further information, and it would be slim in the circumstances, but I was sorry I didn't go then to Crime and Security and ask them and tell them the name of the informant so that maybe they might have intelligence as to his whereabouts at that time. So, that's a thing I missed on.*<sup>781</sup>

1.574 Unsurprisingly, Mr Curran's evidence that he had received advance notification of the fact that Mr Buchanan was going to be shot, that he had reported the matter to his superiors in Crime & Security and that he had not told Mr Buchanan, his friend, of the fact that his life was under threat, was subjected to considerable scrutiny.

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<sup>778</sup> Day 14 (29 June 2011) page 42-43.

<sup>779</sup> Day 14 (29 June 2011) page 23 and page 43.

<sup>780</sup> Day 14 (29 June 2011) page 22.

<sup>781</sup> Day 14 (29 June 2011) page 22-23.

1.575 During the course of the Private Investigative Stage the Tribunal directed An Garda Síochána to furnish it with all documentation relevant to Mr Curran's claim. No such documentation was forthcoming and An Garda Síochána informed the Tribunal that following an extensive trawl of its records it had been unable to locate any report or letter from Mr Curran stating that Mr Buchanan was going to be shot by the PIRA.<sup>782</sup>

1.576 The Tribunal also heard evidence from Detective Superintendent Michael Diffley in relation to the matter. In his Statement to the Tribunal, Mr Curran speculated that his report would have been received by Detective Superintendent Michael Diffley as Mr Diffley was in charge of intelligence in Crime & Security at the time.<sup>783</sup> However, Mr Diffley was categorical in his evidence that he had not received any such report or letter from Mr Curran.<sup>784</sup> In his Statement to the Tribunal, Mr Diffley stated that:

*"...If a warning had been received about a threat to an RUC officer's life there would have been an immediate meeting between the two forces. A threat to another officer would in no circumstances be ignored. The officer in question would have to be told immediately of the threat..."*<sup>785</sup>

1.577 Unfortunately, the Tribunal did not raise this matter with Mr Eugene Crowley when he was examined prior to his death.<sup>786</sup> However, it is noteworthy that Mr Crowley, who was Assistant Commissioner Crime & Security at the time, did not mention the fact that he had received any intelligence or information that Mr Buchanan was being targeted by the IRA.

1.578 The Tribunal also heard evidence from Garda Chief Superintendent Bernard King, who was Mr Curran's superior officer at the relevant time and who, Mr Curran alleged, could not be trusted with sensitive intelligence.<sup>787</sup> Mr King, who served in An Garda Síochána from 1953 to 1992, was Chief

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<sup>782</sup> Day 14 (29 June 2011) page 22.

<sup>783</sup> Day 14 (29 June 2011) page 40.

<sup>784</sup> Day 18 (14 July 2011) page 22.

<sup>785</sup> Read into the record on Day 14 (29 June 2011) page 41.

<sup>786</sup> Read into the record on Day 85 (16 March 2012).

<sup>787</sup> Day 22 (21 July 2011).

Superintendent in Monaghan from 1987 to 1992. He told the Tribunal that Mr Curran never told him that Mr Buchanan was on an IRA 'hit list.'

*"Q. And if Mr. Curran had received information that Bob Buchanan was on an IRA hit list in ordinary course should that have been brought to your attention, sir?"*

*A. I would expect so, yes.*

*Q. And it wasn't?"*

*A. No, definitely not."*<sup>788</sup>

1.579 Mr King emphatically rejected any suggestion that he could not be trusted with sensitive intelligence pointing out that as the senior officer in Monaghan he should have been told of the threat to Mr Buchanan's life.

*"Q... Now can I just ask you does his evidence corresponded with how you believe you treated intelligence reports? He seems to be suggesting you treated intelligence reports and handled them carelessly, do you believe that?"*

*A. I don't know what reports he's referring to because Tom Curran was rarely in my office to see any reports because he was in the building, but he wouldn't be in my office too often. If we were travelling together to meetings we would meet down some place else. The only intelligence reports, we have these special report forms that were kept in the clerks office when I went there and I changed that system and took possession of all the forms and I had them under my personal control in the office."*<sup>789</sup>

1.580 Garda records show that following the fatal shooting of Mr Buchanan and Mr Breen, Mr King sent a report to Mr Pat O'Toole, the new Assistant Commissioner, Crime & Security, in which he outlined the frequency with which Mr Buchanan crossed the Border, the fact that this gave rise to concern

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<sup>788</sup> Day 22 (21 July 2011) page 28.

<sup>789</sup> Day 22 (21 July 2011) page 27.

on his part for Mr Buchanan's safety and the fact that he discussed this concern with Mr Curran. This report stated *inter alia*:

*"... On at least one occasion, I discussed the matter of Superintendent Buchanan's visits to Monaghan with Superintendent Curran who was then Border Superintendent. We were concerned about his unannounced calls to the station, the parking of his private car in the station yard and the difficulty the station orderly had having an RUC Officer in the public office area when members of the public from Monaghan would call. At that time Superintendent Buchanan was advised not to visit Monaghan unless he previously telephoned Superintendent Curran and met him by appointment. He complied with this request and reduced the frequency of his calls..."*

- 1.581 A number of matters arise from the evidence given by Mr Curran that he was told, approximately nine months prior to the fatal shootings, by a man whom he believed to be a member of the IRA that RUC Superintendent Bob Buchanan was going to be shot.
- 1.582 First and foremost is why Mr Curran did not communicate this intelligence to Mr Buchanan, a man who, on his own evidence, he worked closely with for a period of years and with whom he developed a personal friendship. The excuses proffered by Mr Curran were that he "*hoped*" that the initiative to tell Mr Buchanan would be taken at a higher authority and that he did not want Mr Buchanan to feel that "*our lack of security*" might be insufficient to protect him.
- 1.583 The first reason is difficult to reconcile with Mr Curran's evidence of their friendship but could be reconciled with a policy of strict adherence to the principle of the chain of command. However, there are two major difficulties with this supposition. The first is shown by the disregard shown by Mr Curran for the chain of command when he decided not to communicate his information to his direct superior, Mr King. While Mr Curran explained this by virtue of the fact that Mr King could not be trusted with sensitive intelligence, this omission is difficult to understand in light of the fact that the Report

prepared by Mr King following the murders shows that Mr King was aware that the frequency of Mr Buchanan's visits was giving rise to a possible risk for his safety and that he had discussed this risk with Mr Curran. Yet, despite this, Mr Curran did not communicate the fact that he had received more direct information of a threat to Mr Buchanan's life.

1.584 The second matter that arises from Mr Curran's evidence in this respect relates to the manner in which he reported his information to Crime & Security. He decided not to utilise the C77 procedure which was the standard manner for reporting such information, choosing instead to write a letter on ordinary paper. C77s are numbered sequentially and therefore if a C77 is subsequently mislaid or lost the fact that a C77 was created can be proven although the content of that C77 cannot. This is important in light of the fact that Mr Curran's letter cannot be located. The manner in which the letter was sent is also important. On his own evidence, Mr Curran said that he did not address it to the Assistant Commissioner personally but rather to the 'Assistant Commissioner, Crime & Security' which meant that the letter would be opened by another officer, who he speculated might have been Mr Diffley. Why, in light of the seriousness of the information allegedly contained in the letter, did Mr Curran send his letter in this fashion? We shall see in the next section that on receipt of other information involving no threat to life that Mr Curran felt so strongly that he travelled directly to communicate that information directly to the Assistant Commissioner, Crime & Security. Why did he not do so in this case or at the very least address the letter directly to Mr Crowley?

1.585 The evidence, or rather the lack of evidence, of Mr Crowley concerning a threat to Mr Buchanan, combined with the evidence to Mr Diffley, combined with the failure to complete a C77, combined with Mr Curran's evidence of the manner in which the letter was addressed, combined with the absence of any record in Headquarters of Mr Curran's letter must, applying the balance of probabilities, cast serious doubt on whether, in fact, the letter was sent as stated by Mr. Curran.

## **B. Concerns expressed by members of the Gardaí and RUC regarding Mr Buchanan's safety**

1.586 Considerable evidence was given to the Tribunal by members of the RUC and the Gardaí regarding concerns for Mr Buchanan's safety.

1.587 Garda Chief Superintendent Bernard King, the commanding officer in Monaghan from 1987 to 1990, gave evidence to the Tribunal that soon after he arrived in 1987 he became concerned at the frequency and manner of Mr Buchanan's visits to stations in his District. He told the Tribunal that he was certain that he discussed the matter with Superintendent Tom Curran, who was Mr Buchanan's opposite number, and that he also discussed the matter with Sergeant Tom Long, who was Border Sergeant and who was also friendly with Mr Buchanan.<sup>790</sup>

1.588 Garda records show that after the fatal shootings, Mr King sent a report to Mr Pat O'Toole, the new Assistant Commissioner, Crime & Security, in which he outlined the frequency with which Mr Buchanan crossed the Border, the fact that this gave rise to concern on his part for Mr Buchanan's safety and the fact that he discussed this concern with Mr Curran. This report stated *inter alia*:

*"... On at least one occasion, I discussed the matter of Superintendent Buchanan's visits to Monaghan with Superintendent Curran who was then Border Superintendent. We were concerned about his unannounced calls to the station, the parking of his private car in the station yard and the difficulty the station orderly had having an RUC Officer in the public office area when members of the public from Monaghan would call. At that time Superintendent Buchanan was advised not to visit Monaghan unless he previously telephoned Superintendent Curran and met him by appointment. He complied with this request and reduced the frequency of his calls..."*

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<sup>790</sup> Day 22 (21 July 2011) page 21.

1.589 Mr King was not alone in his concern. Garda Sergeant Jim Gannon was in charge of Dromad Garda Station. He told the Tribunal that Mr Buchanan was a routine visitor to Dromad Garda Station and that the nature and frequency of Mr Buchanan's visits were a matter of concern to him. He said that he communicated his concern to Superintendent McCabe in Dundalk Station and asked that Mr Buchanan should be asked to visit Dundalk instead of Dromad.

*"... I wasn't that happy because Dromad is a very rural area and the station was on the side of the main Dublin-Belfast Road and it was right on the border, as I am saying, and a strange car pulling in was inclined to come under notice and I was a wee bit worried that something might have happened to them so I asked the Super in Dundalk if he would arrange, maybe for them, instead of them calling to Dromad for their own safety, that they should go to Dundalk maybe. So that was arranged then and that was the way it worked out..."<sup>791</sup>*

1.590 Garda Gary Witherow was also stationed in Dromad Garda Station. He told the Tribunal that he recalled one occasion when Mr Buchanan visited Dromad Station and parked his car outside the front of the station. He stated that he asked Mr Buchanan to move his car but that Mr Buchanan refused to do so.

<sup>792</sup>

1.591 Garda Sergeant Ray Roche was in charge of Hackballscross Garda Station. He told the Tribunal that Mr Buchanan visited his station and parked his car outside the front of the station. He stated that he warned Mr Buchanan against arriving at Hackballscross unannounced because it was dangerous:

*"...And so I sort of walked him towards the door and I told him it was very dangerous territory. I said, "This is very dangerous territory, Superintendent." And I ordered him sort of to go, as diplomatically as I could..."<sup>793</sup>*

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<sup>791</sup> Day 21 (20 July 2011) page 22.

<sup>792</sup> Day 25 (27 July 2011) page 16 and 22.

<sup>793</sup> Day 25 (27 July 2011) page 4.

1.592 Detective Garda Edmund Sheridan told the Tribunal that he served with Garda Sergeant John Harney. He stated that Sergeant Harney had told him that Mr Buchanan was a regular visitor to Hackballscross Garda Station when he was the Sergeant in charge and that Sergeant Harney told him that he warned Mr Buchanan to stop visiting the station because it was too dangerous:

*“...Sergeant Harney told us that when he was in charge of our unit, he was the Sergeant in charge at Hackballscross for a number of years after promotion. And he said that he would wander in willy-nilly, you know, and Detective Sergeant Harney, who was Sergeant at the time, asked him not to do it because he felt that he was putting his life in danger and the members of the station party.”<sup>794</sup>*

1.593 Similar evidence was given to the Tribunal by Garda Detective Sergeant Con Nolan.

*“... I do know that the late Sergeant John Harney, who was stationed out in Hackballscross, had told these two RUC officers to stop calling to the station.”<sup>795</sup>*

1.594 RUC Chief Superintendent Brian Lally told the Tribunal that the Garda concern about the frequency and manner of Mr Buchanan’s visits south was communicated to him at some time in the period 1987-1988:

*“... A guard mentioned in the wisest and warmest terms he said for god sake will you tell Bob to cool down on crossing the border a bit. Sometimes he's in the station on a regular basis. I did mention it to Bob but Bob would have been one of those men who would listen to what you say, he would travel, he would read something and he would*

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<sup>794</sup> Day 26 (26 July 2011) page 61.

<sup>795</sup> Day 20 (19 July 2011) page 78.

*go to look at the scene. He was just one of those people that I wasn't good as him but he was completely conscientious in what he did and felt he had to do a role...*<sup>796</sup>

Mr Lally was unable to remember the name of the Garda Officer who communicated this concern to him but was of the view that the Garda was a senior officer of the rank of Chief Superintendent.<sup>797</sup>

1.595 The evidence of RUC Inspector Charles Day showed that the Garda concern about the frequency and manner of Mr Buchanan's visits south was not unjustified. Mr Day recalled two occasions, one the week before the fatal shootings, when he travelled south with Mr Buchanan and he felt they were being followed on the return journey by a white Hiace Van which did not cross the border.

*“Q. I think you travelled south with Superintendent Buchanan on the 14th March 1989?*

*A. That's correct.*

*Q. Is that correct? Was it the Tuesday before the two officers were killed?*

*A. I believe that is so, yes.*

*Q. Do you have any particular reason for remembering that journey?*

*A. Well, just because it was so close to the tragedy and because on that particular journey I did mention to him that I thought we were being followed on the return journey to Newry.*

*Q. Where had you gone to?*

*A. We had gone to Dundalk Station.*

*Q. And on the way home from Dundalk?*

*A. On the way home from Dundalk, before we reached the border with Northern Ireland, I noticed a Hiace van behind us.*

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<sup>796</sup> Day 35 (16 September 2011) page 69.

<sup>797</sup> Day 35 (16 September 2011) page 70.

- Q. *Can you remember what road you were travelling that day?*
- A. *We were travelling on the main road up to Newry.*
- Q. *The A1?*
- A. *Yes.*
- Q. *And you noticed a Hiace van behind you?*
- A. *That's correct. And Hiace vans generally would have caused some suspicion because they were used so much by the IRA particularly on the south Armagh area. Of course there are a lot of them about, but I just remarked to Superintendent Buchanan that we may be being followed and this vehicle did follow us across the border.*
- Q. *And did -- Superintendent Buchanan, I think, was driving that day, is that correct?*
- A. *That's correct.*
- Q. *Did he make any comment in relation to it?*
- A. *No specific comment. He just noted, looked in the mirror, kept on eye on it, I suppose.*
- Q. *It was a matter that caused you some concern?*
- A. *Well, not undue concern. I mean, you would be security-aware in that area and you didn't need to say much more. These things would happen from time to time, you just flag it up and would let the driver be alert to any suspicions you might have. On this occasion the van followed us quite a way up into the north but it went off on one of the side roads just before we reached the main border checkpoint, permanent checkpoint controlled by the army.*
- Q. *That was the checkpoint just south of Newry?*
- A. *That's right, at Cloghogue.*
- Q. *At Cloghogue, yes. I suppose would it be fair to say that it caused you some precautionary concern rather than active concern?*
- A. *That's correct. I mean, we didn't feel on that occasion that we needed to accelerate in any great way, just keep an eye out. The danger on the main road would have been a drive-by shoot.*

- Q. *Did you ever previously have any concerns that you might have been followed when travelling with Superintendent Buchanan?*
- A. *Well, just one that stood out in my mind, and that is when we were coming back from Monaghan, I think I said in the statement, several months before.*
- Q. *That was a similar type of incident?*
- A. *Yes, similar, plus there were some people standing on the border crossing point, looked a bit suspicious. It could have been something, it could have been nothing, but, again, you are trained to be alert, you are always subconsciously taking it on board, being aware.*
- Q. *And what -- can you remember what road you were taking that day? You were coming from Monaghan to where?*
- A. *Monaghan back to Armagh, so that would have been a road just east of Middletown, a minor road.”<sup>798</sup>*

1.596 The evidence given to the Tribunal by members of the Gardaí and the RUC shows that members of both forces were alive to the risks posed by the frequency and manner of Mr Buchanan’s visits to Border Stations. The evidence of RUC Inspector Day that Mr Buchanan’s car was followed by a suspicious vehicle on the week before the murder and several months before clearly showed that that concern was not misplaced.

### **C. Concerns expressed by Mr Buchanan**

1.597 Retired Garda Chief Superintendent Tom Curran told the Tribunal that Mr Buchanan expressed a concern regarding Detective Sergeant Corrigan.

1.598 Mr Curran stated that Mr Buchanan told him in the first half of 1987 that:

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<sup>798</sup> Day 6 (9 June 2011) page 144-147 and page 156-157.

*“... the RUC had information that Detective Sergeant Corrigan was associating, unnecessarily associating with the IRA and that the RUC were concerned about it...”*<sup>799</sup>

1.599 Mr Curran stated he surmised based on what Mr Buchanan had said that:

*“... Well, what I gathered was that the association that Detective Sergeant Corrigan had with them went far beyond that, and that I got the impression that he was assisting the IRA.”*<sup>800</sup>

1.600 Mr Curran stated that he probed Mr Buchanan about this information but that Mr Buchanan had no actual information:

*“... So I very soon got the impression that he was only the messenger. He said he had no details of the actual information, but he was asked to ask me to convey that to the Assistant Commissioner in charge of Crime and Security, which I promised I would...”*<sup>801</sup>

1.601 Under cross-examination by Counsel for Mr Corrigan, Mr Curran agreed that his evidence “at its height” was that “Bob Buchanan said to you that there were concerns in the RUC about Owen Corrigan” and that “Bob Buchanan had no specific information about Owen Corrigan, in fact he was just acting as a conduit...”<sup>802</sup>

1.602 It should be noted that both in his examination-in-chief and his cross-examination Mr Curran accepted that in order to gather information on subversive elements it would be necessary for Mr Corrigan to associate with the IRA.<sup>803</sup>

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<sup>799</sup> Day 14 (29 June 2011) page 7.

<sup>800</sup> Day 14 (29 June 2011) page 7.

<sup>801</sup> Day 14 (29 June 2011) page 7.

<sup>802</sup> Day 14 (29 June 2011) page 37.

<sup>803</sup> Day 14 (29 June 2011) page 7 and 45.

“Q. *Would you agree with me in order to be an effective police officer in the border area and in order to gain information about subversives you do have to acquaint with people in the IRA?*

A. *Yes, I would agree with that.*

Q. *In fact, you did it yourself when you got this information about Mr. Bob Buchanan?*

A. *Yes, I did.”*<sup>804</sup>

1.603 This necessity to ‘associate’ with members of subversive groups in order to collect intelligence or information was acknowledged by a considerable number of witnesses from both the RUC and the Gardaí who gave evidence to the Tribunal. This evidence will be dealt with in detail elsewhere in these submissions but it is useful to give a brief flavour of it here to put Mr Curran’s evidence in context.

1.604 Former RUC Second Deputy Chief Constable, Mr Blair Wallace, accepted the suggestion of Counsel for Mr Corrigan that in order to be effective “*it’s necessary to kind of get down into the mud and deal with them [subversives]*” and to “*associate with them*” and he added that “*Part of your job was to rub shoulders with unsavoury elements.*”<sup>805</sup>

1.605 Similar evidence was given by Former RUC Deputy Head of Special Branch, Witness 24 who agreed with Counsel for Mr Corrigan that “*the nature of his job required him coming into contact with Republicans.*”<sup>806</sup>

1.606 This view was shared by Senior Gardaí. Former Garda Assistant Commissioner, Crime & Security, Thomas Ainsworth was unequivocal:

“Q. *And would you agree with me, Mr. Ainsworth, that in order to get information and intelligence on subversives, that members of An Garda Síochána have to associate with people who have*

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<sup>804</sup> Day 14 (29 June 2011) page 45.

<sup>805</sup> Day 60 (30 November 2011) page 74.

<sup>806</sup> Day 41 (6 October 2011) page 53.

*connections with those subversives in order to get that information?*

A. *Look, if you want intelligence you must talk to people. That's the simple answer to that. You must talk to people irrespective of who they are or what they are.*"<sup>807</sup>

1.607 Former Garda Chief Superintendent, Louth-Meath Division, Michael Bohan stated that Mr Corrigan's excellent intelligence was due to his cultivation of IRA sources.

"Q. ... *Was Mr. Corrigan good at getting information about subversives such as the IRA?*

A. *Very good. And reliable information.*

Q. *And of course, in order to get that information you are required to have contact with people within the IRA or people associated with them, is that right?*

A. *Of course.*"<sup>808</sup>

1.608 Former Garda Chief Superintendent, Louth-Meath Division, Michael Finnegan stated that:

*"... any Garda long the border at that time, or based in Dundalk, any guard worth his salt would be in communication with members of the Provisional IRA trying to get intelligence and trying to get information in relation to different things ..."*<sup>809</sup>

1.609 This evidence is particularly important in the context of Mr Curran's evidence since Mr Curran told the Tribunal that he never had anything to do with Mr Corrigan, that he had no information in relation to Mr Corrigan<sup>810</sup>

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<sup>807</sup> Day 24 (26 July 2011) page 42.

<sup>808</sup> Day 17 (13 July 2011) page 29.

<sup>809</sup> Day 46 (21 October 2011) page 84.

<sup>810</sup> Day 14 (29 June 2011) page 15. See also page 37.

"Q. *And you gave evidence to the effect as well that you, yourself, had no direct knowledge about Owen Corrigan, and in fact you were similarly just receiving information and then you passed it on?*

“Q. Did you ever have any information at all that suggested any wrongdoing on the part of Sergeant Corrigan?

A. Not in relation to his duties as a policeman, no.”<sup>811</sup>

and that:

“... I didn't know anything about him at all really...”<sup>812</sup>

1.610 Much reference was made during the course of the public sittings to Mr Curran's evidence regarding the concern allegedly expressed by Mr Buchanan regarding Mr Corrigan. However, it is important to remember exactly what was that evidence. It was not that Mr Corrigan was colluding with the IRA. Nor was it that he was passing the IRA information or otherwise assisting the IRA. It was simply a concern on the part of persons other than Mr Buchanan that Mr Corrigan was associating unnecessarily with the IRA and that the RUC were concerned about that fact.

1.611 In summary, Mr Curran's evidence was hearsay evidence, of what degree it was not possible to establish, of a concern that Mr Corrigan was associating unnecessarily with members of the IRA in circumstances where the Tribunal has heard extensive evidence from members of both police forces that it was necessary to associate with subversives in order to gather intelligence.

1.612 The account tendered by Mr Curran to the Tribunal of how he relayed Mr Buchanan's concern to his authorities was the subject of considerable dispute. Mr Curran stated that he felt the information he had received was so serious that he decided to convey the information personally to Mr Eugene Crowley, the then Assistant Commissioner, Crime and Security, rather than to write a report.<sup>813</sup>

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A. Yes, that's correct.”

<sup>811</sup> Day 14 (29 June 2011) page 31.

<sup>812</sup> Day 14 (29 June 2011) page 15.

<sup>813</sup> Day 14 (29 June 2011) page 10. See also page 46.

1.613 Mr Curran stated that soon after his conversation with Mr Buchanan he went to Dublin to attend a court case and took the opportunity to visit Mr. Crowley<sup>814</sup> Mr Curran stated that he did not pass anyone on his way to Mr Crowley's office and that he *"just knocked at the door and went in."*

1.614 Mr Curran described what happened in the following terms:

*"... He was reading a file when I went in, and I told him the purpose of my visit, and I told him about the information that was passed on to me by Bob Buchanan and all the bits, hearsay that I had heard about Owen Corrigan. When I was finished -- he kept looking at the file, but when I was finished he said to me, "How are things in Monaghan town?" So we discussed activities in Monaghan, but he never mentioned anything in relation to the conversation that I went there to tell him. In a very short time I got the opinion he didn't want to hear it, so I left..."*<sup>815</sup>

1.615 According to Mr Curran, Mr Crowley did not acknowledge what he was saying *"in any way"*, neither did he seek to probe Mr Curran by asking any questions.<sup>816</sup> Mr Curran told the Tribunal that Mr Crowley did not take any notes.<sup>817</sup> Mr Curran stated that he never followed the matter up<sup>818</sup> and he *"... was never spoken to by anybody afterwards about it."*<sup>819</sup>

1.616 Mr Curran told the Tribunal that approximately two weeks after his visit to Dublin, Mr Buchanan asked him had he relayed his concern to Mr Crowley. Mr Curran stated that he had and that Mr Crowley had said *"he'd look into*

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"Q. Why didn't you send a report to Garda Headquarters in the same way you would subsequently send a report about the alleged threat to Bob Buchanan?  
A. Well, I thought the matter was too serious, and it was my decision to go and see the Assistant Commissioner."

<sup>814</sup> Day 14 (29 June 2011) page 8.

<sup>815</sup> Day 14 (29 June 2011) page 9.

<sup>816</sup> Day 14 (29 June 2011) page 9.

<sup>817</sup> Day 14 (29 June 2011) page 10.

<sup>818</sup> Day 14 (29 June 2011) page 13.

<sup>819</sup> Day 14 (29 June 2011) page 11.

*it.*<sup>820</sup> Mr Curran stated that this was not correct and he was simply “*covering up a bit for Mr Crowley...*”<sup>821</sup>

1.617 Mr Curran told the Tribunal that he did not make any written record of his alleged conversation with Mr Buchanan. He did not prepare a written report, if only for the file, or keep any notes.<sup>822</sup> Neither, did Mr Curran report the matter to his superior, Chief Superintendent Bernard King.

1.618 As Mr Curran’s evidence was that he communicated Mr Buchanan’s concern directly to Mr Crowley and did not meet or pass anybody else on his way into Mr Curran’s office, the only other witness that is in a position to corroborate Mr Curran’s account is Mr Crowley. Unfortunately, Mr Crowley died before the Tribunal became aware of Mr Curran’s intended evidence and so Tribunal Counsel were not in a position to put that evidence when they interviewed Mr Crowley on 12 February 2008.<sup>823</sup>

1.619 However, Mr Crowley was asked whether he was aware that the RUC had concerns about Mr Corrigan prior to the fatal shootings and he replied in the negative:

*“Q: Were you ever asked or are you aware of any inquiries into Owen Corrigan prior to that?”*

*A: No, I didn't know anything about Corrigan until I think I might have been in the hospital at the time and somebody told me that this was Corrigan. I didn't know about that, I didn't know about before that.”*<sup>824</sup>

1.620 Mr Crowley was also asked whether he was aware that the RUC had concerns in 1985 that Mr Corrigan was passing information to the IRA and he replied that he was never made aware of any such information.

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<sup>820</sup> Day 14 (29 June 2011) page 13.

<sup>821</sup> Day 14 (29 June 2011) page 13.

<sup>822</sup> Day 14 (29 June 2011) page 46.

<sup>823</sup> Read into the record on Day 85 (16 March 2012).

<sup>824</sup> Read into the record on Day 85 (16 March 2012) page 46.

*“A: I had a very good relationship when I was the Chief, I had a good relationship with my opposite number in the RUC, the Special Branch. No, I was never told, quite sure I would have known about it.*

*Q: That sort of information would, of necessity, have been channelled up to you, I would imagine, if there was a member of your force involved in anything illegal?*

*A: It would have come through Security if the RUC told -- if Security told Gardaí, it would pass to me, yes.*

*Q: Were you the head of Crime and Security in 1985? Who would have been the head of Crime and Security branch?*

*A: I think it was the chief in Security Branch at that time. During that time I would have had a number of visits up and down with my opposite number in the RUC.”<sup>825</sup>*

1.621 Mr Crowley told the Tribunal that if he had received any such information he would have taken immediate action:

*“Q: Well, if you had been given that, if somebody had passed on information about a member of your force, what would you have done about it?*

*A: He certainly would have been investigated and brought in and interrogated by our own force/*

*Q: Right. You had gone by the time, I think, Owen Corrigan would have been asked to give a statement subsequently. So that would be the format, your own would investigate first, and then what would happen after that?*

*A: You mean if... (INTERJECTION)*

*Q: If a piece of intelligence was given to you that this fellow is passing on information to the IRA. Crime and Security would presumably bring him in first and interrogate him?*

*A: Yes.”<sup>826</sup>*

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<sup>825</sup> Read into the record on Day 85 (16 March 2012) page 55-56.

1.622 Mr Crowley's evidence in this regard is important since he could not have given that evidence truthfully if Mr Curran's account of visiting him and communicating Mr Buchanan's concerns about Mr Corrigan is correct.

1.623 It is important that the Sole Member bears this in mind when considering Mr Curran's evidence. This is particularly so in light of the comments made by the Chairman on 26 January 2012:<sup>827</sup>

*“CHAIRMAN: Well, I can't see how anybody could be – it would seem to me that he was telling a story of what he did and it seemed to me to be a very credible story. He said that he actually drove to Dublin and drove to see Assistant Commissioner Crowley, he said that. And nobody, really, on behalf of An Garda Siochana, in cross-examination of him, they haven't really shaken that evidence that he gave.*

*MR. O'CALL: Although I did cross-examine him on it, and it's a matter, obviously, for you, Chairman, to determine what evidence is or is not accepted, but simply because a witness gives evidence, doesn't mean that the Tribunal has to accept it without hesitation or without concern. There is a whole series of factors associated with this evidence that places it under considerable doubt, as to why no document was prepared in respect of it, as to why there was no follow-up in respect of it, and issues such as that. And an explanation that should be put to the witness is that maybe Mr. Curran is mistaken in respect of what he said. That's just an option that*

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<sup>826</sup>

Read into the record on Day 85 (16 March 2012) page 57.

<sup>827</sup>

During the evidence of Assistant Commissioner Dermot Jennings on Day 70.

*should be considered by the Tribunal and, indeed, by Mrs. Lavery...*

CHAIRMAN: *I think it's a matter for me in the last resort, as to whether I believe Mr. Curran or whether I don't, but most of his colleagues who have given evidence before this Tribunal have spoken in very laudatory terms of Superintendent Curran, and I think nobody has said that he was telling a lie about that, or that he was mistaken.”<sup>828</sup>*

1.624 With respect, it is submitted that the effect of Mr Crowley's statement is that it casts serious doubt on Mr Curran's evidence.

1.625 The late Mr Crowley was a widely respected former Garda Commissioner who had spent much of his work as a senior Garda officer dealing with security issues arising from the Northern Ireland Troubles. Relations with the RUC, which had been extremely difficult at senior levels, improved greatly during his tenure and he was the first Garda commissioner to formally meet his opposite number from Northern Ireland.<sup>829</sup> It is submitted that any finding to the effect that Mr Crowley ignored Mr Curran in the manner alleged would be an extremely grave finding with a huge impact on the reputation of the late Mr Crowley and would have to be supported by the most cogent evidence available. It would also have to take into account the evidence of the many senior Garda witnesses who served with Mr Crowley to the effect that he would never have acted in the manner that Mr Curran alleged.

1.626 Former Commissioner Noel Conroy told the Tribunal that he would be shocked if Mr Crowley behaved as Mr Curran alleged.

“A. ... *First of all, let me say I am utterly shocked to think that, through the chain of command, if somebody is saying that Special Branch in the RUC or the PSNI would go to an officer*

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<sup>828</sup> Day 70 (26 January 2012) page 90-92.

<sup>829</sup> The Irish Times, Saturday, August 1, 2009.

*saying what is alleged. Very surprised. That would be surely a matter for command meetings and that is where things, if there is anything like that discussed, anything to be discussed of that nature, it definitely would be discussed there and would not, in my view, ever be discussed at a local level.*

*Now, you mentioned Mr. Crowley. I worked under Mr. Crowley when he was Chief Superintendent in the northern division here in Dublin, and I have read something published about that in recent times, and I can assure the Tribunal that my memory and my working with Mr. Crowley, first of all as a Chief Superintendent, is that he was very particular on every task that he actually would get or give to you and he would remind you on a regular basis to bring it to finality. He was one of those officers of the highest integrity. I am shocked to think that he would be – he would have did what is alleged, because that is not the Mr. Crowley that I knew. I worked with him then, when I was in CDU he was the Commissioner of An Garda Síochána and I had personal meetings with him where he actually called me in to give an overview of crime in the Dublin Metropolitan Region, and it wasn't an easy task I can tell you, briefing him. He was a difficult task master insofar as he wanted to know every detail of what is happening, what I was doing. And not alone that, it was followed up on paper later, that meeting, on a Sunday morning.*

- Q. *And the sort of meeting that I have described to you that has been described by Mr. Curran, in terms of what you said, seems to be unbelievable?*
- A. *Well I am shocked to think that, first of all, what the RUC would be doing in coming to him, that is one; and two, it's not the Mr. Crowley that I knew.”<sup>830</sup>*

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<sup>830</sup> Day 34 (15 September 2011) page 37-38.

1.627 Current Commissioner Martin Callinan also told the Tribunal that he would be shocked if Mr Crowley behaved as Mr Curran alleged:

- “A. Well, Mr. Crowley was a very thorough man in all aspects of his work, a man of great integrity, rose to the highest rank in the Garda Siochana, Chairman. And certainly I was very surprised to read about that aspect of this matter that you are investigating. It certainly wouldn't be my experience that Mr. Crowley would ignore something like that. Indeed, I was very surprised in the first instance to hear that the particular aspect wasn't raised through the proper channels, in other words that it would have gone to the RUC Headquarters and be conveyed at the very highest level. A matter of this importance, that it wasn't raised at the very highest level, at very senior level across to Garda Headquarters directly rather than relying on a parallel line of communication. That surprised me, I must say.*
- Q. I think you, yourself, as part of your career, a significant part of your career was involved in Crime and Security, where you would expect this sort of information to be shared at Headquarters level?*
- A. There is no question or doubt about that, Chairman. I spent over three years in the Crime and Security section at Garda Headquarters and the Security and Intelligence branch of that section, and certainly matters of that import would almost certainly be shared at the very highest level. I have no doubt in my mind.”<sup>831</sup>*

1.628 Former Garda Commissioner Pat Byrne told the Tribunal that knowing both Mr Curran and Mr Crowley he found Mr Curran's evidence “... an

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<sup>831</sup> Day 36 (27 September 2011) page 50-51.

*extraordinary statement to make .... an extraordinary sequence of events.*"<sup>832</sup>

He stated that a number of things surprised him about Mr Curran's evidence:

*"A. First of all, that there is no written record of it; secondly, the description of the reaction that Mr. Curran says he got from Mr. Crowley, which I find extraordinary; thirdly, that he was asked by a border uniform Superintendent of the RUC to convey this message to Headquarters; and fourthly, I think it has been suggested that Mr. Buchanan was asked by RUC Special Branch to do it.."*<sup>833</sup>

1.629 Former Garda Commissioner Laurence Wren said that Mr Curran's evidence *"... amazes me if that happened because that wasn't Gene Crowley's form at all."*<sup>834</sup>

1.630 Former Garda Assistant Commissioner Joe Ainsworth told the Tribunal that Mr Crowley had been his deputy for a period and that he would be amazed if Mr Curran's account was correct:

*"I'd be quite honest with you, I am amazed, if it did happen it's very strange, because protocol would not permit that to happen. That would have moved from the Chief Constable to the Commissioner or from the Chief Constable to me. That's how that complaint would come and it would be acted upon immediately."*<sup>835</sup>

1.631 Former Assistant Commissioner James McHugh told the Tribunal that he could not accept that Mr Crowley would have behaved in the manner alleged by Mr Curran.

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<sup>832</sup> Day 80 (1 March 2012) page 68.

<sup>833</sup> Day 81 (2 March 2012) page 59-60.

<sup>834</sup> Day 54 (15 November 2011) page 69.

<sup>835</sup> Day 24 (26 July 2011) page 19.

- “Q. Did you know Eugene Crowley what who had been both Assistant Commissioner in charge of Crime and Security and later Commissioner?”*
- A. I knew him very well, both as Commissioner I had a significant amount of dealings with him, and Mr. Crowley, God rest him, he has now passed away, but he was a wonderful, decent, honourable, professional police officer, and I'm privileged, I feel privileged that I served under him and I feel proud he led the Garda Síochána as Commissioner; a wonderful man.*
- Q. And knowing what you know about him, what would you say about this: would he be likely, either as Assistant Commissioner or Commissioner, to turn a blind eye or deaf ear to a complaint or to a suspicion that an officer of An Garda Síochána was colluding with the IRA?”*
- A. No. Chairman, I could not for the life of me accept that Mr. Crowley would behave in such a manner. As I say, he was an absolute professional; a wonderful man. As I say, I'm very proud to say I served under him and reported to him. I would never accept that information such as counsel is suggesting, that a member of the Force was involved in subversive activity and he would turn a blind eye to it. I wouldn't and couldn't and I don't believe it happened. I would reject it completely out of hand.”<sup>836</sup>*

1.632 Retired Assistant Commissioner James McHugh also told the Tribunal that he could not comprehend a situation where Mr Crowley would have behaved in the manner alleged by Mr Curran.

- “Q. If someone had come to him with an allegation that Sergeant Corrigan or any other member was in possible collusion, do you think he'd have done nothing about that?”*

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<sup>836</sup> Day 29 (7 September 2011) page 95-96.

A. *I don't believe it for one moment based on the my knowledge of the man and of his working methodology, not alone in Crime and Security but I worked under him in the Special Branch as well and I had many, many dealings with him, and I just -- I couldn't comprehend a situation where he'd ignore something like that.*<sup>837</sup>

1.633 Retired Assistant Commissioner Dermot Jennings also told the Tribunal that Mr Crowley would not have ignored such information.

“A. *He was a very, very committed, very, very hard-working, very, very serious man and a very inquisitive man and a hard task-master, and that was my experience in dealing with him. And he asked a lot of questions, always, and would be very insistent on -- because, at the time he came in, from my experience, into the area of the Special Branch work, it was as a Chief Superintendent, and I remember him saying to me himself one time, when I was briefing him after an operation with others, about he did lack some knowledge and that's why he was so thorough, and he would ask you 40 questions about everything. That's my experience of the man.*

Q. *And if he had been brought information in relation to a suspect guard, what would you expect him to do, or to have done?*

A. *Well, in my view, and in my experience of that man, Chair, the first thing he would say is, "I need a report on this," and, without a doubt, if there was something that could be actioned, it would be actioned by Mr. Crowley. That would be my experience of him.*<sup>838</sup>

1.634 More junior officers gave similar evidence. Former Garda Detective Sergeant, Dan Boyle, worked in Mr. Crowley's office and told the Tribunal that Mr Crowley would never have behaved like that:

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<sup>837</sup> Day 33 (14 September 2011) page 28.

<sup>838</sup> Day 33 (14 September 2011) page 28.

*“A. No. My goodness me, wouldn't you investigate it or at least move on it? You couldn't ignore something like that.*

*Q. Was Mr. Crowley the sort of person who might have ignored such a thing?*

*A. I can't imagine, no.”<sup>839</sup>*

1.635 Former Detective Superintendent Michael Diffley also worked in Mr Crowley's office and told the Tribunal that it:

*“A. ... would be remarkable if Eugene Crowley knew something like that, that he wouldn't have communicated it to somebody like me or to some other of his senior officers. That is all I can say.*

*Q. Did he ever communicate anything similar to you?*

*A. Nothing concerning that individual.”<sup>840</sup>*

1.636 The account given by Mr Curran as to the manner in which he relayed Mr Buchanan's concern must be subject to considerable doubt in light of:

- a. The evidence of Mr Crowley;
- b. The absence of any documentary material supporting Mr Curran's account;
- c. The failure of Mr Curran to inform his superior, Chief Superintendent King, either of the allegation, his visit to Mr Crowley or Mr Crowley's response;
- d. Mr Crowley's record of service; and
- e. The evidence of those Garda Officers who served with Mr Crowley.

1.637 Mention must be made of the suggestion of Tribunal Counsel that one possible reason for Mr Crowley's alleged behaviour is the fact that he had served with Mr Corrigan in Dundalk. However, it is submitted that having regard to the evidence given in relation to Mr Crowley's character any finding

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<sup>839</sup> Day 17 (13 July 2011) page 13.

<sup>840</sup> Day 18 (14 July 2011) page 25.

based on that supposition would not be supported by cogent evidence and would be unreasonable and irrational.

#### **D. Conclusion**

1.638 It is submitted that, having regard to the definition of collusion adopted by the Chairman as including an omission to do something that one ought to morally do, Mr Curran's failure to tell Mr Buchanan that he was aware from an IRA source that the IRA intended to kill him is the only closest suggestion of collusion that emerged in evidence before the Tribunal.

1.639 However, in fairness to Mr. Curran, this alleged failure on his part to warn Mr. Buchanan was not regarded as being of any significance by the PSNI who did not put a single question on this issue to Mr Curran.

## Chapter 22 The Expert Evidence from British Army Experts

### A. Introduction

1.640 The Tribunal heard expert evidence from two senior retired British Army Officers, Brigadier Mike Smith and Brigadier Ian Liles. These Officers offered extremely valuable evidence in relation to the targeting of the two RUC Officers by the IRA and the time that the operation began. The latter evidence is extremely important to the Tribunal's investigation.

### B. Brigadier Mike Smith

1.641 Brigadier Mike Smith was a career infantry officer with a history of extensive service in Northern Ireland.

1.642 Brigadier Smith stated that the South Armagh Brigade of the IRA was *"the most capable and experienced of the terrorist groups."*<sup>841</sup> He stated that they were capable of mounting large scale and ambitious operations.<sup>842</sup> He stated that they were also risk adverse and tended to plan their operations well in advance.<sup>843</sup> He stated that they had significant access to good quality weaponry.<sup>844</sup>

1.643 Brigadier Smith stated that the South Armagh Brigade of the IRA would engage in extensive planning and intelligence gathering before mounting an operation.

*"Q. Now, and again obviously without any actual knowledge of how they mounted this operation, but in an operation such as the one, and you are familiar with how the ambush took place and*

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<sup>841</sup> Day 39, page 8.

<sup>842</sup> Day 39, page 8.

<sup>843</sup> Day 39, page 8.

<sup>844</sup> Day 39, page 8.

*we'll come to that shortly, but what was the type of planning that the IRA would engage in to ensure or to, I suppose to reduce the risk to an acceptable level?*

- A. *Well, clearly gathering information at multiple levels and building that information together to provide some collateral information in which they could form a good image of the likelihood of success, and that would involve the correct identification of a target, I don't think any terrorist group would be interested in random killing of individuals so they would need to have some knowledge of who they were to mount an attack against, and the time, place, location, the general nuts and bolts of how they might conduct that in such a way as to make sure that they had a good chance of success and at the same time reduce the risk to themselves.”<sup>845</sup>*

1.644 Brigadier Smith stated that the South Armagh Brigade of the IRA would have been particular conscious of spotting patterns developing.

“Q. *Now, you make reference to them gathering information, and how would they go about or what method did they use to gather information on a target?*

- A. *Well I've no knowledge of how they conducted themselves in this particular operation but, in general terms, I would expect they would have levels of information at varying levels, and indeed some of the information that they would be aware of may have been passed to them by people who were not aware even of who the likely target might be. But these would relate to commonly used vehicles, commonly used routes, obviously the identities of the individuals concerned, frequency with which they might conduct a particular journey or a particular event. Across the pattern of the IRA campaign across the years, I think there are frequent examples that have come to note of where*

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<sup>845</sup> Day 39, page 9-10.

*individuals, whether they were members of the security force or not, had established some sort of pattern which became predictable and allowed them, therefore, to be targeted.*

- Q. *Now you made reference to people might be tasked to gather information but without knowledge, perhaps say, of who the target was to be or such like. Would that include perhaps, for example, being told to observe sightings of a particular car without knowledge of who the driver might be?*
- A. *Absolutely, yes, I think that that would be the case of a commonly used vehicle particularly if it was seen to be entering or leaving a location that was judged to be of interest. And of course in relation to this particular circumstance, we have a vehicle that was seen to have a Northern Irish registration, that evidence suggests, was seen to be a regular visitor to a number of Garda Síochána stations south of the border.*
- Q. *And the, I suppose the intelligence gathering procedure they might have used, am I correct in understanding that they gather pieces and piece them together to form a bigger picture and not everybody in the gathering process will know what the bigger picture is?*
- A. *Absolutely. And that obviously relates to piecing the information together but it also relates to security within the group itself in that obviously particular individuals who are gathering low-level pieces of data such as vehicle identification would not be privy to the intention to mount an attack or to actually be involved in the attack because that would provide an operational breach of security.*
- Q. *Now, you describe how kind of, I suppose how a pattern can be set, but again in general terms, presumably if you're travelling regularly from A to B there is only a certain number of variables and on each journey there is a certain number of points you must pass irrespective of how you vary your route?*
- A. *Yes, absolutely. And again from my own personal experience, and I had not known either of these officers, I had simply looked*

*at the evidence that was provided by the Tribunal, but from my own experience of moving in civilian vehicles in Northern Ireland during the period of PIRA operations, one did everything one could to avoid setting a pattern but, as you say, there are certain -- on certain locations there are certain bridges that must be crossed or certain junctions at which you have only a number of options and careful analysis of those routes will tend to lead you to key points along those routes, and there are a number of locations here, obviously both in terms of destination and arrival points and one or two key junctions and bridges along the route at which stage you'd probably know that a vehicle was committed to, or highly likely to be committed to a certain course of action.”<sup>846</sup>*

1.645 Brigadier Smith stated that once the IRA established a pattern they would consider whether there was an opportunity to mount an operation.

- “Q. *Now, having established a pattern in respect of a particular target, what would the IRA be next likely to do? How would they progress their operation?*
- A. *Well, I think the first thing to say is that one would expect that their information and intelligence gathering operation would be looking at a number of potential opportunities, so at some stage there comes a trigger point that here is an opportunity that's ready to be exploited or could be exploited or perhaps the situation itself demands, within the organisation, some form of action. And so I think these things build, or my imagination would be that they would build to a situation in which an attack is therefore planned and aimed to be initiated on the grounds that they have sufficient certainty that they can execute it with some good degree of success.*

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<sup>846</sup> Day 39, page 10-12

- Q. *Now, I think in your report you describe an ambush such as this as being that in relation to a 'soft target'. What do you mean by that exactly?*
- A. *Again I think this is fairly, became fairly common parlance during the period of the campaign. It would be an attack against which the terrorist grouping would expect to have the element of surprise. They would expect to be able to exert overwhelming force in terms of outfacing the opposition and where they would not expect there to be an immediate counterattack or reaction. And so this individual, or individuals, were seen to be relatively isolated and unsupported and 'soft' to the extent that they were not, as a military or police patrol might be from either of the police forces, in a position to mount an immediate response to that situation.*
- Q. *So I suppose a more colloquial term for 'soft target' would be one where the IRA would consider the odds to be heavily stacked in their favour?*
- A. *Absolutely, and the individuals themselves, where they were security force members or supporters in some way, had established a sufficient pattern of predictability that the attack could be the mounted again with some certainty of success. And across the period of the campaign if one looked at under-vehicle booby traps or attacks on individuals who had established that sort of pattern, as you know delivery drivers or bus drivers where there was a predictable pattern, one saw that emerging over the 20, 30 years of the campaign.*<sup>847</sup>

1.646 Brigadier Smith told the Tribunal that the frequency of Superintendent Buchanan's visits south of the Border facilitated the establishment of a pattern.

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<sup>847</sup> Day 39, pages 1213.

- “Q. Now the Tribunal has heard previously that, and you have alluded to it, that over the previous couple of years, and it had been part of his job, in fact it had been the major part of his job, that Superintendent Buchanan was a frequent visitor south of the border?”*
- A. That was the information that was given to me, yes. In his role as Border Superintendent he obviously had a duty of liaison with Garda Síochána and therefore my understanding was that he was a regular visitor to a number of garda stations, not just Dundalk where this attack seems to have taken place, and there is evidence that he would be expected to travel across the border on a regular basis, at least probably once during a normal working week.*
- Q. So, from what you have told us about how the IRA would attempt to establish a pattern, if Superintendent Buchanan had been the target of the IRA attack, does the, and as I say the visits that he was required to undertake as part of his job, did that facilitate the establishment of pattern, in your opinion?”*
- A. Yes, and the key issues that I identified here was that obviously the job required him to be a regular visitor to stations over a period of time. I understand that the vehicle he used he had been using for a number of years and --*
- Q. I think the Tribunal has previously been told, I think, he had been using that car since December 1986?”*
- A. Yeah, so three years as a regular visitor, one would anticipate there would be multiple occasions in which it might have been sighted, so therefore the colour, registration, etc, etc, might be known, and it may well have been observed leaving a number of Garda Síochána stations so there would seem to be business there, and at the other end of the journey presumably leaving a number of RUC/PSNI stations where he would be known to have business at that end, and the individual himself, through his work, could have established that it as an understood name. For the Chief Superintendent that pattern seems to be far less*

*strong, and therefore at what moment PIRA decided to launch an attack, whether the Chief Superintendent was simply unlucky in terms of being in that vehicle that day or there was an additional factor, of which I'm unaware, that initiated the attack, I'm able to be much less conclusive there because there doesn't seem to be that collateral information.*"<sup>848</sup>

1.647 Brigadier Smith told the Tribunal that the more compressed the time frame the less likely the chance the operation had of success. Consequently, he testified that it was unlikely that the trigger for the operation was the arrival of the officers at Dundalk Station between 2.15pm and 2.20pm.

*"Q. In terms of the time scale the Tribunal has some evidence that the Superintendents arrived at Dundalk between 2:15 and 2:20 on the day. The meeting was planned for two but they actually arrived between 2:15 and 2:20. Now taking that in conjunction with what you know about the arrival of the van at the site of the murders and the deposition of the men into the derelict cottage there, if there were seven armed men involved it would seem unlikely, would it not, that the tip-off about their arrival at the station would have allowed such a body of men to retrieve their weapons, get the van, assemble, and drive to the murder site within ten or 15 minutes, it would seem unlikely?"*

*A. Yes, I think, as I said earlier, the more compressed the time frame the less likely the probability in terms of the physical act involved, the degree of risk involved. You referred to acquisition of weapons and obviously being in position of an illegal weapon like that itself had some risk, so one presupposes those weapons weren't taken into position until quite late in the process, so therefore the more compressed the time scale I think the less likely you have of a chance of success."*<sup>849</sup>

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<sup>848</sup> Day 39, pages 14-15.  
<sup>849</sup> Day 39, page 57.

## B. Brigadier Ian Liles

1.648 Brigadier Ian Liles was an officer with a history of extensive service in Northern Ireland.

1.649 Brigadier Liles stated that *“South Armagh PIRA were extremely professional and extremely risk adverse.”*<sup>850</sup> He stated that they did not conduct ad hoc operations. Their operations were *“well planned and generally very well executed.”*<sup>851</sup>

1.650 Brigadier Liles stated that it would have been impossible to organise the operation in under three hours:

*“A. I would say it would have been impossible in under three hours just because of the number of moving parts, weapons from hides, cars to be moved, personnel to be assembled, dickers to put on route, to do that is a complicated and time consuming affair, just the time and motion piece of it.”*<sup>852</sup>

1.651 Brigadier Liles stated that the operation could not have been mounted on foot of a tip off to the effect that the RUC Officers had arrived at Dundalk Station.

*“Q. Given your opinion it would have taken approximately three hours to mount the operation what would you say about either them being seen or somebody telling the IRA that they had arrived in Dundalk Garda Station sometime after two o'clock, what affect would that have?”*

*A. I don't think there would be enough time to mount the operation given the time that the ambush was actually mounted.”*<sup>853</sup>

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<sup>850</sup> Day 39, page 64.

<sup>851</sup> Day 39, page 64.

<sup>852</sup> Day 39, page 66.

<sup>853</sup> Day 39, page 67.

1.652 Brigadier Liles stated that he arrived in the area (Three Brigade) three months after the murders and saw no intelligence suggesting that intelligence was given by a telephone tip off.<sup>854</sup> He was involved in intelligence at that time. He was the Uniform Liaison Officer to the Task Coordination Group South.<sup>855</sup> He was involved in analysing intelligence data after the murders.<sup>856</sup>

1.653 Brigadier Liles stated that the operation had to have started by 9am.

*“Q. If, at half past eleven, or thereabouts, or sometime between half past eleven and twelve, that type of activity has been noted and if their radios are perhaps stored off-site, and certainly their weapons are stored away from site, is it likely that the actual, if you like, the preparation for the operation is already underway by half past eleven?”*

*A. It's got to be.*

*Q. When do you think, from your own knowledge and from the observations that you had access to, what is the least amount of time that the IRA could have, or the latest time in which the IRA could have set about putting this operation into place?”*

*A. I mean, the absolute latest, nine, then o'clock that morning.”<sup>857</sup>*

1.654 Brigadier Liles stated the only way that the IRA might have been able to launch the operation later, at say 11:30am/midday, was if the IRA knew that they were coming. And he emphasised that this was still before they left Northern Ireland.

*“A. I wasn't aware of those timings and when I say ten o'clock was the absolute drop dead time, that would be the drop dead time. To only exception to that and how they might have been able to do it from a start at 11:30, 12:00 is if the policemen had been targeted; they were pretty sure they were going to come within a*

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<sup>854</sup> Day 39, page 67.

<sup>855</sup> Day 72, page 19.

<sup>856</sup> Day 72, page 20.

<sup>857</sup> Day 72, page 25.

*week and they had started an operation and were waiting for a trigger, then perhaps you could have a start of eleven o'clock. So a lot of preparation had to be done. But it couldn't have been done from a cold start, and I stick by what I said at the previous tribunal on this one.*<sup>858</sup>

...

“A. *I think the main thing coming out of this. Other than a lot of understanding of IRA tactical operations, was that the operations started to be mounted between 11:30 and 12 o'clock, and therefore, it was being mounted against something they knew that was going to happen later that day, so they certainly knew it at least by 10 o'clock that morning, at least by 10 o'clock that morning. And I think that was the main thing that came out of that study, that this was not, this was not the two policemen driving into the police station and the IRA suddenly mounting an operation to hit them on the way back. The operation started that morning between 11:30 and 12:00.*”<sup>859</sup>

1.655 Brigadier Liles stated that it remained his opinion, however, that the operation “*would need to have started by 10 o'clock that morning.*”<sup>860</sup>

### **C. Conclusion**

1.656 The evidence of Brigadier Smith and Brigadier Liles clearly shows that the operation could not have been triggered by the arrival of the two RUC officers at Dundalk Station between 2.15 and 2.20pm. It shows that the operation began much earlier, long before the two men left Northern Ireland. Brigadier Liles' evidence in this regard was particularly important. He stated that in his view the operation commenced around 10am that morning. He opined that it

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<sup>858</sup> Day 72, page 33  
<sup>859</sup> Day 72, page 41-42.  
<sup>860</sup> Day 72, page 58..

could have started later, between 11.30pm and midday, if the IRA had definite knowledge that the men were coming.

1.657 If this evidence is accepted by the Tribunal, and it is submitted that there is no reason why it should not be, that means that the number of people who had advance knowledge of the meeting and were therefore in a position to leak it is extremely limited.

1.658 The Tribunal will be aware that as the public hearings continued there was widespread acceptance that this evidence in relation to timings was correct. It will be recalled that during his cross-examination of Commissioner Pat Byrne, Counsel for the PSNI stated:

*“...it would have been clear to them that this operation required a significant amount of planning, and I suggest to you that they ought to have looked at that earlier shift, because the operation could not have been put in place from the time they arrived at the station?”<sup>861</sup>*

1.659 It will also be recalled that Assistant Chief Constable Drew Harris also acknowledged this fact<sup>862</sup>.

1.660 This is significant for Mr. Corrigan because there is no evidence that Mr Corrigan had advance knowledge that the two RUC men were visiting Dundalk Station that afternoon.

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<sup>861</sup> Day 81, page 99  
<sup>862</sup> See Para 1.686

## Chapter 23 Intelligence

### A. Introduction

1.661 Intelligence played a prominent role during the course of the public hearings.

1.662 However as recognised by the Chairman during the cross-examination of Mr Dermot Jennings on Day 70, intelligence is not evidence.

“Q. MR. O'CALLAGHAN: I was asking you a general question about intelligence, and whether or not we can equate intelligence with evidence and are there different levels and grades to intelligence that the Garda Siochana receive?

A. Well, Chairman, intelligence, an intelligence agency will always try and grade its value, but without doubt, and I'm not being flippant in any way, but sometimes people can mistake the whole evidence/information/intelligence. And in this particular -- and I am particularly referring to what Mrs. Lavery said about the thing -- you have to analyse your intelligence with great depth. Because if not, what you'd end up doing is you'd end up chasing shadows every day of the week and your organisation couldn't sustain that.

**CHAIRMAN: Intelligence isn't the equivalent of evidence?**

**A. Absolutely not. Certainly it can be a guiding factor, and in fact I think I said it's like a piece of a jigsaw, and that on working on intelligence, then you could develop your case maybe to eventually end up with evidence, but a piece of intelligence and, certainly as the counsel said, it is a mistake that can be made by people that when they see a piece of intelligence, say this is like, this is evidence, and that would be a fatal mistake. Well, as you'd know,**

**Chairman, when you'd go into the court or whatever... can you hear me?**

**Q. I can. And just because it's called intelligence doesn't necessarily mean it contains intelligence information, would you agree with me on that? That the intelligence is a reference to information being received as opposed to the content of the information?**

**A. Well, yes, of course, and then when you analyse it. But to be fair to any person, I suppose, their intention may be very good. Like, they may be very genuinely saying this is what they heard and this is what -- and that is very much the job of a good intelligence handler, is pass it on as you get it and let the experts then analyse it, put it together with whatever else you have and decide is this something that is actionable or is it genuine, or perhaps it's false. But that is kind of the way the system works.**<sup>863</sup> (Emphasis added)

## **B. The Garda Intelligence**

1.663 Detective Superintendent Brian Bruton gave evidence to the Tribunal about Garda Intelligence relevant to the Tribunal's inquiries. He identified the following pieces of intelligence:

1. Doc 121 "Garda Information (1989) suggested that PIRA were in possession of the late Superintendent Buchanan's notebook taken from the scene of the shootings and PIRA were anxious to identify a named person in it."
2. Doc 131 "Garda Information (1992) suggested that PIRA members had conveyed a threat to a witness regarding an upcoming trial in which D/Sergeant Owen Corrigan was a defendant. The information further

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<sup>863</sup> Day 70, page 50-51.

*suggested that as a result of the threat, the said witness was in fear and unlikely to appear in court."*

3. *Doc 235 "Information (January 1990) indicated a known PIRA member may be in possession of a false passport and instructions issued that this person's house should be searched."*
4. *Doc 236 "Information which is based on double hearsay and received subsequent to the killings indicated that there was a contact that passed on information that facilitated the murder of the Gibson family"*
5. *Doc 247/581 "Internal report, dated April 1989, prepared by a Garda Superintendent and based on information received from a reliable source. It reported that over 20 persons were involved in the PIRA operation that culminated in the murders of Chief Superintendent Breen and Superintendent Buchanan and that PIRA had four roads covered for over one week prior to the attack. The four roads were - Omeath/Newry Road north of Border Crossing Point 1; Main Road Dundalk/Newry, North of Border Crossing Point 5; North of Border Crossing Point 28 at Ballybinaby; Edenappa/Jonesboro (scene)"*
6. *Doc 264/613 "Information (April 1989) and assessed as probably true and emanating from a previously reliable source indicated that on the day of the shooting the IRA had men in position on the main Dublin-Belfast road, the main Omeath-Newry road and the Carrickastickan road in addition to the road on which the ambush occurred. The largest concentration was on the Carrickastickan road that is the main Dundalk-Forkhill road. It stated that over 20 IRA men were involved in the operation that was in place for a week before Chief Superintendent Breen and Superintendent Buchanan were murdered. The report went on to provide details as to the identity of the planners and participants in the operation."*

7. *Doc 291/592 "Information (May 1995) available to the Gardaí indicated that Superintendent Bob Buchanan visited a Garda Station that was alleged to be under surveillance a short period prior to his murder."*
8. *Doc 383 "Reporting detailing discussions at Garda/RUC meeting at Garda Headquarters on 24th October 1988. Report confirming the types of meetings to be held between both Forces."*
9. *Doc 487 "Background report on a man with Republican sympathies and his extended family, business connections and alleged smuggling and PIRA activities. Reported that members of this family had organised themselves and virtually controlled the movement of traffic in and out of Northern Ireland in their area. Reported that members of this family used their membership of PIRA to assert their authority locally and further afield."*
10. *Doc 494 "Information (April 1989) and assessed as probably true and emanating from a previously reliable source, indicated that on the day of the shooting the IRA had men in position on the main Dublin-Belfast road, the main Omeath-Newry Road and the Carrickastickan road in addition to the road on which the ambush occurred. The largest concentration was on the Carrickastickan road, that is the main Dundalk-Forkhill road. It is stated that over 20 IRA men were involved in the operation that was in place for a week before Chief Superintendent Breen and Superintendent Buchanan were murdered. The report went on to provide details as to the identity of the planners and participants in the operation"*
11. *Doc 494: "Information concerning a named person from County Louth and in particular reference to a dollar bank draft and dealing in Clenbuterol. Information that a named PIRA person purchased a large quantity of drugs for animals (sic) and information that two other named PIRA members were selling animal drugs in the border area."*

12. Doc 502 *“June 1991 Report on a serving Garda member and aspects of the report were stressed as sensitive. The report stated that the named Garda member imported cars from Northern Ireland and Britain. It was alleged that the same Garda member had been making use of a body repair shop in Dundalk, which was owned by a person with a conviction relative to an arms dump found in his yard and he received a five year suspended sentence. Alleged that the same Garda was the only witness at his trial and gave a character reference on his behalf. Report mentioned a traffic accident between the same Garda member and a Northern Ireland Resident. Report alleged that the Garda did not hold a driving licence since 1977.”*
  
13. Doc 514 *“Garda information received in the final quarter of 1989 suggested that the two RUC officers who were killed were accidentally sighted on the southern side of the border by a named PIRA member. The PIRA member recognised one of the officers and then passed details of the sighting on to IRA. PIRA checked at Dundalk Garda Station and confirmed that the officers were there.”*
  
14. Doc 519 *“Garda report (May 1987) from Deputy Commissioner Operations Branch and addressed to each Border Chief Superintendent. Information indicated that PIRA were aware that the RUC were crossing the border to meet with Gardaí as per Anglo-Irish Agreement. PIRA was determined to smash the agreement and planned to murder a number of RUC officers travelling to or returning from one of these meetings. A report suggested security measures to be considered.”*
  
15. Doc 526 *“Garda report date 14th September 1989 detailing criminal activity in border areas and racketeering activities by subversive groups. The report offered background information on named persons and also detailed the frauds and criminal activity that each named person was allegedly engaged. The writer indicated a need for Gardaí*

*and Customs and Excise to examine the various smuggling/criminal activities.”*

16. *Doc 542 “Garda information indicated by way of double hearsay, that there was a contact in the Gardaí who had passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station.”*
17. *Doc 554 “Garda information (1984) detailed assorted information including the fact that PIRA were monitoring movements of Garda vehicles to and from Dundalk Garda Station. Report also detailed the vantage points used by PIRA to surveil the Garda station.”*
18. *Doc 567 “Garda information received sometime proximate to the murders of Buchanan and Breen suggested that a named PIRA member had a Garda contact who gave only short notice of the visit of Buchanan and Breen to Dundalk Garda Station. The report suggested that PIRA knew that the officers would have to take one of four roads on their way home and that PIRA sent out four units to cover each of these roads.”*
19. *Doc 578 “1987 Garda information detailing PIRA intentions to mount attacks on RUC stations and observations posts. Report detailed the PIRA commanders who planned and who would control the operations. Report stated that the same PIRA unit were responsible for the bomb explosion which killed Lord and Lady Gibson.”*
20. *Doc 604 “March 1989 confidential information received by Gardaí from a person not present at the scene concerning details of the PIRA operation at the scene of the murders and in the minutes preceding the ambush and shooting. The details were set out as follows: Two men with rifles halted three cars before the cars carrying the RUC officers arrived. The occupants were made to leave their cars. As the two officers were travelling from the south they were followed by a white or*

*cream Lite Ace van. The back window of the van was covered with black plastic which gave a mirror reflection from the outside and allowed the person in the van to see out. The van passed the officers' car and pulled across the road in front of them. The car halted and four masked men with guns jumped out of the back door of the van. The RUC officers tried to reverse their car and the four gunmen shot them. The van then drove off towards Jonesboro taking the six gunmen with them. The two men who halted the cars on the roadway did not wear masks and had no transport with them."*

21. *Doc 608 "Garda information contained in two reports which were passed to the RUC in April 1989 regarding the suspicious sighting of vehicles and persons north of the border after the murder."*
  
22. *Doc 613 "Information (April 1989) and assessed as probably true and emanating from a previously reliable source, indicated that on the day of the shooting the IRA had men in position on the main Dublin-Belfast road, the main Omeath/Newry road and the Carrickastickan road in addition to the road on which the ambush occurred. The largest concentration was on the Carrickastickan road, that is the main Dundalk-Forkhill road. It stated that over 20 IRA men were involved in the operation that was in place for a week before Chief Superintendent Breen and Superintendent Buchanan were murdered. The report went on to provide details as to the identity of the planners and participants in the operation."*

1.664 Detective Superintendent Brunton also told the Tribunal about intelligence that had been provided to the Gardaí by the PSNI.

1. *Doc 242 "An internal Garda report that indicated that on 20th March 1989 Superintendent Buchanan and Chief Superintendent Breen met with Chief Superintendent Nolan. 'At the meeting the RUC officers informed Chief superintendent Nolan of allegations of alleged smuggling activities by a named individual'"*

2. Doc 248 *"Report gives details of three named individuals questioned about incidents in the border area by RUC in Northern Ireland"*
3. Doc 274/612 *"Ballistics analysis indicated that four weapons were used in the killings and concluded that at least 25 shots were discharged from these weapons, two .223Armalite rifles, a Ruger mini14 and a 7.62 Kalashnikov rifle. The testing indicated that one of the Armalite rifles had last been used in the murder of Eamon Maguire at Cullaville on 1<sup>st</sup> September 1987. There was no prior recorded trace of the other two rifles."*
4. Doc 302 *"The Cory Report (paragraph 2.156 at page 47) contains the following reference which appears to be based on the contents of document 302 - 'A report received almost a decade after the ambush indicated that an administrator, based somewhere in the Republic, who arranged meetings of Gardaí and RUC officers provided PIRA with information that led to the murders of the officers'"*
5. Doc 306/314 *"A report received almost a decade after the ambush indicated that an administrator, based somewhere in the Republic, who arranged meetings of Gardaí and RUC officers, provided PIRA with information that led to the murder of the officers."*

1.665 Mr Brunton also told the Tribunal about the following Garda intelligence:

*"Document 122: Garda information 1989 that detailed assorted PIRA activity and also identified the PIRA commander and PIRA unit responsible for the murders of Buchanan and Breen.*

*"Document 132: Garda information received many years after 1989 assessed as reliable. Following the alleged abduction of retired Detective Sergeant Owen Corrigan by IRA, was asked about the*

*identities of people supplying information on IRA activities in Louth/Meath.*

*"Document 133: Garda information received many years after 1989 assessed as reliable. Information on the movements of Chief Superintendent Harry Breen and Superintendent Buchanan was not given to the IRA by Owen Corrigan.*

*"Document 246: Garda information 1989 which named two persons involved in the murders of Buchanan and Breen.*

*"Document 263: Garda information 1989 which named three persons involved in the murder of Buchanan and Breen.*

*"Document 498: Garda information 1989 that two named persons involved in the murders of RUC officers on the 20th of March, 1989.*

*"Document 577: Garda information 1988 reported that PIRA had developed a source in a named company and that from June 1988 they would be in a position to monitor telephone numbers called from the garda stations or from a garda's private phone.*

*"Document 585: Correspondence 2008 between an external agency and An Garda Síochána. The external agency wrote to An Garda Síochána and incorrectly stated that a named person from Dundalk had been involved in a terrorist atrocity in which nine people had lost their lives. This named person had the same name as a retired garda sergeant who had been stationed in Dundalk. The external agency later retracted the claim and provided new identifying particulars.*

*"Document 618: Garda report 1989 detailing a Garda search of a suspect's house and the arrest of that suspect under Section 30 of the Offences Against the State Act. The suspect was questioned about the murders of Chief Superintendent Breen and Superintendent Buchanan.*

*During the search of a suspect's house the following material was found:*

- 1. A CB radio which had been adapted for use in the cigarette lighter of a car.*
- 2. A small power unit believed to be a receiver.*
- 3. One stick of military type camouflage paint.*

*"The search did not find any of the documents believed to have been removed from Chief Superintendent Breen and Superintendent Buchanan. The suspect declined to answer any questions and was subsequently released without charge.*

*"Document No. 619: Garda report 1989 which identified the receiver type device described in the previous document. The device was identified as a Lorex hand-held F.W. bug detector/locator. The device was manufactured by Ruby Electronics or Lorraine Electronic Systems Elite in London and was not available for sale in Ireland. The device was effective for a distance of approximately 20 feet and detected signals transmitted by bugging devices.*

*"Document No. 620: Communication 1989 from An Garda Síochána to the RUC. Communication detailed five persons who were arrested by An Garda Síochána on the 27th June, 1989."*

*"Document No. 622: On the 22nd August, 1988 Gardaí stopped a car driven by a person who gave his name as Peter Keeley with an address in Newry, County Down, Northern Ireland. When asked what was he doing in Dundalk, he replied that he was visiting the wife of a named member of PIRA. The report further states that he was observed again in Dundalk on the night Robert Russell was extradited to Northern Ireland. Russell was extra kite indicted on the 27th August, 1988 and was handed over to the RUC at 6:15 a.m. on that day. He was driving around with leading members of PIRA, including P.J.*

*'Mooch' Blair and Mickey Collins. The report further states that it would appear at this stage that he is a trusted person within the PIRA."*

*"Document No. 533: Page from the journal of ex-Chief Superintendent John Nolan. A meeting was held at Dundalk Garda Station on Thursday the 2nd February, 1989 between Chief Superintendent John Nolan and Chief Superintendent Harry Breen and Superintendent Bob Buchanan*

*"Document No. 535: A page from the journal of ex-Chief Superintendent John Nolan. On the 8th March, 1989, Constable Sir John Hermon (RUC) and Chief Superintendent Bill Wilson (RUC) met with Chief Superintendent John Nolan at Dundalk Garda Station at 4:5 p.m. They remained until 5:30 p.m. until suspect devices on the northern side of the border were declared safe.*

*"Document No. 556: Report of Department Owen Corrigan dated the 8th May, 1985. Report details a search of a home of a PIRA suspect by D/Sergeant Owen Corrigan and other Gardaí. Gardaí seized a number of photographic negatives from the house. One of the photographs was of Owen Corrigan and was taken by the PIRA suspect. Gardaí also found the names and home address of Gardaí in the house. The report also detailed the harassment of Owen Corrigan off duty and his wife by the PIRA suspect and six other members of PIRA on the streets of Dundalk. The report also detailed that PIRA posted photographs of Owen Corrigan at different locations in Dundalk town.*

*"Document No. 637: Report of Chief Superintendent BM King, Monaghan Garda Station. Reported that Superintendent Buchanan travelled alone, unarmed and unescorted. He would drop in unannounced to garda stations. Some months earlier Superintendent Buchanan called to Clontribret Garda Station. The sergeant was concerned about his security and directed him to contact the*

*superintendent at Monaghan. On at least one occasion, Chief Superintendent King discussed the matter of Superintendent Buchanan's visits with Detective Sergeant Tom Curran. Both were concerned about his unannounced visits in his own car to garda stations. They were also concerned about him parking his own car in the yards of garda stations. Superintendent Buchanan was advised not to visit Monaghan unless it was arranged first with Superintendent Curran. Superintendent Buchanan would call informally to Castleblayney, Corrinshogo and Carrickmacross garda stations."*

1.666 Assistant Commissioner Edward O'Dea was the Head of Crime & Security in 1989. He stated that Patrick O'Toole was his Chief Superintendent and Pat Byrne was his Detective Superintendent in Charge of Intelligence.

1.667 Assistant Commissioner Edward O'Dea told the Tribunal that Crime & Security received Intelligence Documents 236, 542 and 567 within a year or two of the murders. It will be recalled that these docs stated:

- *Doc 236 "Information which is based on double hearsay and received subsequent to the killings indicated that there was a contact that passed on information that facilitated the murder of the Gibson family"*
- *Doc 542 "Garda information indicated by way of double hearsay, that there was a contact in the Gardaí who had passed on information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station."*
- *Doc 567 "Garda information received sometime proximate to the murders of Buchanan and Breen suggested that a named PIRA member had a Garda contact who gave only short notice of the visit of Buchanan and Breen to Dundalk Garda Station. The report suggested that PIRA knew that the officers would have to take one of four roads*

*on their way home and that PIRA sent out four units to cover each of these roads."*

1.668 Assistant Commissioner Edward O'Dea told the Tribunal that he recalled seeing "some of those" intelligence documents.<sup>864</sup> He stated that as a result of one of them he instructed Detective Superintendent Byrne to mount a surveillance operation on the named PIRA member to see if they could obtain any corroboration of or more detail of the intelligence.

*"A. Yes, I recall seeing some of those, and I remember, as a result of one, that Superintendent Byrne, as a result of who was named - there was a particular person named in the document - mounted a surveillance programme on him for quite a while, and, as well as that, they had technical support as well, but nothing came from it and they had to transfer to other areas of activity and nothing came out of their period in that area.*

*Q. Yes. I take it, when you talk about surveillance being carried out, it wasn't on a member of the Garda Siochana?*

*A. No, one of the opposition."<sup>865</sup>*

1.669 Assistant Commissioner Edward O'Dea told the Tribunal that an allegation of a Garda tipping off the IRA was very serious and would be investigated. He told the Tribunal that they caught a Garda in Limerick who was doing it:

*"A. Mm-hmm. Well, you see, we had one case down in Limerick where we got intelligence about a particular individual, and there was a trap set and he fell for it.*

*Q. Yes.*

*A. And he was arrested just after leaving the station, when he was making -- went to the nearest public telephone box, and he was arrested in the box. Now, he was subsequently charged in the Special Criminal Court, convicted and sentenced, and, naturally,*

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<sup>864</sup> Day 54, page 105.

<sup>865</sup> Day 54, page 105-106.

*he was dismissed from the Force. So we did deal with -- **when we had something to go on, we dealt with it efficiently.***" <sup>866</sup>

(Emphasis added)

1.670 Patrick O'Toole was Chief Superintendent in Crime and Security from 1989 to 1991. He told the Tribunal that he was never aware of any intelligence that he saw that there was a problem with collusion in Dundalk.<sup>867</sup> He stated that if they received actionable intelligence they dealt with it.<sup>868</sup> He said that they had previously done so in Dundalk (The Passport Affair) and Limerick (Kelly).<sup>869</sup> He stated that the allegation that a Garda had colluded in the murder of two RUC colleagues was the most horrendous allegation that can be made against a policeman and that he had not seen any evidence that there was a Garda mole in Dundalk.<sup>870</sup>

1.671 He said that Intelligence Document 567 and the other two pieces of intelligence were inquired into:

*"Q. I see. And do you recall, in fact, that when the -- when the piece of evidence, I think it was the Document 567, which mentioned a named IRA person, are you aware that that was looked into?"*

*A. Those three pieces of intelligence that emanated from the same source were discussed together. There was -- it was noted, along with what you have already said, that this was single-source reporting, with no collateral, good, bad or indifferent, that there was no person named, garda or civilian, there was no Garda Station mentioned, Garda -- whatsoever, there was no reporting or intelligence from any source outside of our State indicating that there was a problem, there was no -- our own agents in that area were not -- never reported, not even after the dreadful events, that there was a mole, or whatever you want to*

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<sup>866</sup> Day 54, pages 106-107.

<sup>867</sup> Day 75, page 32.

<sup>868</sup> Day 75, page 32.

<sup>869</sup> Day 75, page 32.

<sup>870</sup> Day 75, page 34.

*call it, a leak, in that area. And the one name that was there was the person who allegedly had the contact. So it was decided to increase operations or intensify operations relative to that individual, to see -- even though there had been no indication, up to this, between -- you know, that that would include his associates as well, to see would anything raise its head, but nothing did.*

Q. *And I think that Mr. O'Dea gave evidence on Day 54, I think at page 105, that Superintendent Byrne was the person responsible for setting up a surveillance programme in relation to that named person?*

A. *He was the Superintendent in charge of the intelligence section and any such operations that would be driven by him, yes.*

Q. *And I think you were there at that stage?*

A. *I was Chief Superintendent and Mr. O'Dea was Assistant Commissioner in charge and he was kept -- he was made aware of these pieces of intelligence and what was being done.*

Q. *It was looked into on your watch, anyway, and nothing came of it?*

A. *That's right, correct.*

Q. *And given that you had no further specifics, there was no more you could do?*

A. *Well, I should mention, as well, that I think the last of those three pieces came to 'C' Branch in April or May of '91, and I left there in June of '91, so I would have lost touch with events after that.<sup>871</sup>*

### **C. British Intelligence**

1.672 Mr David McConville produced a number of intelligence documents on behalf of the PSNI.

1.673 On Day 13, Mr McConville produced the following document:

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<sup>871</sup> Day 75, pages 74-75.

*“Reliable intelligence indicates that a civilian administrator based at an unknown to location in the Republic of Ireland organised meetings between the Garda and the RUC in 1989. This administrator was responsible totalling for the leak to PIRA that led to the deaths of Chief Superintendent Harry Breen and Superintendent Robert James Buchanan on the 20th of March, 1989, in south Armagh.”<sup>872</sup>*

1.674 On Day 99, Mr McConville produced the following intelligence documents:

1. *“Reference the double murder of Superintendent Buchanan and Chief Superintendent Breen. Intelligence indicated that a ‘Hard Bap’ Hardy and a male known as ‘Mooch’ from the Dundalk area would have been deeply involved in the murder.”*
2. *“Intelligence received indicated that the information obtained by PIRA in respect of the movements of Chief Superintendent Breen and Superintendent Buchanan was obtained by a person visiting Dundalk station on legitimate business at the same time as the arrival of Mr Breen and Mr Buchanan and recognized them.”*
3. *“Intelligence indicated that an unknown female who works in Dundalk Garda station made a phone call to an unknown member of PIRA when Chief Superintendent Breen and Superintendent Buchanan were leaving the barracks. This phone call enabled the two officers to be triggered into an ambush on the Edenappa Road, Jonesboro on 20 March 1989. Inquiries continue to identify the female concerned.”*
4. *“Intelligence dated 1996: Intelligence indicates that PIRA abducted Owen Corrigan and Frank Tiernan on 13<sup>th</sup> December 1995 from a hotel in Drogheda. It is believed the two men mounted a scam on a business.*

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<sup>872</sup>

Day 13, page 71-72.

*PIRA subsequently interrogated the two men for two days before being released on 14<sup>th</sup> December 1995.”*

5. *“Intelligence dated 1996: Intelligence indicates that south Armagh PIRA were involved in the abduction and interrogation of Owen Corrigan and Francis Tiernan from the Boyne Valley hotel in Drogheda on 13/12/1995. Corrigan and Tiernan are believed to have been involved in a major property scam, which PIRA want to investigate.*
6. *“Intelligence dated 1996: Intelligence indicates that PIRA were responsible for the kidnapping of Owen and Francis Tiernan on 13<sup>th</sup> December 1995. A number of leading PIRA members were involved. The two hostages were released on 14/12/1995”*
7. *“Intelligence indicates that following his abduction by south Armagh PIRA, Frank Tiernan was told his life was under threat. PIRA/Sinn Fein held an inquiry into the abduction resulting in Tiernan being cleared. Further inquiries held into the abduction by PIRA PSF found that a number of their senior members acted without authority from senior command. These members became the subject of a PIRA/Sinn Fein disciplinary investigation.”*

1.675 On Day 117, Detective Chief Superintendent Roy McComb gave evidence to the Tribunal about five additional pieces of intelligence which had come into the possession of the PSNI over the previous five years. These were as follows:

1. *“Intelligence relating to PIRA indicates that PIRA had received information regarding Chief Superintendence Breen and Superintendent Buchanan from a detective AGS officer who had been publically associated to the Smithwick Tribunal and that this individual had been paid a considerable amount of finance for this information.”*

2. *“Intelligence indicates that this AGS officer also provided information in relation to Tom Oliver and continued to provide a variety of information to PIRA for a number of years. It is believed that this AGS officer is now retired. This AGS officer was handled as a source by a senior member of the PIRA.”*
3. *“Separate intelligence indicated that a senior AGS member in Dundalk provided the IRA with the intelligence that enabled PIRA to murder Chief Superintendent Breen and Superintendent Buchanan.”*
4. *“Additional intelligence regarding the murders of Chief Superintendent Breen and Superintendent Buchanan indicated that an AGS officer played a role in passing the details of the officers’ movements to PIRA. Intelligence also exists to link a criminal from the border area to their targeting.”*
5. *“Intelligence indicates that a former AGS officer, Jim Lane, who was based in the Dundalk area frequently expressed his concerns to associates that fellow AGS officers Finbarr Hickey and Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area.”<sup>873</sup>*

1.676 Detective Chief Superintendent Roy McComb was unwilling to name the Garda officer mentioned in the first piece of intelligence. He told the Tribunal that he was not in a position to say whether he knew the identity of the Garda Officer.<sup>874</sup> He stated that the intelligence did indicate who the handlers were in respect of that piece of intelligence.<sup>875</sup> He stated that the same individual is the Garda in the first and second pieces of intelligence.<sup>876</sup> **He confirmed that the first four pieces of intelligence made no mention of Mr Corrigan.**<sup>877</sup>

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<sup>873</sup> Day 117, pages 3-4.

<sup>874</sup> Day 117, 7-8.

<sup>875</sup> Day 117, 7-8.

<sup>876</sup> Day 117, pages 12-13.

<sup>877</sup> Day 117, pages 25-26.

He stated that these pieces of intelligence were regarded as accurate and reliable.<sup>878</sup>

1.677 Assistant Chief Constable Drew Harris gave further evidence to the Tribunal in respect of the five new pieces of intelligence. This evidence was read into the record on Day 124. He stated that the Garda Officer referred to in the first and second pieces of intelligence was not named.<sup>879</sup> He also confirmed that Mr Corrigan was not mentioned in relation to the first four pieces of intelligence.<sup>880</sup>

1.678 Mr Harris also gave evidence in relation to a further 12 pieces of intelligence. These were as follows:

1. *"PIRA traditionally obtained extremely good intelligence from Dundalk Garda Station." When in PIRA, the Tribunal redacted that particular name, it mentions an individual "was involved in intelligence gathering operations and would have been aware of PIRA's contacts in the Garda.*
2. *Kevin Fulton is understood to have received information regarding the murders of Chief Superintendent Breen and Superintendent Buchanan from a PIRA member linked to a senior PIRA figure.*
3. *In summer 2011, 'Mooch' Blair commented that he was not involved in the murders of RUC officers Breen and Buchanan as was claimed during the Smithwick Tribunal in Dublin. Blair stated that he was actually engaged on a separate operation at the time of the murders. Blair also confirmed that there was a Garda spy involved. This fact had been speculated during the Tribunal.*
4. *During 2011, a senior PIRA member confided to an associate their personal fears concerning the ongoing Smithwick Tribunal, particularly that the AGS personnel that were previously under*

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<sup>878</sup> Day 117, page 27.

<sup>879</sup> Day 117, page 43.

<sup>880</sup> Day 124, page 117.

*PIRA's control would potentially highlight the level of cooperation previously provided.*

- 5. In late 2011 Patsy O'Callaghan a senior PIRA member commented that to his knowledge, An Garda Siochana Sergeant Owen Corrigan had no time for the IRA but was a gangster who was out for money.*
- 6. A senior PIRA figure had several AGS officers passing information to PIRA, including officers of a more senior position than Owen Corrigan.*
- 7. In relation to the murder of Lord Justice Gibson, a senior member of PIRA has since revealed that the information which led to the PIRA operation emanated from An Garda Siochana.*
- 8. Sinn Fein/PIRA members remain concerned that the Smithwick Tribunal continues to disclose possible damaging information. Sinn Fein/PIRA members remain concerned that specific detail relating to the murder of Tom Oliver may be disclosed.*
- 9. Intelligence indicates that a senior PIRA Army Council member was directly involved in ordering the murder of Tom Oliver. The senior PIRA Army Council member had been approached by several PIRA members and others requesting that Tom Oliver not be killed. Despite these requests, the senior PAC member directed that Oliver be executed.*
- 10. Further intelligence suggests that a senior PIRA figure sought direction and instruction from a senior PIRA Army Council member in relation to the discovery of allegations of Tom Oliver being an AGS informant. The senior PAC member subsequently ordered Oliver to be executed.*
- 11. Intelligence suggests that Owen Corrigan engaged in corrupt activity targeting criminals, and was motivated by greed. The intelligence also suggests that he did provide sensitive information to PIRA and that he did so for reasons of self-preservation.*
- 12. A senior PIRA member revealed that he was responsible for the murder of John McAnulty. Intelligence indicates that someone informed PIRA that McAnulty was meeting with RUC officers. The*

*senior PIRA member was subsequently informed of the allegations and McAnulty was later murdered.”*

1.679 Very significantly, Mr Harris told the Chairperson that based on all the intelligence and evidence it was in his opinion highly unlikely that the trigger for the murders was a tip off received when the men arrived in Dundalk Station.

*“Q. Right. Now, that's an interesting analysis. It is one we have had from a number of British Army officers. But can I take it that your considered view, as the Assistant Chief Constable, is that because of all you have said about the preparation, et cetera, that a tip-off as being the trigger for the murders, a tip-off based upon their arrival at the station, being seen at the station or being present at the station, wouldn't have allowed enough time for the IRA to mount the operation?”*

*A. I think it would have been difficult for the logistics of that scale of an operation to have been gathered together within the timescale of a meeting being conducted and then concluded.*

*Q. Okay. So, you are happy to rule out somebody in the foyer or around Dundalk Garda Station - this says a legitimate visitor to the station - tipping them off as being, giving the IRA operation time to plan and prepare and execute the operation?”*

*A. Well, I suppose not impossible, but I just --*

*Q. Highly unlikely?”*

*A. -- I just think highly unlikely.”<sup>881</sup>*

1.680 Mr Harris also confirmed that the piece of intelligence which referred to Mr Kevin Fulton/Peter Keeley and which was “*current*” intelligence did not name Mr Corrigan:

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<sup>881</sup>

Day 124, pages 69-70.

“Q. Number 2: “Kevin Fulton is understood to have received information regarding the murders of Chief Superintendent Breen and Superintendent Buchanan from a PIRA member linked to a senior PIRA figure.” Now, that doesn't mention any guards providing information, isn't that right?

A. That's correct, yes.

Q. It doesn't implicate any member, named or unnamed, in any way?

A. No, it doesn't, no.

Q. And puts the passage of information between Mr. Fulton, who was a member, apparently, of the IRA and two other members of the IRA?

A. Yes, that's correct.

Q. And do you know the identity of those two other members? Does the intelligence tell you that?

A. In that particular case I wish to neither confirm nor deny.

Q. So, it may, but are not saying one way or the other; you can't say?

A. I can't say.<sup>882</sup> (Emphasis added)

1.681 Importantly, in relation to the fifth piece of intelligence which stated:

*“5. In late 2011 Patsy O’Callaghan a senior PIRA member commented that to his knowledge, An Garda Siochana Sergeant Owen Corrigan had no time for the IRA but was a gangster who was out for money.”*

Mr Harris stated that this intelligence was considered against all material known about Mr Corrigan and was assessed as accurate and reliable:

*“A. well, yes, it -- the difficulty, well as I have already said, the difficulty we have with this material is there is so much material*

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<sup>882</sup> Day 124, page 85.

*has been said, particularly in respect of ex-Sergeant Owen Corrigan, and so nearly anything that we would say would have, would find a contradiction somewhere. And so, that has not, in effect, been a valuable test to apply to this material.*

Q. *Okay. So, you are conscious of that as a fact, but you have still certified this as accurate and reliable?*

A. *Yes.*<sup>883</sup>

#### **D. Conclusions**

1.682 The Tribunal heard evidence from several Garda and PSNI witnesses in relation to intelligence matters. Much of this evidence came during the course of the last days of the public sittings. The PSNI provided the Tribunal with 24 new pieces of intelligence between May 2012 and September 2012.

1.683 It should be noted from the outset that not one single piece of intelligence, from either Garda or PSNI sources, states that Mr Corrigan colluded with the IRA in the killing of Chief Superintendent Breen and Superintendent Buchanan.

1.684 It should also be noted that on Days 117 and 124, the PSNI provided the Tribunal with four pieces of intelligence which suggested that a member of An Garda Síochána had colluded with the IRA in the killing of Chief Superintendent Breen and Superintendent Buchanan and that the PSNI expressly confirmed that Mr Corrigan was not that Garda Officer. Detective Superintendent McComb expressly confirmed that the four pieces of intelligence made no reference to Mr Corrigan. This was later confirmed by Assistant Chief Constable Harris

1.685 The new intelligence provided by the PSNI albeit at a very late stage is very significant from Mr Corrigan's point of view for a number of reasons other than the fact that it does not suggest that he colluded with the IRA in the killing of Chief Superintendent Breen and Superintendent Buchanan.

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<sup>883</sup> Day 124, page 88.

- a. It is significant in that it refers to a different detective Garda, who had not been publically associated with the Tribunal and who was allegedly paid a significant sum of money for the information that led to the deaths of the two RUC men.
- b. It is significant in that it states that this detective Garda provided information which led to the death of Tom Oliver.
- c. It is significant because it refers to another Garda, described as a senior Garda in Dundalk, who provided the IRA with intelligence that enabled them to murder the two RUC Officers.

1.686 It is also significant that at this late stage in the Tribunal's proceedings the evidence given by Assistant Commissioner Harris was that, having regard to all of the intelligence and evidence, it was highly unlikely in his opinion that the trigger for the murders was a tip off received when the two RUC Officers arrived at Dundalk Station.

## Chapter 24 Mr Corrigan's Intelligence Output

1.687 Mr Peter Kirwan was a Detective Inspector in Security & Intelligence section of Crime & Security in 2000. He stated that his review of the files showed that Corrigan was a significant contributor of intelligence:

*“Q. Now, what can you tell us from the files that you have seen in relation to Mr. Corrigan's history and contribution to the intelligence service?”*

*A. Well, I know that Mr. Corrigan, prior to 1986, was a very regular contributor. Over a two-year period, he was submitting intelligence reports of substance. The different reports for that two-year period would have amounted to in excess of 90 reports touching on Provisional IRA activities and, to a lesser extent, activities of the INLA.*

*Q. And were these reports of substance rather than mere tittle-tattle?*

*A. The majority of the reports would have, yeah, they would have been of significant interest.*

*Q. And I think that those reports are available to the Tribunal if it wishes to see them in private, or hear evidence from them in private?*

*A. That's correct.”<sup>884</sup>*

1.688 He stated that the intelligence Corrigan generated in 1985 was very meaningful.<sup>885</sup> He stated that Mr Corrigan's reputation was extremely anti-IRA.<sup>886</sup>

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<sup>884</sup> Day 62, page 98.

<sup>885</sup> Day 62, page 101-102

<sup>886</sup> Day 70, page 49

1.689 Mr Patrick O'Toole was in Crime and Security in the 1980s. He confirmed to the Tribunal that Mr Corrigan was involved in the Russell and McGlinchey extraditions.<sup>887</sup>

1.690 Mr Brian Brunton, Detective Superintendent in Crime & Security gave evidence in relation to Mr Corrigan's intelligence output in 1985. He stated that he focused on 1985 as the Tribunal has been concerned with an SB50 from 1985 this was designed to counterbalance the information contained in that SB50.<sup>888</sup>

*"1. Report on PIRA. Report details information regarding a named individual. His home address was searched under Section 30 of the Offences Against the State Act, 1939. The report also details the vehicle that this person is driving.*

*"2. A report on PIRA activities. Reported that a named person is in danger from PIRA. The report also names a person who is active with PIRA on the border. It gives biographical details of this person. The report also states that another named person is involved in PIRA activities in the border area."*

*"3. Information that a known PIRA member has become active after a period of inactivity. The report states that this person is planning attacks on security forces in the near future. A second person is named who is also PIRA. This person has been working from the address of another named person.*

*"4. Report on activities of INLA members. It states that there is an INLA operation planned to carry out an armed robbery.*

*"5. A report into the activities of PIRA. There are a number of individual reports in this document. The member expresses the*

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<sup>887</sup> Day 75, page 30-32.  
<sup>888</sup> DAY 85, PAGE 20.

*opinion that there is a marked increase in the activity of PIRA at this time.*

- 1. It indicates that two suspected members of PIRA were seen travelling together in the same vehicle.*
- 2. Two suspected PIRA persons had been stopped together.*
- 3. Details a sighting of two suspected PIRA.*
- 4. Two named persons observed together in a vehicle. The Gardaí attempted to stop the vehicle but when they did the occupants fled the vehicle and ran across fields to escape.*
- 5. Report of an arrest in Dundalk."*

*"6: A report on PIRA activity. Reported that a named person had returned from overseas.*

*"7: A report on the activities of PIRA. The report indicates that the member conducted a search at a stated address in July 1985. During the search the following items were discovered: wigs; gloves; a UHF receiving transmitter model 2003. There were also two sets of electronic equipment for transmission of telex messages. The report also states that named persons were arrested at the house during the search.*

*"8. A report on subversives. The report refers to a named person who was attacked in Dundalk. It gives the suspected reason for the attack on this person. It also states that a suspected INLA member had called to the home of a named person and threatened him.*

*"9. Report on subversive activities in Northern Ireland. In this report it states that members of the INLA have drawn up a list of targets for execution. They have researched the targets and they have teamed up with PIRA to undertake these attacks. The report goes on to outline the tactics that the two groups are intending to use in the attacks. Reported that one of the targets is a member of the RUC and another*

*is a member of the Prison Service in Northern Ireland. "10. A report on PIRA activities. The report details a search conducted at an address under the Offences Against the State Act, 1939. In the course of the search, the occupants were discovered in the kitchen with drawings of explosive devices. These drawings were of explosive devices that could be attached to grills of a building. The drawings were passed to the Garda Technical Bureau.*

*"11. A report detailing an address where known members of INLA have been visiting in recent times.*

*"12. A report on INLA activities. Reported that the INLA have possession of a motor vehicle that is being used in armed robberies in the North of Ireland and in the South. The report outlines details of the vehicle.*

*"13. A report on PIRA and INLA activities. Reported that the INLA are in possession of a motor vehicle and that this vehicle is being used in the commission of armed robberies. The report gives details of explosives and arms find.*

*"14. A report indicating that a known PIRA suspect has not been seen for some time. The report states the description of the person the description of a person and a last known address. Reported that this person travels with another person. They use false names and pose as husband and wife.*

*"15. Report on PIRA activities. Report names a person suspected of PIRA involvement. Reported this person had a senior position in PIRA, is an expert bomb maker and is also involved in armed robberies. It goes on to name the other persons suspected of being members of the Active Service Unit. It gives information regarding arrests that were made in the past regarding the named persons in the report.*

*"16. A report on PIRA activities. Reported that named persons have become more active. Reported that named persons were arrested in the North of Ireland in recent times.*

*"17. A report on INLA activities. The report names a person who is a member of an INLA Active Service Unit. Reported that this person has access to firearms and explosives and this person is a suspect in a number of armed robberies. There is also information regarding other named persons and details of their addresses. The report details information on persons suspected of placing incendiary devices on Dublin and Belfast trains.*

*"18. A report on PIRA activities. Information that a vehicle was stolen for use in a mortar attack on a named RUC station.*

*"19. Report details an address that is being used by PIRA members. Reported that this address has been searched a number of times in the past. A named person is reportedly to be friendly with a well-known PIRA member.*

*"20. Report on PIRA activities. The report details an address that is being used as a PIRA safe house. It also reports that this address is being used as a training house by members of PIRA for firearms training. Instruction is being given by a named person.*

*"21. Report concerning a PIRA member who is on-the-run from the North. Reported that this person assists PIRA members on operations. Reported that this person is abusive towards the Gardaí when he had been stopped in the past by them.*

*"22. Reported that an INLA unit has increased its activities. Reported that a named person has taken over a prominent role. The report warns that information available to the member suggests that INLA*

*actions are to be stepped up in the near future. Report also names a person who has become very active in the INLA.*

*"23. A report on PIRA activities. Reported that two persons were expelled from PIRA as a result of a disagreement within the organisation. The report also names other PIRA members and the connection that they have to the dispute.*

*"24. Report on PIRA activities. Report outlines the dealings between PIRA prisoners and the PIRA leadership. Report details the talks relative to a named prisoner. It also reports a named person was responsible for the abduction of a person and that this person was held for three days and interrogated by the PIRA.*

*"25. A report into PIRA activities. The report states that there has been an increase in activity from an Active Service Unit operating close to the border. It names the persons involved in this Active Service Unit.*

*"26. A report on PIRA activities. Information that a bank account was opened for the benefit of PIRA. This account was moving money to PIRA from the USA. Also reported that a licenced premises had been purchased with PIRA money. Member received information regarding a shooting by PIRA. The report also advises that members of PIRA are using a particular licenced premises to meet.*

*"27. A report into INLA activities. Reported that a named person has taken up residence at a stated address. Reported that the person has become very active in the INLA. Reported that the person has indicated his intention to attack members of the RUC.*

*"28. A report on PIRA activities. Report details the recent marriage of a PIRA member.*

"29. *Intelligence report that updates a previous report. The report contains the names of two people who were using a safe house for firearms training.*

"30. *Report that an INLA member has moved address and has moved to the Dublin area. This person was named and is a prominent member of the INLA. Reported that he has access to firearms.*

"31. *Reported that PIRA are gathering intelligence in relation to a retired members of the police.*

"32. *Reported that a named INLA person has moved to a new address.*

"33. *Intelligence relating to activities of the INLA. The report states that a named person has joined the INLA. A search of this person's address found a firearm at that address.*

"34. *Report on PIRA members. The report details the home addresses of PIRA members. Reported that the named PIRA are members of the same Active Service Unit.*

"35. *A report into INLA activities. Report details names and addresses of activists.*

"36. *A report indicating that a named person has moved to a different location to work. Reported that this person is involved in fundraising.*

"37. *Report on subversives in Dundalk. The report indicates that there was a person who was attacked in Dundalk. It gives the suspected reason for the attack on this person. It also states that a suspected INLA member had called to the home of an official of the Department of Social Welfare and threatened him.*

*"38. Report on INLA activities. A named INLA member reported to be associating with leading members of the INLA. Report gives details of this person's vehicle. Report details another person who the first named has been residing with."<sup>889</sup>*

1.691 Mr Brunton read into the record:

*"Document No. 556: Report of Department Owen Corrigan dated the 8th May, 1985. Report details a search of a home of a PIRA suspect by D/Sergeant Owen Corrigan and other Gardaí. Gardaí seized a number of photographic negatives from the house. One of the photographs was of Owen Corrigan and was taken by the PIRA suspect. Gardaí also found the names and home address of Gardaí in the house. The report also detailed the harassment of Owen Corrigan off duty and his wife by the PIRA suspect and six other members of PIRA on the streets of Dundalk. The report also detailed that PIRA posted photographs of Owen Corrigan at different locations in Dundalk town."*

1.692 Mr Brunton agreed that the reports submitted by Mr Corrigan in 1985 are impressive and that they are considerable in number.<sup>890</sup> He stated that Mr Corrigan had a significant input of intelligence around terrorists and terrorist suspects.<sup>891</sup> He said that it would be a fair comment to describe Mr Corrigan's intelligence input over a 10 year period as impressive having reviewed all of it.<sup>892</sup> He agreed that there was a decline in Mr Corrigan's intelligence output after 1985.<sup>893</sup>

1.693 Mr Brunton also gave evidence to the Tribunal about Mr Corrigan's intelligence output for 1989:

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<sup>889</sup> Day 85, pages 3-10.

<sup>890</sup> Day 85, page 16.

<sup>891</sup> Day 85, page 16.

<sup>892</sup> Day 85, page 76.

<sup>893</sup> Day 85, page 76.

1. *Doc no. 14024 - Garda information dated 1989 and assessed as accurate. Reporting Garda received information which was passed through Garda authorities to the RUC. The information led to the discovery of a bomb consisting of four to six hundred pounds of homemade explosives. The bomb as located by RUC officers on the 16th December, 1988, at Kilnasaggart Railway Bridge in County Armagh.*<sup>894</sup>
2. *Doc no. 14035 - "Ungraded Garda information dated June 1989. Information identified a person who allowed his home to be used for storing PIRA firearms and also as a PIRA safe house. The information details the modus operandi of the subject in the collection and storage of weapons. The information identifies the senior PIRA commander who is directing the activities of this named person."*<sup>895</sup>
3. *Doc no. 14036 - "Garda information dated August 1989 and assessed as reliable. Information detailed the location of a PIRA arms dump which was adjacent to the home of a named prominent PIRA member."*<sup>896</sup>
4. *Doc no. 14039 - "Garda information dated June 1989 and assessed as 'very reliable'. Information detailed the identity of a person involved in the movement and distribution of PIRA weapons and explosives. The report detailed the personal transport and the modus operandi of this named IRA operative."*
5. *Doc no. 14040 - "Undated and ungraded. Garda information reported that John McNulty had been abducted by the south Armagh IRA unit and was being held by them. Reported it was believed that a decision to execute Mr. McNulty had been taken by PIRA. Reported that McNulty had recently been involved in litigation with a named company in the republic of Ireland. Reported that McNulty had approached PIRA and asked them to put pressure on the management of the company not to pursue their*

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<sup>894</sup> Day 108, page 2

<sup>895</sup> Day 108, page 4

<sup>896</sup> Day 108, page 4

*litigation against him. Members of south Armagh PIRA then threatened the senior management of the company. PIRA was to receive a financial payment in return. Meanwhile, McAnulty was arrested in Northern Ireland and questioned about grain smuggling. He was released from custody without charge and this led to PIRA to believe that he may have given information to the authorities. The information stated that a named person had telephoned PIRA and provided information that assisted the abduction. The document named the PIRA commander and the PIRA unit who were responsible for the abduction of Mr. McAnulty. The same PIRA unit was responsible for the earlier threat against the company management and was also responsible for the murders of RUC officers Breen and Buchanan. The Garda member reported that he was monitoring the situation closely and may have further information regarding the identity of the culprits and the location of the house where Mr. McAnulty was being held.”<sup>897</sup>*

6. *Doc no. 14041 - “Garda information ungraded, dated September 1989. The report outlines that the railway line at Kilnasaggart Bridge, County Armagh, which has been closed for the last number of days, has been booby trapped by PIRA. Report advises that the bomb had been concealed in a van parked close by and the intention is to detonate it and kill security-force members. Report stated that a number of other bombs had been strategically placed in surrounding fields to kill security-force members alighting from helicopters that deploy in the area to inspect the bridge.”<sup>898</sup>*
7. *Doc no. [not in transcript] - “Garda information, 1989, suggested that PIRA were in possession of the late Superintendent Buchanan’s notebook taken from the scene of the shootings and PIRA were anxious to identify a named person in it.”<sup>899</sup>*
8. *Doc no. 14043 - “Garda information ungraded, dated 17th July, 1989. Report identified a person involved in the manufacture of*

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<sup>897</sup> Day 108, page 6-7  
<sup>898</sup> Day 108, page 7  
<sup>899</sup> Day 108, page 8

*improvised explosive weaponry. The report also identified a person involved in the transport of this weaponry.*<sup>900</sup>

9. Doc no. 14045 - *“Garda information dated 17th July, 1989, and assessed as reliable. Information identified a PIRA member involved in the handling of PIRA finance. Report advised that this person was under suspicion from PIRA for taking some PIRA funds for his personal use. Report also detailed the new address of this person who was linked to the PIRA finance.”*<sup>901</sup>

10. Doc no. 14046 - *“Report dated 27th July, 1989, outlining Garda information concerning John McAnulty, who was murdered by PIRA in 1989. The report refers to a previous report dated 17th July, 1989.”* [Confirmed that the report referred to from 17th July 1989 is document 5 above]<sup>902</sup>

*“The report (27th July 1989) outlines the business and smuggling activities of Mr. McAnulty and the assistance that he was providing to PIRA, which included getting ‘stuff’ into Northern Ireland. PIRA became suspicious of Mr. McAnulty following occasions where he was arrested and released without charge and following searches of premises in south Armagh. He had been detained for a period of two weeks before he was finally taken away and shot.”*

*“The report named two suspects who formed the nucleus of a vicious and dangerous unit within PIRA. The report further details a threat to unnamed persons who may suffer the same fate as Mr. McAnulty, North and South.”*<sup>903</sup>

11. Doc no. 14047 - *“Ungraded Garda information dated 27th July, 1989. Information detailed the location where a named person used to meet with a named RUC member. Reported that this location was a regular meeting place for RUC and army informants.*

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<sup>900</sup> Day 108, page 8

<sup>901</sup> Day 108, page 8

<sup>902</sup> Day 108, page 8-9

<sup>903</sup> Day 108, page 10.

*Reported that PIRA intended to bomb this location on a future date.”*

1.694 Mr Brunton rejected the characterisation of some of this intelligence as “*social and personal.*”

*“Q. Mr. O’Callaghan: Just one question, Superintendent Brunton. If information was provided in a C77 concerning a marriage of a member who was involved in the Provisional IRA or who was involved in the INLA and it concerned personal matters concerning that individual, would you agree with me that was information that, if the member out it I, was relevant, and wouldn’t be dismissed as being simply gossip or social & personal information?”*

*A. No, absolutely not. I mean, its important that we would be aware of all activity of target subjects, and if someone has just got married or if they went away on a holiday, that can be of significance. It may not appear to be of significance at the time, but, down the road, you know, could have some significance, so we certainly wouldn’t dismiss anything.*

*Q. And you wouldn’t regard it as social & personal information, and that’s a reference to a glossy magazine.*

*A. Social & personal?*

*Q. Yeah, apparently so. It’s not a magazine you read...*

*A. If an IRA target gets married, that’s something we want to know about.<sup>904</sup>*

## Chapter 25 Positive Evidence about Mr Corrigan given by Garda and RUC Officers

### A. Introduction

1.695 A considerable body of evidence was given to the Tribunal by both Garda and RUC Officers which was very positive to Mr Corrigan.

1.696 This was recognised by the Chairperson and accepted by Counsel for the Tribunal on Day 62:

*“CHAIRMAN: I think Mr. O’Callaghan has been at pains throughout the hearings to make the point on behalf of his client that he had a spectacularly good record of getting intelligence which was seriously damaging to the IRA, I think that’s the --*

*MR. DILLON: And the Tribunal certainly hasn’t questioned that.*

*CHAIRMAN: Nobody has, really. I mean –<sup>905</sup>*

*...*

*“CHAIRMAN: I take your point, but nevertheless, there is a fact that the -- it is uncontested that Detective Sergeant Corrigan gave very good service to the Garda Síochána, and, particularly, he was the head detective in Dundalk on his own for a long period, and, during that time, he was at the forefront of the fight against the IRA there, that’s uncontested.”<sup>906</sup>*

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<sup>905</sup> Day 62, page 132.

<sup>906</sup> Day 62, page 134.

## B. Garda Officers

1.697 Mr Tom Molloy was a Detective Garda in Dundalk. He told the Tribunal that he did not believe that Mr Corrigan colluded with the IRA because no man arrested more IRA men than Mr Corrigan and no man suffered more abuse from the IRA in Dundalk than Mr Corrigan.

*“Q. You mentioned to the Chairman earlier that Mr. Corrigan's record in the Special Criminal Court was excellent. Could you just elaborate upon that for the Chairman, as to what you meant by that?”*

*A. Well, I would say that nobody that I know arrested more IRA people than what Owen Corrigan did, and I would also say that nobody took more abuse than what he did from them.*

*Q. Could you tell the Tribunal about the abuse you refer to there that Mr. Corrigan took from the IRA?*

*A. Both on and off duty. He would be followed around with a camera, with people with cameras taking photographs of him. If he went into shops, they were following him. His photograph was put up on poles around the town.*

*Q. Am I correct in stating that the reason he was harassed was because he stood up to the IRA?*

*A. He did, yeS.*

*Q. You are aware that at the centre of this Tribunal's inquiries is a suggestion that a member of An Garda Síochána, or members, colluded with the IRA. I take it you don't believe that?*

*CHAIRMAN: He has already said he doesn't believe that.*

*Q. MR. O'CALLAGHAN: Can I ask you in respect of specifically Detective Sergeant Owen Corrigan do you believe that?*

*A. Definitely not.<sup>907</sup>*

1.698 Mr Matthew Reilly was a uniformed Garda who served with Mr Corrigan in Dundalk. He stated that people looked up to Mr Corrigan because he had a good knowledge of subversives, their movements and activities and tackled them. He stated that Mr Corrigan suffered for this and that he was specifically branded a traitor.

*"A. Well, Judge, I arrived in '82 and I suppose Owen Corrigan was someone that was looked up to from the point of view that he had a good reputation, he had a good knowledge of subversives, had good knowledge of their movements, and he probably would have hassled them a bit and he probably would have suffered as a result of it.*

*Q. And I think you say in your statement, and evidence has been given to the Tribunal, that, up until 1985, Owen Corrigan was the head detective in Dundalk Garda Station since the -- he was the Detective Sergeant?*

*A. That's correct, yes.*

*Q. And that he would have been the front line or at the front of the line in the battle against subversives during that period?*

*A. He would have been, yes.*

*Q. And, Sergeant, my client will give evidence to this Tribunal that one of the elements of the campaign of harassment that he suffered was that signs were put up throughout Dundalk with his picture on it and the words "Traitor" and "High Treason" in the 1980s. Do you have any recollection of those posters or signs?*

*A. Well, I just don't remember the posters, Judge, but I do know that, in subversive terms, the branch in the guards were known as -- they would use the nickname 'collaborators', they would perceive them as collaborators British collaborators, and they would probably get this hassle all the time from them. I do recall, I think it was the first extradition, that Robert Russell was extradited across the border, and I was out at the border that day and I think it was Owen Corrigan that handed him over.*

*Now, we got a lot of hassle out there that day. You know, there certainly was issues.*

Q. *And were you aware of the particular type of hassle that Owen Corrigan suffered as a result of that incident? Are you in a position to tell the Chairman about that, how it manifested itself, that harassment?*

A. *Well, all I know is that Owen Corrigan, in relation to that one extradition across the border, that there was a picture appeared in the paper; Owen Corrigan was seen to be handing over Robert Russell to the RUC, and I know that certainly there was a lot of slander went on afterwards in relation to it.*

Q. *And when you say "slander," what do you mean?*

A. *I mean slander towards Owen Corrigan, we'll say, from the subversive point of view, Judge, is that they would all have tainted Owen Corrigan as a traitor, and tainted all the guards, I suppose, as a traitor, but particularly Owen Corrigan, that the fact that he was the one that is perceived as being the person that handed him over. I think subsequently, then, a lot of the extraditions were by air, Judge, they weren't by land, because of all the hassle that was in that first one."<sup>908</sup>*

1.699 Mr Michael Bohan was a Chief Superintendent who served with Mr Corrigan. He was Mr Corrigan's District Officer from 1966-1974 and his Divisional Officer from 1985-1987. He wrote a reference for Mr Corrigan in the context of his disciplinary proceedings.

*"To whom it may concern*

*I have known Detective Sergeant Owen Corrigan since I came to Drogheda in February 1966. I was his District Officer in Drogheda from the 11th of February, 1966 until the 7th of July, 1974. I was his Divisional Officer from the 24th of October, 1985 until I resigned from*

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<sup>908</sup> Day 16, pages 84-86.

*the Force on the 7th of July, 1987. During all this time I found Detective Sergeant Corrigan to be a loyal efficient and dedicated officer. He was, to my knowledge, responsible for the solving of many major crimes in the Louth/Meath Division and for bringing to justice the perpetrators of numerous serious outrageous. I have always found him to be a willing and cheerful worker who would diligently complete any task assigned to him. Indeed, I am very much aware of the very valuable contribution that Detective Sergeant Corrigan has made to the safety of the State and for which, in my opinion, he has never got due recognition. Perhaps it's not too late, even at this eleventh hour to give this man his just reward."*

1.700 He told the Tribunal that Mr Corrigan was very anti-IRA:

*"A. The funeral of the late Paddy Duffy, who at one time was quartermaster of the IRA and there was a Provo funeral and I was there and we had a big force of Gardaí, and just as the remains were brought out, there are steps at the front of the church and in the porch of the church then there were a number of women and children, and behind those two men in balaclavas with revolvers fired five shots each. And I gave an order to have the church searched and those arrested and the women and the children, they started screaming, you know, that they were being brutally assaulted by the police but eventually -- now Corrigan would be one of the first into the church. He never led from behind. And we did succeed in arresting one of them; he was found in a confession box, and we got one gun. The other guy escaped."<sup>909</sup>*

1.701 He stated that Mr Corrigan was very good at getting information on the IRA:

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<sup>909</sup> Day 17, pages 27-28.

“Q. MR. O'CALLAGHAN: *I appear for Mr. Owen Corrigan. Was Mr. Corrigan good at getting information about subversives such as the IRA?*

A. *Very good. And reliable information.*

Q. *And of course, in order to get that information you are required to have contact with people within the IRA or people associated with them, is that right?*

A. *Of course.*”<sup>910</sup>

1.702 He stated that Mr Corrigan stood up to the IRA and was harassed as a result:

“Q. *Did he stand up to the IRA in the campaign waged by them against this State?*

A. *Oh, yes he did. And when the late, what was his name, Dominic McGlinchey, was being handed over to the RUC at the border it was Corrigan that handed him over and he was photographed handing him over, and that photograph of McGlinchey and Corrigan has appeared in numerous papers.*

Q. *Do you know why it was that Mr. Corrigan was the guard who handed over or was given the job of handing over McGlinchey?*

A. *Well, no, I couldn't honestly answer that question.*

Q. *Yes. Are you aware whether Mr. Corrigan was subjected to harassment by members of the IRA and their supporters in Dundalk?*

A. *Yes, he was.*

Q. *What type of harassment would you be able to tell the Tribunal Chairman?*

A. *I understood that on one occasion a dead hen was placed outside of his door.*

Q. *A what?*

A. *A dead hen.*

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<sup>910</sup> Day 17, pages 29-30.

- Q. *A dead hen. And does that have any symbolism, that you are aware of?*
- A. *Well, I would construe that as a threat: the hen is dead, you may be next. Maybe I am wrong in that interpretation.” (17/30)*

1.703 He stated that Mr Corrigan was not promoted because of a change of Government:

- “Q. *He was also, you say, an excellent guard. Do you have any explanation to give to the Chairman as to why you think, Mr. Bohan, Mr. Corrigan wasn't promoted further in the Force?*
- A. *Well, I am aware that he was -- when I was absent from the county Louth area at Mullingar Headquarters he was appointed a Detective Sergeant. That was a promotion which I think he well deserved. I am also aware that there was a list of 20 Inspectors compiled to be appointed to the Detective Inspector ranks and Corrigan's name was on one of those. But then there was a change of Government and that list never saw the light of day.*
- Q. *And do you think that was part of the reason why he wasn't promoted from the position of Detective Sergeant?*
- A. *Well, yes, but maybe the reason why he wasn't promoted to Detective Superintendent -- he was a Detective Sergeant and his name appeared on the list of these new appointees for Detective Inspector as the vacancies arose, but then we had a change of Government and maybe the change didn't suit the new Commissioner or the new Government.”<sup>911</sup>*

1.704 He characterised Mr Corrigan's disciplinary proceedings as concerning minor matters.<sup>912</sup>

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<sup>911</sup> Day 17, page 31.  
<sup>912</sup> Day 17, page 32

1.705 Mr Michael Diffley worked in the Intelligence Unit at Garda HQ (C3) from 1975 to 1988 as a D/Sgt, D Insp and D/Super. He had an intimate knowledge of the subversive threat:

*“Q. And therefore one surmises would you have a very good knowledge of subversives and what was going on in the country?”*

*A. Yes, I would hope that I had as intimate knowledge of how subversives were operating within the state and indeed outside the state, and from outside the state in the state as anybody else.”<sup>913</sup> (18/14-15)*

1.706 He stated that Mr Corrigan was very active in the 70s and early 80s.<sup>914</sup> He stated that the late Superintendent Michael Fitzgerald (who died in 1981) spotted Mr Corrigan as a Detective of great potential in working against subversives and encouraged him.

*“A. Well, Michael Fitzgerald had spotted certain members, not necessary detectives in various parts of the country that he thought showed great potential as working against subversion. And Owen Corrigan was one of those.*

*Q. Michael Fitzgerald is an individual you respected and whose integrity you wouldn't question?”*

*A. Yes, Michael Fitzgerald died young, I think died in '81 at the height of his career. Definitely he was an inspiration to me when I first came to Headquarters.”<sup>915</sup>*

1.707 Mr Laurence Crowe was a Detective Garda and served with Mr Corrigan in Dundalk. He said that Mr Corrigan stood up to the IRA and was harassed as a result, particularly after the McGlinchey extradition.<sup>916</sup>

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<sup>913</sup> Day 18, pages 14-15.

<sup>914</sup> Day 18, page 46.

<sup>915</sup> Day 18, pages 46-47.

<sup>916</sup> Day 18, page 76-80.

- 1.708 Mr Michael Staunton was a Sergeant and served with Mr Corrigan in Dundalk. He stated that Mr Corrigan stood up to the IRA and was harassed as a result, particularly after the McGlinchey extradition when posters were put up around the town.<sup>917</sup> He stated that Mr Corrigan was a very good detective and he had no evidence or information of collusion.<sup>918</sup>
- 1.709 Mr Gerard Murphy was a Detective Garda and served with Mr Corrigan in Dundalk. He stated that Mr Corrigan was *“an excellent detective Sgt, who had great knowledge of the persons likely to engage in subversive activity.”*<sup>919</sup> Mr Corrigan was a *“fantastic detective”* who *“hated the IRA.”*<sup>920</sup> He stated that posters were put up criticising Mr Corrigan for his involvement in the extradition of McGlinchey and he was with Corrigan one day when someone called him a *“bastard.”*<sup>921</sup>
- 1.710 He stated that Mr Corrigan was harassed more than other Gardaí.<sup>922</sup> He stated that he met RUC men regularly at social and work meetings and no one ever expressed any concern to him about Mr Corrigan.<sup>923</sup> He opined that the suggestion that Corrigan was involved in the killings was shameful.<sup>924</sup>
- 1.711 Mr Richard Cottrell was a Chief Superintendent who served with Mr Corrigan. He stated that Mr Corrigan was a good D/Sgt and a good worker.<sup>925</sup> He stated that he was exceptionally competent and intelligent.<sup>926</sup> He stated that it was very hard to be a good detective but Mr Corrigan was a good detective.<sup>927</sup> He stated that for all Mr Corrigan’s faults, he couldn’t see him being involved:

“A: *Well, my honest to God view on that is that I couldn't see him -- he may be covetous for money and he may be covetous for*

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<sup>917</sup> Day 19, pages 23-24.  
<sup>918</sup> Day 19, page 24.  
<sup>919</sup> Day 19, page 39.  
<sup>920</sup> Day 19, page 50.  
<sup>921</sup> Day 19, page 50.  
<sup>922</sup> Day 19, page 57.  
<sup>923</sup> Day 19, page 46.  
<sup>924</sup> DAY 19, PAGE 51.  
<sup>925</sup> Day 20 page 29.  
<sup>926</sup> Day 20, page 31.  
<sup>927</sup> Day 20, page 32.

*property -- but in no way could I see him lifting the phone and getting on to the IRA, **he'd be too cute to get involved with them anyhow.** I couldn't see him, no. I have spoken to a number of people and they are all unanimous that he wouldn't be involved in that.”<sup>928</sup>*

1.712 He stated that Mr Corrigan considered the IRA the enemy:

*“Question: Can I ask you what was your opinion of Owen Corrigan's attitude towards the IRA at the time?*

*Answer: I think that Owen Corrigan considered the IRA the enemy.*

*Question: Would you agree that he was very strong against the IRA?*

*Answer: I would, but that was as far as I know.*

*Question: You mentioned in some of your reports that he had been involved in many excellent cases, both subversive and ordinary?*

*Answer: Yes, he was, yes.”<sup>929</sup>*

1.713 He stated that Mr Corrigan had a great relationship with the RUC.<sup>930</sup>

1.714 Mr Tom Duffy was a Detective Garda who served with Mr Corrigan in Dundalk Station. He stated:

*“A. Well, I never worked directly with him but he was always about - he was always about the station. He was always, in later years when I went into the branch, I was only in there with him for a short period of time, but he was always very much against the IRA and very vocal in that way.”<sup>931</sup>*

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<sup>928</sup> Day 20, page 30.

<sup>929</sup> Day 20, page 33.

<sup>930</sup> Day 20, page 36.

<sup>931</sup> Day 20, page 59.

1.715 He stated that Mr Corrigan was very outspoken and militant in terms of his work against the IRA.<sup>932</sup>

1.716 Mr Terry Hynes was a Detective Garda who served with Mr Corrigan in Dundalk Station. He told the Tribunal that Mr Corrigan was an excellent detective who stood up to the IRA and was vigorous in his prosecution of them.<sup>933</sup>

1.717 Mr Tom Fox was a Detective Garda who served with Mr Corrigan in Dundalk Station. He told the Tribunal that Mr Corrigan was his Sgt and that he was a very active detective. He said that his work tailed off before retirement as one would expect.<sup>934</sup> He stated that Mr Corrigan made a lot of enemies in the IRA and that the IRA put posters of him up about the town.<sup>935</sup> He stated that he thinks that people want to blacken Mr Corrigan because of his success in fighting terrorism.<sup>936</sup>

1.718 Mr Joe Ainsworth is a former Assistant Commissioner in Charge of Crime and Security. He stated that Mr Corrigan's supply of intelligence was one of the best in the State.

*“A. Well, the flow of intelligence brought about results in his case. I can, if I may say so, I can mention two or three of many that he was involved in and that his unit was involved in. One was where a bomb factory was found secreted in a dugout under a cow shed, the floor of a cow shed. And that was a difficult one but it was got. There was bombs, explosives, timing devices, everything you could think of was found in that. It was big, I was down there, I saw it. And that was through the operations of his unit and he was head of the unit at the time.*

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<sup>932</sup> Day 20, page 69.

<sup>933</sup> Day 21, Page 95.

<sup>934</sup> Day 23, page 9.

<sup>935</sup> Day 23, page 12.

<sup>936</sup> Day 23, page 21.

*On another occasion, which is very important, a barrel of liquid explosives was found secreted in an outhouse, and the self same unit, I don't know who was the person in the unit who was involved, but the self same unit found it and brought it.*

*And another occasion on a Sunday morning, I remember it quite well, they came across, right on the border, they came across in a derelict house or almost derelict house ten or thereabouts, I can't give the figure because I haven't the figure before me, but it -- they filled the floor of the house. I was there, I saw it, all churns, big huge churns holding artificial manure, 10, 10, 20, and diesel, and I visited that place with the Army Ordnance Officer and saw it. We couldn't touch it because we didn't know whether they were booby traps or not at the time.*

*That unit was responsible for finding that, because that whole setup was in transport, in transport and I think to the north, because it was right on the border. Now, what happened in that case is this: the stuff wasn't taken away because nobody knew what was inside the churns themselves or how booby trapped they were so a decision was taken to blow the whole lot up and it was a terrific -- I witnessed it, I was there -- it was a terrific explosion. So this thing was continued. I could relate, relate, relate. They were turning up quite an amount of hard evidence turned to goods and believe it or not, as I saw it myself, they were responsible for saving an awful lot of lives.<sup>937</sup>*

1.719 He stated that Mr Corrigan was excellent because 'he turned up the goods'<sup>938</sup>

1.720 Mr Edmund Sheridan was a uniform and later Detective Garda who served with Mr Corrigan in Dundalk Station. He told the Tribunal that Mr Corrigan played a big part in the extraditions of Majella Harte and Dominic

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<sup>937</sup> Day 24, pages 40-42.

<sup>938</sup> Day 24, page 43.

McGlinchey.<sup>939</sup> He states that as a result posters of Corrigan with the caption '*traitor*' '*wanted for treason*' were put all over Dundalk.<sup>940</sup>

1.721 Mr John Courtney was Border Superintendent from 1978 to 1979. He stated that Mr Corrigan worked well and that he had no complaints about him. He stated that Mr Corrigan had good links with the RUC and that he facilitated a meeting with Chief Superintendent Mooney, the Chief of CID. He stated that no one ever warned him about Mr Corrigan and that Mr Corrigan stood up to the PIRA.

1.722 Mr Pat O'Donoghue was a uniform Garda who served with Mr Corrigan in Dundalk Station. He stated that Mr Corrigan was fast but thorough and that his authorities thought highly of him.

1.723 Mr James Sheridan was a Detective Garda who served with Mr Corrigan in Dundalk Station. He stated that he was aware of an incident in a hotel where Corrigan had a drink poured over his head by an IRA man.

1.724 Mr Sean Gethins was a Detective Garda who served with Mr Corrigan in Dundalk Station. He stated that he was not surprised that Mr Corrigan was not involved in the investigation because Superintendent Connolly always used the same team of people. He said that the IRA nearly killed Mr Corrigan. He said that Mr Corrigan told him that he was put in a blue boiler suit (meant as a shroud). He stated that the IRA hated Mr Corrigan with a vengeance. He stated that he knew that Mr Corrigan was attacked in a pub after the extradition of Dominic McGlinchey. He stated that the IRA would have been happy to spread rumours about Corrigan as part of the propaganda war. He stated that Mr Corrigan was very friendly with Brian Fitzsimons, ACC Special Branch RUC and also with Witness 8 and Witness 27. He stated that Mr Corrigan also worked with W57.

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<sup>939</sup> Day 24, page 63.  
<sup>940</sup> Day 24, page 70.

1.725 Mr Noel Conroy is a former Garda Commissioner. He stated that he used Mr Corrigan in an operation to recover the Beit paintings because he had confidence in him.<sup>941</sup> He said that he wouldn't have used Mr Corrigan if he was a security risk.<sup>942</sup> He stated that Mr Corrigan was an officer of ability and courage.<sup>943</sup>

*"A. Yes. Well I used him because of his courage, that was part of the reason for me involving him in the recovery of the bite paintings, in an effort to recover the bite paintings.*

*Q. It was his courage that attracted you to him in this particular sensitive task?*

*A. Yes.*

*Q. And just to conclude. If you thought that Owen Corrigan was an IRA mole, am I correct in stating that there would have been no circumstances in which you would have sought him for this particularly sensitive task?*

*A. Absolutely not, and I would imagine if there was any information, substantial information, that that would be totally explored by the organisation of An Garda Síochána."*

1.726 Mr Des McTiernan was a Detective Sergeant who worked with Mr Corrigan along the Border. He stated that Mr Corrigan had an "excellent reputation" for combating subversives.<sup>944</sup> Mr Corrigan was a top class investigator.<sup>945</sup> He stated that he saw posters of Mr Corrigan in Dundalk with the words 'Owen Corrigan' 'Wanted' in the windows of houses in Dundalk.<sup>946</sup>

1.727 Mr Peter Maguire spent 25 years in the Special Detective Unit starting in 1978. He was promoted Sgt in the SDU in 1988, Detective Inspector in 1993, Detective Superintendent in 1997 and Chief Superintendent in 2000. He

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<sup>941</sup> Day 34, page 23.

<sup>942</sup> Day 34, page 42.

<sup>943</sup> Day 34, pages 42-44.

<sup>944</sup> Day 34, page 58.

<sup>945</sup> Day 34, page 59.

<sup>946</sup> DAY 34, page 67.

stated that he had vast experience in dealing with subversives.<sup>947</sup> He told the Tribunal that Mr Corrigan had a great reputation:

*“Q. Now, I think that you would have known ex-Sergeant Owen Corrigan, is that correct?”*

*A. Yes, I would have -- I never knew Sergeant Corrigan well, but I certainly knew of him and I'd often seen him -- I was on operations that he was involved in, and I suppose I would have first seen him in the early '70s and I would have had some experience of him right up to the date he retired.*

*Q. And I think in the '70s he was certainly providing amazing intelligence, it would appear?”*

*A. Yeah, he was regarded as a very efficient officer certainly in the '70s and '80s. Now, in recent years he became into controversy with his authorities in Dundalk, and I think he wasn't -- his return of work had almost diminished to nil at one stage, but he was a very efficient officer and I know that -- I mean, it's widespread that he is alleged to have passed on information in this case. And just to cut to the point: I never had a concern about Mr. Corrigan in relation to his attitude towards security matters, in relation to his fidelity to the State and in relation to his fidelity to the Garda Síochána. I never suspected for one minute that Mr. Corrigan was passing on any information to anybody.”<sup>948</sup>*

1.728 He stated that it was part of Mr Corrigan's job to have contact with the IRA in the discharge of his official duties.

*“A. Well, a matter of concern about being too close to the IRA, I mean, I don't know what it means. There are many of us who could have been seen in very unusual circumstances with members of the IRA throughout our lifetime.*

*Q. You see, I am not criticising --*

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<sup>947</sup> Day 34, page 74.

<sup>948</sup> Day 34, pages 84-85.

- A. *And would somebody say we were too close to the IRA because we were there trying to discharge a critical State function at the time...*
- Q. *I understand that --*
- A. *Without going into it in detail.*
- Q. *The nature of the business requires that you have to associate with members of the IRA?*
- A. *We might have to make contact.*<sup>949</sup>

1.729 Mr Mick O'Driscoll was a Detective Garda who served with Mr Corrigan in Dundalk Station. He described the naming of Mr Crrigan under parliamentary privilege as a low blow.<sup>950</sup>

1.730 Mr John Fintan Kenny was a Detective Garda who served with Mr Corrigan in Dundalk Station. He stated that Mr Corrigan was very diligent and a very god worker.<sup>951</sup>

1.731 Mr Patrick Magee was a Detective Garda who served with Mr Corrigan in Dundalk Station. He described Mr Corrigan as follows:

*“A. My own view of him, and I was only a very young member at the time, was he seemed to be active in the whole fight against subversives. I do remember him involved in a number of arrests. I remember him involved in the handing over of people on the border, particularly I remember one, I think it was Dominic McGlinchey, I remember him, he was the specific officer because I was holding back a crowd of people who were trying to force the release of the prisoner that was being handed over. And I remember him, he was the one that was actually physically handing him over to the RUC on the border. So to me he had always been involved very much in the forefront in the*

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<sup>949</sup> Day 34, page 94. Cf page 88.

<sup>950</sup> Day 38, page 15.

<sup>951</sup> Day 38, page 30.

*fight against subversives in Dundalk which was quite a difficult task at the time.*<sup>952</sup>

1.732 Mr Bernard McGrath was a Detective Garda who served with Mr Corrigan in Dundalk Station. He told the Tribunal that he was not surprised that Mr Corrigan was not involved in the murder investigation run by Chief Superintendent Connolly as Mr Connolly did not like Mr Corrigan.

“Q. *In relation to the forensic investigation carried out by Mr. Connolly, it appears from the job sheets that no job sheets refer to your colleague, Detective Sergeant Owen Corrigan, does that surprise you that he doesn't seem to have been involved in that investigation?*

A. *It doesn't, Judge. I don't think Connolly and Corrigan were seeing eye-to-eye at that time.*

Q. *Why was that?*

A. *I don't know. I don't know. There might have been previous history. They certainly didn't seem to get along together anyway.*

Q. *And from what did you form that impression?*

A. ***Well, in the day-to-day activities in the station or in the office, Connolly never seemed to be treating Corrigan as a Superintendent would a Sergeant in the day-to-day business of an office of that nature in their discussions. There was very few -- very little discussion between them. Any of the various operations that were done, or carried out at that time, I don't recall Corrigan and Connolly being together on any one of them.***

Q. *And were you aware of any specific incident or reason for this apparent lack of getting on?*

A. *No, Judge.*<sup>953</sup>

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<sup>952</sup> Day 38, page 50-51.

<sup>953</sup> Day 39, pages 80-81.

1.733 He stated that Chief Superintendent Connolly “more or less excluded Corrigan from a lot of stuff.”<sup>954</sup> He also stated that he felt Mr Connolly victimised those in Mr Corrigan’s unit as well:

“Q. ... In your evidence to the Chairman you have said that Superintendent Connolly didn't like Owen Corrigan?

A. That would be my perception at the time, yeah.

Q. And in your statement that you provided to the Tribunal you said it didn't stop just there. You say that "Others in the unit would always have experienced some exclusion by Connolly because they were on Corrigan's unit."

A. Yeah, well I felt that Connolly would have excluded Corrigan's unit from various tasks I suppose or whatever.

Q. **So his dislike of, say, whatever was going on between the two individuals involved, Connolly and Corrigan, it didn't just stop there, it was filtering down the food chain as it were to people who were in the Corrigan's unit like yourself?**

A. **I would go along with that. That was my view at the time.**

Q. And although you were a relatively junior detective, at that stage you had been in the guards for I think eleven years when Superintendent Connolly came to Dundalk in 1988?

A. Yeah, that's correct.

Q. And would you regard that treatment of, say, or exclusion of guards in Detective Sergeant Corrigan's unit as something that was an appropriate thing for a Garda Superintendent to be doing?

A. Not at all. Quite the opposite but that have the nature of the man I suppose.

Q. What do you mean that was the nature of the man? Unfortunately we don't know him?

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<sup>954</sup> Day 39, page 91.

- A. *Well, Connolly, he did things his way I suppose and that's just the way he did it. I don't think he was over familiar with anybody really.*
- Q. *And would it be the case, when you say he did things his way and that was it that it was kind of his way or the high road in terms of the way he'd organise himself?*
- A. *Yeah, I'd go along with that. He had his way and you either did it that way or you didn't do it at all.*<sup>955</sup>

1.734 He stated that Mr Corrigan was a good detective whose work tailed off:

- “A. I thought he was a good Detective Sergeant. He seemed to know his stuff about subversives and was competent and capable in anything that I saw him doing anyway.*
- Q. *Did the, as you saw it, kind of poor relationship with Superintendent Connolly, did that have any impact on Corrigan's work?***
- A. *Well my own impression was that Corrigan tailed off, he didn't have the same interest in his work, he certainly didn't seem to have the same interest in his unit at that time whatever was going on in the background, I don't know.***
- Q. *And was that -- was it your impression that that was as a result of the breakdown in his relationship with his superior officer?*
- A. *I t seemed to be kind of a personal conflict between two of them, but they are two experienced men, they may have known each other for years before, you know in a situation like that when you are a relatively young guard, you don't know what history they had between each other.”*<sup>956</sup> (39/81)

1.735 Mr Dan Prenty was a Detective Inspector in Dundalk. Despite the fact that he harbours severe animosity towards Mr Corrigan, he acknowledged that

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<sup>955</sup> Day 39 Pages 94-95  
<sup>956</sup> Day 39, page 81.

posters of Mr Corrigan were placed around Dundalk and that he had a drink poured over him.<sup>957</sup>

1.736 Mr Patrick O'Connor was a Detective Garda who served with Mr Corrigan in Dundalk. He recalled the posters of Mr Corrigan that were put up around Dundalk after the extradition of Russell.<sup>958</sup> He stated that Mr Corrigan stood up to the IRA.

1.737 Mr Michael Finnegan was a Garda who served with Mr Corrigan. He stated that Mr Corrigan paid a heavy price for his Anti-IRA activity particularly following the McGlinchey extradition when posters of him were put up and he was threatened.<sup>959</sup> He stated that Mr Corrigan was very anti-IRA:

*“A. Owen Corrigan was a very, very dedicated and hard worker in the Garda Siochana in the fight against terrorism. I am saying that and I am putting that on the record. I am only answering questions that you are asking me to clarify matters.”<sup>960</sup>*

1.738 He said that as a Detective Garda involved in combating subversives, Mr. Corrigan would have to associate with them:

*“A. Owen Corrigan worked extremely hard. I never worked with Owen Corrigan, for a start, but Owen Corrigan worked extremely hard as a member of the Garda Siochana and he worked extremely hard in the fight against terrorism. But he was involved -- any Garda long the border at that time, or based in Dundalk, any guard worth his salt would be in communication with members of the Provisional IRA trying to get intelligence and trying to get information in relation to different things, and he was doing the same...<sup>961</sup>*

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<sup>957</sup> Day 42, Pages 28-29 and 45.

<sup>958</sup> Day 46, page 27.

<sup>959</sup> Day 46, page 75.

<sup>960</sup> Day 46, page 83.

<sup>961</sup> Day 46, pages 83-84.

He stated that Mr Corrigan was at the forefront of the fight against the IRA.<sup>962</sup>  
1.739 He said that Mr Corrigan wasn't popular with the IRA.<sup>963</sup> He agreed that it would not be unreasonable for the Chairman to conclude that the IRA had a substantial grudge against Corrigan:

*“Q. Would you agree with me that it wouldn't be unreasonable to suggest that, because of the character of Mr. Corrigan's service, that he was in a slightly different position to other retired members of the Force, vis-à-vis the IRA?”*

*A. There was a lot of members in Dundalk carried out a lot of work on a par with Owen Corrigan, but certainly Owen Corrigan did an awful lot of work against the IRA in Dundalk.*

*Q. And he had a higher profile as a result?*

*A. He did have a high profile, but other members did, as well.*

*Q. Thank you very much.”<sup>964</sup>*

1.740 Mr Owen Giblin was the Chief Superintendent of the Louth Meath Division between 1983 and 1988. He stated that Mr Corrigan was an excellent detective:

*“A. He did. I regarded Corrigan as an excellent detective who provided a lot of good information, and by good information I mean information which subsequent events confirmed that it was correct. He was a good worker, if he was handled the right way. He had excellent contacts with locals and others, and indeed he could -- he gave me information at times on bank accounts.”<sup>965</sup>*

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<sup>962</sup> Day 46, page 93.

<sup>963</sup> Day 46, page 99.

<sup>964</sup> Day 46, page 101.

<sup>965</sup> Day 55, page 20.

1.741 He stated that getting intelligence on subversives included contact on subversives<sup>966</sup> and that Mr Corrigan was a “*very significant contributor of information to HQ.*”<sup>967</sup>

1.742 Mr Colm Murray was a Detective Garda who served with Mr Corrigan in Dundalk. He stated that Mr Corrigan was not popular with the IRA because of his work against them and he recalled that posters of him were placed around Dundalk following the McGlinchey extradition.<sup>968</sup> He was aware that Corrigan had drinks poured over him in a pub.<sup>969</sup>

### **C. RUC Officers**

1.743 Witness 27 joined the RUC in 1966. In 1989 he was a Chief Superintendent and deputy to the Assistant Chief Constable, Border Zone. He stated that he was forced to leave Northern Ireland due to repeated attempts on his life. He worked in Special Branch Head Quarters from 1981-1984. He stated that he never had any concern about dealing with Gardaí. He stated that when he went to Newry in 1980 he built up a relationship with Mr Corrigan. He described this as a practical relationship and stated that he trusted him as a valuable and important source.<sup>970</sup> He stated that he renewed contact with Mr Corrigan when he returned to Newry in 1988. He stated that Mr Corrigan’s information was operationally useful. He stated that nobody ever warned him off Mr Corrigan. He stated that Mr Corrigan could have set up lots of RUC men over the years if he wanted but he did not. He described how Mr Corrigan saved his life on one occasion.

“Q. *And I believe that there is one particular incident involving Sergeant Corrigan which you recall, and in that regard you have supplied your diary entry for the day in question and I would ask*

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<sup>966</sup> Day 55, page 21  
<sup>967</sup> Day 55, page 45.  
<sup>968</sup> Day 55, page 100.  
<sup>969</sup> Day 55, page 101.  
<sup>970</sup> Day 30, page 142.

*Mr. Mills to put up your diary entry, the third page of your diary entry, which is a diary entry for the 27th April, 1981. Do you have a copy of that in front of you, Witness 27?*

A. Yes.

Q. *In fact I might just perhaps ask you to supply the colour copy to Mr. Mills, if you'd be happy to read off the black and white copy it might be easier for the other parties and the members of the public to read from the coloured copy.*

A. *Do you want me to read?*

Q. *Yes, I don't think it is necessary to read from the absolute beginning. If you could read the references to your dealings south of the border?*

A. *"Travelled to Dundalk and met with Garda source. Made arrangements with a source" -- that was another source, that was a civilian source, the second one -- "returned to Newry and attended supervision duties, obtained necessary papers for operations" -- not related to Dundalk or anything-- "returned to Dundalk and met with the Garda source" -- which was Owen Corrigan -- "out in the area to meet the person" -- who was actually an informant who I was introducing to Corrigan who lived in Dundalk outside my jurisdiction, and for me it was very dangerous obviously to go to Dundalk to meet him on my own. So we went off to meet this informant, source, whatever. But we appeared to be compromised by three vehicles which Corrigan recognised as we drove to the rendezvous point he said "this is a trap. Get out of here." So he escorted me to the border at a rapid pace and I drove to Newry, and by that time it was midnight, 24:00."<sup>971</sup>*

1.744 Witness 61 joined the RUC in 1968. In 1985 he was promoted Chief Inspector, Special Branch responsible for the Western Region based in

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<sup>971</sup> Day 30, pages 119-120.

Gough Barracks.<sup>972</sup> In 1988 he was promoted Superintendent and made responsible for the Eastern Region.<sup>973</sup> One of his stations was Omagh and he worked with Superintendent Buchanan. He stated that he had a lot of contact with the Gardaí.<sup>974</sup> He stated that while he never had any dealings with Mr Corrigan he knew that Mr Corrigan was close to the late Mr Brian Fitzsimons former head of RUC Special Branch and that Mr Fitzsimons thought Corrigan tormented the IRA:

*“Q. Very good. Now, I want to deal with a number of individuals who are here represented before the Chairman. The first is a Detective Sergeant, as he was then in 1989, Owen Corrigan. Did you have any dealings with Mr. Corrigan?”*

*A. None whatsoever.*

*Q. Do you know what sort of relations he had with members of the RUC, your colleagues?”*

*A. He had none with any of my colleagues other than I know the late ACC Fitzsimons and he were very close and Fitzsimons always spoke very highly of him.*

*Q. Now, when you say spoke very highly of Mr. Corrigan, I mean is there something you heard yourself or...*

*A. Yeah. Well, Mr. Fitzsimons told me that he'd been very helpful during the period of the Restorick murder. [Corrected this to Capt Nairac at page 40]*

*Q. And what was the view about Mr. Corrigan dealing with the IRA?”*

*A. There's no real such view, there was just a personal view that Mr. --*

***Q. Sorry, you misunderstand me. I mean in terms of his work, I think the phrase might be that he tormented the IRA, would that be fair?***

***A. Oh, yes, absolutely.”**<sup>975</sup> (Emphasis added)*

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<sup>972</sup> Day 40, page 27.

<sup>973</sup> Day 40, page 27.

<sup>974</sup> Day 40, page 29.

<sup>975</sup> Day 40, page 34-35.

- 1.745 Mr Harmon Nesbitt joined the RUC in 1970. He went to Newry as a uniform Inspector in 1983 and was later promoted Chief Superintendent and Operations Chief for the Newry Sub Division.<sup>976</sup> He knew Mr Breen and Mr Buchanan well. He stated that he had a lot of dealings with Gardai<sup>977</sup> and that he never heard that Mr Corrigan was a threat.<sup>978</sup>
- 1.746 Witness 24 joined the RUC in 1963. He served in Special Branch from 1969 to 1972. He returned to Special Branch in June 1981 when he was promoted Detective Chief Inspector in Charge of the Republican Desk at Special Branch HQ. In 1985 he was promoted Superintendent and put in charge of the republican, loyalist and communist desks. In February 1988 he was promoted Head of Intelligence. In 1990 he was promoted Deputy Head of Special Branch where he served until his retirement in 1995. He told the Tribunal that the RUC did not consider Mr Corrigan unreliable.<sup>979</sup>
- 1.747 Witness 41 joined the RUC in 1965. He served in Armagh from 1977 to 1985. In 1982 he was promoted Chief Inspector in charge of South Armagh. In 1983 he was promoted Deputy Sub divisional Commander. He stated that he never heard rumours or came across any information that Mr Corrigan was a security threat.<sup>980</sup> He stated that Mr Breen never said anything about Mr Corrigan.<sup>981</sup> He stated that nobody ever suggested that Mr Corrigan was a mole.<sup>982</sup>
- 1.748 Mr Henry Gerard McCann joined the RUC in 1971. He served widely throughout the South Down and South Armagh areas in the 1970s and 1980s. He spent most of his career in CID. He stated that he worked with Mr Corrigan and had nothing but admiration for him.

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<sup>976</sup> Day 40, page 48.  
<sup>977</sup> Day 40, page 50  
<sup>978</sup> Day 40, page 77.  
<sup>979</sup> Day 41, page 9.  
<sup>980</sup> Day 44, page 37.  
<sup>981</sup> Day 44, page 38.  
<sup>982</sup> Day 44, page 55-56.

“Q. Yes. Did you have many dealings with Detective Sergeant Corrigan?

A. I did, yes.

Q. And what was your view of him?

A. I put him in the same category as the rest of the Garda officers from Dundalk police station. I have nothing but admiration for him and the work he did.”<sup>983</sup>

1.749 He stated that Mr Corrigan was at the forefront of the fight against the IRA at “no small risk to himself.”<sup>984</sup>

1.750 He stated that he frequently took Mr Corrigan’s advice on his travel plans when travelling south of the Border.

“Q. Did you ever take advice from him in relation to, for example, your travel routes or such like?

A. Regularly, yes.

Q. And to what extent, or what was the nature of that?

A. Well, if I was appearing at the Special Criminal Court in Dublin I was aware that it would be known that I would be appearing as a witness at the Special Criminal Court and I would perhaps have said, "look, Owen, I am going to have to be heading down at such-and-such time." "What car will be in, Gerry? What way are you travelling? Don't go that way, there is a bit of a road stop on, or a bit of a road blockage there, take the other way, you might be able to travel a bit faster. We will follow you through Dundalk Division" and that was normal practice. I mean, there was no -- that is just one example of many, and it wasn't just me, it was my colleagues as well.

Q. Yes. And if Detective Sergeant Corrigan advised you to take one particular road over another, did you take that advice?

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<sup>983</sup> Day 79, page 17.

<sup>984</sup> Day 79, page 25.

A. *I did indeed, yes. I wouldn't have asked him if I wasn't going to take his advice.*<sup>985</sup>

1.751 He stated that *"I trusted Owen Corrigan with my life."*<sup>986</sup>

1.752 He stated that he never heard any concerns expressed about Mr Corrigan until this Tribunal started.<sup>987</sup> He stated that in his view the people who had criticised Mr Corrigan for not being the most dynamic of officers *"would need to take a wee look at themselves."*<sup>988</sup>

1.753 He recalled one occasion where paramilitaries opened fire on him and Mr Corrigan.

*"A. It was actually after a conversation that I had with, in this Tribunal that it prompted something that happened in my memory. This was an incident that happened at Drumagavalle when a soldier, that's close to the border, a soldier had been blown up in a booby-trap explosion and we went to the scene, myself and two other detectives from Newry, and we were met on the border by garda from Dundalk, I am almost certain Owen Corrigan was one of those guards, and I presume that they would have been Crime Special, so it could have been some of his colleagues from that end of it, and as we talked on the border an IRA unit operating from the South fired across the border towards the British Army who were protecting us in the North but behind us we were in a hollow at the border, these guys were up, higher up on the other side, and the result was that, certainly I did anyway and I am sure all the rest, that we dived to the ground as fast as we could and I remember lifting a big boulder and putting it to the side of my head and I presume that Owen did the same. And afterwards, after the shooting was*

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<sup>985</sup> Day 79, page 17.

<sup>986</sup> Day 79, page 26.

<sup>987</sup> Day 79, page 18 and 26

<sup>988</sup> Day 79, page 19.

*over, we made our way to our various stations as quickly as we could. And I have tried to find out more details about it, which is why it is not in my statement, and about a month -- well it was actually towards the end of last year I wrote to the Chief Constable of the PSNI because, arising from that incident there was a civil claim made by myself for injury which was caused to me and by two other officers who were with me, and I indicated the dates that I thought it was and that there had been a civil claim, but I received a reply from the Chief Constable's Office to the effect that they could not trace the incident which was, as you will appreciate, well more than 30 years previously. I mention it because I think it is relevant to what the Chairman is inquiring into.”<sup>989</sup>*

1.754 Witness 80 stated that he had an excellent relationship with Mr Corrigan:

*“Q. And how did you consider the working relationship you had with Detective Corrigan?*

*A In my own opinion, it was an excellent relationship.”<sup>990</sup>*

1.755 Witness Z was a Detective Sergeant attached to Newry Special Branch in June 1985.<sup>991</sup> He, along with another former member of the RUC, Witness Q, was the author of an SB50 dated June 1985.<sup>992</sup>

1.756 Witness Z stated that he met with Detective Sergeant Corrigan on a number of occasions. Witness Z stated that he often received telephone calls from Detective Sergeant Corrigan. These calls generally related to vehicle checks which were required for security inquiries.<sup>993</sup> He stated that, notwithstanding the SB50, he had no difficulty in providing any such information to Mr

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<sup>989</sup> Day 79, pages 19-20.

<sup>990</sup> Day 83, page 73.

<sup>991</sup> Day 98 Page 3.

<sup>992</sup> Day 98 Pages 1 & 14.

<sup>993</sup> Day 98 Page 21.

Corrigan.<sup>994</sup> The witness disagreed with the suggestion that this indicated that he didn't really consider Corrigan to be a security risk but there really is no other construction you can put on it. Witness Z accepted that any positive reports concerning Detective Sergeant Corrigan would have been relevant.

*“Q. I suppose it would be relevant also to consider whether this -- these allegations or rumours, or whatever they are, whether they were contradicted by any other reporting, isn't that right; you'd have to consider that?”*

*A. Yes, absolutely, yes.”<sup>995</sup>*

1.757 Witness Q told the Tribunal that he met with Detective Sergeant Corrigan “a couple of times” during the course of these meetings and that he engaged in the “sword fencing” or “horse trading” exercise with Detective Sergeant Corrigan.<sup>996</sup> He described Detective Sergeant Corrigan as “a person who had an air of authority about him” and indicated that it may have been Detective Sergeant Corrigan who warned him against discussing sensitive information in Dundalk Station and that such information should more properly be passed at headquarters level.

*“Q. And turning now to the last name I am going to put to you, did you meet Detective Sergeant Owen Corrigan?”*

*A. I did.*

*Q. How many times do you think you met Sergeant Corrigan?”*

*A. No more than a couple of times.*

*Q. And how did you find him?”*

*A. Well, I found him a person who had an air of authority about him.*

*Q. Did you do any of the sword-fencing or horse-trading with him?”*

*A. Yes, I did.*

*Q. And how did that go?”*

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<sup>994</sup> Day 98 (11 May 2012) page 65.

<sup>995</sup> Day 98 (11 May 2012) page 42.

<sup>996</sup> Day 100 (23 May 2012) page 9.

A. *We think it may have been him. It may have been him who was talking about sensitive information being passed through his Headquarters, rather than speaking about it within the context of Dundalk Station.*<sup>997</sup>

1.758 In 1985 Witness X was the Deputy Head of Special Branch in South Region East. This Region covered Newry, Armagh, Lurgan and Portadown.<sup>998</sup> The SB50 was submitted to him by Witnesses Z and Q.<sup>999</sup> He said that their informant was a medium grade contact.<sup>1000</sup> He stated that he had heard rumours like the subject matter of the SB50 before<sup>1001</sup> but it did not cause him any concern because he knew Corrigan well meeting him once a month.<sup>1002</sup> He did not believe the allegation that Corrigan was assisting the IRA.<sup>1003</sup>

“Q. *When you received this intelligence in 1985 that indicated that Detective Sergeant Corrigan was helping out the Provisional IRA, did you believe it?*

A. *To be quite honest, it didn't really -- it didn't concern me. From my own point of view, I didn't believe it.*

Q. *How would you have -- how did you characterise the intelligence in your own -- I know the grading was medium, but why did you not believe it?*

A. *Well, again, as I say, like, it just seemed to me like gossip more than intelligence.”* Q. *When you received this intelligence in 1985 that indicated that Detective Sergeant Corrigan was helping out the Provisional IRA, did you believe it?*

A. *To be quite honest, it didn't really -- it didn't concern me. From my own point of view, I didn't believe it.*

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<sup>997</sup> Day 100 (23 May 2012) page 9.

<sup>998</sup> Day 93 (25 April 2012) page 89.

<sup>999</sup> Day 93 (25 April 2012) page 90.

<sup>1000</sup> Day 93 (25 April 2012) page 91.

<sup>1001</sup> Day 93 (25 April 2012) page 96-97.

<sup>1002</sup> Day 93 (25 April 2012) page 97.

<sup>1003</sup> Day 93 (25 April 2012) page 98.

- Q. *How would you have -- how did you characterise the intelligence in your own -- I know the grading was medium, but why did you not believe it?*
- A. *Well, again, as I say, like, it just seemed to me like gossip more than intelligence.*<sup>1004</sup>

1.759 Witness X told the Tribunal that he was wary of travelling to Dundalk Station because Corrigan had warned him that it was dangerous for him to do so. He recalled one particular occasion in 1983/1984 when he was in Dundalk Station and Corrigan told him to “*hang around*” for a while as there were suspected subversives downstairs in the Station.<sup>1005</sup> He said that afterwards Corrigan suggested that in future they meet in places other than the station to be arranged between them over the telephone.<sup>1006</sup>

#### **D. Conclusions**

1.760 It is submitted that this evidence shows what a positive contribution Mr Corrigan made to combat the subversive threat during his career in the Gardaí.

1.761 What is particularly interesting about this evidence is the evidence of the former RUC officers who were involved in the generation of the 1985 SB50. Witness Z stated that notwithstanding the SB50 he had no difficulty in dealing with Mr Corrigan or in providing him with information. Likewise, Witness Q stated that Mr Corrigan may have warned him against discussing confidential information too openly in Dundalk Station. Witness X stated that on one occasion Mr Corrigan asked him to stay in the Station after a meeting because there were subversives in the Station and he might be at risk. All of this shows that those officers in the RUC who worked with and knew Mr

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<sup>1004</sup> Day 93 (25 April 2012) page 98-99.

<sup>1005</sup> Day 93 (25 April 2012) page 99-100.

<sup>1006</sup> Day 93 (25 April 2012) page 100.

Corrigan did not view him as a threat but regarded him as a reliable member of the Gardai.

## Chapter 26 The Negative Evidence given about Mr Corrigan by former RUC and Garda Officers and others

### A. Introduction

1.762 Some evidence was given by former Garda and RUC officers and a journalist about rumours and gossip that circulated about Mr. Corrigan during his time in the Gardaí and afterwards. Because of his prominence in the public hearings, these rumours and gossip received considerable prominence in the media. This is a factor that has caused Mr Corrigan and his family grave hurt.

1.763 It will be apparent from what follows that these rumours and gossip were vague and were accepted to be such by those individuals who told the Tribunal about them. Worryingly, the more serious rumours which suggested that Mr Corrigan was involved with subversives were totally unsubstantiated, with the witnesses unable to tell the Tribunal who told them these rumours or when they heard them.

### B. Gardaí

1.764 Chief Superintendent Connolly told the Tribunal that he heard rumours of unease about Mr Corrigan when he served in Tallaght and Headquarters. He stated that at its height it was a *“rumour that there was a possibility.”*<sup>1007</sup> He also stated that an RUC Officer expressed concern about Mr Corrigan in 1988/1989.<sup>1008</sup> Yet when pressed, Mr Connolly could not remember any details of the Garda unease such as who told him,<sup>1009</sup> when he heard it or where or the identity of the RUC Officer.<sup>1010</sup> He also accepted that the rumours were hearsay.<sup>1011</sup>

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<sup>1007</sup> Day 17, page 72.

<sup>1008</sup> Day 17, page 67..

<sup>1009</sup> Day 17, page 68..

<sup>1010</sup> Day 17, page 67..

<sup>1011</sup> Day 26, page 22.

1.765 Mr Diffley stated that he heard rumours that Mr Corrigan was smuggling but never heard any detail of the allegation.<sup>1012</sup> Mr Cotterell stated that he heard rumours that Mr Corrigan was overly fond of money but he never received a formal complaint about Mr Corrigan.<sup>1013</sup> Mr Tadgh Foley heard rumours that Mr Corrigan was ‘chancey’ and that he had cheated on a firing range test.<sup>1014</sup> Mr Donal Smyth stated that he was simply told to be careful of Mr Corrigan<sup>1015</sup> but he accepted that this could have simply meant Mr Corrigan was cranky or abrupt.<sup>1016</sup> Mr McHugh accepted that he heard rumours about Mr Corrigan smuggling but stressed that this was simply the Garda rumour machine.<sup>1017</sup> Mr John Nolan stated that he suspected Mr Corrigan was involved in smuggling but he never had any evidence that he was.<sup>1018</sup> Mr Egan stated that he heard rumours that Mr Corrigan’s kidnapping was to do with smuggling and not paying for illegal drink but he stressed that this was not based on solid facts.<sup>1019</sup> Mr Sean O’Connell never worked with Mr Corrigan but stated that he heard rumours in Harcourt Street and Tralee that Mr Corrigan was ‘dodgy’ but never anything to suggest that he colluded with the IRA. Mr Des McTiernan told the Tribunal that Mr Corrigan had a reputation of being fond of money but this was just a rumour.<sup>1020</sup> Mr Peter Maguire heard rumours that Mr Corrigan was slow to pay his bills and that he was dishonest in his financial affairs.<sup>1021</sup> Mr Dan Prenty had many complaints about Mr Corrigan but stated that he could not say Mr Corrigan was involved with the IRA and that he would have no difficulty in saying he was if he could. He stated that an RUC Officer, whose identity he could not remember, told him that there was a file with a red ribbon on Mr Corrigan. (No such file has ever been found). Mr O’Connor said that Mr Corrigan had a reputation for owing

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<sup>1012</sup> Day 18, page 36-37.  
<sup>1013</sup> Day 20, page 42.  
<sup>1014</sup> Day 21, pages 55-56.  
<sup>1015</sup> Day 23 page 88  
<sup>1016</sup> Day 23, page 97.  
<sup>1017</sup> Day 29, page 88.  
<sup>1018</sup> Day 30, page 61.  
<sup>1019</sup> Day 33, page 21.  
<sup>1020</sup> Day 34, page 59 and 68.  
<sup>1021</sup> Day 34, page 85-86.

money.<sup>1022</sup> Mr Finnegan stated that he heard rumours that Mr Corrigan was smuggling alcohol but stated that this was just speculation and gossip, what he termed 'soft intelligence.'<sup>1023</sup> Mr Wren stated that he heard rumours about Mr Corrigan's houses.<sup>1024</sup>

### C. RUC

1.766 Witness 9 stated that in the late 1970s Superintendent John McMenamin (deceased) told him to be careful what he discussed in front of Mr Corrigan.<sup>1025</sup> Witness 33 stated that Witness 27 told him to be careful of what he said to Mr Corrigan. He did not elaborate on why.<sup>1026</sup> Mr Brian Lally stated that Mr Corrigan's name was thrown around more than most but he never heard anything to make him suspicious of Mr Corrigan. Witness 24 did not consider Mr Corrigan unreliable but he heard a rumour that a republican terrorist was working on one of Mr Corrigan's houses.<sup>1027</sup> Witness 41 stated that he heard rumours about Mr Corrigan but that the rumours were simply to be careful of him.<sup>1028</sup> Witness 62 stated that he heard rumours that Mr Corrigan was a problem Garda after the murders. He inferred that this meant Mr Corrigan was passing information but stressed that he had no evidence to support this inference.<sup>1029</sup> However, he accepted that he knew nothing about Mr Corrigan's links with the RUC.<sup>1030</sup> Witness 65 stated that Inspector Prenty had told him not to speak in front of Mr Corrigan.<sup>1031</sup> He stated that the view in his station, Bessbrook in the early 1980s was that Mr Corrigan was not friendly to RUC Special Branch and that there was a "wrong connection" between Mr Corrigan and the IRA.<sup>1032</sup> Mr Raymond White stated that he

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<sup>1022</sup> Day 46, page 38.

<sup>1023</sup> Day 47, page 77

<sup>1024</sup> Day 54, page 63.

<sup>1025</sup> Day 24, page 74.

<sup>1026</sup> Day 35, page 25-26.

<sup>1027</sup> Day 41, page 9.

<sup>1028</sup> Day 44, page 37.

<sup>1029</sup> Day 51, page 30.

<sup>1030</sup> Day 51, page 93.

<sup>1031</sup> Day 53, page 91.

<sup>1032</sup> Day 53, page 92.

heard gossip that Mr Corrigan was not someone to do business with.<sup>1033</sup> Witness 69 stated that he heard rumours that Mr Corrigan was a bad guy; involved in smuggling and that he should not do business with him. However, he accepted that no details were provided.<sup>1034</sup> Witness 73 stated that he was told to be careful of what he said in front of Mr Corrigan because he was suggested that he was passing information to the IRA.<sup>1035</sup> He said that he could not remember who gave him the warning.<sup>1036</sup> He said that a Garda Sergeant had also warned him about Mr Corrigan.<sup>1037</sup> He could not remember the name of the Garda Sergeant.<sup>1038</sup> He accepted that this was hearsay.<sup>1039</sup> Witness 68 stated that he did not know Mr Corrigan but that he was briefed by his authorities that Mr Corrigan was a potential leak. (This was not in his statement.)

1.767 Witness 70 stated that he received a warning from a Special Branch Officer, whose name he could not remember, that Mr Corrigan was actively sympathetic to the IRA. He stated that Mr Corrigan was described as an IRA activist. He stated that he had no direct knowledge of whether this was correct.<sup>1040</sup> He stated that he did not know the basis for this briefing and would be disappointed if it was a rumour as rumours can be started out of animosity, a fact which would not be known to those who received the information further down the line.<sup>1041</sup>

#### **D. Mr Chris Ryder, Journalist**

1.768 Mr Chris Ryder, Journalist, stated that he was frequently told by RUC men that there were Gardaí they didn't trust.<sup>1042</sup> He stated that Gardaí told him that

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<sup>1033</sup> DAY 71, page 82-83.  
<sup>1034</sup> Day 74, page 34.  
<sup>1035</sup> Day 77, page 5-6.  
<sup>1036</sup> Day 77, page 15.  
<sup>1037</sup> Day 77, page 10.  
<sup>1038</sup> Day 77, page 40.  
<sup>1039</sup> Day 77, page 34-35.  
<sup>1040</sup> Day 65, page 6.  
<sup>1041</sup> Day 65, page 40-41.  
<sup>1042</sup> DAY 63, PAGE 12.

there were Gardaí that they didn't trust.<sup>1043</sup> He stated that the station that caused the RUC most concern was Dundalk.<sup>1044</sup> He stated that a number of names were mentioned, one of which was Owen Corrigan.<sup>1045</sup> He stated that he remembered the name because he met him in the company of Mr Brian Fitzsimons in the la Mon hotel in Belfast in the 1970s.<sup>1046</sup> He stated that Mr Corrigan in the toilets offered him stories for money.<sup>1047</sup> He stated that he heard the name subsequently:

"A. *In the context that, you know, he was a bit of a dodgy guy in terms of helping the IRA and in terms of not being trustworthy, as the RUC would have seen it, in respecting security confidences and things of that sort. And, you know, his name didn't come up on a regular basis, but from time to time, if there was an incident down there, or something, or I might be talking to somebody, and I would say, oh, you know, that was such-and-such or, you know, Corrigan was involved in that or somebody was trying to get Corrigan to do something. It was just in a very general context. But because I remembered Mr. Corrigan so vividly from our encounter, then, you know, whenever his name did come up in conversation and there was inferences, sort of, or allegations made about his conduct and his trustworthiness, you know, I knew who they were talking about and I knew what was involved.*"<sup>1048</sup>

1.769 Importantly, Mr Ryder was not aware that Mr Corrigan and Mr Fitzsimons were close.<sup>1049</sup>

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<sup>1043</sup> Day 63, page 13.

<sup>1044</sup> Day 63, pages 14-15.

<sup>1045</sup> Day 63, pages 16

<sup>1046</sup> Day 63, pages 18.

<sup>1047</sup> Day 63, pages 19. An allegation Mr Corrigan denies.

<sup>1048</sup> Day 63, pages 19-20.

<sup>1049</sup> Day 63, pages 74-76

## **E. Conclusion**

1.770 It is clear that the rumours concerning Mr Corrigan were vague and uncorroborated. Most concerned petty matters but the rumours that suggested he was involved with subversives were proven to be totally unsubstantiated. Those who relayed these rumours were careful to remind the Tribunal that what they were relaying was hearsay and they could not provide any specifics of who told them the rumour or where they heard it. Tribunals of Inquiries cannot reach findings based on rumours.

## Chapter 27 Peripheral Matters concerning Mr Corrigan that were the subject matter of inquiry during the Public Hearings

### A. Introduction

1.771 A number of peripheral matters, unconnected with the events of 20 March 1989, concerning Mr Corrigan were the subject matter of inquiry by the Tribunal during the course of the Public Hearings.

### B. Mr Corrigan's kidnapping by the IRA in 1995

1.772 Mr Corrigan was kidnapped by the IRA in 1995 and beaten nearly to death.

1.773 He was interviewed by Detective Garda James Sheridan and Detective Garda Sean Gethins in relation to the incident. Both men gave evidence to the Tribunal.

1.774 Mr Sheridan sated that Mr Corrigan had received a severe beating:

*“Q. What observation did you make about the condition that Detective Sergeant Corrigan was in when you met him in hospital?”*

*A. Well it was obvious immediately he had suffered a severe beating. His head was very badly swollen, his head and face. He didn't appear to have very many lacerations or that type of thing, but his face was black or certainly discolored. It was badly swollen. He showed me his back and his entire back was black.*

*Q. Over your years in the guards you have been a witness to the aftermath of many assaults and the like, would that be reasonable to say?*

- A. *Absolutely, yes.*
- Q. *In the context of your experience what degree of assault had taken place?*
- A. *Well from recollection he didn't appear to any lacerations or certainly not major ones. It was obvious certainly that he had been the victim of a continuous beatings. Normally you would see somebody who may have got a number of belts of some type of implement would have some marks, but both his head and face and his back it was obvious he had been beaten over a long - certainly over a period of time.*
- Q. *Was it a moderate beating, would you say? Was it bad, severe? How would you categorise it?*
- A. *I would say it would have to be pretty severe to cause in such a short period of time certainly the discoloration of his back and that type of thing. His entire back was just black.*<sup>1050</sup>

1.775 Mr Gethins stated that the IRA nearly killed Mr Corrigan:

- "A. Well, all I'm saying is that it was a bad way -- if he had been helping the IRA, it was a bad way they repaid him. They nearly killed him.*
- Q. *They didn't kill him though, did they? That's probably a facetious question, forgive me, I didn't mean it to come out quite like that.*
- A. *I'd say they put a blue boiler suit on him, which anybody along the border knows that when a blue boiler suit is put on you, that's your habit.*<sup>1051</sup>

1.776 Mr Sheridan stated that Mr Corrigan did not provide a Statement but they took a Memo of Interview.

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<sup>1050</sup> Day 31, page 43.

<sup>1051</sup> Day 31, page 86.

1. *His abductors had armalite rifles and a handgun. He thinks the handgun was a .38. They point it under his ear and spun the cylinder at his ear.*
2. *Got phone call from Tiernan around 8:30 p.m. to meet him at Boyne valley. Corrigan said he wanted to see match and Tiernan told him it wouldn't take long."*
3. *Corrigan drove immediately to Boyne Valley in his red Renault van. He parked the van at the side of the hotel.*
4. *He walked in the front door of the hotel and went to the bar. He had a pint and went to the toilet.*
5. *He walked out of the hotel through the front door and walked over to Tiernan's car.*
6. *He got into the back of the car. Tiernan and another man he did not know were in the front of the car.*
7. *He was only in the car for a matter of seconds when a car pulled in front of it and a van along side. (He thinks they were in the car park waiting for him to come out).*
8. *A number of men got out, smashed the side window of the car and tried to pull him out of the car. He resisted but was eventually forced into the back of the white Ford transit van.*
9. *He was blind folded with a cloth material and had his hands and feet tied with some material(maybe plastic ties).*
10. *He could see a church through a blindfold through the window of the house and heard one chime.*
11. *Continually asked him about cases he was involved."*
12. *Asked him if Provo's were being blamed for spat of robberies in Dundalk three years ago.*
13. *Asked him who he thought were holding him. He told them the PIRA because it was the military type operation of a subversive organisation. (They beat him several times for referring to them as subversives.)*
14. *Ask him about cash deliveries to post offices. Who drove post office vans.*
15. *He states he had no business deals with Tiernan.*

16. *He stated he was not involved in a drinks deal with Tiernan.*
17. *He had met Tiernan several times down the years but had only met him once before at the Boyne Valley Hotel.*
18. *When they were releasing him they put him in the boot of the car.*
19. *They drove him out from the house he was held in in a different way than they drove in. It seemed to be a very narrow, rough driveway.*
20. *The car got stuck at one point and they had to push it out."*

1.777 They carried out a subsequent interview with Mr. Corrigan and a second Memo of Interview was prepared:

*"Got a phone call around 8:30 p.m. from Francis Tiernan to meet at the Boyne Valley Hotel. Corrigan went to the Boyne Valley Hotel and met Tiernan and another man. Got into the car. A car and a van pulled up in front of them in the car park. A number of masked men got out and bundled Corrigan and Tiernan into a white Ford Transit van. Corrigan was blind folded, was kicked and punched in back of the van.*

*Driven for about an hour possibly to South Armagh. Taken to an old two story house lived in by an old man. The house was near a church(he could hear bells rings). Close to a main road (he could hear traffic passing). His hands were tied behind his back. He was taken up a narrow stairs in the house. Tiernan was taken downstairs. He was continually kicked and beaten throughout the night and hit on top of the head with a rubber mallet. Asked about who were the touts for the branch in Dundalk. Asked about Sean Gethins, Terry Heinz, Larry Crowe and Tom Fox.*

*"Asked about Tom Olivers' case and other cases in South Armagh over the years. Accused him of setting up Dominic McGlinchey in Drogheda and asked about the bomb found in Donaghmoyne on 10th November 1995. Told him they wanted him to gather information on the branch in*

*Dundalk. Then he asked for a drink, he was given urine. They said they were being harassed by the branch in Dundalk and would take them on. He estimates that approximately 20 people took part in his interrogation. The interrogation teams were made up of four men who alternated approximately every two hours. They were reading from notes when asking about specific incidents. When they were being released they were told to wait an hour and a car would come and sound it's horn. Tiernan's wife received a phone call to come and collect them. She contacted Thomas Tiernan(brother of Francis Tiernan) and they collected Corrigan and Tiernan 300 yards south of Drumbilla customs post on the Dundalk/Newtownhamilton Road. Thomas Tiernan drove Owen Corrigan to his home in Dundalk and then took Francis Tiernan home. We are calling to Owen Corrigan tomorrow to see if he wishes to make a full written statement. He's intimated he may not wish to make one. Corrigan has severe injuries to his head and body. He states he was treated far worse than Tiernan. Francis Tiernan is presently in Daisy Hill Hospital in Newry. Thomas Tiernan will make himself available for interview to the Gardaí on request."*

1.778 Mr Sheridan stated that he understood why Mr Corrigan did not want to give a statement.

“Q. Do you recall the reasons or would you like me to read them again because I was going to ask if you've any sympathy for that evidence that he gave?

A. No, I've heard them, Judge, and I recall them. I can understand them because there are other people who have been victims in the past who have given these type of reasons.”<sup>1052</sup>

1.779 Mr Gethins stated that he was the one who mentioned the possibility of a drinks deal.

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<sup>1052</sup> Day 31, page 59.

**“Q. And you asked him as well was he involved in a drinks deal with Tiernan. Now -- so, there was -- was there a suspicion or a possibility that you thought at the time that Owen Corrigan could have been involved in smuggling drink with Tiernan?”**

**A. Everyone knew that at the time half the people in around Forkhill were involved in smuggling and half the pubs in Dundalk were, or around the border were buying smuggled drink and it was just in that context that it was put to him.**

**Q. So, it was -- it would be a reasonable explanation as to why they were beaten up by the IRA, wouldn't it?”**

**A. Well, I'd have put the same question to 90 percent of publicans in Dundalk, if they were beaten like that.”<sup>1053</sup>**

(Emphasis added)

1.780 This is extremely important evidence in light of the significance that was subsequently attached to the reference to a drinks deal by others later on.

1.781 Detective Sergeant Patrick O'Donnell prepared a report on the kidnapping. He concluded at paragraph 5.3 that:

*“In the absence of any cooperation on the part of either of the injured parties it has not been possible to bring this matter any further and we can only speculate on the reason for this incident. Some say it was because of a ‘deal’ which went sour while others say it was because of debts which have not been aid, all of which could be possible having regard to the reputations of those involved.”*

1.782 Unfortunately Mr O'Donnell is deceased and was unable to give evidence as to the source for his speculation. It is submitted that a reasonable interpretation of the reference to a drinks deal was the question posed by Mr

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<sup>1053</sup> Day 31, page 92.

Gethins. Unfortunately for Mr Corrigan, Mr Gethins did not record why he asked the question at the time, namely the fact that the question was not based on something he had heard about Mr Corrigan rather it was a question he would have asked any publican in the area.

1.783 This Report was forwarded to Superintendent Fergus Doggett who prepared his own report on the incident dated October 1996. This concluded inter alia at paragraph 2.6:

*“The reasons as to why the incident took place in the first place can also be speculative. I would also have to say that the interview which Corrigan gave, the contents thereof are I believe that, which he would like to put forward, but are not factual.”*

1.784 Mr Doggett gave evidence to the Tribunal. He agreed that his report was simply a *“distillation of Sgt O’Donnell’s report.”*<sup>1054</sup> He was asked what he meant by paragraph 2.6 and replied as follows:

*“A. I think he could have, having regard to the incident he was involved in, that he probably could have been a lot more forthcoming as to what exactly did happen on that particular time in Boyne valley.”*<sup>1055</sup>

1.785 Mr Doggett stated that he understood why Mr Corrigan did not want to give a statement.<sup>1056</sup> He stated that he did not know Mr Corrigan and only met him twice.<sup>1057</sup>

1.786 This Report was forwarded to Chief Superintendent Al McHugh. He wrote to the Assistant Commissioner, C Branch (Security) on 3 October 1996 and stated that

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<sup>1054</sup> Day 31, Page 18.

<sup>1055</sup> Day 31, page 17.

<sup>1056</sup> Day 31, page 29.

<sup>1057</sup> Day 31, page 26.

*“As stated at paragraph 2.6 of Supt Doggett’s report the reasons why the incident took place as put forward by Mr Corrigan would be those he wishes to be believed rather than the actual reasons.”*

1.787 On 9 January 1997, Mr Corrigan’s then solicitors, Patrick Quinn & Co, wrote to the Department of Justice asking for an application form so that Mr Corrigan could make a claim for compensation arising out of his kidnapping.

1.788 Detective Superintendent Michael Finnegan was detailed to prepare a report on the matter. His report dated 11 April 1997 stated inter alia:

*“Owen Corrigan*

*....*

*Intelligence received since the abduction indicates that Corrigan and Tiernan were abducted by the Provisional IRA because they owed the organisation money. Both men offered to dispose of a load of spirits which was in the possession of this organisation, but, having done so, failed to deliver of the money, which is mentioned as being £35,000.*

*This is based on intelligence received, but no hard evidence has been gleaned to substantiate this due to the fact that neither Corrigan or Tiernan cooperated with the investigation concerning their abduction and the other party involved is the Provisional IRA.*

*...*

*Conclusion*

*...*

*We are, therefore, forced to rely on intelligence received in this matter. This indicates that both men owed PIRA money and would not give it to them. It is alleged it concerned a lorry-load of spirits which both men disposed of for the organisation and this theory would be consistent with the character and activities of these men. There is no evidence whatsoever to support the view and it is not accepted that the*

*abductions and subsequent beatings of both men had anything to do whatsoever with Owen Corrigan's previous service in An Garda Siochana."*

1.789 Mr Finnegan gave evidence to the Tribunal.

1.790 He said the intelligence referred to in his report was soft intelligence:

*"A. Basically, what I meant by the intelligence at that time, and still, is that, subsequent to that incident happening, it was a very serious incident for both, for Owen Corrigan and for Francis Tiernan, and they both received very serious beatings. Neither of the men cooperated, as such, with the Garda investigation, and, at that stage, you were relying on intelligence. And I would have to say, in relation to what's written there, there would be what would be termed very soft intelligence and maybe rumours as to why it happened. There certainly was never any concrete evidence as to why it happened, but that was put up as a suggestion as to why that happened.*

*Q. Now --*

*A. As I said, Francis Tiernan was involved in smuggling, and Owen Corrigan was alleged to be involved in some ways in smuggling, he was also selling and dealing in cars, that type of thing, and they were associates.*

*Q. So, speculation, gossip and soft intelligence, is that right?*

*A. Correct, Chairman.*

*Q. What do you mean by "soft intelligence"?*

*A. It would be intelligence, something that certainly was never, or could not or was never firmed up on or couldn't be confirmed."<sup>1058</sup>*

1.791 Mr Finnegan accepted that he did not make this clear in his report.<sup>1059</sup>

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<sup>1058</sup> Day 46, page 77.

1.792 Counsel for the Tribunal said that it wasn't intelligence but that it was rumour which is totally different:

*“Q. I have to put it to you it wasn't intelligence; it was speculation and gossip and soft intelligence, which you described as rumour?”*

*A. Yeah, that's fine.*

*Q. That's intelligence?*

*A. It is, but there is certainly different strands of intelligence.*

*Q. So gossip is intelligence, is that right?*

*A. No, no, no. It would be based on -- some of it would be based on rumour, and obviously this is – this intelligence, in inverted commas, would be things that were told to members in Dundalk by associates of, or members connected with the Provisional IRA.*

*Q. Sorry, would you mind repeating that sentence?*

*A. It would have been information received by members or being told to members, members of the Garda Siochana in Dundalk by suspected or actual members of the IRA and given a reason as to why this happened.*

*Q. Who were these members? Did you actually talk to members of the station in Dundalk about this?*

*A. Yeah, there were a number of meetings held in relation -- subsequent to the abduction, there were conferences held and interviews held, or --*

*Q. Absolutely, but what I'm asking you is, did you actually speak to people in Dundalk in relation to this matter, members of the station in Dundalk, I mean, in relation to this matter?*

*A. Absolutely.*

*Q. And guards told you about gossip and speculation –*

*A. Yes, it was as a result of that that this report was*

written.

- Q. *And the gossip and the speculation was that Mr. Corrigan was involved with the IRA commercially? A. Yes, in relation to what I have said here in relation to the disposal of a lorry-load of spirits, yeah.*
- Q. *So, there were members of the Force in Dundalk who had this - well, let's put it at its highest - knowledge, speculation, gossip, and were happy to share that with you, is that right?*
- A. *They weren't sharing it with me at all. That's the reason why conferences are held, to share information.*
- Q. *I put it to you that, and this is an important matter from Mr. Corrigan's point of view, that you said "intelligence received," not speculation, gossip and soft intelligence. That creates the impression --***
- A. *I didn't say that, I didn't say that. You asked me, in relation to this intelligence, you asked me what type of intelligence it was, and I'm saying now that it was my belief that it was soft intelligence and rumour and gossip that was going on as to reasons as to why they were abducted. And just in relation to that, that what I'm saying is, that if the intelligence was, what we term hard intelligence or good intelligence, they probably would have been arrested and questioned about it, but it was never of that standard.***
- Q. *No, but the reality is, as I understand it, is that you really can't use intelligence for prosecutions because that means revealing your sources, isn't that right?*
- A. *Correct.*
- Q. *So, 'intelligence', when that word is used, it is to suggest information and you cannot reveal your source?*
- A. *Yes, but intelligence, as I have said several times, and I am sure it's still happening, people are arrested regularly and interviewed in relation to intelligence received, but you are still not revealing sources.*

- Q. *No, but why did it take until 2009 for you to clarify that what you said was intelligence, was, in fact, speculation, gossip and soft intelligence that was circulating?*
- A. *I think we are at cross-purposes here. What I'm saying is that when you asked me in relation to intelligence, I am saying now that I believe that the intelligence, as such, was soft intelligence.*
- Q. *But you didn't say it in your report, is the point I'm making. I am coming to a point, but I'm not just labouring the point for the joy of it, I'm coming to a point.*
- A. *Well, I can't put the matter any further.*
- Q. *Right. The point being this: that this allegation is very damaging to Mr. Corrigan and his reputation, isn't it?*
- A. *Yes.*
- Q. *And also, it would be, had he pursued his claim for compensation, it would have destroyed his claim for compensation?*
- A. *Well, I don't know whether it would or not.*
- Q. *Well, because you said it had nothing to do, the abduction had nothing to do with the --*
- A. *Well, I think if he pursued a claim for compensation, that the biggest damage to his claim was the fact that he didn't cooperate with any investigation, anyway.*
- Q. *But nonetheless, you wrote a sentence, in fact you repeated the sentence in different forms, which is very damaging to Mr. Corrigan's reputation, isn't that right?*
- A. *Well, you are saying that. I cannot put the matter further.*<sup>1060</sup>  
(Emphasis added)

1.793 He said that there was never any hard evidence that Mr Corrigan was in a commercial relationship with the IRA.<sup>1061</sup> He agreed that Mr Corrigan's evidence as to why he didn't provide a statement was an explanation.<sup>1062</sup> He

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<sup>1060</sup> Day 46, page 79-82.

<sup>1061</sup> Day 46, page 84.

<sup>1062</sup> Day 46, page 96.

also accepted that it was possible that Mr Gethin's question in the interview led to the soft intelligence about smuggling:

*“Q. Again, you mightn't be able to answer this question, but in circumstances where your state of knowledge when you were preparing your report is based on the documentation generated, is it a possibility that your soft intelligence, rumours, speculations in relation to the smuggling of drink, emanated from you reading that question being put to my client by Garda Gethins in the course of the interview, you mightn't be able to answer that?”*

*A. I am not able to answer it, but it is possible that, with other things, that that led to that.*

*Q. Would it be a reasonable inference for the Chairman to draw, or it wouldn't be an unreasonable conclusion to come to?*

*A. I accept that. It was probably that, in conjunction with other things, that formed my opinion on it at the time.”<sup>1063</sup>*

1.794 Mr Finnegan's report was forwarded to Chief Superintendent Al McHugh. Mr McHugh issued his report on the matter on 27 May 1997. He concluded that Mr Corrigan's beating was as a result of his smuggling activities and other scams.

1.795 Mr McHugh gave evidence to the Tribunal. He stated that everything he wrote was based on investigations carried out by D/Sup Finnegan.<sup>1064</sup>

1.796 It is submitted that the investigation into Mr Corrigan's kidnapping is a classic example of how baseless speculation and rumour can be transformed into fact.

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<sup>1063</sup> Day 46, page 99.  
<sup>1064</sup> Day 46, page 10.

1.797 It is also unfortunate that a piece of Garda Intelligence, Document 132, which supported Mr Corrigan's position only emerged at a very late stage in the Tribunal's investigation. This document 132 provided as follows:

*"Document 132: Garda information received many years after 1989 assessed as reliable. Following the alleged abduction of retired Detective Sergeant Owen Corrigan by IRA, was asked about the identities of people supplying information on IRA activities in Louth/Meath.*

### **C. The Failed Prosecution**

1.798 The Tribunal also examined the failed prosecution against Mr Corrigan.

1.799 It is submitted that the evidence of Mr James McHugh who investigated the matter shows (a) the irrelevancy of this matter and (b) the danger of making a finding against Mr Corrigan based on the evidence of the late Mr Gallagher.

1.800 Mr McHugh stated that in 1991 he was a Superintendent and investigated the complaint of alleged fraud against Mr Corrigan. He stated that the complaint was made to a Garda in Dundalk who reported it to his authorities and the Chief Superintendent forwarded the complaint to HQ. He stated that he interviewed Finbarr Dillon, Patrick J Fearon and Patrick Gallagher. He stated that Mr Gallagher did not turn up for the trial. He gave the excuse that he had broken down. In 1993 (2 ½ months after the trial) Mr Gallagher told him that he had been approached by a former neighbour and asked not to attend. There was also mention of money and he said his wife had received a number of telephone calls inquiring after her husband's whereabouts. He stated that he did not understand Mr Gallagher to have been in fear. He stated that Mr Gallagher never mentioned being stopped by 4 people although he did mention the neighbour. He stated that Mr Gallagher is wrong when he said that he initiated the complaint. He stated that his investigation of the fraud complaint was thorough - in fact, more thorough because the complaint was

against a Garda. He stated that his report concluded that any prosecution would be unlikely to succeed. He stated that the Gardaí examined the Fiat Uno and concluded that the damage was consistent with that recorded on the invoices. He stated that Mr Gallagher never identified the make of Mr Corrigan's car on the claim form. He stated that Mr Gallagher also got the registration number wrong. He stated that his report concluded that the evidence supported Mr Corrigan.

1.801 It is submitted that in circumstances where the Gardaí did not feel that a prosecution against Mr Corrigan would be likely to succeed that it would be manifestly unfair for the Tribunal to make any finding in relation to this matter. In any case any such finding would be wholly unrelated to the subject matter of the terms of reference. This Tribunal was not established to report on a withdrawn prosecution against Mr. Corrigan.

#### **D. Mr Corrigan's Disciplinary Proceedings**

1.802 Mr Corrigan's disciplinary proceedings also featured in evidence. The Tribunal was entitled to inquire into these matters to see if there was any connection between the subject matter of the proceedings and the terms of reference. At the conclusion of the public hearings it is clear that there is none and therefore no findings should be made in relation to very minor matters. It would be manifestly unfair if the Tribunal was to make findings in relation to these issues in circumstances where no link between the two was established and where the disciplinary process in relation to the second set of proceedings had not concluded because Mr. Corrigan had retired and, consequently, was not given the opportunity to defend himself. Similarly, the Tribunal should recall the evidence of Mr Bohan that the first set of proceedings concerned minor matters as was evidenced by the sanctions imposed.

## E. Narrow Water

1.803 The Narrow Water Bombing was not mentioned in the Opening Statement or in the Proposed Heads of Inquiry.

1.804 It is noteworthy that Jeffrey Donaldson MP, who stated in evidence that he actually heard the Narrow Water explosions go off and that he felt a personal involvement in the matter as a result, gave evidence to the Chairman that he had no evidence or information of collusion in the Narrow Water case and that he mentioned it in the House of Commons simply to illustrate what he perceived as the inadequate level of co-operation between the two police forces.

*"A. No, I did not link collusion to the Narrow Water case.*

*Q. And have you any evidence or information as such now today to suggest there is any collusion?*

*A. No, I think the point that I had made about the Narrow Water case was inadequacies in the level of cooperation."<sup>1065</sup>*

1.805 Mr Raymond White, former RUC Assistant Commissioner simply relayed hearsay evidence to the effect that many of the CID Officers involved were very frustrated because of the number of people killed and because they felt that the crime scene had not been maintained properly. He said that one CID officer suggested that the grass had been cut.

*"Q. You also indicated in the statements that you recollect some frustration in relation to the investigation of the Narrow Water bombings?*

*A. Again, it's simply commentary from CID officers that would have been present. There was a high level of frustration, obviously, given the numbers that were killed, and that, and that the crime scene, when eventually they got to it, looked as if it had been*

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<sup>1065</sup> Day 64, page 88-89.

*very seriously trampled, or the grass, in fact, one officer suggested it was even cut, so that, from their perspective, any forensic evidences recovered from that would have been seriously contaminated and, therefore, perhaps, of no value to the courts. I wasn't at Narrow Water, and it's simply a reflection of what CID officers that I subsequently served with, passed comment on afterwards.*

Q. *And were those CID officers who had been involved in the Narrow Water investigation?*

A. *That's correct.*" <sup>1066</sup>

and:-

"Q. *Insofar as the Narrow Water investigation is concerned, you mentioned that in passing. You weren't involved in any way in that yourself?*

A. *No, no.*

Q. *What you have said is obviously hearsay, what others have said to you?*

A. *That's correct.*

Q. *But, I mean, obviously everyone understands that, from the northern side, there was, I think, 19 soldiers killed in the attacks?*

A. *Yes.*

Q. *And on the southern side, I think you probably knew that there was a young -- a young boy from England, a young man from England who was shot dead on the southern side?*

A. *No.*

Q. *And that there was both a murder investigation in progress on the southern side and also an investigation as to whether there had been firing points on the southern side. Did you know anything yourself about the details of the visits that Mr. Hall, the Chief Scientist, had had to those sites?*

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<sup>1066</sup> Day 71, page 68.

A. No, no.

Q. And I think you are not suggesting yourself, you are not in a position to suggest that there was anything wrong with the Gardaí in preserving the scene for their own investigation and searching for whatever evidence they thought appropriate?

A. No, I am not. As I say, I am simply reflecting a hearsay conversation with officers that had been at the scene, as such.”

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1.806 It was during the evidence of Kevin Myers that the Narrow Water incident was first mentioned in evidence and then only to damage Mr. Myers’ credibility. In the first interview he gave to the Gardaí following the publication of his article he said that there was collusion by Gardaí in the Narrow Water investigation:

*“I am now talking about a small body of men who disclosed information. I was told since that the entire Narrow Water investigation was compromised by an individual or individuals from Dundalk Garda Station. Every single name that came up the IRA knew about it shortly afterwards.”*

and in the second interview he withdrew that allegation.

*“My instinct is now that it was not a conspiracy to destroy forensic evidence, it may be more incompetence. I do not believe and have not any reason to believe that this was compromised by a garda mole.”*

1.807 In his evidence, he said that *“my information I have had over the years since [the interviews] is that information was destroyed deliberately. But I say information; it’s not evidence, it’s an allegation that I have heard.”*<sup>1068</sup>

1.808 The Tribunal heard evidence from the RUC officers who were unhappy with the Narrow Water investigation, Witnesses 68, 69, 73 as well as from Dr Alan

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<sup>1067</sup> Day 71, page 115-116

<sup>1068</sup> Day 50, page 59.

Hall. The Tribunal also heard extensive evidence from the Garda Officers who were involved at the scene. The Tribunal also considered in detail the documentary evidence provided by both forces. While this is really a matter for submission by the Gardaí, from Mr Corrigan's point of view it is sufficient to point out the allegation that was made against him, namely that he was in charge of the investigation, ordered the grass cut down or interfered with evidence, has not been made out at all.

1.809 It is clear that the unhappiness of the RUC witnesses in relation to this stems from a lack of information as to what the Gardaí were doing and had done which was due to a breakdown in communication between the forces.

1.810 As Witness 69 stated:

**“Q. I think that that frustration and that dismay continued for a long time after that, is that so?”**

**A. From my point of view, on a personal level, it developed into great resentment and bewilderment; why this would happen, how it happened, why would they do this? And our dismay was intensified within a day or two when we learned that these two people on the motorcycle had been released and were charged with having no insurance or having a defective bike.”**<sup>1069</sup>

1.811 Witness 69 said that he did not know where the order to destroy the site came from, he said that *“it is our belief that maybe the order came from a higher authority.”*<sup>1070</sup> He said that he didn't know that a Garda Forensic Team had examined the site as well and that he had not seen the Garda Forensic Reports.<sup>1071</sup> He also said that he wasn't suggesting that the act of cutting the grass was collusion:

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<sup>1069</sup> Day 76, page 18.  
<sup>1070</sup> Day 76, page 20.  
<sup>1071</sup> DAY 76, PAGE 21.

“Q. How, then, do you mind me asking you, can you say that there is evidence of collusion on the part of An Garda Siochana in this instance?

A. No, well I didn't agree that there was collusion. The strongest statement I made was that there was an agreement made with the Garda at the scene and that agreement was broken. I am not, for one moment, suggesting collusion, or anything else; all - I am making a factual statement to that effect.”<sup>1072</sup>

1.812 It should be pointed out that Mr Corrigan became the lightning rod for criticism on the RUC side and it is clear from Mr White's evidence that this criticism was widely repeated throughout the force in South Down. It is not unreasonable to assume that much of the rumour and speculation that was spread about Mr Corrigan on the RUC side might have emanated from this incident.

## F. Financial Affairs

1.813 Mr Corrigan's financial affairs also figured in the evidence given in the public sittings. Much of this evidence was rumour, hearsay and speculation and was accepted as such as has been seen in the chapter dealing with negative evidence given about him. **However, it is important to note that not one single piece of intelligence or evidence was given suggesting that Mr Corrigan passed information to the IRA for financial reward.** This, in itself, is quite revealing given the ease with which people were willing to discuss his financial affairs negatively. It is important to note that the reference to him having a possible commercial or financial relationship with the IRA that was raised during the course of his kidnapping has been comprehensibly dealt with in the section dealing with that issue. The fact that Mr. Corrigan bought properties whilst a Garda and a Public house whilst retired is unsurprising and unimportant, as is the fact that he also dealt in

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<sup>1072</sup> Day 76, page 21.

second-hand cars. The Tribunal of Inquiry was not established in order that Mr. Corrigan's financial affairs could be examined. There is no connection between his financial affairs and any allegation made at the Tribunal. It is also instructive that he was the only witness to be publicly questioned, repeatedly, about his financial affairs. It is submitted that this line of questioning was unmerited and unfair.

## **G. The Death of Mr McAnulty**

1.814 During the course of the inquiry into the SB50, Mr McAnulty emerged as the source of the information about Mr Corrigan. Mr McAnulty was subsequently murdered by the IRA and the suggestion was made by Counsel for the Tribunal that Mr Corrigan did not do all he could to save Mr McAnulty life. It was described as a 'game changer'.<sup>1073</sup>

1.815 This was an outrageous suggestion. In addition, it was utterly implausible as Mr Corrigan would have to have been aware that Mr McAnulty was the source of the SB50. There is no evidence that Mr Corrigan was aware of the existence of the SB50 let alone the source of the information.

1.816 Witness Z told the Tribunal that Mr McAnulty knew his life was under threat and carried a hatchet in his car for protection.<sup>1074</sup> Mr Corrigan was criticised by Mr Dillon for not telling Mr McAnulty that his life was under threat. Mr Corrigan's evidence is that he could not remember whether he told the RUC of the threat to his life.<sup>1075</sup> It is submitted that this criticism of Mr. Corrigan was grossly unfair when compared with the lack of criticism of Mr Curran for failing to warn Mr. Buchanan about the very real threat to his life.

1.817 It was also inappropriate in light of the intelligence reports filed by Mr Corrigan which showed that he was heavily involved in providing intelligence on Mr

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<sup>1073</sup> Day 108, page 55.

<sup>1074</sup> Day 98, page 18

<sup>1075</sup> Day 108, page 37.

McAnulty's whereabouts on the night he was kidnapped and afterwards. This is comprehensively dealt with in the section on intelligence.

1.818 It is clear that any negative finding in respect of Mr McAnulty would be unreasonable and irrational as the '*cogent evidence*' requirement established by the Supreme Court in the **Lawlor** case could in no way shape or form be said to have been met.

## **Chapter 28 The Role of the PSNI during the Public Sitings**

### **A. The Role of the PSNI at the Tribunal**

1.819 During the first 30 days of the Tribunal's Public Inquiry, aside from one day, the PSNI asked no questions of any witnesses. This included Mr. Corrigan who gave evidence on Day 20. It was not until Day 30 that the PSNI started to cross-examine witnesses. It was also apparent that, from that date, the attitude of the PSNI in respect of the Tribunal had changed considerably. Prior to Day 30 the PSNI was not, it is submitted, a participant that was seeking a finding of collusion. Instead, it was a force that recognised the fact finding task being conducted by the Tribunal. After Day 30, it is submitted that the PSNI became an active participant in the Tribunal seeking a finding of collusion against An Garda Siochana. The nature of the cross-examination of senior Garda Officers by the PSNI indicated that it wished to secure a negative finding against An Garda Siochana - whether that be a finding of collusion or a finding in respect of what the PSNI clearly sought to present as the inadequacy of the O'Dea and Camon/Kirwan reports.

1.820 It is noteworthy that notwithstanding this desire on the part of the PSNI to allege collusion on the part of An Garda Siochana, at no stage did they put it to Mr. Corrigan that he had colluded in the killing of the two RUC Officers. Instead, the PSNI sought to attack Mr. Corrigan on peripheral issues based on what it regarded as a violation of him of his oath.

### **B. The Failure to Disclose the Grading of the SB50**

1.821 Great emphasis was placed by the PSNI on the fact that an SB50 had been generated by the RUC in 1985 suggesting that Mr. Corrigan was associating with members of the Provisional IRA. A lengthy battle was fought by Mr. Corrigan's legal team seeking to gain access to the grading of this SB50 so

that the Tribunal Chairman would be aware of the reliability attached to it at the time by the RUC. Repeatedly, the PSNI refused to reveal the grading. They refused to do so, they said, because this would compromise national security and could lead to the identification of sources. It is submitted that this was a nonsensical submission. First, the identity of the source who had given the information to the RUC had already been identified publicly in the Tribunal as John McAnulty. Second, the grading system was no longer used by the PSNI and, consequently, there was no threat to its intelligence methodology by releasing the grading.

1.822 Ultimately, having faced an application by Mr. Corrigan for the release of the grading, the PSNI acceded to this request and allowed the grading of the SB50 to be identified as C6. It is submitted that the only reasonable interpretation that could be put upon the PSNI's failure to release this grading at an earlier stage is that they wanted to perpetuate the suggestion that the SB50 was a credible piece of intelligence, and they recognised that by releasing the grading it would be seen to be unreliable. It is submitted that such a policy on the part of the PSNI was deliberately designed to seek to accentuate the possibility of Garda collusion. It is submitted that the reason for this was that it suits the interests of certain sections of the PSNI for there to be suggestions, which they hope will be confirmed by a Tribunal of Inquiry, that there was collusion between An Garda Síochána and the Provisional IRA during the troubles in Northern Ireland. This would, it is submitted, deflect some attention from the undeniable and reprehensible collusion that existed between RUC Special Branch or the Force Research Unit and loyalist paramilitaries, particularly in respect of the murder of the Belfast Solicitor, Pat Finucane.

### **C. The Failure of the PSNI to Disclose Intelligence Material on a Timely Basis**

1.823 On Day 95 of the Tribunal when Detective Chief Superintendent Roy McComb of the PSNI came to give evidence, he informed the Tribunal that the PSNI

was adopting a co-operative approach with the Tribunal. He told the Chairman that if there was material that the PSNI was holding that was relevant to the Tribunal it had already been made available to the Tribunal for its consideration.<sup>1076</sup> The Tribunal was entitled to believe at that stage that all documentation relevant to its inquiries within the PSNI had already been furnished to the Tribunal.

1.824 On Day 117 Chief Superintendent McComb gave evidence that there were five other pieces of intelligence which he described as credible and reliable relating to the matters being investigated by the Tribunal.<sup>1077</sup> Mr. McComb accepted that this intelligence, which was completely exculpatory of Mr. Corrigan, had been within the possession of the PSNI for seven years and they had never provided it to the Tribunal. Chief Superintendent McComb recognised the unfairness to Mr. Corrigan of the PSNI not giving this information to the Tribunal at a much earlier stage.<sup>1078</sup>

1.825 Those five pieces of intelligence were presented to the Tribunal at a time when its work was concluding and when, it is submitted, it was clear that there was no evidence supporting Garda collusion. At the eleventh hour, this extra piece of information was added into the Tribunal's inquiries. It is noteworthy that during his questioning Chief Superintendent McComb stated that the decision had been taken by the PSNI not to release this intelligence.<sup>1079</sup>

1.826 Subsequently on Day 124 another twelve pieces of intelligence were provided by the PSNI to the Tribunal. All of them are different to the five pieces of intelligence given by Chief Superintendent McComb. Evidence was given in respect of these twelve pieces of intelligence by Assistant Chief Constable Drew Harris of the PSNI. He stated that this intelligence was current and "*of the moment*". None of this intelligence suggests any involvement by Mr. Corrigan in the murders of the two RUC Officers. In fact, it suggests involvement by other unidentified members of An Garda Síochána.

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<sup>1076</sup> Day 95 (1 May 2012) Q.51

<sup>1077</sup> Day 117 (25 July 2012)

<sup>1078</sup> Day 117 (25 July 2012) Q.137

<sup>1079</sup> Day 117 (25 July 2012) Q.144

1.827 The accuracy of this intelligence is not the central issue to this chapter; rather, what is of central interest is that the PSNI decided at a very late stage of the Tribunal's inquiries to provide this information. It is instructive that at no stage have the PSNI shared this information with An Garda Siochana. It is apparent from the evidence of An Garda Siochana that it is highly unusual for the PSNI not to share intelligence concerning subversive activity.

1.828 It is respectfully submitted that the intelligence, which has never been fully put before the Tribunal so that it can be properly tested, was a last desperate attempt by certain sections of the PSNI or British Security Service to suggest collusion on the part of An Garda Siochana. It is instructive that none of the new intelligence suggests any collusion by Mr. Corrigan. Consequently, if the Tribunal is prepared to give any veracity to RUC/PSNI intelligence, then this intelligence should also be relied upon as confirming no acts of collusion on the part of Mr. Corrigan.

## Chapter 29 Mr. Corrigan's Thesis and the Evidence in Support

1.829 Repeatedly throughout his evidence Mr. Corrigan expressed his opinion that the inquiry into alleged Garda collusion was part of a carefully orchestrated strategy to deflect attention from collusion in Northern Ireland. The Tribunal should give consideration to this evidence of Mr. Corrigan which, it is submitted, cannot be dismissed as a conspiracy theory grounded upon no evidence. In this regard, the Tribunal must give consideration to the facts outlined in the remaining part of this chapter.

### A. The Murder of Pat Finucane

1.830 On 12 February 1989, five weeks prior to the murders of Chief Superintendent Breen and Superintendent Buchanan, Pat Finucane, a Catholic Solicitor, was shot dead by members of the Ulster Freedom Fighters, a cover name used by the Ulster Defence Association. Mr. Finucane was murdered in front of his family at his home in Belfast.<sup>1080</sup> In the aftermath of the murder of Pat Finucane there were very serious allegations of collusion between the loyalist paramilitaries and members of the Northern Security Forces.

1.831 In May 1999 Sir John Stephens, Commissioner of the Metropolitan Police Services, was asked to investigate the murder of Mr. Finucane and allegations of collusion. On 17 April 2003 Sir John published the overview and recommendations of his Third Stephens Inquiry. In that report he emphasised how his Inquiry into alleged collusion in the murder of Mr. Finucane had been obstructed. In fact, he reported that throughout all 3 of his Inquiries he was obstructed.<sup>1081</sup> This obstruction included the incident room from where he worked being destroyed by fire. Sir John in his report stated that the fire at his incident room had never been adequately investigated and that he believed it

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<sup>1080</sup> A month earlier, on 17 January 1989, a British Home Office Minister, Douglas Hogg MP, had made a statement in the House of Commons in which he referred to a "number of Solicitors in Northern Ireland who are unduly sympathetic to the cause of the IRA".

<sup>1081</sup> See para 3.1 of Stephens 3 Inquiry, dated 17 April 2003.

was a “*deliberate act of arson*”.<sup>1082</sup> He concluded his report on alleged collusion in the murder of Pat Finucane as follows:

*“4.6 I have uncovered enough evidence to lead me to believe that the murders of Patrick Finucane and Brian Adam Lambert could have been prevented. I also believe that the RUC investigation of Patrick Finucane’s murder should have resulted in the early arrest and detection of his killers.*

*4.7 I conclude there was collusion in both murders and the circumstances surrounding them. Collusion is evidenced in many ways. This ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.”* (Emphasis added)

1.832 On 9 February 1994 Amnesty International published a report which claimed that there was “*mounting evidence*” of collusion between the security forces and loyalist paramilitaries. The RUC said that the claims were “*utter nonsense*”.

1.833 On 15 March 1999 another Catholic Solicitor, Rosemary Nelson, was killed by loyalist paramilitaries, and again there were claims of security force collusion in her death.

1.834 On 12 April 1999 the United Nations Special Rapporteur, Paran Kumaraswamy, published a report on the alleged harassment of Defence Solicitors. In that report Mr. Kumaraswamy also called for an independent inquiry into the killing of Pat Finucane because of the evidence of collusion between members of the security forces and loyalist paramilitaries.

1.835 In November 2001 William Stobie was prosecuted for aiding and abetting the murder of Mr. Finucane. On 26 November 2001 his trial collapsed. Mr. Stobie

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<sup>1082</sup> See para 3.4 of Stephens 3 Inquiry, dated 17 April 2003.

had been arrested as a result of investigations by the Stephens 3 Inquiry. Following the collapse of his trial, the British government announced that it would appoint a Judge of international standing to begin a fresh investigation into the Finucane killing and several other killings. There was agreement during the Weston Park Talks, which began on 9 July 2001, that such a Judge would be appointed to investigate a series of killings where there were allegations that the security forces in Northern Ireland had colluded with loyalist paramilitaries. On 12 December 2001 Mr. Stobie was shot dead by loyalist paramilitaries as he left his home.

1.836 On 12 February 2002 the US Lawyers Committee for Human Rights published a report into the murder of Mr. Finucane which repeated allegations of collusion in his murder and claimed to have found new evidence.

1.837 On 1 April 2004 Judge Cory published his report into the murder of Pat Finucane and concluded that:

*“There was strong evidence that collusive acts were committed by the Army (FRU), the RUCSB and the Security Service. I am satisfied that there is a need for a public inquiry.”*<sup>1083</sup>

1.838 Notwithstanding the unambiguous recommendation of Judge Cory, to date there has been no public inquiry into the murder of Pat Finucane.

## **B. The Thesis**

1.839 It is apparent from the aforesaid that throughout the 1990's and early part of this century there was considerable pressure on the British State to investigate allegations of collusion involving the British Army and the RUC. It cannot be repeated often enough that a former Commissioner of the Metropolitan Police Service, Sir John Stephens, reached a finding in his report that there was collusion in the murder of Mr. Finucane. He also found that

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<sup>1083</sup> Cory Collusion Report into murder of Pat Finucane, 1 April 2004, para 1.293.

senior RUC Officers briefed Mr. Hogg MP in respect of the allegation that “*some Solicitors were unduly sympathetic to the cause of the IRA*”. Mr. Stephens said that this information was not justifiable and he concluded that it had compromised Minister Hogg.<sup>1084</sup>

1.840 Mr. Corrigan submits that the can of worms that has been, in part, opened by investigations into the murder of Mr. Finucane - but which has yet to be fully opened with a public inquiry - is the reason why sections within the British State, in particular the British Security Service and certain elements within the PSNI, are so anxious to suggest that collusion was not simply limited to Northern Ireland but, in fact, was also evident in the Republic of Ireland. It is for that reason that from 1999 onwards, with the publication of Mr. Harnden’s book ‘Bandit Country’ and the concerted allegations made by Mr. Donaldson MP and Mr. Keeley, that allegations of Garda collusion commenced.

1.841 A question was repeatedly asked of Mr. Corrigan as to why he would be the individual chosen as the fall guy in this analysis. His evidence was that the SB50 from 1985, which no-one at the time believed, was used as a hook upon which to hang an allegation of collusion against the Garda Síochána. The fact that there was such an SB50 was relied upon by the inventors of this allegation in order to give it some basis, although we now know that the grading given to the SB50 was derisory.

### **C. The Mysterious Email of 8 September 2003**

1.842 A meeting between Mr. Keeley and Judge Cory took place on 9 September 2003.

1.843 Evidence was presented to the Tribunal of an email that was sent to Judge Cory’s office on the day before this meeting at 16.09. This email was provided to the Tribunal by the British Government but crucial parts of it are redacted. In particular, the identity of the sender and recipient of the email is redacted

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<sup>1084</sup> See Stephens Report para 2.17

although the latter part of the sender's email address is not redacted and is identifiable as [mail@icabod.fasnet.co.uk](mailto:mail@icabod.fasnet.co.uk). The subject of the meeting is entitled "Fulton Meeting". The email reads as follows:

*"Hi, just a very brief note to thank you for arranging to meet "Kevin Fulton" so quickly. I trust the meeting will be mutually beneficial. However, I must stress that I and an increasing number of others believe Fulton's life is in immediate danger. As you will soon see the knowledge he has accumulated over two decades on various degrees of "undercover" activities makes him a very real threat to the Republican movement and the British Intelligence Services. At the moment he has no money, no job prospects and faces life on the streets with the removal of his safe accommodation by the Northern Ireland Office early next month. It appears to many of us that a conscious decision has been taken by the intelligence services to remove Fulton on the grounds that the problems he caused to them over the Omagh bomb information of August 1998. Perhaps Judge Cory could be made aware of Fulton's precarious position.*

*Secondly, I have sent the Wright material to you and it will be delivered when you meet Fulton in the morning. I must advise you that both **[NAME REDACTED]** and myself have been made fully aware of the content of this material. However, we have both agreed not to proceed further with the material until after Judge Cory has had time to view and assess its significance in relation to his inquiry into the murder of the **[NAME REDACTED]**.*

*I will be in London on Thursday and if the possibility of a brief meeting is still on the cards I would appreciate it.*

*Cheers.*

**[NAME REDACTED].**<sup>1085</sup>

1.844 The following facts are discernible from or relevant to this hugely important email:

- a. Judge Cory was appointed by the British and Irish governments on 29 May 2002 to undertake a thorough investigation of collusion in a number of cases including the murders of Chief Superintendent Breen and Superintendent Buchanan.
- b. As he was in the process of concluding his reports, he was contacted by people in order that he would agree to meet Peter Keeley.
- c. Judge Cory agreed to meet Peter Keeley on 9 September 2003, in response to the request as is evident in the email of 8 September 2003.<sup>1086</sup> At that meeting Peter Keeley, accompanied by a friend, delivered a statement to Judge Cory that stated, inter alia, that:

*“I was in Dundalk on the day of the ambush of Superintendent Buchanan and Chief Superintendent Breen. I am aware that, after the ambush took place, my senior IRA Commander was told by a member of PIRA that Garda Owen Corrigan had telephoned to the Provisional IRA to tell them that Officers Breen and Buchanan were at the Dundalk Station.”*

1.845 This statement, delivered to Judge Cory at the eleventh hour, persuaded him that a public inquiry into the murders of Chief Superintendent Breen and Superintendent Buchanan was merited. However, it must also be recalled that later in September 2003, after his meeting with Mr. Keeley/Fulton, Judge Cory was sent the 1985 SB50 by persons who remain unidentified. It was this combination of the Keeley statement and the SB50 that persuaded Judge

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<sup>1085</sup> HMG Document 160, Document A001871, PILU, 09/07/08. See also Day [X] of Corrigan's evidence.

<sup>1086</sup> See para 2.149 of Cory report into murders of Breen and Buchanan.

Cory to recommend a public inquiry into alleged Garda collusion in the Murders of the 2 RUC officers.

**D. Evidence Supporting Mr. Corrigan's Thesis**

1.846 The following facts should be taken into account as evidence supporting the veracity of Mr. Corrigan's thesis:

- i. The fact that in 1988 and 1999 the RUC Special Branch assisted Mr. Harnden by providing him with information used in his book, *Bandit Country*;
- ii. The fact that in his 1989 statement, sworn two days after the murders, Mr. Mains never mentioned Mr. Corrigan but in September 2000, after his interaction with Mr. Harnden, he drafted a new statement referring to Mr. Corrigan;
- iii. The fact that it was dishonestly represented by Mr. Harnden that he had been told by "Inspector L" (Mr. Prenty) that the leak had come from Dundalk Garda Station. This was vehemently denied by Mr. Prenty;
- iv. The fact that Mr. Keeley was a paid agent of the British Security Service at the time he visited Jeffrey Donaldson in the House of Commons in 2000 and provided him with information about Mr. Corrigan and later when he attended before Judge Cory on 9 September 2003 with a letter that persuaded Judge Cory that a public Tribunal into the murders of Chief Superintendent Breen and Superintendent Buchanan would be merited;
- vi. The identity of the person or persons who organised the meeting between Peter Keeley and Judge Cory has been deliberately withheld by the British government, although the fact that the British government

was able to discover a redacted version of this email to the Tribunal indicates that it came from within the offices of the British State.

- vii. The email to Judge Cory presented Mr. Keeley as a person who had very real and substantial information and that he was “*a very real threat to the Republican movement and the British Intelligence Services.*”
- viii. The email reveals that the British government was instrumental in or aware of Mr. Keeley being brought to Judge Cory to give him new information. Judge Cory was then subsequently provided with the 1985 RUC SB50.
- ix. Although the identity of the sender is redacted, the evidence given to the Tribunal by Mr. Frazer was that he, Mr Jeffrey Donaldson and a number of other individuals were involved in the decision to send Mr Keeley/Fulton to meet Judge Cory.<sup>1087</sup> He stated that the other individuals involved were “retired members of the security forces, there were a few lords and stuff.”<sup>1088</sup> Mr Frazer stated that he did not send the e-mail dated 8 September 2003. Mr Frazer stated that he accompanied Mr Keeley/Fulton to meet Judge Cory. He stated that Mr Keeley/Fulton did not show him the statement in advance.
- x. The fact that when this Tribunal seemed to be coming to an end, the PSNI threw into the mix further intelligence material that it had failed to share with An Garda Siochana, which was exculpatory of Mr. Corrigan and which should not have been withheld from the Tribunal. The introduction of this material at the eleventh hour of the Tribunal was designed to propagate again the allegation of Garda collusion;
- xi. The desire of certain sections of the PSNI to have the Narrow Water murders investigated by the Tribunal when the allegations of collusion

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<sup>1087</sup> Day 120, page 58.  
<sup>1088</sup> Day 120, page 59.

or wrongdoing by An Garda Síochána at the Narrow Water Inquiry were completely baseless when put to a full examination.

## **Chapter 30 Conclusion**

1.847 It is submitted that, having regard to the foregoing, the suggestion that Mr Corrigan colluded with the IRA in the murder of the late Chief Superintendent Breen and Superintendent Buchanan is a monstrous lie. Any finding by the Tribunal that he did collude with the IRA in their murders would be unreasonable and irrational. The evidence requires that the Tribunal reports that the allegation against Mr. Corrigan is false.

**Darren Lehane BL**  
**Jim O'Callaghan SC**

**Wednesday, 19 June 2013**

**The Smithwick Tribunal**

**Submissions on behalf of Finbarr Hickey**

**20<sup>th</sup> June 2013**

**MacGuill & Company  
Solicitors  
5 Seatown  
Dundalk  
Co. Louth**

## 1. Introduction

This Tribunal was established by resolution of the Dáil and Seanad in March 2005, to inquire into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20<sup>th</sup> March, 1989. In the opening statement, made by counsel to the Tribunal in June 2011, Finbarr Hickey, a former Garda Sergeant was named as one of three persons *"about whom suggestions were made"* in respect of the allegation of collusion. It has always been Finbarr Hickey's position that he had absolutely nothing to do with the murders and never colluded with the IRA.

There is no doubt that the naming of Finbarr Hickey in association with an allegation of collusion in murder has caused him a great deal of damage. This reputational damage to individuals who are named in the context of public inquiries has been acknowledged by the Supreme Court in the recent case of *Lawlor v. Members of the Planning Tribunal*:-

*"it is undeniable that reputational damage may attach to any individual against who allegations are aired before a Tribunal, notably in its public sittings, not least because of the length of time which may elapse before the person concerned can rebut such allegations."* (per Murray CJ)<sup>1</sup>

It is submitted that this has been recognised also by the Tribunal itself when in its opening statement, counsel for the Tribunal stated:-

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<sup>1</sup> [2010] I IR 170 at para. 34

*“these three people must be investigated, not least so that if they are innocent, their names can be cleared.”*

Now that the Tribunal has had an opportunity to fully investigate the “suggestions” made in respect of Finbarr Hickey, it is submitted that there can be no doubt that he had nothing at all to do with the murders of Chief Superintendent Breen and Superintendent Buchanan. It is therefore submitted that it is now incumbent on the Tribunal to publicly clear his name.

In making these submissions, it is intended to focus on the evidence that has been given that relates directly to Finbarr Hickey. It is accepted that the Tribunal’s terms of reference do not solely relate to Finbarr Hickey and in relation to any matters that are not strictly relevant to Finbarr Hickey, no submissions are to be made.

In light of the above it is intended to make submissions dealing with the following:-

- (i) Finbarr Hickey’s history in An Garda Síochána
- (ii) The passport investigation
- (iii) Finbarr Hickey’s means of knowledge as to the visit by the RUC officers to Dundalk Garda Station. This will deal with:-
  - (a) The knowledge of uniformed officers
  - (b) The arrangements for the meeting
  - (c) Whether Finbarr Hickey working that day
- (iv) The purported “intelligence” evidence disclosed by the PSNI

- (v) The information provided to the Tribunal by former members of the Provisional IRA.

These submissions are made for the purpose of sifting through the evidence which we say establishes Finbarr Hickey's innocence and, to ask the Tribunal to finally clear his name.

## **2. Finbarr Hickey's personal history and time in An Garda Síochána**

Finbarr Hickey gave evidence to the Tribunal on Day 96. He confirmed that he joined An Garda Síochána on the 31<sup>st</sup> December 1981 and that there was history of joining the Gardaí in his family. His grandfather joined the Gardaí in 1922 and his father retired as a Chief Superintendent. He also confirmed that he had lived for a time, as a child, in the station in Dundalk when his father was a Sergeant there.

Following training in Templemore, Finbarr Hickey was sent to Dundalk Garda Station in 1981, where he remained until 1992 when he was promoted to the rank of Sergeant. He was then sent to Castleblayney where he remained until 1994 at which stage he was transferred to Hackballscross.<sup>2</sup> He confirmed that Hackballscross was a busy station at that time, partially due to the outbreak of Foot and Mouth disease and BSE. There were up to 40 gardaí on temporary transfer in Hackballscross to cover all the border crossings.<sup>3</sup>

When in Dundalk Garda Station, Finbarr Hickey was initially attached to Unit A but was transferred to Unit C in or around 1983.<sup>4</sup> He remained on Unit C until he left Dundalk Garda Station. Leo Colton was the Sergeant on Unit C for a period of time until he was transferred to another unit.<sup>5</sup>

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<sup>2</sup> Day 96, pp.2 - 3

<sup>3</sup> Day 96, p.4

<sup>4</sup> Day 96, p.14

<sup>5</sup> Day 96, p.14

One of the other Gardaí who was a member of Unit C at the same time as Finbarr Hickey was Regina McArdle.<sup>6</sup> It appears that she is the only Garda, apart from Finbarr Hickey, who was a member of Unit C (in 1989) that has given evidence to the Tribunal. A perusal of the station diary that is available from the weeks before the murders would suggest that a Sergeant Coggans, and Gardaí Trehy, Mahony, Donnelly, Sweeney and Dempsey were also attached to Unit C in 1989.<sup>7</sup>

The evidence before the Tribunal is that Finbarr Hickey separated from his wife in 1993, obtaining a formal judicial separation in 1995. He accepted in evidence that he was drinking too much at that time.<sup>8</sup> He told the Tribunal that

*“I was drinking a bit much at that stage and I was in the pub nearly – if I wasn’t working, I was in the pub, because I got separated and I was living in an aul kip of a flat and that you couldn’t sit in, so I spent most of my time then in the pub if I wasn’t working”<sup>9</sup>*

He confirmed that the drinking started before he separated as things were bad for a year or two before he left. He indicated that he felt that he got to grips with his drinking problem when he met his new wife in 1997.<sup>10</sup>

As a result of the fallout from the passport affair dealt with below, Finbarr Hickey had to resign from An Garda Síochána, pleaded guilty to offences under the Forgery Act and served a 12 month sentence in the Curragh Prison.

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<sup>6</sup> Day 96, p.13

<sup>7</sup> See for example, Station Diary from Tuesday 7th March, 1989 where it is noted that Unit C started duty the following morning (8<sup>th</sup> March) at 6am and the evidence of Sergeant Donal Smyth in this respect (Day 23, p.102)

<sup>8</sup> Day 96, pp.16 - 17

<sup>9</sup> Day 96, p.41

<sup>10</sup> Day 96, p.102

## Evidence in relation to Finbarr Hickey as a Garda

It is submitted that much of the evidence that the Tribunal has heard would support a picture of a Garda who while not particularly interested in his work, was helpful and easily used.

Detective Garda Michael O'Driscoll, who was on Unit C with Finbarr Hickey until he became a Detective in 1986, gave evidence on Day 38. He said:-

*" I found Finbarr vey quiet sort of guy. To be honest, not terribly interested in the work that we were trying to do.*

*Q. How did that show or manifest itself?*

*A. Just lacklustre, like, in his approach to how work was done. Like, for instance, like, I would have been a driver at the time and at briefings, the daily brief, like, you'd be handed we'll say maybe summonses or warrants or maybe specific inquiries to make, take a statement from somebody, and you'd be aware that whoever was detailed with you for the day would have gotten similar type of work and as a driver you always sort of looked after your job first, get it out of way, and then I returned to Finbarr and say you got summonses for such a place. Ah they'd be grand. And a few days afterwards, like the Sergeant might ask for the return of these, and he might still have them.*

*Q. I understand, yes.*

*A. but I found him a pure gentleman, like, I mean he was – I had no qualms about socialising with him, I found him very, friendly but just I don't think he was cut out for the guards...."*<sup>11</sup>

Retired Assistant Commissioner Al McHugh who gave evidence on Day 32, referred to meeting Finbarr Hickey on some of his visits to Hackballscross station. He said:-

*"well I would describe him as a tall, friendly person, very amenable to authority, very respectful and you know, he never did anything that brought him undue notice, apart this other serious investigation that subsequently took place...I'd describe him – his service as satisfactory".*<sup>12</sup>

This view of Finbarr Hickey seemed to be echoed by Chief Superintendent Patrick Magee (who didn't work with him but knew him). He gave evidence on Day 38 and said :-

*"Well I would have always regarded him, and I think I said it in my statement, as a harmless type of individual. He wasn't very forceful. He would be timid. That's the only way I could describe him. Certainly inoffensive in every way."*<sup>13</sup>

An understanding of Finbarr Hickey's personality and approach to work may be seen though the evidence of Detective Colm Murray on Day 55 :-

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<sup>11</sup> Day 38 at pp.5-6

<sup>12</sup> Day 32 at p.7

<sup>13</sup> Day 38 at p.53

*"He had plenty of ability, but I don't think he really ever wanted to be in the guards; I felt that it was imposed on him by his father, who was a Chief Super, became a Chief Superintendent, and an uncle who was a Chief Superintendent, and I think they may have thought that that was the career path for him, but I don't think that it was one that he picked out for himself."*<sup>14</sup>

An aspect of Finbarr Hickey's personality that appears to have come out of the evidence given to the Tribunal is a man who might be easily used. Chief Superintendent Jim Sheridan said on Day 31 that his impression of Finbarr Hickey was that *"he was easily led"*.<sup>15</sup> This was echoed by Retired Detective Joe Flanagan who also said that Finbarr Hickey was easily led.<sup>16</sup> Retired Detective Terry Hynes said that *"I would say, Chairman that Mr. Hickey had a malleable personality and that he would have had no malicious intent in his actions"*.<sup>17</sup> Retired Garda Pat O'Donoghue described him as *"accommodating"* and agreed that he would be willing to do someone a favour if asked.<sup>18</sup>

It is submitted that this supports a view that Finbarr Hickey was used in respect of the passport applications, in accommodating another retired member. The view echoed by a number of witnesses is that Finbarr Hickey was simply not the sort of man that would have been trusted by the Provisional IRA. Retired Superintendent Michael Finnegan was asked whether he thought the IRA would

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<sup>14</sup> Day 55 at p.91

<sup>15</sup> Day 31 at p.50

<sup>16</sup> Day 12 at p.48

<sup>17</sup> Day 21 at p.97

<sup>18</sup> Day 27 at p.60

have ever trusted Mr. Hickey to do the job of signing the passports of his own initiative, to which he responded *"personally, I don't. I do not"*.<sup>19</sup> Retired Chief Superintendent Michael Staunton gave evidence and was asked in cross-examination :-

*"you expressed a view about my client Mr. Hickey, that he is not a man the IRA would have approached, is that your professional view?"*

*A. Yes I would accept that, yes I would accept that"*<sup>20</sup>

It should be noted that in oral argument on the relevancy on the passport issue, counsel for the Tribunal seemed to place some emphasis on the evidence of Garda Regina McArdle who gave evidence on Day 17. She was asked if she recalled working with Finbarr Hickey and whether he was a good policeman:-

*"A. Yes, I would consider him a good policeman, yes."*

*Q. Was he good at spotting criminals?"*

*A. Yeah, I though in my estimation anyway of Finbarr, was he could – he seemed to have a sixth sense almost in terms of spotting if somebody was a little bit, just not right, we'll say, in stopping a car, and he had a great eye, he could remember faces and, from that point of view, I though he was quite a good policeman."*<sup>21</sup>

It is submitted that there is no evidence to suggest that Finbarr Hickey was not a good policeman, even though Sergeant Leo McGinn said on Day 21, that his follow-up on paperwork was less than satisfactory, although he was

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<sup>19</sup> Day 46 at p.71

<sup>20</sup> Day 19 at p.31

<sup>21</sup> Day 17 at p.55

operationally very good.<sup>22</sup> He was also asked about Regina McArdle's evidence and he said that:-

*"there was an innate cuteness about him I found as well. Although not the most talkative individual, but he was very good to sum up a situation, yes, I would say that about him. He was nearly a senior in the force. He had probably ten years service at that stage. On the scale of things, even in Dundalk at that time, he was an experienced member of Garda rank."*<sup>23</sup>

When Finbarr Hickey was asked why he thought he had been approached by Leo Colton he said, *"well, I was too easygoing, I was far too easygoing with my duties, far too easygoing."* Counsel for the Tribunal suggested to him that he wouldn't have been promoted to Sergeant unless he was kind of smart. He responded *"Yeah. I suppose there was a bit of pull as well I suppose"*.<sup>24</sup>

It is submitted that the evidence that the Tribunal has heard, including the evidence of Finbarr Hickey himself on Day 96, paints a picture of man who was not terribly interested in police-work and may well have joined the Gardaí as a result of his family's connection with the force. He was quiet, and vulnerable to being used by a retired senior member who needed a favour. Unfortunately due to combination of difficult personal circumstances, he started to drink too much in the 1990s making him even more vulnerable. While, he was a person who could be used by another member of the force, it is submitted that the evidence

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<sup>22</sup> Day 21 at p.23

<sup>23</sup> Day 21 at pp.23 - 24

<sup>24</sup> Day 96 pp.37 - 38

would suggest that he was not the type of person that would be used by the IRA as he would have been a security risk from their perspective.

Finally, and of significance, it is notable that not one person who worked with Finbarr Hickey, met Finbarr Hickey, or investigated Finbarr Hickey has suggested that there was ever any link, rumour of a link, or suspicion of a link between Finbarr Hickey and any subversive organisation.

### **3. The Passport Investigation**

The passport investigation refers to the investigation by An Garda Síochána into the signing of eight passport application forms by Finbarr Hickey between the 26<sup>th</sup> January, 1995 and 4<sup>th</sup> April, 1996, when he was a Sergeant in Hackballscross Garda Station. Some of the passports issued on foot of these applications were destined for known members of the Provisional IRA. Finbarr Hickey pleaded guilty to four offences under the Forgery Act 1913 in May, 2001, and was sentenced to twelve months imprisonment. He was not charged or convicted of any other offences for example under the Offences Against the State Acts, the Official Secrets Acts, or any other offences implying knowing collusion with a prescribed organisation, namely the IRA. In light of the totality of the evidence submitted by experienced and senior investigators for consideration by the Director of Public Prosecutions it is clear no such charge would have succeeded

#### **(a) Relevance to the terms of reference**

An application was initially made to the Tribunal that the passport investigation was not relevant to the terms of reference of the Tribunal on behalf of Finbarr Hickey (and also on behalf of Leo Colton) on Day 36.<sup>25</sup> The Chairman ruled that the question for the Tribunal is whether Finbarr Hickey knew that he was signing application forms for members of the IRA and the possible implications of such a finding. The Chairman ruled that he had not heard evidence yet from Mr. Hickey and it would be wholly inappropriate to rush to the conclusion urged

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<sup>25</sup> Day 36 at pp.1 – 22

upon him without hearing the evidence. He refused an application also that the matter be held in private.

**(b) Summary of the passport investigation**

In summary, the passport investigation was commenced in April 1996 when a passport application came up on an internal "stop list" in the passport office and thus required further verification. This passport was discovered to be false and had been certified by Finbarr Hickey in Hackballscross Garda Station on the 4<sup>th</sup> April 1996. An investigation was launched and eventually uncovered that Finbarr Hickey had certified eight passports, which later transpired to be false, between the 26<sup>th</sup> January, 1995 and the 4<sup>th</sup> April, 1996. Of these eight passports, three, were identified by An Garda Síochána, as having fallen into the hands of known members of the Provisional IRA. The criminal offences committed by Finbarr Hickey related to the declarations that he was satisfied with the identity of the person applying for the passports. In September, 1998, he was arrested and detained in Navan Garda Station whereby he admitted his involvement in the offences. After he had been arrested, he implicated a retired Garda Sergeant, Leo Colton and told investigating members that Leo Colton had brought the applications into him in Hackballscross to sign.

There is no dispute but that Finbarr Hickey committed serious criminal offences in certifying the identity of persons for passport applications. In point of fact, he admitted his wrongdoing immediately and cooperated fully with the investigation with all indications that he had no subversive connection or

motivation. He pleaded guilty to three counts of forgery contrary to s.4(1) of the Forgery Act 1913 and one count of uttering contrary to s.6 of the Forgery Act 1913 in the Special Criminal Court in May 2001 for which he received a twelve month sentence that he served in the Curragh prison (as distinct from political offenders imprisoned in Portlaoise).

### **Evidence before the Tribunal in respect of the passport investigation**

Evidence was given to the Tribunal that Finbarr Hickey initially made a statement to Superintendent Quinn in February, 1998, in context of the Garda disciplinary proceedings. On the 29<sup>th</sup> September, 1998, Detective Superintendent Callinan and Detective Inspector John O'Mahony visited Finbarr Hickey in his home. They cautioned him and put a number of matters to him, apparently spending over four hours there. They left after Finbarr Hickey gave them the keys to two lockers, and a filing cabinet, in Hackballscross Garda Station and after they had informed him that he was suspended from duty. They returned a few hours later to Finbarr Hickey's home, where he had remained, and Detective Inspector O'Mahony arrested him. During the car journey to Navan Garda Station, Finbarr Hickey said "would it make any difference if I told you it was Leo Colton who asked me to sign the passport forms?"<sup>26</sup> Finbarr Hickey was held overnight in Navan Garda Station until the following afternoon. The evidence before the Tribunal from the various Gardaí who were involved in interviewing Finbarr Hickey was that he was interviewed five times:-

1. 29<sup>th</sup> September 1998, 7:02pm - 9:35pm by D/S Dominic Hayes and D/S

Gerard McGrath

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<sup>26</sup> Day 36 at p.37

2. 29<sup>th</sup> September 1998, 11:05pm - 11:40pm by D/I John O'Mahony and Superintendent Callinan
3. 30<sup>th</sup> September 1998, 8:25am -10:20am by D/S Dominic Hayes and D/S Gerard McGrath (statement)
4. 30<sup>th</sup> September 1998, 11:35am - 12:50pm by D/I John O'Mahony and Superintendent Callinan (confrontation)
5. 30<sup>th</sup> September 1998, 12:55pm - 1:28pm by D/I John O'Mahony and Superintendent Callinan.

On foot of the allegation made by Finbarr Hickey, a decision was made to arrest Leo Colton and he was arrested at his home on the 30<sup>th</sup> September, 1998. His home was also searched and a number of blank passport application forms were discovered. He was also brought to Navan Garda Station where he was interviewed five times:-

1. 30<sup>th</sup> September, 1998, 10am - 12:25pm by D/S Melody and D/G John Fitzpatrick
2. 30<sup>th</sup> September, 1998, 12:30pm - 1:57pm by D/G Hanley and D/S Gerard McGrath (confrontation)
3. 30<sup>th</sup> September, 1998, 3pm - 4:30pm by D/S Melody and D/G John Fitzpatrick
4. 30<sup>th</sup> September, 1998, 5:48pm - 7:08pm by D/S Hayes and D/G Hanley
5. 30<sup>th</sup> September, 1998, 7:25pm - 8:30pm by D/S Melody and D/G John Fitzpatrick

It should be noted that during Finbarr Hickey's fourth interview and Leo Colton's second interview, a confrontation was orchestrated by the interviewing members between the two men. Detective Inspector O'Mahony brought Finbarr

Hickey into the room in which Leo Colton was being interviewed by Detective Garda Hanly and Detective Sergeant Gerard McGrath. The confrontation only lasted a few minutes.

All of the Gardaí involved in the interviews of both Finbarr Hickey and Leo Colton gave evidence to the Tribunal. Evidence was given to the Tribunal by Commissioner Callinan and Assistant Commissioner O'Mahony on Day 36. Detective Superintendent Dominic Hayes, Retired Detective Garda John Fitzpatrick, Retired Detective Sergeant John Melody and Retired Detective Garda John Hanly gave evidence on Day 37 and Detective Inspector Gerard McGrath gave evidence on Day 44. The Tribunal also received into evidence the memoranda of interviews with both men. In fact the Tribunal had access to all evidential material.

### **Specific evidence given by the investigation members**

#### **Commissioner Martin Callinan (Day 36)**

Commissioner Callinan, an acknowledged expert in all matters relating to national security, confirmed that he had been involved in the 1998 investigation into allegations that false passports had been issued to members of the IRA<sup>27</sup> and that this investigation was headed by the now deceased Sean Camon. He held the rank of Superintendent at the time.

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<sup>27</sup> Day 36 at p.34

Commissioner Callinan said that *"I found Mr. Hickey to be quite forthcoming in the circumstances"*<sup>28</sup> and he accepted without question that he was the author of the passport forms. He agreed that this was *"not the type of approach [making admissions] one would expect from an IRA member or a person colluding with the IRA"*.<sup>29</sup> He also agreed that from beginning to end Mr. Hickey acknowledged his wrongdoing in this case, including admitting and pleading guilty before the Special Criminal Court.<sup>30</sup>

Of significance, Commissioner Callinan went on to say that *"he had no evidence or no suspicion at all that Finbarr Hickey was a member of the IRA...or a sympathiser to the IRA [or in collusion with the IRA]"*.<sup>31</sup>

Under re-examination by counsel for the Tribunal, where he was asked whether he was satisfied that Finbarr Hickey was telling the truth, Commissioner Callinan said *"insofar as we cannot put it any further, I accept that Mr. Hickey's version of events is true until the point that the contrary is proved. And I made that judgment, Chairman, based on his co-operation and the fluency within which he answered questions. And I do accept that some of those questions and some of those answers progressed in the currency of the interviews, which is not at all uncommon, but he was certainly helpful and he did co-operate and he didn't refuse to answer questions and he didn't have to rely on legal advice to say 'No, I'm not going to'. So he provide a version to us, and we had certainly – certainly I had no*

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<sup>28</sup> Day 36 at p.57

<sup>29</sup> Day 36 at p.57

<sup>30</sup> Day 36 at p.59

<sup>31</sup> Day 36 at p.64

*reason, and I think my colleague will tell you himself, we had no reason to doubt what he was telling us at the particular time. We couldn't put it any further."*<sup>32</sup>

**Assistant Commissioner John O'Mahony (Day 36)**

Assistant Commissioner John O'Mahony also gave evidence on Day 36. He confirmed that he was involved in the passport investigation and that he first became involved in the investigation in August 1998 (the initial complaint being made by the passport office in April 1996). Chief Superintendent Camon was asked, presumably by the Commissioner of time, to carry out an investigation and he appointed Detective Superintendent Callinan and Detective Inspector O'Mahony to carry out the investigation.<sup>33</sup>

He confirmed that allegations of this nature were taken very seriously and because of the nature of the investigation it would have been a very discreet investigation at the early stages, with all the initial members taken from the National Bureau of Investigation.<sup>34</sup> Assistant Commissioner O'Mahony confirmed that forty-five passports were examined which had been signed by Finbarr Hickey between September 1993 and April 1996. He confirmed that it was a very extensive investigation over a period of practically 12 months.<sup>35</sup> He was also asked:-

*Q. "if it was suggested by anyone that An Garda Síochána did not completely audit the potential damage done to the State by the action of Sergeant Hickey, that would simply be unfounded, in fact?"*

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<sup>32</sup> Day 36 at p.69

<sup>33</sup> Day 36 at p.75

<sup>34</sup> Day 36 at pp.76 - 77

<sup>35</sup> Day 36 at p.91

A. *"We carried out the investigation. It was a very, very thorough investigation. Every possible avenue of investigation was followed through on."*

Q. *"But nobody could suggest this was treated casually, not fully investigated? All the possible avenues of investigation were, in fact, pursued?"*

A. *"As a senior member of the investigation I would be very, very happy to stand over that investigation, what we did."*<sup>36</sup>

As indicated previously, during the detention of both Leo Colton and Finbarr Hickey, a confrontation was organised by the investigating Gardaí between the two men. Assistant Commissioner O'Mahony confirmed that he was present at the confrontation between Finbarr Hickey and Leo Colton and said that he felt that the confrontation was very meek, that he had hoped that the confrontation would be stronger.<sup>37</sup> He accepted under cross examination that he had not included this in his statement at the time<sup>38</sup> or in the report he made at the time,<sup>39</sup> as he said it was only his opinion and not evidence. He also accepted that one prisoner telling another to tell the truth is confrontational.<sup>40</sup> It is worth noting that counsel for the Tribunal, submitted to the Tribunal that there was no prejudice to Mr. Hickey (in this evidence being given some thirteen years after the fact when it had not been included in an earlier statement) and that on the contrary it was to Finbarr Hickey's benefit that this evidence was given.<sup>41</sup>

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<sup>36</sup> Day 36 at p.96

<sup>37</sup> Day 36 at p.78

<sup>38</sup> Day 36 at p.106

<sup>39</sup> Day 36 at p.107

<sup>40</sup> Day 36 at p.113

<sup>41</sup> Day 36 at p.124-5

Finbarr Hickey gave evidence in relation to the confrontation on Day 96. He was asked about Assistant Commissioner's O'Mahony's view that he hadn't taken a strong enough stance against Leo Colton. He said:-

*"But like, what did he want me to do? Do you know? I said what I said. Like, bar jump across the table and assault Colton, what else could I have done? I said, 'Leo, I am in shit, you are after getting me in shit, tell the truth.'" What else could I say, sure?"<sup>42</sup>*

He further explained his reaction:-

*"Well, my world was crashing down around me at that particular time. I was in a state of shock, my world was crashing down around me. I went in and they said to me, 'Do you want to confront him?' And I said, 'I will.' And I went in and I said what I said. That was it."<sup>43</sup>*

Assistant Commissioner O'Mahony confirmed that Leo Colton had been quite robust in his defence and denied vehemently Finbarr Hickey's allegations.<sup>44</sup>

It was Assistant Commissioner John O'Mahony who gave evidence before the Special Criminal Court, Finbarr Hickey having pleaded guilty to three counts of forgery contrary to s.4(1) of the Forgery Act 1913 and one count of uttering contrary to s.6 of the Forgery Act 1913. The Assistant Commissioner told the Tribunal that while *"the crime could not have been committed without Finbarr*

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<sup>42</sup> Day 96 at p.45

<sup>43</sup> Day 96 at p.46

<sup>44</sup> Day 36 at p. 88

*Hickey, but that my solid belief from all the circumstances of the investigation, that he was not the main player".<sup>45</sup>*

Assistant Commissioner O'Mahony confirmed that Finbarr Hickey had had a lot of difficulties around the time of the offences (1995 – 1996) and that he had told the Special Criminal Court at the time that Finbarr Hickey was very vulnerable,<sup>46</sup> and that he was satisfied that around 1995 he was drinking to excess.<sup>47</sup>

Of significance, he confirmed *"I was happy – very, very happy from the investigation that he did not have a knowledge of where those passports were going to or were going to [be] utilised."*<sup>48</sup> Assistant Commissioner O'Mahony also indicated to the Tribunal that *"I have never doubted Finbarr Hickey's honesty"*.<sup>49</sup>

He confirmed that that the fact that Finbarr Hickey served his sentence in the Curragh Prison would indicate that he was not a person who would be on the landing in Portlaoise and that there was *"no evidence or anything to indicate that he was in any way in collusion [with the IRA]"*.<sup>50</sup> He also confirmed that Denis Kelly, a former garda, who had been convicted of an offence of assisting the IRA served his sentence in Portlaoise.<sup>51</sup>

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<sup>45</sup> Day 36 at p.84

<sup>46</sup> Day 36 at p.84

<sup>47</sup> Day 36 at p.101

<sup>48</sup> Day 36 at p.102

<sup>49</sup> Day 36 at p.114

<sup>50</sup> Day 36 at p.104

<sup>51</sup> Day 36 at p.104

Assistant Commissioner O'Mahony then gave evidence that he attended the Curragh Prison with Detective Superintendent Sean Camon on the 31<sup>st</sup> October, 2001 to ask about the possibility of Finbarr Hickey giving evidence against Leo Colton and James Fox.<sup>52</sup> He said that Finbarr Hickey told them that he was afraid of Leo Colton because he had political connections and that he wanted to talk it over with his family.<sup>53</sup> Assistant Commissioner O'Mahony said that he believed that when they attended the prison again, a message was sent out saying that he wasn't willing to give evidence.<sup>54</sup> It should be noted that the Chairman queried whether he could have been summonsed to give evidence.<sup>55</sup> Under cross it was confirmed that there was not really any dispute about what happened at the meeting and that Finbarr Hickey's position is that he decided he had enough of it, it wasn't going to give evidence and sent out a message to that effect. Assistant Commissioner O'Mahony said he wouldn't disagree with that.<sup>56</sup> Finbarr Hickey himself gave evidence that he told them straight off that he wouldn't give evidence but that they kept on badgering him, when they came down the following week, he refused to see them.<sup>57</sup> He said that his hesitancy in relation to Leo Colton was because *"the whole thing was done and dusted. I was after losing everything. I was in jail. I wanted just to forget about the matter. I didn't want this continuing on for another couple of years, waiting for Colton's trial to come up and waiting for another couple of years. I just wanted to get out of jail and finish it, that is all I wanted."*<sup>58</sup> Under cross-examination by counsel for the Commissioner

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<sup>52</sup> Day 36 at p.86

<sup>53</sup> Day 36 at pp.86 - 87

<sup>54</sup> Day 36 at p.88

<sup>55</sup> Day 36 at p.88

<sup>56</sup> Day 36 at p.116

<sup>57</sup> Day 96 at p.60

<sup>58</sup> Day 96 at p.62

of An Garda Síochána, he said *"they came down mainly to ask me about, to give evidence against Jimmy Fox, because his trial was coming up in the next month or so. They could have thrown in, as kind of an afterthought: Oh will you give evidence against Colton? But their main [...] reason for coming down was to ask me to give evidence against Jimmy Fox".*<sup>59</sup> He went on to make the point that *"But it was a bit late, it was a bit late at that stage asking me to give evidence against Mr. Colton and me in jail already, after my trial being up already and me in jail. If they wanted me to give evidence against Colton, why didn't they ask me before my trial"*<sup>60</sup>

#### **Detective Superintendent Dominic Hayes (Day 37)**

Detective Superintendent Dominic Hayes gave evidence on Day 37. He went through the interviews for which he was present. During direct examination he said;- *"when we interviewed [Finbarr Hickey], Chairman from the beginning of the interview he did outline his involvement and accepted that he was doing wrong in signing the statements – or signing the passports, and I suppose outlined, as counsel has gone through, each – his involvement with each passport and the fact that Leo Colton had sought him to sign each passport. He was forthright in and had easy recollection of what happened with each passport at that time, and certainly, he was – was aware of the details and the significance of signing passports when in fact the people weren't there and he didn't know those people."*<sup>61</sup>

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<sup>59</sup> Day 96 at pp.86 - 87

<sup>60</sup> Day 96 at p.88

<sup>61</sup> Day 37 at p.13

When he was asked about Finbarr Hickey's attitude he said *"yes he did show remorse during that interview, Chairman, of having succumbed to signing these, in the now-realisation that they were used by leading members of the IRA. Again, he outlined involvement as much as he could recall at that time and was co-operative with us."*<sup>62</sup>

In response to a question from the Chairman as to whether he had formed any judgment about whether Finbarr Hickey was being truthful or not, he replied *"yes, I believe he was, Mr. Chairman, yes. Yes, I do believe that he was."*<sup>63</sup>

Detective Superintendent Dominic Hayes was also involved in interviewing Leo Colton. Under cross examination he said that *"based on the information and the evidence before me at that time, I believed that Leo Colton, yes, played a part in the provision of passports to the Provisional IRA through organising them being stamped by a member of An Garda Síochána, that being Sergeant Hickey at the time"*.<sup>64</sup>

### **Retired Detective Garda John Fitzpatrick (Day 37)**

Retired Detective Garda John Fitzpatrick gave evidence on Day 37. He confirmed that his role was on the periphery, interviewing Leo Colton.<sup>65</sup> He confirmed that Leo Colton refused to sign the interview notes.<sup>66</sup> He confirmed under cross-

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<sup>62</sup> Day 37 at p.18

<sup>63</sup> Day 37 p.30

<sup>64</sup> Day 37 at p.24

<sup>65</sup> Day 37 at p.33

<sup>66</sup> Day 37 at p.40, p.44, p.47

examination that Leo Colton answered all questions and consistently denied the allegations of wrongdoing.<sup>67</sup>

The Chairman asked him whether he formed any opinion as to whether Leo Colton was telling the truth or not to which he answered *"No, My Lord, I didn't"* The Chairman asked again *"you didn't form an opinion?"* to which he responded *"No, I didn't form [an opinion] as to whether he was telling the truth or not. He was a very cute man."*<sup>68</sup>

### **Retired Detective Sergeant John Melody (Day 37)**

Retired Detective Sergeant John Melody who gave evidence on Day 37, had been involved in the interviews with Leo Colton. He said that *"he maintained his right to silence on a lot of the questions. He was co-operative in providing us with samples of his signature. He answered some of the questions. That's all I can say to you."*<sup>69</sup> This was disputed in cross examination and he accepted that Leo Colton didn't remain silent when any particular question was asked.<sup>70</sup> He thought it out of character for a retired member of An Garda Síochána not to sign the interview notes.<sup>71</sup> In response to a question as to whether Leo Colton was ever asked to make a formal statement at any time, he said *"not that I can remember because he wasn't co-operative in answering any of our questions, so if he said he was going to co-operate, we would have asked him to make a formal statement"*<sup>72</sup>

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<sup>67</sup> Day 37 at p.53

<sup>68</sup> Day 37 at p.53

<sup>69</sup> Day 37 at p.58

<sup>70</sup> Day 37 at p.68

<sup>71</sup> Day 37 at p.59

<sup>72</sup> Day 37 at p.59

In relation to Finbarr Hickey, he said that there was some reference to the fact that he had been taking drugs, hashish and that there was some reference that a member of the public had sent an anonymous letter in saying that there was a sergeant in the station smoking hash.<sup>73</sup> He formed view that Finbarr Hickey could be vulnerable. He also accepted that he had no personal knowledge of Finbarr Hickey and was repeating something that was said to him.<sup>74</sup>

### **Retired Detective Garda James Hanley (Day 37)**

Retired Detective Garda James Hanley also gave evidence on Day 37. He was present during the interview that the “confrontation” took place.<sup>75</sup> On being asked about the demeanour of the two parties at the confrontation, he said that *“my memory is that Finbarr Hickey was, he was a timid type of a person, whereas Leo Colton was – he wasn’t perturbed or he wasn’t unduly concerned about the confrontation”*. Under cross-examination he agreed that Leo Colton was “belittling” Finbarr Hickey.<sup>76</sup>

He also agreed under cross-examination that he had said in his statement to the Tribunal that *“I would believe Hickey about the applications. I have no doubt if he named Colton he was absolutely truthful in that”*.<sup>77</sup>

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<sup>73</sup> Day 37 at p.61

<sup>74</sup> Day 37 at p.71

<sup>75</sup> Day 37 at p.76

<sup>76</sup> Day 37 at p.83

<sup>77</sup> Day 37 at p.83

### **Detective Inspector Gerard McGrath (Day 44)**

Detective Inspector Gerard McGrath gave evidence on Day 44. He was a Detective Sergeant at the time and was involved with two of the interviews with Finbarr Hickey and one of the interviews with Leo Colton. He was asked whether he thought it unusual that the Leo Colton had refused to sign his interview and he said that it was “*not an unusual occurrence*”. He was asked whether it was unusual for a member of the Gardaí to refuse to sign and he said “*well, it was my first experience, you know, in relation to dealing with a Sergeant, a retired Sergeant of An Garda Síochána, but I’ve no doubt he got legal advice and that was the legal advice that was given.*”<sup>78</sup>

Detective Inspector Gerard McGrath had been one of the members present during the confrontation and was asked whether he formed any impression of the two men in the course of confrontation. He replied that “*I did believe Finbarr Hickey. I believed he was telling the truth*”. He said that he based that on “*my experience and the amount of time that I spent conducting the interviews with Finbarr Hickey. So its an opinion I had. I believed Finbarr Hickey to be telling the truth*”.<sup>79</sup>

He was cross-examined by counsel for the Commissioner of An Garda Síochána, as follows:-

*Q. What was Mr. Hickey's demeanour throughout his interview?*

*A. I believe he was upset. He was embarrassed. That's what I recall.*

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<sup>78</sup> Day 44 at pp.12 – 13

<sup>79</sup> Day 44 at p.13

*Q. How was Mr. Colton?*

*A. He appeared to be very cool about the whole situation, that's how I'd best describe that, and that's my -- the best of my recollection, Chairman.*

*Q. He appears to have brushed off various of your questions?*

*A. Yeah, he did. He certainly did, yes, I wouldn't disagree with that.*

*Q. Did you believe anything he said? Maybe that's too wide a question.*

*A. Yeah, it's too wide a question.*

*Q. Put it this way: What was your overall impression of his truthfulness?*

*A. Well, to put it another way, I believed Finbarr Hickey, Chairman.*

*Q. And the account he gave?*

*A. And the account he gave.*

*Q. So, that would clearly mean that you didn't believe Mr. Colton's account?*

*A. Yes, I had concerns about his account.<sup>80</sup>*

He confirmed that Leo Colton had denied the allegations during the confrontation.<sup>81</sup>

### **The interviews**

The Tribunal in addition to the evidence from the interviewing members has the benefit of being in position to look at copies of the memoranda of interviews with Finbarr Hickey and Leo Colton. As indicated above, Finbarr Hickey was interviewed five times, and it is submitted that he answered all questions put to him.

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<sup>80</sup> Day 44 at p.14

<sup>81</sup> Day 44 at p.18

During the course of the interviews, Finbarr Hickey outlined how he met Leo Colton in Carrolls Pub, Seatown, Dundalk he told him that he would drop with a passport form for a friend of his. He made a detailed statement outlining his involvement, how he had gotten to know Leo Colton and that he had signed 8 passports for Leo Colton. He said that he realised that he had been totally used by Leo Colton.

During all of Leo Colton's interviews, he denied having brought the passport applications to Finbarr Hickey to sign. During his first interview he said that he would often meet him (Finbarr Hickey) and had a pint with him. In his second interview he said *"I don't meet him. I would salute him if he came into the pub. He is usually with a biker type crowd."* In his third interview he said *"I did not. I was never in Hackballscross since I retired"*. He also said that of course he had seen him in Carroll's pub along with other Gardaí and that he would speak to Finbarr and the other lads. In his fourth interview he later denied having any contact with Finbarr Hickey after he left the job but then said they might meet a few times in Carrolls pub for a pint. Later in this interview he said *"I might have called into see him in the Hack if I was passing but he never signed anything for me"*. Also in his fourth interview, Leo Colton said *"he mentioned something to me about being investigated about a passport. He mentioned it to me, that's all."*

Leo Colton refused to sign any of memoranda of interviews.

### Evidence of Finbarr Hickey and Leo Colton

The Tribunal, having heard the evidence of both Finbarr Hickey and Leo Colton is ideally placed to assess the credibility of both men in respect of the passport investigation.

Finbarr Hickey gave evidence on Day 96. He said that Leo Colton had been his Sergeant when he was on Unit C in Dundalk.<sup>82</sup> He confirmed that Leo Colton was a colleague that he *"wouldn't have been overly friendly with"* but that after retirement, Leo Colton started drinking in the pub that Finbarr Hickey used to go to, although he said that *"I wouldn't have been sitting drinking with him in the pub. He could be at one side – I wouldn't be sitting having a pint with him in the pub. He would come in and say 'hello' and I would say 'hello' and that would be it."*

He confirmed that during the 90s he did not have particular financial strain due to Mad Cow disease and BSE as he was getting plenty of overtime. He had also received money from an accident that he had been involved in.<sup>83</sup>

He reiterated during his evidence that he thought he was doing Leo Colton a favour by signing the passport forms,<sup>84</sup> and as far as he was concerned, Leo Colton was vouching for the people.<sup>85</sup> He said that he felt that *"[Leo Colton] knew the right man to approach, he knew that I was soft, and that I was an easygoing soft person, and he know the right person to approach and that is why he approached me."*<sup>86</sup>

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<sup>82</sup> Day 96 at p.14

<sup>83</sup> Day 96 at p.18

<sup>84</sup> Day 96 at p.23 - 24

<sup>85</sup> Day 96 at p.28

<sup>86</sup> Day 96 p.37

He told the Tribunal that *"when I was signing [the passport applications] at the time I didn't think that they were false"*.<sup>87</sup> He accepted that he had told the Gardaí when interviewed that he thought they might have been for men who were messing around with women in the North. He told the Tribunal that *"I think that was just something I had said just to try and explain"*<sup>88</sup>

Under cross-examination by Commissioner for An Garda Síochána while Finbarr Hickey denied that he said to the Gardaí that he thought that there was something "dodgy" with the passports, but accepted that he might have said that there was something "funny" in relation to them. He accepted that those comments suggested an awareness on his part that there was something suspicious about it but that that suspicion never extended to any subversive links.<sup>89</sup> It was suggested to him by counsel for the Commissioner of An Garda Síochána that *"you were probably looking back on events as the interview was unfolding"*. Finbarr Hickey agreed with this proposition.<sup>90</sup>

It was put to Finbarr Hickey by counsel for the PSNI that he must have known who the passports were for as *"no one else at that time [...] had a desire for passports, false identities, except PIRA"*. Finbarr Hickey was adamant that he did not know that the passports were for the IRA.<sup>91</sup>

Counsel for the PSNI did not challenge any of the interviewing members especially Commissioner Callinan and Assistant Commissioner O'Mahoney on their sworn testimony as to their belief as to the state of knowledge of Finbarr Hickey.

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<sup>87</sup> Day 96 at p.56

<sup>88</sup> Day 96 at p.57

<sup>89</sup> Day 96 at p.83

<sup>90</sup> Day 96 at p.84

<sup>91</sup> Day 96 at p.127

He confirmed that he had met Leo Colton in the pub after he had heard that there was a problem with one of the passports. He said that he had said

*"Leo, there is something wrong with that passport'. And he said something back to me, 'Don't worry about it, it will be alright' he goes. And that was it."*<sup>92</sup>

Leo Colton gave evidence on Day 97. He told the Tribunal that there wasn't really a friendship between himself and Finbarr Hickey.<sup>93</sup> He confirmed that he drank in the same pub that Finbarr Hickey came into but it *"it wasn't a constant affair."*<sup>94</sup> While he accepted that he had assisted persons in obtaining passports by helping people filling out forms he denied that he did anything else.<sup>95</sup>

Although Leo Colton initially denied that Finbarr Hickey had ever spoke to him about having a problem with a passport,<sup>96</sup> he later accepted that Finbarr Hickey might have said something to him about a passport and confirmed that this took place in Carroll's pub.<sup>97</sup> He confirmed that:-

*"The only thing he said to me was that – we were having general conversation – he says, 'I am in a bit of trouble over issuing a passport.'" <sup>98</sup>*

He was unable to explain to the Chairman, if he had not signed passport for Finbarr Hickey, why Finbarr Hickey had spoken to him:-

*"Chairman: Why should he say that to you if you hadn't asked him to sign it?"*

*A. Well, he wasn't talking to anyone else, only me.*

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<sup>92</sup> Day 96 at p.43

<sup>93</sup> Day 97 at p.43

<sup>94</sup> Day 97 at p.44

<sup>95</sup> Day 97 at p.133

<sup>96</sup> Day 96 at p.46

<sup>97</sup> Day 96 at p.134

<sup>98</sup> Day 96 at p.134

*Chairman: But why did he say it to you? If you had no dealings with him over passport applications, why should he say it to you that 'I am having trouble with'*

*A. Well, we would be having general conversation, and I would say, 'How are things going?' Something like that. Then, he'd say whatever, the pressure is on him out in Hackball, the pressure is on him up in Dundalk, or whatever. But he probably just said, 'I have a bit of a problem with a passport.' That is all he said.*

*Chairman: But why to you if you had no – if you had no connection with him about passports?*

*A. Well, he could have said it to other people as well, I don't know.*

*Chairman: Didn't he say to you, 'I am having difficulty with the last passport application,' and you said to him, according to him, 'Oh don't worry about that'?*

*A. Possibly, yeah. He would be looking for a bit of consolings, maybe like, you know.<sup>99</sup>*

Leo Colton initially denied that he ever called into Hackballscross Garda Station, as alleged by Finbarr Hickey, but then later on also accepted that he may have done so.<sup>100</sup> He was asked by the Chairman why he would call on Mr. Hickey in Hackballscross at all and he replied:-

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<sup>99</sup> Day 97 at pp.135 - 136

<sup>100</sup> Day 97 at p.136

*“Well, just on account of him being on the unit with me in Dundalk. I am not saying I did call in, but that might have been – just called in, bit of craic, bit of chat.”<sup>101</sup>*

Under cross Leo Colton told the Tribunal that he might have called in as he did a bit of work for a person on the other side of Cullaville.<sup>102</sup> He confirmed that the person that he was doing some work for was Eamon Devlin and that he had been wanted for smuggling but that the charges were dropped.<sup>103</sup>

Leo Colton also denied that he knew that Brian Ruddy had been the subject of a major investigation into the importation of angel dust, and that two of Mr. Ruddy’s known associates were Sean Hughes, a member of the Provisional IRA, and Francis Tiernan.<sup>104</sup> He also denied knowledge of Jimmy Fox, Paul Hughes and Francis Tiernan.<sup>105</sup> This is a different position to that of Finbarr Hickey to accepted that he knew the names of these people although he did not recognise their faces (in the case of Jimmy Fox and Paul Hughes). It is peculiar that if Finbarr Hickey was aware of these names as to why Leo Colton says that he was not.

Interestingly, there did not appear to be a huge divergence in the accounts of Finbarr Hickey and Leo Colton. Both men indicated that they were not that friendly, but that they had worked together on the same unit when Leo Colton was the unit sergeant and that they saw each other on occasion in the pub. Leo

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<sup>101</sup> Day 97 at p.137

<sup>102</sup> Day 97 at p.137

<sup>103</sup> Day 97 at p.139

<sup>104</sup> Day 97 at pp.40 - 41

<sup>105</sup> Day 97 at p.81

Colton initially denied that he had ever called into Hackballscross after he retired, although subsequently accepted that he “might” have called in. Leo Colton also accepted that Finbarr Hickey said something to him about a problem with a passport in the pub, although could not explain why Finbarr Hickey would have said anything to him if he (Leo Colton) had not given him the application to sign.

### **(c) Conclusion**

In making an assessment as to the credibility of Finbarr Hickey in respect of the passport affair, it is submitted that regard should be had to the attitude of all the investigating members who confirmed that in their view Finbarr Hickey told the truth. Furthermore, those same investigation members did not appear to believe Leo Colton, a retired Garda Sergeant. It is submitted that the presence of blank passport application forms and driving licence forms in Leo Colton’s house, his acknowledgment in evidence that he may have called into Hackballscross, and also that Finbarr Hickey had told him about a problem with the last passport, must lead to the conclusion that Leo Colton was the person who had provided the application forms to Finbarr Hickey to sign.

Finally, it is submitted that if the Tribunal accepts Finbarr Hickey’s account in respect of the passports that the Tribunal must also have regard to the fact that there was no evidence given which suggested in any way that Finbarr Hickey had any subversive connections or any awareness at all as to the final destination of the passports.

#### **4. Means of Knowledge**

An important question that the Tribunal will have to address is whether there is any evidence that Finbarr Hickey had, or could have had, the knowledge as to the fact that the two RUC officers were due to visit the station on the afternoon of the 20<sup>th</sup> March, 1989, and that they did arrive at the station at some time after 2pm.

##### **(a) Arrangements for the meeting**

The Tribunal has had the benefit of not only the O'Dea Report which examined arrangements for the meeting in days after the murders, RUC documentation and the Cory Report, but also has heard evidence from a number of RUC and Garda officers who were involved in making the arrangements for the visit of Superintendent Bob Buchanan and Chief Superintendent Harry Breen to Dundalk Garda Station on the 20<sup>th</sup> March, 1989.

There is a great deal of confusion as between the various RUC officers who have given evidence about the lead up to the meeting on the 20<sup>th</sup> March, 1989, particularly in respect of when the decision was made that there should be a meeting, who attended a meeting in Armagh RUC Station on the preceding Thursday, the 16<sup>th</sup> March, 1989, and whether there was a direction that no RUC officers were to cross the border. The Tribunal may well have to make findings in relation to these issues but it is submitted that, in relation to the communication of the request for a meeting to Dundalk Garda Station, the only

finding that the Tribunal will be able to make supported by evidence is that the first time that anybody in Dundalk Garda Station was aware that the RUC officers sought to travel on the 20<sup>th</sup> March, 1989, was on the morning of the 20<sup>th</sup> March, 1989.

### **RUC Officers who were aware that a meeting was to be arranged**

On Day 2, Witness 18 (Assistant Chief Constable for Rural East) and his staff officer, Witness 6 gave evidence. They both recalled a meeting in Armagh RUC station on the 16<sup>th</sup> March, 1989 (the preceding Thursday), which involved both Chief Superintendent Harry Breen and Superintendent Bob Buchanan. Witness 18 told the Tribunal that he had a general meeting on the 16<sup>th</sup> March with the Chief Constable of the RUC in Headquarters in Belfast and that he was told to contact Superintendent Bob Buchanan and have all available operational information in operational hands in respect of smuggling activities of a particular individual.<sup>106</sup> Witness 18 said that the Chief Constable had said that there was no need for persons to cross the border<sup>107</sup> and Witness 18 gave evidence that he had told them not to cross the border and that they had given him that undertaking.<sup>108</sup> On Day 2, Witness 6 (Staff Officer to Witness 18 (Assistant Chief Constable for Rural East)) also gave evidence of a meeting in Armagh RUC Station on the 16<sup>th</sup> March 1989 (the preceding Thursday). He said that Witness 18, Witness 6, Chief Superintendent Harry Breen and Superintendent Bob Buchanan were present and that Alan Mains (Chief Superintendent's Staff

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<sup>106</sup> Day 2 at p.44

<sup>107</sup> Day 2 at p.47

<sup>108</sup> Day 2 at p.59

Officer) came and went. He had no recollection of Witness 36 (the collator in Bessbrook being present).

On Day 3, a slightly different account of the meeting, if it was the same meeting was given to the Tribunal. Witness 36 (the collater in Bessbrook) recalled a meeting on the Thursday in Armagh. He said that Chief Superintendent Harry Breen was not present as he was off that day and Witness 18 chaired the meeting. Superintendent Bob Buchanan was there, as was a Chief Superintendent from Special Branch (Witness 27) and there were military officers there. He said that Alan Mains was in and out of the meeting.<sup>109</sup> He said that Witness 18 told Superintendent Buchanan to arrange a meeting with his counterparts [in An Garda Síochána] on the Monday and to take Chief Superintendent Harry Breen with him and to ring and let Chief Superintendent Harry Breen know.<sup>110</sup>

Witness 27 (Deputy Assistant Chief Constable to the Border) gave evidence on Day 30 and said that he had attended a meeting on the 16<sup>th</sup> March, 1989 in Armagh in the afternoon.<sup>111</sup> He said that Chief Superintendent Harry Breen was present with Superintendent Bob Buchanan and Witness 18. He said that Witness 36 was not present.<sup>112</sup> He did not recall a direction being given that it wasn't necessary to travel south to meet An Garda Síochána.<sup>113</sup> He gave

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<sup>109</sup> Day 3 at pp. 9 - 10

<sup>110</sup> Day 3 at p.11

<sup>111</sup> Day 3 at p.97

<sup>112</sup> Day 3 at p.99

<sup>113</sup> Day 3 at p.104

evidence that it was left to Chief Superintendent to organise the meeting.<sup>114</sup> He said that he was spoke to Chief Superintendent Breen at approximately 9:25am who appraised him of the arrangements for the meeting, that they were to meet in Newry and travel from there.<sup>115</sup>

The evidence that Chief Superintendent Breen attended a meeting in Armagh on the 16<sup>th</sup> March, 1989, is somewhat surprising, as his diary appears to record that he was on leave on that day. Further in a statement read to the Tribunal on Day 22, Chief Superintendent Breen's wife, June Breen stated she was "*quite certain that her husband could have been in the office on that day and was categorical that he husband did not attend any meeting that day*".<sup>116</sup>

Finally, Alan Mains, Chief Superintendent Breen's Staff Officer, who gave evidence to the Tribunal on Days 9 and 10, also said that Chief Superintendent Breen had been on leave the week before the murders.<sup>117</sup> Alan Mains said that Chief Superintendent Breen asked him to set up a meeting in Dundalk and to contact Superintendent Buchanan to see if he wanted to go down with him.<sup>118</sup> He said that made a phone call asking if the meeting could be facilitated and recalled speaking to a female<sup>119</sup> at approximately 10am on the morning of the murders. He accepted under cross that he had not said that in his original

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<sup>114</sup> Day 3 at p.105

<sup>115</sup> Day 9 at p.107

<sup>116</sup> Day 9 at p.4

<sup>117</sup> Day 9 at p.104

<sup>118</sup> Day 9 at p.113

<sup>119</sup> Day 9 at p.113

statement.<sup>120</sup> He said that Chief Superintendent Breen had travelled to Newry to meet Superintendent Buchanan leaving at roughly 12, 12:20, after his lunch.<sup>121</sup>

While there are various conflicts in the evidence of RUC officers who had knowledge of a potential meeting, the one thing that seems to be clear is that nobody in Dundalk Garda Station was contacted with a view to arranging a meeting until the morning of the 20<sup>th</sup> March, 1989. This view is supported by the evidence given by the various members of An Garda Síochána who were made aware of a meeting taking place.

**An Garda Síochána who gave evidence about the arrangements for the meeting on the morning of the 20<sup>th</sup> March, 1989**

Retired Garda George Flynn gave evidence on Day 4. He worked in the District Office in 1989, and he confirmed that other people in the office were Vincent Rowan, Mary Clarke and Kathleen McCooey.<sup>122</sup>

Superintendent Tierney was the District Officer and Chief Superintendent Nolan was the Divisional Officer.<sup>123</sup> He said that he arrived into work that day (the 20<sup>th</sup> March, 1989) at about 9:15am and received a call from Superintendent Buchanan at about 9:20am asking for Superintendent Tierney to call him.<sup>124</sup>

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<sup>120</sup> Day 10, at p.29

<sup>121</sup> Day 9 at p.145

<sup>122</sup> Day 4 at p.2

<sup>123</sup> Day 4 at p.3

<sup>124</sup> Day 4 at pp.5 – 6

Superintendent Tierney, the District Officer in 1989, also gave evidence on Day 4. He arrived in at approximately 9:30am and George Flynn told him that Superintendent Buchanan wanted to contact him. Initially there was no answer and then he rang Armagh and the line was disconnected. He said that subsequently he rang back again and then Superintendent Buchanan rang him a few minutes later.<sup>125</sup> He said this occurred after 10am.<sup>126</sup> He said that Superintendent Buchanan mentioned the fact that he was due to be transferred and then indicated that he wanted to arrange a meeting between Chief Superintendent Breen and Chief Superintendent Nolan. He said that he suggested that he contact Chief Superintendent Nolan directly.<sup>127</sup> He said that he later heard from Inspector Murray at about 1:40pm that Superintendent Buchanan and Chief Superintendent Breen were coming to Dundalk that afternoon. He said that Superintendent Buchanan called into him at about 3pm, and that Detective Superintendent Connolly also came in. He said that Superintendent Buchanan was delighted about his impending transfer away from the border region.<sup>128</sup>

Chief Superintendent John Nolan, on Day 9, said that it was at 10:15am when he was in his office when he received a telephone call on his office line from Superintendent Bob Buchanan that Chief Superintendent Breen wanted to meet him and they fixed on 2pm. He said that he didn't make any telephone call to

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<sup>125</sup> Day 4 at p.25

<sup>126</sup> Day 4 at p.42

<sup>127</sup> Day 4 at pp.25 - 26

<sup>128</sup> Day 4 at p.31

Chief Superintendent Breen.<sup>129</sup> He confirmed that it was the first he had heard that there was a possibility that he was going to be visited by the two officers.<sup>130</sup> He thought he might have told Frank Murray about the visit in the District Office or in the room where they were having their eleven's.<sup>131</sup> He said that he believed that the meeting lasted about 55 minutes, ending at about 3:15 when they both left to return north.<sup>132</sup>

Inspector Frank Murray's (RIP) statement was read into the record on Day 11.<sup>133</sup> In that statement, he referred to having been told at 11am that the two officers were visiting.

It is submitted that the only finding that the Tribunal can make following on the evidence that has been given by the RUC officers and members of An Garda Síochána is that the very earliest that anybody in An Garda Síochána was aware that a meeting was even sought was 9:20am on the morning of the murders. It would appear that the timing of the meeting then was not confirmed until Superintendent Buchanan spoke to Chief Superintendent Nolan at approximately 10:15am. From Chief Superintendent Nolan's evidence, he may have told Inspector Frank Murray about the meeting at 11am. It is submitted that there is no evidence to suggest that any other persons (with the possible exception of Vincent Rowan who was aware of Superintendent Buchanan's imminent transfer) in the Garda Station was aware of the visit in the morning. Specifically

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<sup>129</sup> Day 9 at p.27

<sup>130</sup> Day 9 at p.25

<sup>131</sup> Day 9 at p.30

<sup>132</sup> Day 9 at p.29 and p.81

<sup>133</sup> Day 11 at p.35

it is submitted that there is not one piece of evidence to suggest that anyone in the ordinary uniformed units had any knowledge at all about the visit prior to the arrival of the officers in the station.

### **Arrival of Chief Superintendent Breen and Superintendent Buchanan in Dundalk Garda Station**

It appears that while the meeting had been arranged for 2pm, the two RUC officers did not arrive in Dundalk until approximately 2:20pm. Garda Seamus Nolan was the station orderly that afternoon. He gave evidence to the Tribunal, that he had been told by Garda David Sheridan that the Chief was expecting some visitors and that they were to be shown up the back stairs. He said that in fact, when they arrived, they managed to get in the front door,<sup>134</sup> and that he then led them up to Chief Superintendent Nolan's office.

There is no doubt that once the two officers arrived in Dundalk Garda Station they were visible to all. Superintendent Buchanan had travelled in his car which was recognisable to many (see, for example, Retired Garda George Flynn's evidence on that he could see it out the window parked in the car park<sup>135</sup>). They came through the busy public office, and then were brought up to the Chief's office. There is also evidence that Superintendent Buchanan left the Chief's office at one stage to go to Superintendent Tierney's office.<sup>136</sup> Of course, the reality is that once the two officers arrived in the station it is not only members of An Garda Síochána who were aware of their presence but also anybody passing

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<sup>134</sup> Day 9 at p.4

<sup>135</sup> Day 4 at pp.17 - 18

<sup>136</sup> Day 4 at p.31

Dundalk Garda Station who were aware of Superintendent Buchanan's car, any member of the public in or near the Garda Station, any person who had the Garda Station under surveillance, or who had followed the car. All the evidence was to the effect that Dundalk Garda Station was a particularly busy one with members of the public including accused persons routinely present at the station.<sup>137</sup>

However, from significantly from the point of view of Finbarr Hickey, it is submitted that there is no evidence at all that Finbarr Hickey was in the Garda Station that day prior to the murders, and further it is submitted that all the evidence before the Tribunal points to the conclusion that he was not on duty that day, and only came on duty after the murders.

**(b) Knowledge of uniformed officers in relation to the visit of RUC officers to the station**

Garda Regina McArdle, who was on Unit C with Finbarr Hickey, was asked whether she recalled any RUC officers visiting the Garda Station. She said that she recalled one man who came to the station, she didn't know what his name was but he was a tall bald man, she pointed out that she used to work from time to time in the District Office and he would come to meet the superintendent but she didn't know who he was and he was the only one that she could recall.<sup>138</sup>

Retired Garda Pat O'Donoghue gave evidence on Day 27 and he was also asked about the visits of RUC officers to the station.

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<sup>137</sup> See for example the evidence of Retired Superintendent Michael Stauton (Day 19 at pp.28 – 29)

<sup>138</sup> Day 17 at p.42

*"Q. And you have indicated that in the course of your years of service in Dundalk, you saw members of the RUC coming and going from the Garda station?*

*A. I did. I saw them in the foyer of the Garda station. I didn't see them outside now and I let them in once or twice to go upstairs the Superintendent's office.*

*Q. Were you ever informed by senior officers of the proposed attendance of RUC members?*

*A. No.*

*Q. Can I take it that on those occasions when you observed or met members of the RUC in Dundalk Garda Station, that by and large, was by chance?*

*A. By pure chance*

*Q. And you wouldn't expect senior detective officers to inform you or any other uniform member of the intention or proposal that RUC officers will [be] attending at the Garda station?*

*A. You would not notify uniform officers at all unless they were requested for a bit of help or something like that. In general they kept it to themselves."<sup>139</sup>*

It is submitted that there is nothing to suggest that Finbarr Hickey would ever have had any advance notice of the arrival of the two men in the station, or would have recognised them when they did arrive, even if the evidence was that he was present in the station on the day. In any event it is submitted that he was not in fact present prior to the murders.

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<sup>139</sup> Day 27 at pp.51 - 52

**(c) Evidence suggests that Finbarr Hickey not working on the 20<sup>th</sup> March, 1989**

Initially when Finbarr Hickey was interviewed by the Tribunal he indicated that he believed that he was working in Dundalk Garda Station on the 20<sup>th</sup> March, 1989. He based his belief on the fact that he had a memory of there being concerns about Chief Superintendent Nolan not being in his office and therefore believed that he must have been working on 2pm to 10pm shift. Garda Matthew O'Reilly<sup>140</sup> also referred to concerns about the Chief Superintendent. Garda O'Reilly was detailed in a patrol car that afternoon, at around 4:30pm they were asked to return to the station where they were told that the two RUC officers had been shot, that there was some concern for the Chief as he was the last person to have been seen with them, and they were given the task of going down the town to see if they could find him.

Specifically when initially interviewed by the Tribunal Finbarr Hickey was neither provided with nor apprised of the contents of the contemporaneous O'Dea Report which was the best available evidence as to those parties who were present on duty that day, all of whom were interviewed, clearly out-ruling Finbarr Hickey from those who were on duty. It is reasonable to assume that had this information been available to him at that first interview that he would have had a refreshed and improved recollection.

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<sup>140</sup> Day 16 at p.75

It should be noted that Finbarr Hickey is not the only witness who mistakenly gave a statement to the Tribunal suggesting that they were working in the Garda Station that day. On Day 19, Kathleen Freeman gave evidence that she was a member of the civilian staff in Dundalk Garda Station from 1985 to 1990.<sup>141</sup> She worked in the District Office.<sup>142</sup> She had initially told the Tribunal that to the best of her recollection she was working that day between 9am and 5:15pm.<sup>143</sup> However after she spoke to the Tribunal she did some further investigation by phoning Garda personnel in Navan to confirm if she had been working.<sup>144</sup> She discovered that she had been on maternity leave and produced a letter confirming same to the Tribunal.<sup>145</sup> It is clear from this understandable mistake on the part of Ms. Freeman, that recollection at a twenty year remove is often confused. It is submitted that Finbarr Hickey, due to having a recollection of the day, made a similar mistake.

It has been confirmed by Counsel for the Tribunal that the station diary for the day in question is missing.<sup>146</sup> Furthermore, Counsel for the Commissioner of An Garda Síochána on Day 18 confirmed to the Tribunal that the station diaries from Dundalk were missing from the 10<sup>th</sup> June 1987 to the 24<sup>th</sup> November, 1988 and from the 10<sup>th</sup> March, 1989 to the 25<sup>th</sup> May 1991.<sup>147</sup> It is submitted that the station diary would definitively show that Finbarr Hickey was not on duty on the 20<sup>th</sup> March, 1989, or working overtime. Although it is accepted that such records

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<sup>141</sup> Day 19 at p.58

<sup>142</sup> Day 19 at p.59

<sup>143</sup> Day 19 at p.68

<sup>144</sup> Day 19 at p.68

<sup>145</sup> Day 19 at p.63

<sup>146</sup> Day 23 at p.71

<sup>147</sup> Day 18 at p.1

do disappear from time to time, and the blame cannot be laid at anyone's door, it is, from Finbarr Hickey's point of view, unfortunate and prejudicial to him that these records are no longer available.

In any event, it is submitted, that even without the station diaries, all the evidence that the Tribunal has heard must lead to a finding that Finbarr Hickey was not working in Dundalk Garda Station on the 20<sup>th</sup> March, 1989.

### **The Unit Roster**

It would appear that each ordinary uniformed member is assigned to a specific unit with which they will always work. There will be one or two Sergeants in charge of the unit. The units work in strict shift pattern that can be predicted years in advance.

**Sergeant Donal Smyth** gave evidence on Day 23. He confirmed that he was on Unit D. He confirmed that the roster is set so that he would know when he was due to be working in 2 or 3 years time.<sup>148</sup> He said that he knew for a fact that Unit D was on duty from 6am to 2pm<sup>149</sup> and that Unit A came on from 2pm to 10pm. He confirmed that from looking at the station diary that was available for the 7<sup>th</sup> March, 1989, that unit C was the resting unit on Sunday, Monday and Tuesday (the 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup>) and that they would be back on nights on the Wednesday the 22<sup>nd</sup>. He confirmed that Unit B would be on nights on the

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<sup>148</sup> Day 23 at p.71

<sup>149</sup> Day 23 at p.72

20<sup>th</sup>/21<sup>st</sup> (10pm – 6am).<sup>150</sup> He confirmed that Finbarr Hickey was on Unit C and thus was attached to the resting unit on the 20<sup>th</sup> March, 1989.<sup>151</sup> He accepted that if someone was working overtime it would be recorded in the station diary, or perhaps an overtime record.<sup>152</sup>

### **Unit A (2pm – 10pm shift)**

The Tribunal heard evidence that the uniformed unit that was working the 2pm – 10pm shift on the 20<sup>th</sup> March, 1989, was Unit A. The Sergeant in Charge of Unit A was Sergeant Thomas Brady who gave evidence on Day 11. He confirmed that he paraded the unit at 2pm<sup>153</sup> and confirmed making a statement he had made on the 22<sup>nd</sup> March, 1989, to Assistant Commissioner O’Dea was correct. In that statement he referred to the following members as having been detailed for duty (accompanied by Sergeant Leo Colton):-

- Garda Seamus Nolan
- Garda David Sheridan
- Garda Anne McMorrow
- Garda John McKeown
- Garda Val Smith
- Garda Matthew O’Reilly
- Garda John Daly

He confirmed in evidence as far as he was aware the members mentioned in his statement were the only uniformed members on duty [on the 2pm – 10pm

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<sup>150</sup> Day 23 at p.72

<sup>151</sup> Day 23 at p.72

<sup>152</sup> Day 23 at p.73

<sup>153</sup> Day 11 at p.42

shift].<sup>154</sup> He confirmed that he would have had access to the Detail book in compiling the list of members that he would have given to Assistant Commissioner O’Dea<sup>155</sup> and he did not believe that there was any other member called in.<sup>156</sup> Under re-examination he confirmed that this only related to Unit A.<sup>157</sup>

The Tribunal also heard from each of the members of Unit A who had worked the 2pm – 10pm shift that day.

**Seamus Nolan** gave evidence on Day 9 and was detailed as station orderly for the shift.<sup>158</sup> He confirmed that Finbarr Hickey was not a member of the A unit.<sup>159</sup>

**David Sheridan** gave evidence on Day 10 and confirmed that he arrived in the station before 2pm and took a telephone call from Chief Superintendent saying that he had two visitors coming and that they were to be shown up the back stairs.<sup>160</sup> He believed that he was subsequently assigned to assisting in the radio room. He confirmed that he knew Finbarr Hickey, that he wasn’t on the A unit, and that he wouldn’t have been working that shift.<sup>161</sup> He said that he believed that Finbarr Hickey was on the C unit.<sup>162</sup>

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<sup>154</sup> Day 11 at p.56

<sup>155</sup> Day 11 at p.56

<sup>156</sup> Day 11 at p.56

<sup>157</sup> Day 11 at p.57

<sup>158</sup> Day 9 at p.2

<sup>159</sup> Day 9 at p.21

<sup>160</sup> Day 10 at p.78

<sup>161</sup> Day 10 at p.92

<sup>162</sup> Day 10 at p.92

**Anne McMorrow** gave evidence on Day 15. She confirmed that she had been detailed for duty in the Communications Room, working the 2pm – 10pm shift on Unit A.<sup>163</sup>

**John McKeown** gave evidence on Day 10. He initially thought he was Unit C, but confirmed in evidence that it was Unit A and that he had worked the 2pm – 10pm shift on the 20<sup>th</sup> March, 1989.<sup>164</sup> He was detailed to go out as official driver accompanied by Val Smith.<sup>165</sup>

**Val Smith** gave evidence on Day 10. He confirmed that the occurrence book was a list of things that had happened in the last 24 hours.<sup>166</sup> The Details were another book noting where each member on the unit was assigned.<sup>167</sup> The on-off book was used by the Detective Unit.<sup>168</sup> He confirmed that he commenced patrolling in the patrol car with John McKeown.<sup>169</sup> He confirmed that Finbarr Hickey wouldn't have been working that shift.<sup>170</sup> He also confirmed that the station diary was a book kept by the station orderly where whoever was commencing duty would have signed on.<sup>171</sup>

**Matthew O'Reilly** gave evidence on Day 16 and confirmed that he was on Unit A<sup>172</sup> and that he went out in the Patrol car with John Daly.<sup>173</sup>

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<sup>163</sup> Day 15 at p.2

<sup>164</sup> Day 10 at p.23

<sup>165</sup> Day 10 at p.24

<sup>166</sup> Day 10 at p.96

<sup>167</sup> Day 10 at p.96

<sup>168</sup> Day 10 at p.97

<sup>169</sup> Day 10 at p.101

<sup>170</sup> Day 10 at p.109

<sup>171</sup> Day 10 at p.110

<sup>172</sup> Day 16 at p.66

**John Daly** gave evidence on Day 16, that he was attached to Unit A and that he had been detailed in the Garda Van. He confirmed that he did not see Finbarr Hickey working that day.

It should be noted that **Leo Colton** also gave evidence on this issue to the Tribunal on Day 18 where he confirmed that he was a Sergeant on the A unit and reported for duty on the 20<sup>th</sup> March, 1989 at 2pm.<sup>174</sup>

#### **Unit D (6am – 2pm)**

There has been evidence before the Tribunal from five members of Unit D. It would appear from their recollection and from Sergeant Donal Smyth's evidence, that they worked the early morning shift.

**Michael Johnson** gave evidence on Day 12. He confirmed that he didn't actually remember the day as such, but as best as he could recollect he worked the 6am – 2pm shift. He confirmed that the station diary would have gone into storage in Dundalk garda station when it was finished<sup>175</sup> and that it would have recorded all uniformed and plain clothes personnel who working on a given day.<sup>176</sup>

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<sup>173</sup> Day 16 at p.74

<sup>174</sup> Day 18 at p.87

<sup>175</sup> Day 12 at p.68

<sup>176</sup> Day 12 at p.70

**Tom Mulpeter** gave evidence on Day 14. He confirmed that on the day he was a member of the D unit.<sup>177</sup> He confirmed that he worked from 6am to 2pm<sup>178</sup> in the radio room. He confirmed that Finbarr Hickey was not on the D unit and wouldn't have been working the 6am to 2pm shift.<sup>179</sup>

**Vincent Jackson** gave evidence on Day 15. He confirmed that he was attached to the D unit working the 6am to 2pm shift. He was detailed to work as driver of one of the official patrol cars accompanied by Kevin Forde.<sup>180</sup> He said that he was standing on steps of the station and saw the 2 RUC officers going into the station although he didn't know them at the time.<sup>181</sup> He confirmed that Finbarr Hickey was on Unit C.<sup>182</sup>

**Joe Whelan** gave evidence on Day 17. He gave evidence that he was a member of Unit D and may have been station orderly on the morning of the murders.<sup>183</sup> He confirmed that the station diary was the most important document for recording members coming on and off duty.<sup>184</sup>

**Sergeant Donal Smyth** gave evidence on Day 23. He confirmed that he had been on the early shift but had finished 11:30am that day as he had time off in lieu.<sup>185</sup>

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<sup>177</sup> Day 14 at p.60

<sup>178</sup> Day 14 at p.62

<sup>179</sup> Day 14 at p.73

<sup>180</sup> Day 15 at p.33

<sup>181</sup> Day 15 at p.35

<sup>182</sup> Day 15 at p.56

<sup>183</sup> Day 17 at p.88

<sup>184</sup> Day 17 at p.100

<sup>185</sup> Day 23 at p.77

### **Unit B (Night shift -10pm - 6am)**

It should be noted that it doesn't appear that any members attached to Unit B on the 20<sup>th</sup> March 1989 gave evidence to the Tribunal.

### **Unit C (Resting unit)**

The only other member of Unit C (Finbarr Hickey's unit) that has given evidence to the Tribunal is **Regina McArdle**. She gave evidence on Day 17. She confirmed that other members of her unit included Martin Beggy, Pat Mahony, Pat Trehy and Finbarr Hickey.<sup>186</sup> She confirmed that she was not working on the day in question. She said she had been out with her father and when she came home, her mother had received a phone call from Dundalk Garda Station asking for her to go into work on overtime and that she went into work that evening.<sup>187</sup> She couldn't remember who else had been called in but said that the resting unit were the first unit to be called in.<sup>188</sup> She confirmed that she would have been signed in by the station orderly in the station diary.<sup>189</sup> On looking at the station diary that was available she confirmed that that it would appear that when people came in irregularly, not on the ordinary duty, their movements and presence are still recorded in the station diary.<sup>190</sup> She confirmed that, like Finbarr Hickey, she had not been interviewed by Commissioner O'Dea.<sup>191</sup>

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<sup>186</sup> Day 17 at p.47

<sup>187</sup> Day 17 at p.47

<sup>188</sup> Day 17 at p.48

<sup>189</sup> Day 17 at p.48

<sup>190</sup> Day 17 at p.66

<sup>191</sup> Day 17 at p.69

### **Finbarr Hickey's Evidence**

Finbarr Hickey gave evidence on Day 96. He had made a supplemental statement to the Tribunal in March 2012 which was read into the record by counsel for the Tribunal.<sup>192</sup> In that statement he confirmed that he had initially believed that he might have been working on the 20<sup>th</sup> March, 1989 as he had a recollection of the Chief Superintendent being missing from his office. However, he confirmed that he now believes that he was called in after the murders, similar to Regina McArdle, which would confirm his memory of the day. He confirmed in evidence that he believed that he was in the station after the event.<sup>193</sup>

### **No evidence that Finbarr Hickey working overtime or otherwise present in the station prior to the murders**

The Tribunal also heard from Tom Connolly who was the Detective Superintendent in Dundalk at the time. After the murders he set up a Garda investigation.<sup>194</sup> A job sheet was put to him which required the taking of a "statement from all members who were on duty or otherwise between 2pm and 4pm".<sup>195</sup> He explained that this was a request to take statements from all members who were present in the Garda station between 2pm and 4pm, including members who were not on duty for one reason or another.<sup>196</sup> He confirmed that would include people on overtime, or people maybe finished duty

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<sup>192</sup> Day 96 at p.9

<sup>193</sup> Day 96 at p.11

<sup>194</sup> Day 16 at p.15

<sup>195</sup> Day 16 at p.19

<sup>196</sup> Day 16 at p.20

or called casually to the station.<sup>197</sup> It is submitted that if there had been any suggestion that Finbarr Hickey was in the station, even though his unit was not on duty, a statement would have been taken from him. No statement was ever taken from Finbarr Hickey.

**(d) Conclusion**

It is submitted that in light of the fact that his unit was the resting unit, that the only other member of his unit was called in after the murders, that one person suggests that he was in the station on the day, that he was not interviewed by Assistant Commissioner O'Dea, nor a statement taken from in him the context of Detective Superintendent Connolly's investigation, the only finding that the Tribunal can make is that Finbarr Hickey was not in Dundalk Garda Station prior to the murders.

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<sup>197</sup> Day 16 at p.36

## 5. Intelligence

There have been a number of different pieces of “intelligence” placed before the Tribunal from both An Garda Síochána and from the PSNI. Some of these items of intelligence would appear to have been available to the Tribunal from its inception, and some, particularly emanating from the PSNI were disclosed to the Tribunal at a relatively late stage and after much of the evidence had already been heard.

The difficulty that the Tribunal faces is that while intelligence is a potentially useful tool, it is not evidence and can never be evidence. This has been repeated by many witnesses, an example would be the evidence given to the Tribunal on Day 70 by Retired Garda Assistant Commissioner Jennings. The Chairman asked, *“Intelligence isn't the equivalent of evidence?”* The witness responded:-

*“Absolutely not. Certainly it can be a guiding factor, and in fact I think I said it's like a piece of a jigsaw, and that on working on intelligence, then you could develop your case maybe to eventually end up with evidence, but a piece of intelligence and, certainly as the counsel said, it is a mistake that can be made by people that when they see a piece of intelligence, say this is like, this is evidence, and that would be a fatal mistake. Well, as you'd know, Chairman, when you'd go into the court.”<sup>198</sup>*

PSNI Detective Chief Superintendent McComb said on Day 117 that intelligence is an *“imprecise art”*.<sup>199</sup> Detective Chief Superintendent Peter Kirwan of An Garda Síochána who gave evidence to the Tribunal on the 6<sup>th</sup> and 7<sup>th</sup> December, 2011,

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<sup>198</sup> Day 70 at pp.20 - 21

<sup>199</sup> Day 117 at p.49

the 1<sup>st</sup> May, 2012 and the 16<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> April, 2013, referred to difficulty where by information gathered was given the label “intelligence” which might elevate it to something of a higher level.<sup>200</sup> He suggested that

*“there are a whole range considerations in relation to information intelligence. First of all, very simply, you start off with information, and if you get strands of information from different sources, you would hope that you would be able to generate a picture form that that would entitle the label ‘intelligence’ to be applied to it.”<sup>201</sup>*

He went on to make the point that a lot of the Garda Síochána intelligence led operations would not be depending on one strand.<sup>202</sup>

The Tribunal will have to assess the usefulness of all of the intelligence that it has heard. It is submitted that a bald statement without any background of how the information was provided, when it was provided, to whom it was provided, in what context it was provided and without knowledge of the nature of the source (human or electronic), whether the information was hearsay, emanating from a casual conversation or within direct knowledge of the source, whether there was more than one source and/or whether there was some corroboration of the information makes it almost impossible for the Tribunal to assess the credibility or the usefulness of this information. The fact that a security agency has assessed the intelligence in a particular fashion is of interest but that assessment could never usurp the function of the Tribunal to reach a conclusion based on the evidence before it.

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<sup>200</sup> Day 127 at p.17

<sup>201</sup> Day 127 at p.17

<sup>202</sup> Day 127 at p.20

In any event, most of the intelligence before the Tribunal does not relate directly or indirectly to Finbarr Hickey and it is not therefore proposed to deal with that in any detail. There are, however, a few pieces of intelligence/information, all of which emanate from the PSNI, which purport to identify Finbarr Hickey and these dealt with below.

### **Forewarning of Searches Intelligence**

On Day 95, the Tribunal heard evidence from PSNI Detective Chief Superintendent Roy McComb in respect of certain items of "intelligence". Counsel for Finbarr Hickey asked the Tribunal to consider refusing to hear the evidence, which application was refused.

Detective Chief Superintendent McComb gave evidence of a précis of intelligence which referred to Finbarr Hickey in the following terms:-

*"Since the 1970s, a number of members of An Garda Síochána and Irish Customs Officers have provided information to PIRA, particularly forewarning of searches and arrests. In this connection, the name of Garda Hickey and another Garda officer not based in Dundalk have been mentioned."*

He confirmed that this was intelligence received by the PSNI in the past year<sup>203</sup> and was considered accurate, reliable and credible.<sup>204</sup> He refused to confirm who the source was, what grade applied to the source, who the intelligence was provided to, whether the information was corroborated.<sup>205</sup> He also confirmed

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<sup>203</sup> Day 95 at p.27

<sup>204</sup> Day 95 at p.28

<sup>205</sup> Day 95 at pp.29 - 31.

that he was not in a position to say whether intelligence was hearsay, double hearsay, triple hearsay, gossip or rumour.<sup>206</sup>

### **Jim Lane Intelligence**

PSNI Detective Chief Superintendent Roy McComb gave further “intelligence” evidence on Day 117. He gave evidence of five separate pieces of intelligence which were presented to the tribunal in précis form. Finbarr Hickey’s representatives were informed two days prior to this evidence being called that the “*Tribunal was anticipating evidence of recently received intelligence from the Northern Security forces.*” No indication of the nature or substance of this evidence was provided until minutes before the evidence was given by Detective Chief Superintendent Roy McComb. It was therefore a surprise to see that one of the précises of evidence that was to be given was:-

*“Intelligence indicates that a former AGS officer Jim Lane who was based in Dundalk area frequently expressed his concerns to associates that fellow AGS officers Finbarr Hickey, Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area.”<sup>207</sup>*

Detective Chief Superintendent Roy McComb told the Tribunal that the PSNI had assessed all five pieces of intelligence as “*accurate and reliable*”.<sup>208</sup> He said that they came from multiple sources and that they were received over a period of time in the course of the Tribunal.<sup>209</sup> He confirmed to that this meant “*the last*

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<sup>206</sup> Day 95 p.31

<sup>207</sup> Day 117 at p.4

<sup>208</sup> Day 117 at p.2

<sup>209</sup> Day 117 at p.2

*five years*".<sup>210</sup> This intelligence was also referred to by Assistant Chief Constable Drew Harris, whose evidence was read into the record on Day 124, having previously been given in private sessions. He was unable to give any further information or background to the Tribunal. He said that "*[i]t's very difficult for me, actually, to go behind those pieces of information to actually talk about specific sources. And even in using the term 'sources', I am using that in the widest possible meaning of both human and technical sources.*"<sup>211</sup>

The other relevant evidence in relation to this piece of intelligence was the evidence of Detective Garda Jim Lane himself. Retired Detective Garda Jim Lane first gave evidence to the Tribunal on Day 12. Counsel for the Tribunal asked him "*Has there – have you ever had any suspicion or information over the years that Finbarr Hickey had any connection with the IRA prior to this incident?*" His answer was "*No*".<sup>212</sup>

He was recalled and gave further evidence to the Tribunal on Day 118. When the précis of intelligence referring to his apparent concerns was read to him by counsel for the Tribunal he said:-

*"[...] but I can truly say that the only conversation I had in relation to Finbarr Hickey, Leo Colton and Owen Corrigan was that we would have discussed – with my colleagues and myself, we would have discussed the incidents that they were involved in. That would be quite natural, that we would have done that, because we were working together every single day*

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<sup>210</sup> Day 117 at p. 3

<sup>211</sup> Day 124 at p.23

<sup>212</sup> Day 12 at p.??

*and we were – we would have been – they were colleagues of ours, and it would have been natural to discuss the incidents; namely, the passport incident and the kidnapping of Owen Corrigan.*<sup>213</sup>

This evidence would appear to be directly contradictory of the intelligence provided by the PSNI.

### **The difficulties with these two pieces of intelligence**

It is proposed to deal with these two pieces of intelligence together in identifying the reasons why it is submitted that the Tribunal should not and cannot rely therein.

#### **(a) There were no details given to allow the Tribunal make an assessment as to credibility/reliability.**

The PSNI say that this “intelligence” is deemed to be accurate, reliable and credible. However, no evidence was given to the Tribunal by the PSNI or otherwise as to:-

- (1) The source of the information. The Tribunal cannot make assessment as to reliability and credibility when they are not told whether the source is human or otherwise, whether they had previously provided reliable intelligence or over long a period that they provided intelligence.
- (2) The handler who received the information. The Tribunal has not been told this was a person within the PSNI or otherwise, whether they regularly received such information, what kind of relationship they had with the source, or even whether they paid the source for information.

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<sup>213</sup> Day 118 at p.76

- (3) The nature of the information. In relation to the first piece of intelligence the witness refused to confirm whether the information was hearsay, double hearsay, triple hearsay, or gossip. It is also not whether this information came from more than one source or whether it is single strand intelligence.
- (4) The grading applied by the PSNI to the source or to the information.

This lack of information is in direct contrast to the evidence given to the Tribunal in respect of the 1985 SB50 (intelligence document)<sup>214</sup>. It is submitted that there is no information at all to allow the Tribunal make any assessment as to credibility or reliability. Obviously the PSNI suggestion that this was credible and reliable is of little meaning in circumstances where they refuse to provide any further information as the Tribunal cannot assess how or why the PSNI came to this conclusion. Without this background information, it is simply a view of the PSNI, which is of little value. It is submitted that while the Tribunal may take into account the view of the PSNI, the Tribunal must be a position to reach its own conclusion which is impossible without any further information.

**(b) The information was only received by the PSNI within the period of the Tribunal after Finbarr Hickey's name had been in the public domain for the more than ten years.**

Evidence was given to the Tribunal that the first piece of intelligence was received by the PSNI in the preceding year to the evidence being given,<sup>215</sup> and

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<sup>214</sup> See the evidence of Witness Z and Witness Q on Day 98 and Day 100 respectively.

<sup>215</sup> Day 95 at p.27

that the second piece was received in the preceding five years.<sup>216</sup> It is submitted that an allegations as vague as that contained in these précises, which were only received some 15 – 30 years after the fact, and after Finbarr Hickey's name appeared in the media connected with Tribunal does not and cannot have any value.

**(c) There is contradictory or no other supporting evidence before the Tribunal**

In respect of the first piece of intelligence, the “forewarning of searches” intelligence, it is submitted that in circumstances where the Tribunal has been told nothing about the background to the information, and where the PSNI has refused to confirm that it was not triple hearsay or gossip, the Tribunal cannot come to any conclusion as to the usefulness of this intelligence without some other relevant evidence. In this regard it should be noted that it was only days before this intelligence was given that Finbarr Hickey was informed of its existence. Had he been aware of it from the outset of the Tribunal he may have been in a position to cross-examine certain witnesses to demonstrate, for example that he, as a uniformed Garda, would not have had any advance knowledge of searches. He should not be prejudiced because that evidence was not elicited by his legal representatives.

In respect of the second piece of intelligence, the “Jim Lane” intelligence, it is submitted that the evidence of Detective Garda Jim Lane given to the Tribunal *viva voce*, must be taken over the PSNI intelligence. It is submitted that the Tribunal is bound to accept the evidence of the witness which is that he had no

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<sup>216</sup> Day 117 at p.3

suspicion or information over the years that Finbarr Hickey had any connection with the IRA prior to the passport incident.

**Information suggesting a person disclosed an allegation to uniformed police that Finbarr Hickey was responsible for the passing of information to PIRA which resulted in the murder of Chief Superintendent Breen and Superintendent Buchanan.**

The third piece of information that was put before the Tribunal is dealt with separately because it is of note that the PSNI did not appear to be standing over this information as either reliable or credible and regarded it as information casually obtained rather than intelligence. On Day 95, Detective Chief Superintendent McComb gave evidence of a précis of information that had been received by the PSNI in June 2000.<sup>217</sup> This précis indicated the following:-

*“Subject disclosed the following information to uniformed police in June 2009 [sic]. Garda Sergeant Finbarr Hickey who was recently charged in the Republic of Ireland with Jimmy Fox re passport fraud was responsible for the passing of information to PIRA which resulted in the murder of Chief Superintendent Breen and Superintendent Buchanan. Comment. Subsequently, when questioned by CID over the information he had given to uniformed police, he denied giving the information and was released without charge.”*

It is submitted that many of the criticisms of the information dealt with above equally apply to this information. However, furthermore, Detective Chief

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<sup>217</sup> The document circulated to the tribunal on Day 95 was dated “June 2009”. It was Finbarr Hickey’s understanding that this document was actually dated June 2000 and that this may have been an error.

Superintendent McComb agreed that in this case that it looked liked something that was *"obtained relatively casually"*. He also agreed that it might be called information rather than intelligence.<sup>218</sup> He told the Tribunal that he did not know whether this came from a previously graded source and agreed that persons would give information for a variety of reasons.<sup>219</sup>

Detective Chief Superintendent Kirwan also commented on this piece of information on Day 128. He referred to the fact that Finbarr Hickey's name was in the public domain when a member of the PSNI had a interaction with a member of the public who said that the Finbarr Hickey was responsible for the passing of information that lead to the deaths of the two RUC Superintendents. He went on to say:-

*"This member of the public later resiled from the information when interviewed by detectives. And, you know, I was making the point that does illustrate the dangers of an over-reliance on casual sources giving information, especially information or names that might be in the public domain."*<sup>220</sup>

He confirmed that the fact that Finbarr Hickey's name was in the public domain would mean that any information would have to be treated with caution and that information from a casually obtained source would have to be treated with extra caution.<sup>221</sup>

Obviously the fact that the member of the public subsequently resiled from the information means that it could never be relied on by this Tribunal or otherwise in forming any conclusion against Finbarr Hickey. Moreover, it is submitted that

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<sup>218</sup> Day 95 at p.43

<sup>219</sup> Day 95 at p.45

<sup>220</sup> Day 128 at p.25

<sup>221</sup> Day 128 at p.26

in circumstances where there is no information as to how this subject came to have this information; where this information appeared to be imparted when the subject was arrested himself; and where the name of Finbarr Hickey was in the public domain at the time that the information was imparted; it is nothing more than a bare allegation made by an arrested person. The PSNI has not at any stage suggested that this was “intelligence” or that they believed that it was credible, reliable or accurate information. In those circumstances, it is strongly submitted that the Tribunal should make a finding that it is none of these things and cannot be relied on in any way.

**PSNI intelligence suggesting that a “fourth garda” was involved in the murders of the two RUC officers.**

In addition to the intelligence referred to above, there was other pieces of intelligence placed by the PSNI before the Tribunal by Detective Chief McComb on Days 95 and 117 and by Assistant Chief Constable Harris whose evidence was read into the record on Day 124. As indicated, much of this intelligence did not relate to Finbarr Hickey at all and therefore it is not proposed to make any comment on same. However, it is noted that two of the five pieces of intelligence referred to by Detective Chief Superintendent McComb, and which was reiterated by Assistant Chief Constable Harris suggested that another member of An Garda Síochána who had not been publicly associated with the Tribunal had been providing information to the provisional IRA. One of these pieces of intelligence suggested that this individual had been paid a considerable amount of finance for the information in relation to Superintendent Buchanan and Chief Superintendent Breen and the second piece suggested that he had also

provided information in relation to Tom Oliver. The PSNI assessed this information as “*accurate and reliable*”.<sup>222</sup> The evidence before the Tribunal was that it had come to light within the course of the Tribunal,<sup>223</sup> which was confirmed to mean “*the last five years*”.<sup>224</sup> There did seem to be some confusion within the PSNI as to why the intelligence had not been provided immediately it had been received by the PSNI. Detective Chief Superintendent McComb told the Tribunal “*I can’t answer why the information was not provided at the original moment that it was made available to the police.*”<sup>225</sup> He also said “*Decision were made that the documentation would not be shared. I am afraid I can’t assist you at this point as to who made those decisions or when those decisions were made.*”<sup>226</sup> Under cross examination by counsel for Owen Corrigan, he confirmed that the intelligence “*could have been provided at an earlier point but they weren’t.*”<sup>227</sup> Assistant Chief Constable Harris was then called to give evidence, a transcript of which was read into the public record on Day 124. He told the Tribunal that he had overall responsibility for intelligence within the PSNI.<sup>228</sup> He was asked whether Detective Chief Superintendent McComb was correct in saying that there had been a decision not to proffer certain items of intelligence.<sup>229</sup> He did not appear to give a direct answer to this question and suggested that there were difficulties in sharing live intelligence that had to be worked through. Under cross examination by counsel for the Commissioner of An Garda Síochána, he was asked to identify which pieces of intelligence had come into existence within

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<sup>222</sup> Day 117 at p.2

<sup>223</sup> Day 117 at p.2

<sup>224</sup> Day 117 at p. 3

<sup>225</sup> Day 117 at p. 8

<sup>226</sup> Day 117 at p.21

<sup>227</sup> Day 117 at p. 26

<sup>228</sup> Day 124 at p.11

<sup>229</sup> Day 124 at p.11

the last three months and he said that he was “*not able to elaborate further*”.<sup>230</sup> He did agree however that the pieces of intelligence given on Day 117 were not shared with An Garda Síochána until almost immediately before they were shared with the Tribunal.<sup>231</sup>

Assistant Chief Constable Harris’s evidence was read into the record on Day 124 and he also gave evidence of twelve further pieces of intelligence which had also recently come into the possession of the PSNI. He said that the PSNI would rate these as “*accurate and reliable*”.<sup>232</sup> This included a piece of information suggesting that a senior PIRA figure had several members of An Garda Síochána passing information to PIRA including officers of a more senior position than Owen Corrigan. The timescale in respect of the receipt of that information cannot be put into the public domain on foot of a ruling by the Chairman.<sup>233</sup>

It is noted that no explanation was forthcoming either in evidence, or through counsel for the PSNI as to why the PSNI had taken a decision not to provide this intelligence when received (apart from some general discussion in respect of the accepted difficulties in sharing “live intelligence”).<sup>234</sup> This is of particular concern as the first two précis of intelligence, provided to the Tribunal on Day 117, suggest that the PSNI had “accurate and reliable” information that the member of An Garda Síochána (who was not one of the named persons before the Tribunal) had been paid a considerable amount of finance for information that he had provided in relation to Chief Superintendent Breen and Superintendent Buchanan, and also that he a provided information in relation to

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<sup>230</sup> Day 124 at p.47

<sup>231</sup> Day 124 at p.48

<sup>232</sup> Day 124, p.26

<sup>233</sup> Day 124 pp.1 - 8

<sup>234</sup> Day 124 pp.12-13

Tom Oliver and was handled as a source by a senior member of the Provisional IRA. This intelligence is directly relevant to the terms of reference of the Tribunal. While this is only intelligence rather than something of evidential value, it is submitted that it is a matter that should have been disclosed at the earliest possible stage, to enable the Tribunal to effectively investigate and it is astonishing that the PSNI would apparently make a decision not to disclose. From Finbarr Hickey's point of view, it is disappointing that the existence of "credible and reliable" intelligence which suggests that another person leaked information that led to the murders under investigation, was not disclosed at the first opportunity. Perhaps, if the Tribunal had had an opportunity to properly investigate these allegations and if they could have been substantiated, Finbarr Hickey might have been exonerated at an early stage.

## 6. IRA Statement

The Tribunal has heard evidence of a number of different theories as to how these murders came to be committed (including, for example, the suggestion that the telephone exchange in Dundalk had been intercepted). It is not proposed to deal with these various theories, with the exception of the IRA statement.

It appears from the evidence given, that some former members of the provisional IRA, provided a "final approved note" outlining what they said were the circumstances leading up the murders in March 1989. This appears to have been provided to the Tribunal at some time prior to the 14<sup>th</sup> February, 2008, because on that date, the solicitor to the Tribunal wrote seeking further information.<sup>235</sup>

Some further information was provided and which lead to a meeting in April, 2011, an account of which was read into the record on the 1<sup>st</sup> February 2013.<sup>236</sup>

It is of course unfortunate for all involved that there was no person willing or in a position to provide oral evidence, and to be subjected to examination and cross examination.

In any event, these materials purport to give a detailed account of how the provisional IRA came by the information that the RUC officers were visiting the station on the day in question (through surveillance) and denied the involvement of any member of An Garda Síochána. It is unfortunate that this document was not disclosed to the various parties represented before the Tribunal at an earlier stage. Some of the details provided would have been more

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<sup>235</sup> Day 125 at p.80

<sup>236</sup> Day 125 at pp.84 - 85

fully explored with witnesses had the document been available at the time that these witnesses were called (for example, Charles Day who gave evidence on Day 2 and Moira Carroll and Kenneth Farnon who gave evidence on Day 61). While it is accepted that now the Tribunal has the difficult task of assessing the credibility and reliability of this statement in the absence of oral evidence, it is noted that the Tribunal at least has the advantage (not enjoyed by other represented parties) that members of the Tribunal legal team met with the individuals and also were able to seek some further clarifying details (in contrast to the intelligence put before the Tribunal by the PSNI).

What is beyond dispute is that the approved note was in the possession of the Tribunal before the commencement of public hearings and therefore prior to the disclosure into the public domain of the intended evidence of witnesses or the contents of documents such as the diaries of the two Superintendents. The diaries have a particular significance in that their authors could not have retrospectively altered them for any purpose and they have at all times presumably been in the secure control of the RUC/PSNI and not available to the IRA. It is submitted therefore that the fact that the approved note is corroborated by material not available to its authors in respect of events almost twenty years previously is of importance.

For example, and despite the confusion of the christian name, it is clear that the visit described in the IRA statement by an RUC man "Nigel Day" in late Spring/early Summer 1988 accords with either of two possible entries made in

Superintendent Buchanan's diary, the 26<sup>th</sup> April 1988, and the 7<sup>th</sup> July, 1988,<sup>237</sup> thus confirming that there was such a visit where he was accompanied by Inspector Charles Day. It is also clear that the acknowledged dates of Superintendent Buchanan's annual leave in the Summer of 1988 are consistent with the reported inactivity of his vehicle as described by the IRA.<sup>238</sup>

Furthermore, the viewpoint from the derelict and vacant house at 12 the Crescent was available to the IRA as described at the relevant time which was confirmed in evidence by Moira Carroll who subsequently bought the property. Interestingly this was contrary to an initial statement given to the Tribunal by Ms. Carroll.<sup>239</sup> Furthermore it should be noted that even before the content of the agreed note was disclosed to parties, the Tribunal had heard considerable evidence which would support the IRA account.

In particular there was the evidence that Dundalk Garda Station was busy and exposed and an ideal place for IRA volunteers to come by casual sighting of visiting RUC officers. There was also the evidence that the methodology employed by the IRA had as a hallmark prolonged surveillance and a willingness to commit substantial numbers of its personnel to operations even on a speculative basis exactly as described in the approved note. For example, see the evidence of retired Chief Superintendent Michael Stauton<sup>240</sup> and Witness 6<sup>241</sup> who was the RUC staff officer to Assistant Chief Constable Rural East. This evidence was given by a number of witnesses whose experience, expertise,

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<sup>237</sup> Day 132 at p.30

<sup>238</sup> Superintendent Buchanan's diary records that he was on leave from the 21<sup>st</sup> July, 1988 to the 23<sup>rd</sup> August, 1988 (Day 132 at p.38).

<sup>239</sup> Day 61 at pp.1 - 15

<sup>240</sup> Day 19 pp.29-30

<sup>241</sup> Day 6 pp.100-101

impartiality and probity are beyond question and were not in fact challenged by any party.

Finally, it is noted that on Day 132 counsel for Tribunal attempted to engage in an exercise of using the available diaries to analyse the IRA account. While this exercise may undoubtedly be of some assistance to the Tribunal, it is submitted that it in no way could be regarded as forensic and there seemed to be a number of assumptions made (such as the use of the words accompanied determining who was driving). It is also noted that there could have been numerous times that Chief Superintendent Breen was in Superintendent Buchanan's car in Meigh, one of the matters that counsel for the Tribunal was attempting to analyse, without same being reflected in the Superintendents' diaries. A characteristic of the diary entries is that they are exceptionally brief detailing principal activities only namely, stations visited, but not routes followed. Given the relatively small geographical area concerned, it is probable that Meigh would be regularly traversed. The other difficulty is that there is no suggestion that the diaries were comprehensive and there may well have been meetings etc. which were not recorded in the diaries.

It is submitted that the IRA statement provides a credible, as some elements of the statement can be tested, alternative theory of how these murders were committed and in the circumstances cannot be easily discounted.

## 7. Standard of Proof

Although the Tribunal may regulate its own procedure, when it comes to the possibility of making serious findings against an individual which are of a criminal nature, the Tribunal will always be conscious of the requirement that any findings of a criminal nature must be grounded in evidence. As Murray CJ stated in *Lawlor v. Members of the Planning Tribunal*:-

*"it would, nonetheless be wrong [to infer] a Tribunal of inquiry is at large in terms of the requirements of proof or that the standard of proof is simply a matter of procedure which it may regulate as it sees fit. Such an approach could lead to a situation where, for example, on the bare balance of probabilities, a finding of the utmost gravity could be made against a particular individual. In principle, evidential requirements must vary depending upon the gravity of the particular allegation. This is not to adopt the "sliding scale" of proof advocated by counsel for the applicant, but rather to simply recognise, as an integral part of fair procedures, that a finding in respect of a serious matter which any involve reputational damage must be proportionate to the evidence upon which it is based. For example, a finding that a particular meeting occurred on one day rather than another may be of such little significance that a Tribunal could make a finding in that respect on the bare balance of probabilities. A finding of criminal behaviour on the other hand would require a greater degree of authority and weight derived from the evidence itself."*<sup>242</sup>

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<sup>242</sup> [2010] IIR 170 at para. 39

7. That Finbarr Hickey did not collude with the Provisional IRA and did not pass any information to the Provisional IRA or anyone else about the visit of Chief Superintendent Breen and Superintendent Buchanan on the afternoon on the 20<sup>th</sup> March, 1989.

Fionnuala O'Sullivan BL

Dated the 21<sup>st</sup> June, 2013

Signed:   
MacGuill & Company  
Solicitors  
5 Seatown  
Dundalk  
Co. Louth

# **SMITHWICK TRIBUNAL OF INQUIRY**

*Tribunal of Inquiry into suggestions that members of An Garda Siochana or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20<sup>th</sup> March, 1989*

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**CLOSING SUBMISSIONS ON BEHALF OF PETER  
KEELEY AKA KEVIN FULTON**

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**JOHN McATAMNEY & CO SOLICITORS**

21<sup>st</sup> June 2013

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## A. INTRODUCTION

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1.1 These submissions bear in mind at all times the Terms of Reference of the Tribunal, namely that its duty is to inquire into suggestions that members of An Garda Siochana or other employees of the State colluded in the fatal shootings of RUCH Chief Superintendent Harry Breen and Superintendent Robert Buchanan on the 20<sup>th</sup> March 1989.

1.2 On the 3<sup>rd</sup> March 2006, the Chairman stated as follows:

*“the issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act, in the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or pretended ignorance or unawareness of something one ought morally, legally or officially, oppose. Judge Peter Cory defined the word collusion in similar terms when considering the evidence before him and considering whether or not the murders under review as part of the Weston Park Agreement merited further investigation.”*

1.3 Aspects of the evidence given by Peter Keeley aka Kevin Fulton, (hereinafter ‘PETER KEELEY’), and indeed others, touches upon events beyond the murders referred to above, but is nonetheless relevant to the Tribunal in dealing with matters of witness credibility (by establishing same or lack thereof with respect to other incidents), and as evidence of collusion in the wider sense between members of AGS with subversives by reference to other incidents.

1.4 It is further borne in mind that the standard of proof in the various matters is on the civil standard, namely balance of probabilities, although it is accepted that the more grave the allegation the more cogent the evidence required. In *Re Dellow's Will Trusts, Lloyd's Bank v Institute of Cancer Research* [1964] 1 WLR 451 at p 455 Ungoed Thomas J stated:

*‘The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. This substantially accords with the approach adopted in authorities such as the well known judgment of Morris LJ in *Hornal v Neuberger Products Ltd* [1957] 1 QB 247 at p266. This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegation proved than when deciding less serious or trivial matters.’*

1.5 The issue of witness credibility is of course a central one upon which the Tribunal will strive to reach resolutions. By way of example, this is arguably the paramount consideration in reaching conclusions on the evidence in connection with the Tom Oliver murder. It is also noted that on 2<sup>nd</sup> December 2011, the Tribunal delivered a Memorandum to represented parties in respect of disclosure of documents relating to PETER KEELEY, wherein on behalf of the Tribunal it was stated:

*“Kevin Fulton*

*Kevin Fulton is in some ways a unique witness as his information to Judge Cory was identified in the Cory Report as the balance tipping factor in favour of a public inquiry. His particular allegations are both grave and specific. In that context, it would be fair to say that it was apparent from the outset that he would be asked to give evidence (although he is not a compellable witness), and that there is a unique strong and specific interest in his evidence and credibility being thoroughly tested.*

*The Tribunal recognises the rights of those in the frame of Kevin Fulton’s allegations to thoroughly test his evidence and credibility. In this aspect it is noted that Kevin Fulton is quite a public figure and there is a plethora of public information available from which to test his credibility. Not only has he published a book, he has been involved in previous public enquiries, and has published on the internet. The Tribunal has also made a point of hearing witnesses who have had dealings or views of Kevin Fulton prior to his evidence so that this evidence may be put to him.*

*The notes of his interviews would be as described above, with the caveat of the knowledge of his importance as stated. However, in light of Kevin Fulton’s unique status to the Tribunal and mindful of the rights of those under his allegations, the Chairman has undertaken to review the Tribunal’s records for inconsistencies on behalf of the main party named by him. No prejudgment will be made as to the weight attached to any such inconsistency found, but as broad a disclosure as possible will be made (subject only to issues of protection of life and state security).*

*Any party still dissatisfied with the course taken may make submissions either in writing or in session to the Chairman.”*

1.6 Peter Keeley has of course attended at the Tribunal voluntarily and in circumstances where he was not compellable. He gave oral evidence over 3 days, subjecting himself to cross-examination from all parties represented. In that regard, the Tribunal can have no concerns that “those in the

frame" have in any way been hindered from thoroughly testing his evidence and credibility. The Tribunal is also no doubt aware that PETER KEELEY attended at the Tribunal under armed guard which is demonstrative of the threat to his life that currently exists by virtue of his activities as a British Army agent. It will also be strongly submitted on behalf of PETER KEELEY that in attending at the Tribunal voluntarily, he did so without inuring to himself any benefit, contrary to suggestions made by other parties.

1.7 On the issue of witness credibility, reference is made to the dicta of Lord Pearce in *Onassis and Calogeropoulos v Vergisi* [1968] Lloyd's Law Reports p 431:

*"Credibility" still now in general involves wider problems than mere demeanour "which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be". Credibility covers the following problems. First, is the witness a truthful or untruthful person; secondly, is he, though a truthful person, telling something less than the truth on this occasion, or, though an untruthful person, telling the truth of this occasion? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained him. Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism often used in accident cases, that with every date that passes the memory become fainter and the imagination becomes more active . . . And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process.'*

1.8 In *R v Murphy Moen and Gilmour* (Court of Appeal, unreported, 4 January 1993) Hutton LCJ stated at page 7

*'Where a trial judge considers that a witness has told a lie or a number of lies in relation to part of his evidence, no general rule can be laid down as to whether the remainder of his evidence should be accepted or rejected by the trial judge. That will depend on the particular facts and circumstances of the individual case (the judge then quoted from Phipson on Evidence, 14th edition, which is replicated in 15th edition, at para 6-16):*

*"Unlike admissibility the weight of evidence cannot be determined by arbitrary rules, since it depends mainly on common sense, logic and experience. For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness*

*must be brought to bear upon the facts elicited. The weight of evidence depends on rules of common sense." "*

1.9 In dealing with conflicts of evidence between the PETER KEELEY and other witnesses, the Tribunal is invited to consider all of the above factors together with the existence of corroborating evidence or information in arriving at its conclusions on PETER KEELEY's evidence. What follows are submissions into the key aspects of PETER KEELEY's evidence, namely (i) the Narrow Water explosion, (ii) the Omeath Bomb Factory, (iii) the Breen & Buchanan murders, (iv) the Tom Oliver murder and other detail relevant to the assessment of PETER KEELEY as a witness of fact. Submissions are also made in respect of Owen Corrigan, being a person named by PETER KEELEY as having colluded with PIRA, and a rebuttal of criticisms made of PETER KEELEY.

## B. Narrow Water

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### The Evidence given by PETER KEELEY

- 2.1 In his Statement of Intended evidence dated 25<sup>th</sup> January 2008 and 14<sup>th</sup> May 2010 PETER KEELEY said:

*"I can't say when I first became aware that Owen Corrigan was a friend of Dundalk republicans. I have heard lots of stories from Mooch and in particular in relation to the Narrow Water bomb. While you might take it as a big thing it was no big thing. It was a story I had heard which had been ongoing over a long period of time. In relation to Narrow Water, Brendan Byrnes was caught on the motorbike with wires or something and apparently stuff disappeared as well. They should have had him banged to rights. They should have had, in police terms, enough to do him either for a bomb or for membership but apparently all the evidence disappeared. He wasn't charged. The suggestion was that the "friend" had taken care of it but I don't know if this is true or not. I never heard of any other reference to any other member of the Garda in this connection."*

- 2.2 In his oral testimony to the Tribunal on the issue, PETER KEELEY's evidence was as follows:

#### Day 66 (cross-examination by Counsel for the Tribunal), p127 line 20 onwards

**484 Q. Just one last thing, Mr. Fulton; you gave a statement to Judge Cory?**

**A. Yes.**

**Q. And how did that come about?**

**A. I was contacted by a journalist who said that there was, again it was a person of a victims' group called William Frazer. At this stage, I didn't know William Frazer or his victims' group. At this time, I was in London. I didn't even know there was an investigation by Judge Cory. In England, you don't hear of these things because no one covers it. It's the same as this Tribunal, no one is covering it. And the journalist asked me would I speak to William Frazer because this group, FAIR, had done their own investigations and looked into things, so I said yes, so I talked to them, and he had asked me about, again, the Garda, the IRA units in Dundalk. He says, "Would you come to Dublin and speak to this Judge?" I said, "Yeah, yeah, that is OK." So I did come to Dublin with him. I mean, and it ended up after that, this is the victims' group that I did visit, which is FAIR, and listened to these people, yes.**

**486 Q. And did they appear to have information that -- did William Frazer, for example, seem to have information that corroborated what you told Judge Cory?**

**A. He did, he had other information as well going back as far back as the Narrow Water -- you know, the bombing in Narrow Water. I mean, his group seemed to have done a lot of research into certain things.**

**487 Q. But the evidence that you gave Judge Cory was, very simply, in relation to this, this murder, isn't that right?**

**A. Yes.**

**488 Q. And you haven't elaborated much on that, it would appear?**

**A. No.**

**489 Q. Yes. Thank you very much, Mr. Fulton. I am sure there will be lots of questions people will want to ask you.**

**Day 67, (Cross-Examination by counsel for Owen Corrigan p18 line 31 onwards)**

**31 Q. Could you try and be more specific, Mr. Keeley, as to when, by date, you first became aware that Owen Corrigan was assisting the IRA?**

**A. By date, I couldn't, sir, but one instance I was told of as well many years ago was after the Narrow Water bombing, that it was said that Owen Corrigan had helped the IRA at that time.**

**32 Q. Now, Mr. Keeley, you weren't in the IRA at the time of the Narrow Water bombing?**

**A. No, but I had heard it after that, yes.**

**33 Q. OK. So when did you hear that?**

**A. I can't remember the exact date, sir.**

**34 Q. The Narrow Water bombing was in August 1979, isn't that correct?**

**A. Yes.**

**35 Q. You got involved with the IRA or you started to, I think your language was hang around with 'Mooch' Blair in around 1981 or 1982, isn't that so?**

**A. That is correct, yes.**

**36 Q. Did you become aware of Owen Corrigan's alleged assistance at that time?**

**A. It would have been around that time, and while I was hanging around with 'Mooch' Blair and people like that in Dundalk.**

.....contd

**Q 61 to 94**

**61 Q. MR. O'CALLAGHAN:** *Mr. Keeley, I now want to ask you about the type of assistance that you allege Owen Corrigan provided to the IRA. You said a few moments ago that you heard he had provided assistance in respect of the Narrow Water investigation, is that correct?*

**A.** *That is correct, yes.*

**62 Q.** *That was in August 1979, you had no involvement with the IRA at that time?*

**A.** *Absolutely none, no.*

**63 Q.** *You had just joined up in the British Army at that time?*

**A.** *Yes, yes.*

**64 Q.** *What did you hear about his involvement in Narrow Water?*

**A.** *I had heard that some of the evidence that was held by the garda was something to do with a motorbike or something or firing mechanism or something went missing after the garda had got evidence.*

**65 Q.** *OK.*

**A.** *Whether it's true or not, I don't know, but that is what I heard.*

**66 Q.** *I just want to try and be specific with you. So what you heard was that a piece of evidence, you think perhaps a motorbike?*

**A.** *Something to do with a motorbike or a firing line, you know a firing pack, yes.*

**67 Q.** *And that this had been a piece of evidence that had been obtained at the scene by An Garda Siochana?*

**A.** *Must have been.*

**68 Q.** *Is that what you believe it to be, because you are the person who heard this now?*

**A.** *You have never heard this before?*

**69 Q.** *I've never heard it from you before.*

**A.** *But I have heard that, yes.*

**70 Q.** *Can you be detailed? You have no difficulty in talking when you want to talk about certain matters, I'd like you to elaborate and be articulate about this?*

**A.** *That is all I have heard. How can I elaborate any more? Either part of a motorbike or firing pack, evidence had went missing, that is the easiest way to put that.*

**71 Q.** *Who did you hear this from?*

**A.** *I can't remember who I heard that from.*

**72 Q. Did you hear it from a member of the Provisional IRA?**

**A. More than likely it would have been, yes. I can't remember the exact person. There is lots of things were said.**

**73 Q. OK. So you think you heard from a member of the Provisional IRA that Owen Corrigan had assisted in destroying evidence, is that correct?**

**A. Yes.**

**74 Q. When did you hear that?**

**A. Again, sir, I am not great on dates. I can't remember the exact date. Can you remember what you did two weeks ago, can you, at 9:30 a.m. on Monday morning?**

**75 Q. I am sure I could.**

**A. Well, you are very good.**

**76 Q. I am asking you about this particular Narrow Water investigation. You heard that Owen Corrigan assisted in destroying evidence?**

**A. Yes.**

**77 Q. Yes. Are you aware that Owen Corrigan had no involvement in the investigation into Narrow Water?**

**A. I have no idea that he had any involvement or no involvement in it, no.**

**78 Q. He had no involvement other than questioning one man called Burns, that is his --**

**A. Brendan Burns it was, yeah.**

**79 Q. Brendan Burns. He had no involvement. He was not involved in the scene at the detonation of the bomb. Does that cause you any concern about the accuracy of the information you had given?**

**A. No, you just asked me what I heard and I told you what I had heard.**

**80 Q. I followed it up by asking you does that cause you any concern about the accuracy of the information that you were given?**

**A. Concern to me, I'm just repeating what I had heard because you had asked me the question. It doesn't matter -- I mean, it is nothing to do with me, you know.**

**81 Q. Does it cause you concern about the accuracy? You were told, and presumably you believed, that Owen Corrigan had interfered in that investigation?**

**A. That is what I had been told.**

**82 Q. And did you believe that?**

**A. Maybe at the time, yes, I do. And did he or did he not, I don't know.**

**83 Q. I know, but you were told it, isn't that so?**

A. Yes.

84 Q. And you believed it when you were told it?

A. I just repeated what I was told.

85 Q. But is it fair to say that you believed it?

A. Sometimes I don't believe everything I am told.

86 Q. OK.

A. Yes.

87 Q. But you included it in your statement to the Inquiry, isn't that correct?

A. Read it out to me. I can't remember my statement to this Inquiry.

88 Q. This is what you said in your statement, which was signed on the 1st of March this year, not that long ago and you state the following: "I can't say when I first became aware that Owen Corrigan was a friend of Dundalk republicans. I have heard lots of stories from 'Mooch' and in particular in relation to the Narrow Water bomb. While you might take it as a big thing, it was no big thing; it was a story I had heard which had been ongoing over a long period of time. In relation to Narrow Water BB" - which I presume is Brendan Burns - "was caught on the motorbike with wires or something, and apparently stuff disappeared as well. They should have had him bang to rights, they should have had, in police terms, enough to do him either for a bomb or for membership, but apparently all the evidence disappeared. He wasn't charged. The suggestion was that the 'friend' had taken care of it, but I don't know if this is true or not"?

A. Yes.

89 Q. And you stand over -- that is your account of your knowledge of Narrow Water?

A. Yes.

90 Q. When I tell you that Owen Corrigan was not involved in the investigation on the ground, would you agree with me it's very difficult and unlikely that he could have interfered with that investigation?

A. Well, you are telling me that now, I will have to take your word for that.

91 Q. But in fairness to Mr. Corrigan, do you not think it's very unlikely that he could have interfered with evidence if he wasn't involved in the investigation on the ground?

A. I don't know what way their evidence was stored. I am only telling you. You asked me a question, let me finish, you know. I don't know what way their procedures were in Dundalk when evidence was taken or anything else. Is a person able to tamper with stuff? I don't know. You will have to go into the garda and find out what way they operated.

92 Q. Yes. So in effect, Mr. Keeley, you have no evidence, really, to suggest that Owen Corrigan compromised Narrow Water, isn't that a fair assessment?

A. I am saying that is what I heard and -- I didn't say it's evidence, it is what I have been told.

**93 Q. In fairness to Mr. Corrigan, it's a serious allegation to make against him, and you have made more serious ones. You don't have any evidence to substantiate the Narrow Water investigation?**

**A. Just what was said.**

**94 Q. OK. And do you think 'Mooch' Blair said that to you?**

**A. More than likely it was 'Mooch'. 'Mooch' was a person I went about with most in the IRA, yes.**

**Q 807 – 810 (Cross Examination by Counsel for An Garda Siochana)**

**807 Q. Now, in your statement you say that it was at this stage that you learnt of Mr. Corrigan?**

**A. Right.**

**808 Q. That would appear to be after November 1986?**

**A. Again, sir, the dates... I am hopeless with dates, sir.**

**809 Q. And that you had learnt that from Mr. Blair?**

**A. Yeah.**

**810 Q. Now, can you tell us -- it was at this stage you say you learnt about it. What did you learn about him at that stage?**

**A. At that stage I was going up and down to Dundalk to 'Mooch' Blair. I was basically getting in with him again, and it's just a case of where we're talking about Narrow Water, different things. I mean, when you are hanging about with IRA people you talk about lots of things. And the chat, 'Mooch' Blair is actually a very talkative person so he is.**

2.3 To summarise, PETER KEELEY stated that he had heard stories from Mooch Blair, one of which was that evidence had apparently disappeared after the Narrow Water explosion site was examined by An Garda Siochana. He heard Owen Corrigan's name associated with this allegation. He believed it related to something to do with a motor bike that Brendan Byrnes was on after the event, perhaps a firing mechanism, and that one of those involved was "caught with wires" but for some reason nobody was charged. PETER KEELEY was given this information at some point in the early 1980s when he was in Dundalk and associating with Mooch Blair.

2.4 PETER KEELEY's evidence is, by his own admission, generalised and non-specific. Nor does he attest to having any direct evidence of the allegations contained in the substance of what was relayed to him. The Tribunal have heard from numerous RUC

and AGS witnesses who were present in the aftermath of the Narrow Water explosions and involved in the subsequent investigation and crime scene preservation. From that evidence, it emerged that there were two sites on the southern side of Narrow Water, and therefore under the responsibility of AGS, namely the site where Michael Hudson was found, and a site which was suspected to be the point from which the bombers detonated the explosive device.

### **Rebuttal of Criticisms of PETER KEELEY's evidence**

2.5 The following matters have emerged from subsequent evidence before the Tribunal on the matter.

2.6 Owen Corrigan, through his counsel, questioned the veracity of the information which PETER KEELEY relayed to the Tribunal on the basis, *inter alia*, that he had "no involvement in the investigation into Narrow Water" and was "not involved in the investigation on the ground", other than to question Brendan Burns. It is submitted that this assertion, upon which the veracity of PETER KEELEY's evidence was challenged, was false.

2.7 On Day 85, Garda Sergeant Michael Mullaney gave evidence. It was based at least in part on detailed and meticulous contemporaneous official notes. The salient portions of same are now set out:

**147 Q. I see. Now, I think that on the 27th of August, sometime after the explosions, two men were stopped on a motorcycle, is that correct?**

**A. I understand that is correct, but again I have to explain that I didn't see them, but I do know that they were arrested, they were detained.**

**148 Q. Yes, and where were they brought to after the initial arrest?**

**A. They were taken to Omeath Garda Station.**

**149 Q. Yes.**

**A. And they were detained at a place called Aghameen A-G-H-A-M-E-E-N, Aghameen, and it's on the road to Dundalk, from Omeath to Dundalk. It's about four and three-quarter miles or so from Omeath.**

**150 Q. And the Tribunal has previously heard that these were men known as Brendan Burns and Joseph Brennan, is that correct?**

**A. That's right.**

**151 Q. And when they were brought, then, to Omeath, for how long were they kept in Omeath Station, can you recall?**

**A. Well, there is a record to say that they were there from 5:30 p.m. to 7:40 p.m.**

**152 Q. And where were they moved to then?**

**A. They were -- I understand they were moved to Dundalk Station.**

**153 Q. And do you know who transferred them?**

**A. According to the record, it was Detective Sergeant Owen Corrigan, Garda Edmond P. Smith. Now, the other, Sean Gethins -- I have a photostat copy here of entries in the diary in reference to the prisoners, if the Chairman would like to see it?**

**154 Q. Is this by way of a Custody Record?**

**A. No, no, it's not a Custody Record.**

**155 Q. This is your own diary, is it?**

**A. It's the diary, yes, the station diary.**

**156 Q. The station diary, is it?**

**A. Yes.**

**157 Q. Okay.**

**CHAIRMAN: It's very detailed.**

**.....contd**

**Cross Examination by Counsel for PETER KEELEY**

**238 Q. And did I hear you right when you said you went up there, you went up there out of curiosity, really, to have a look?**

**A. Well, I wanted to be -- I wanted to familiarise myself with the situation and what was happening, yes.**

**239 Q. Absolutely. As the senior Sergeant on the ground, you would have needed to have known whether there was one scene or two scenes. Again, I am not criticising you for it, but you went up to have a look yourself, isn't that right?**

**A. As a matter of fact, to say that there were two scenes, that's probably incorrect. I would say that it was one scene and two sites within the one scene.**

**240 Q. Two sites within the one scene, yes. Thank you very much for that. And when you went up, you're absolutely in no doubt that Detective Sergeant Owen Corrigan was there?**

**A. Well, yes, I am satisfied he was.**

241 Q. You are absolutely positive about that. And you --

A. He was there with other members. He didn't come on his own.

242 Q. Oh, no, I am not suggesting, but I'm suggesting you are absolutely positive that he was there on the 29th. Now, you also recall him talking to men that you think were from the RUC?

A. One man.

243 Q. One man?

A. Yes.

244 Q. But he was talking to one man who you think was from the RUC, but there were possibly six or more other men that came with that one man, is that correct?

A. Well, five along with that man.

245 Q. Five along with that man. And there is a conversation that they have with Detective Sergeant Owen Corrigan, isn't that right?

A. Well, he happened to be the person who was convenient to where this man was. He didn't seek him out.

246 Q. That's right. And at that time, Inspector McCabe had gone off for his food?

A. Yes.

247 Q. So, would it be fair to say that at that time Detective Sergeant Corrigan would have been the senior man at that site?

A. That's debatable now because -- well he was the Sergeant in charge of the subdistrict there.

248 Q. Well, certainly would you agree with me that he would have been the senior Garda Detective Sergeant at that scene?

A. He'd have been the only Detective Sergeant at the scene.

249 Q. So he would have been the only Detective Sergeant at the scene?

A. Yes.

250 Q. Can I ask you, you weren't privy to anything that was discussed between the man that you have described as the RUC officer and Detective Sergeant Owen Corrigan, were you?

A. I was present -- there was no further discussion. He just asked the question, there was no further conversation. And Owen Corrigan answered the question. He answered it twice, actually.

251 Q. About McCabe?

A. Yes.

252 Q. Well, did you remain at that scene or did you leave?

A. I would say that I left fairly soon afterwards, but I don't recall leaving it now. The mind is blurred now. I don't recall leaving it.

253 Q. If you have a hole in your recollection, it was sometime ago, I don't want you saying anything that you think might be wrong. But do you recall, or you think you probably left very shortly after the RUC arrived, is that right?

A. Well, I am unable to help you now on that.

254 Q. Well, that's very fair. Can I ask you, were you on duty the next morning?

A. Well, I cannot recall, but it would be shown here if I was.

255 Q. And more importantly, were you on duty at that site the next morning?

A. No, I don't think I returned to the site afterwards.

256 Q. You see, the evidence has been from two persons that there was a conversation with Owen Corrigan on the night of the 29th, and when they returned the following morning, that's when there was some anger because the site had been interfered with. You weren't present the following morning to see any fallouts or anger?

A. No, I don't recall, I don't recall any further visit on my part to that scene. And I never -- I never heard, I never heard that anybody complained about the scene being disturbed. It's only in recent times that this has been mentioned.

257 Q. No, I fully appreciate that. Lastly, I want to read you a piece of transcript, as it were, because I appear for a man who was questioned by Mr. O'Callaghan, who is counsel for Mr. Corrigan, you understand that, and it's part of the duty of a counsel to put what his client is going to be saying. And it was put to my client, I am going to read you this -- this is the 14th December, it's page 17, line 18.

MR. O'CALLAGHAN: Day?

258 Q. MR. RAFFERTY: It's 14th of December, day -- it's the second day of Mr. Keeley's evidence, Day 66, is it? Or 67. Page 17, line 18, question 77. Sorry, Mr. Mullany, we were just waiting for My Friend to -- have you found it? It's Day 66. We'll just get the transcript for -- I'll actually give My Friend a copy of the transcript here.

MR. O'CALLAGHAN: I have got it.

259 Q. MR. RAFFERTY: I apologise, Mr. Mullany. I just want to read you this portion.

"Question: Yes. Are you aware that Owen Corrigan had no involvement in the investigation into Narrow Water?

Answer: I have no idea that he had any involvement or no involvement in it, no.

Question: He had no involvement other than questioning one man called Burns, that is his --

Answer: Brendan Burns?

Question: Yes. Brendan Burns, he had no involvement, he was not involved in the scene at the detonation of the bomb, does that cause you any concern about the accuracy of the

*information you have given?"*

*Now, the reason I am quoting that to you is I want to ask you, it's correct that Owen Corrigan interviewed Mr. Burns, isn't that correct?*

*A. Yes, Owen Corrigan and the two detective officers who were with him, they transferred those two prisoners, one of whom was Brendan Burns, from Dundalk Station, leaving at 7:40 of the 27th August.*

*260 Q. Thank you. And it's also correct, from your note, that Owen Corrigan was present at the site where Mr. Hudson's body was on the ground?*

*A. Yes.*

*261 Q. And it's your recollection and in your own words "No doubt about it" that Owen Corrigan was up at the scene of the detonation site?*

*A. He was.*

2.8 The log notes compiled demonstrate Owen Corrigan arrived at the scene where Michael Hudson was shot, on 27<sup>th</sup> August 1979, at 6.30pm. (Q194 Day 85). As can be seen from the above evidence, Garda Mullaney then gave evidence about a group of men, perhaps RUC officers (Q166) who arrived a couple of days after the explosion, one of whom asked for Inspector McCabe (Q170). Mr Mullaney's impression was that this visit was cleared or arranged with someone from AGS (Q172). These men took no part in investigating "except to go up and look at this particular spot where they thought the detonation took place" (Q176). They made no notes there, and Mullaney was asked how long they were there for (at the suspected detonation site). The following evidence was then given:

*179 Q. You don't know. Okay. Do you recall whether Detective Sergeant Corrigan was there [at the suspected detonation site] when they were there?*

*A. He was, because it was Detective Sergeant Corrigan that this man addressed when he inquired to know where Inspector McCabe was.*

2.9 Garda Mullaney's evidence was given some 20 odd days after PETER KEELEY had given evidence. Counsel for Owen Corrigan stated at Q195 "and Mr Corrigan's recollection corresponds with that; he says that he has recollection that he was down at the Hudson scene where Mr Hudson was shot, so there is no dispute between you and him on that, that he was there". It is submitted that this is markedly different from the case put on his behalf to PETER KEELEY. The two sites, namely the Hudson scene and the "nest site" were obviously in any event geographically and temporally proximate (450 yards). As noted above, at Q239

Sergeant Mullaney in any event indicated that he was of the view that whilst there were two 'sites' there was one crime scene which incorporated the Hudson site and the nest site. The questioning of PETER KEELEY on Day 66 on behalf of Owen Corrigan clearly implied that he was not present "on the ground" at all whether at the Hudson site or the nest site. That transpired to be incorrect. Garda Mullaney also gave further evidence that Owen Corrigan was the only Garda Detective Sergeant at that scene at the time the RUC men were present (Q248 and 249). Garda Mullaney's evidence was unequivocal. His evidence was also based on contemporary notes. Counsel for Owen Corrigan accepted the accuracy of those notes (Q191 "I'm just saying it is an accurate record of what occurred on those days, isn't that so"). Therefore the suggestion that Owen Corrigan had "no involvement on the ground" or was "not involved in the investigation" is not correct. Garda Mullaney's evidence clearly shows he was in fact present at the suspected detonation site.

2.10 Witness 68 gave evidence on Day 78. He was formerly a Detective Chief Superintendent with the RUC. He gave evidence that he was appointed by William Mooney (RUC) as Senior Investigation Officer in relation to the Narrow Water investigation. He stated in his evidence (Q 29, Q51, Q65) that Mr Corrigan was there at the scene. He confirmed that in fact Mr Corrigan was brought over to the Warrenpoint side to conduct investigations (Q35). W68 also stated that he "met him on the south side of the border and he was with Inspector Keeney and Chief Superintendent Flaherty." He went on to state at Q65 as follows: "I can assure you we were told that he was the senior investigating officer". W68 prepared two reports, one in October 1979 which was a preliminary report for the attention of his authorities and a second, more comprehensive written report, on a later date. In relation to the first report, W68 confirmed that the basis for some of the content of that report was from "verbal briefings which Mr Corrigan had been good enough to give us at that time" (Q71).

2.11 W68 also stated in his first report dated 9/10/79 as follows:

*"with the assistance of the Gardai and their Technical Bureau an area of dense undergrowth was located on the southern side of the border. This area had been trampled down and a cigarette butt was found there. This was indicative of the flattened area being used as a lookout for the persons who detonated the bomb. Topographically, this scene would have been ideal for the detonation of the bomb on the York trailer. It was a slightly elevated site directly overlooking the main Newry/Warrenpoint Road" (see Q20 of Day 78).*

He also confirmed that from recollection one of the items at the scene was a "milk bottle" (Day 78, Q61 pg 28 line 28). W68 gave evidence to the effect that the only way Dr Hall's team would have been given access to carry out inspections was upon express authority by AGS. He also recounted (in answer to Q53) that the site identified had been obliterated and that when Dr Hall returned he described him as being "enraged". On page 27, lines 13 and 14, W68 described the cutting back of the area as "totally and absolutely inexplicable".

2.12 W68 also felt "optimistic" about a prosecution, because all of the forensic matters detailed in his first provisional report, whilst not enough on their own, could be taken in conjunction with the connection to the motor cycle and the trailer (Q23 and 24). The problem was that the two suspects were being spoken to as the second bomb went off (pg 12 lines 8 and 9) but the RUC were always hopeful that either a formal interview would occur or the southern authorities would provide their notes of interviews with the suspects. This did not happen. Nobody was charged.

2.13 Dr Alan Hall, forensic scientist, gave clear evidence on Day 77 that he had attended at site which was suspected to be the detonation point. He noticed immediately that there was an area of ferns flattened and a number of items of discarded food wrappings, bottles and the like of which he took the view would provide a rich line of inquiry for further forensic inspection. This visit took place on the 29<sup>th</sup> August at about 6.30 pm in the evening. Dr Hall spoke with a plain clothes garda officer who was present at the scene and he indicated that he intended to return the next morning with a suitably equipped team to analyse the area. He left with the clear belief that the plain clothes Garda officer in charge of the site agreed to preserve the scene. This accords with the evidence of Garda Mullaney (Q244, Day 85). When he returned early the next morning, the area in question had been "obliterated", by which he meant that all the undergrowth had been cleared away or cut down and the items that were present were no longer there. He indicated he was furious and he spoke to the plain clothes Garda officer, who he confirmed was the same officer as the day before. As is indicated in his statement, Dr Hall stated that the "plain clothes officer who I had been in contact with the previous day advised me that he had taken the action in order to recover evidence". As Dr Hall had been there late the evening before and arrived early the next morning, that meant such an evidence-recovering exercise must have taken place in the very early hours of the morning when it was light, or during the night when it

was dark. Dr Hall indicated that he did not imagine that one would undertake a fingertip search of the area in the dark (Q539). He described the actions as “unbelievably incompetent or deliberately obstructive” (Q550).

2.14 W69 gave evidence on Day 76. The most salient portion of his evidence, at Q281, is as follows:

*Question: In fact, sir, I don't know if a huge amount turns upon whether you are right or Sergeant Corrigan is right as to whether or not he was there, but can I just clarify from you, are you suggesting to the Chairman that Mr. Corrigan in some respect organised for the ferns to be cut in order to prevent the forensic team from having access to the evidence?"*

*Answer: Well, I clearly saw the forensic scientist talking to this plain-clothes officer, the man I believe is Sergeant Corrigan, and he turned and I was a few feet behind him, and definitely there was an arrangement made that the scene would be preserved to the following morning and the scene wasn't preserved."*

Therefore W69 confirms that according to his evidence the plain clothes officer was Sergeant Corrigan. Dr Hall also confirms that the same man was present the night before and the next morning. Henry McCann also confirmed on Day 79 at Q257 that everyone from Dundalk would have been involved in the investigation in some fashion.

2.15 Raymond White said on Day 71

*"253 Q You also indicated in the statements that you recollect some frustration in relation to the investigation of the Narrow Water bombings?"*

*A Again, its simply commentary from CID officers that would have been present. There was a high level of frustration, obviously, given the numbers that were killed, and that, and that the crime scene, when eventually they got to it, looked as if it had been very seriously trampled, or the grass, in fact, one officer suggested it was even cut, so that, from their perspectives, any forensic evidences recovered from that would have been seriously contaminated and, therefore, perhaps, of no value to the courts. I wasn't at Narrow Water, and it's simply a reflection of what CID officers that I subsequently served with, passed comment on afterwards."*

*254 Q And were those CID officers who had been involved in the Narrow Water investigation?"*

*A That's correct."*

## Summary

2.16 There was also a clear watering-down of the position of Owen Corrigan as put to Sergeant Mullaney in comparison with the case put to PETER KEELEY by Counsel for Owen Corrigan on day 67. Garda Mullaney had the following assertion put to him:

**“208 Q Now, my client, Mr Corrigan, does not recollect and says he wasn’t up by the nest site, but its 32 and a half years, but his recollection is that he wasn’t there”**

2.17 That case put on behalf of Owen Corrigan on Day 85 clearly allowed for the possibility that perhaps he was present but that if he was he could not recollect it given the passage of time. It is noted that the explosion at Narrow Water was a landmark atrocity which came on the same day as Lord Mountbatten was killed. It is submitted that if ever a day would remain in someone’s memory it would be the day of such an event. There are issues with credibility insofar as it being suggested that Owen Corrigan may have forgotten about his very presence at Narrow Water in the aftermath of the incident, regardless of what individual duties he was carrying out that day. We know from the above site that he was at the scene for more than one day, that Garda Mullaney regarded there being two sites but one scene, encompassing the detonation point and the Hudson scene, that whenever Inspector McCabe was not present Owen Corrigan was the only detective sergeant on site, that he had conversations with members of the RUC, that he informed one of them that he would arrange for the preservation of the site, and that he had given instructions to scythe the area to allow for forensic inspections, that he attended at the northern side of the river, that he spoke with W68 to give him some detail for his preliminary report to his superiors, that he transferred the prisoners to Dundalk Garda station and that he also interrogated one of them. In light of all of that, to indicate that he was not “on the ground” or “involved in the investigation” is simply wrong.

2.18 If it is accepted that it would not have been possible to forget about his involvement at Narrow Water, then one has to ask why he tried to assert in his cross –examination of PETER KEELEY that he was not at the scene. One can only conclude that it was out of a motivation to distance himself from the allegation contained in the substance of the information PETER KEELEY received.

2.19 The other issue, relating to a destruction of the nest site, if accepted by the Tribunal, is suggestive of a level of obstruction in the investigation and as such provides oblique corroboration of the allegation contained in the information which Peter Keeley heard. The main issue which flows from this evidence is that the suggestion the Owen Corrigan was not present at the site, being that which was put to PETER KEELEY in cross-examination, was not correct. For the reasons noted above it is submitted that this cannot be simply down to a failure in recollection, but rather was an attempt by Owen Corrigan to put clear water between himself and the allegation. One wonders why he attempted to do this if there was no substance in the allegation.

## C. Omeath Bomb Factory

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### The Evidence

3.1 It is submitted that the evidence given by PETER KEELEY in respect of this incident is very important for the Tribunal in the assessment of PETER KEELEY as a witness. It is an example, we say, of PETER KEELEY having given detailed and specific information which was corroborated in many respects. It also remained clear and consistent throughout the robust cross-examinations by counsel for Owen Corrigan and Counsel for AGS. In that regard it is submitted that it provides a clear example of credibility and frankness of PETER KEELEY's evidence and is therefore of direct relevance in considering other modules of his evidence.

3.2 In his statement to the Tribunal, PETER KEELEY stated as follows:

*"I can't tell you how it came about that Corrigan was Patsy O'Callaghan's friend but I know that on a number of occasions when devices were found and things went wrong, stuff was caught. In one particular case in Omeath it was a ton of explosives and a Hiace van that was hijacked. Somebody in Newry let things down. The bomb was for the ferry in Warrenpoint. The gardai got wind of it and went to the bomb making factory....At that time everybody from the South had to go on the run. I think it was about three days later, we got word from Patsy O'Callaghan that everything was clear. Our friend looked after it; its cleared, there's nothing. I take our friend to be Owen Corrigan and this was not the first time I had heard of him. I heard his name mentioned in different conversations at different times." –page 10-11*

3.3 The evidence given by PETER KEELEY at the Tribunal appears in the following portions of the transcript.

- Day 66 - pages 2 – 5 (Cross-ex by Tribunal Counsel, Q314-322)
- Day 67 - pages 6 -49 (Cross- ex by Counsel for Owen Corrigan, Q 202-278)
- Day 67 - pages 51-56 (Cross- Ex by Counsel for AGS Q 856- 870)
- Day 68 - pages 57 – 64 (Re-examination by Tribunal Counsel Q603 – 614)

Day 66 - Cross Examination by Tribunal Counsel

*A. It was actually one of worst kept secrets within our unit. I mean this person had helped on a number of occasions when things went wrong, when there was explosive finds in Omeath as well, "our friend". There was fingerprints on equipment inside in a place in Omeath, I think it was 1000lb bomb, at that stage it was one of the biggest bombs ever found in the Irish Republic.*

**315 Q.** *I have been trying to check that out, Mr. Fulton. On the 28th of August 1989, there was a bomb factory found in Omeath?*

*A. In a garage.*

**316 Q.** *Would that be?*

*A. It would be, yes, just above the -- when you go into Omeath there is like a small square -- no, a crossroads, and it's just as you go up on the hill and on the left-hand side that is where the house.*

**317 Q.** *That would have been, of course, later the same year that bomb factory was found, and I think at the time you told the Tribunal, in your statement, that your fingerprints, everyone's fingerprints --*

*A. Everybody's fingerprints was on equipment inside where the bomb was being manufactured and I think there was a Hiace van as well that had been hijacked in Newry, Ballyholland.*

**318 Q.** *And what was the outcome of that panic?*

*A. Well, basically, at that time when I went up to Dundalk, 'Mooch' and all had to go on the run. He was already -- well we all believed he was on the run from Northern Ireland, so he went on the run from his own house. So did also, Man C.*

**319 Q.** *What about yourself?*

*A. Well, I was just told to go north and stay north.*

**320 Q.** *Mm-hmm.*

*A. Yes.*

**321 Q.** *And when did you -- when did you get the all-clear that you could come back again?*

*A. I think it could have been about 24, 48 hours later word came a back from Mr. O'Callaghan that everything is clear, it's OK, go back home, there is nothing, it's all cleared up.*

**322 Q.** *Did he give a reason why it was all cleared up?*

*A. Well basically "our friend" had cleared it up. I don't know how he cleared it but there was fingerprints on the equipment inside it.*

DAY 67 – Cross Ex by Counsel for Owen Corrigan

202 Q. I will move on. I now want to go on and talk about the three specific examples of what you say is Owen Corrigan colluding with the IRA?

A. Yes.

203 Q. Omeath, Fintan Callan's Céilí House and, finally, the murders of Chief Superintendent Breen and Buchanan. I want to start with Omeath. You are aware from what Mrs. Lavery said to you yesterday that the Omeath bomb was seized on the 28th of August, 1989, isn't that correct?

A. If you say that is the date.

204 Q. There is no dispute of that. In what way did Owen Corrigan help the IRA?

A. When the bomb was actually caught in the place, there was a lot of tools there. The bomb wasn't totally finished. And basically, the guards raided it, caught all the stuff. And 'Mooch' and everybody had to go on the run. They were already living in Dundalk but had to run because their prints were everywhere. So I moved 'Mooch' and that about, got him off-side. And I think it was two days later we got a message back from Patrick that "our friend" had sorted things out. So I took it that the fingerprints and all had disappeared. so I took it that "our friend" was the same Owen Corrigan.

205 Q. OK. And I have to try and tie you down to detail here. What did Patsy O'Callaghan say to you after --

A. No, he didn't say to me. The message came through from Mickey --

206 Q. Just describe to me again?

A. Man A on the cipher.

207 Q. You were making a bomb in Omeath, isn't that correct?

A. They were making a bomb in Omeath, yes.

208 Q. And you were there?

A. I was party to it.

209 Q. You were party to it. And it was raided by An Garda Síochána?

A. By the Garda, yes.

210 Q. And were you apprehended by An Garda Síochána?

A. No, sir, I wasn't. I wasn't even arrested.

211 Q. And were you at the scene at the time of the raid?

A. No, neither was 'Mooch' or anybody else.

**212 Q. OK. So you are stating that the bomb factory was raided by An Garda Siochana at a time when no one was there?**

**A. Well, 'Mooch' nor the bomb-makers were there, no.**

**213 Q. OK. And then, what happens after that? 'Mooch' says to you that...**

**A. They had to get off-side because -- I mean they knew their fingerprints were on things inside the garage where the bomb was.**

**214 Q. And do you not work with gloves when you are making bombs or anything?**

**A. People do work with gloves. A lot of people grinding sometimes don't use gloves because, number one, at that stage it's not actually a bomb, you are grinding your fertiliser, and before you mix it up, people will touch things. I mean, there is cases where 'Mooch', before a bomb went from Omeath up to Newry, he had actually put his fingerprint on the bomb. Sound madness, but he has done it.**

**215 Q. OK. So the premises in Omeath was raided?**

**A. Yes.**

**216 Q. You left the area, although you weren't there at the time**

**A. I wasn't there at the time, no.**

**217 Q. Where did you go after it was raided?**

**A. I was living in Newry at the time.**

**218 Q. What were you told to do?**

**A. When I went back down to Dundalk to pick up 'Mooch', to move him away, the stuff had been caught and get him off-side. And he went to a friend's house somewhere else.**

**219 Q. Did you go in Northern Ireland or in the Republic of Ireland?**

**A. No, he was still in the Republic of Ireland.**

**220 Q. And how long after that do you hear from Patsy O'Callaghan?**

**A. I think it was about two days or so, it was very quickly after it.**

**221 Q. And who did Patsy O'Callaghan speak to?**

**A. We got the information from Man A on the cipher.**

**222 Q. Mickey Collins, he has been named already?**

**A. Mickey Collins. Oh, that's all right, Mickey Collins, yeah.**

**223 Q. So you were with 'Mooch' Blair in a safe house in the Republic of Ireland?**

**A. I visited him, I didn't stay with him, no, I drove him because he wasn't driving at the time.**

**224 Q. And what information did you get at that stage?**

**A. Just that it was okay to come back, everything is all clear, "our friend" --**

**225 Q. Who gave you that information?**

**A. It would have been Mickey Collins.**

**226 Q. And did he give it to you or to 'Mooch' Blair?**

**A. I would have heard it from him, but I also heard it from 'Mooch' as well. So he would have got a call to the place where he was staying.**

**227 Q. And what did he say to you?**

**A. Just that "our friend" -- it's safe to go back, all the stuff is gone, "our friend" had helped. Don't pin me down to exact words. But it worked out that basically "our friend" had looked after things, the stuff is gone, the evidence.**

**228 Q. So Mickey Collins tipped you off --**

**A. Yes.**

**229 Q. -- that things were okay?**

**A. Yes.**

**230 Q. This is what you said in your statement at page 10: "The guards got wind of it and went to the bomb-making factory in Omeath. The guards went in and got all the stuff: There was a grinder, there was tools, there were fingerprints of 'Mooch' Blair, my fingerprints were there. At that time everybody from the South had to go on the run, I think it was about three days later we got word from Patsy O'Callaghan that everything was clear, our friend looked after it, it's cleared, there is nothing. I take 'our friend' to be Owen Corrigan. And this was not the first time I had heard of him."**

**Now, you told the Chairman a few moments ago that it was Mickey Collins who tipped you off?**

**A. Yes.**

**231 Q. In your statement you told the Chairman it was Patsy O'Callaghan. Which is correct?**

**A. Everything that would have come from Owen Corrigan would have come through Patsy O'Callaghan. That was the main contact. Mickey Collins was about the only one in Dundalk had a telephone and Mickey would have been the main contact with Patsy as well. I mean, Owen Corrigan would never have contacted 'Mooch', me or anybody else. Not even Mickey Collins.**

**232 Q. Why wouldn't Owen Corrigan have contacted 'Mooch' or yourself? Sure he was an IRA mole, according to you.**

**A. Usually when you work with different teams you work with one specific person, and I have said in the statement that Owen Corrigan's contact within the IRA was Patsy O'Callaghan.**

233 Q. Why wouldn't Owen Corrigan have contacted 'Mooch' or yourself?

A. He would never have looked me anyhow. Why would he contact me?

234 Q. Because you are in the IRA?

A. No. Listen, that's nonsense. There is about 60 or 80 IRA men roaming around Dundalk. He is not going to go to any of those people. It's like, I was working for British intelligence, does that mean I would go to an ordinary RUC man on the street and tell him? Of course not.

Q. It was Mickey Collins or Patsy O'Callaghan who told you that everything was sorted out?

A. It would have come from Patsy O'Callaghan at the very start. It could have come from no one else but him. I know, you're nitpicking on my statement, yeah, yeah.

236 Q. You said Mickey Collins a few moments ago to the Chairman?

A. Mickey Collins would have told me as well, yeah.

237 Q. So both of them told you, Mickey Collins and Patsy O'Callaghan?

A. Patsy O'Callaghan would not have told me. Patsy O'Callaghan would have no dealings with me, sir. I was a driver that drove Mickey out and just the Internal Security stuff, that's it. I went out to Patsy O'Callaghan with Collins. I would not even have talked to Patsy O'Callaghan on the street.

238 Q. You got your information from Mickey Collins that there was no longer a problem?

A. But it all would have come from Patsy O'Callaghan, yes.

239 Q. What did -- because Mickey Collins is the only one that spoke to you, isn't that correct? What did he say to you?

A. Well, basically "our friend" -- everything is clear, I could go down and collect 'Mooch'. Don't ask me --

240 Q. I'm not asking you word-for-word. From your recollection, what did he say to you?

A. Basically that it was all clear, the fingerprints are gone and I could go down and pick 'Mooch' up, which I did.

241 Q. And where did he say to you that "our friend has sorted it out"?

A. He would have said that in Dundalk.

242 Q. Tell the Chairman what he said to you, how he said it?

A. Again, sir, word-for-word I can't remember.

CHAIRMAN: Tell me what he said.

A. Basically that "our friend" had looked after things, fingerprints are gone, I can take things back.

**243 Q. MR. O'CALLAGHAN: And you interpreted "our friend" to be Owen Corrigan?**

**A. Absolutely, yes. Yes, sir.**

**244 Q. OK. Did you ever hear of a man called Joseph Patrick Parker?**

**A. No.**

**245 Q. Think about it?**

**A. Oh, yes, that is the guy that owned the house in Omeath. Hold on, just because the IRA used a house, it doesn't mean that everybody would know the person that owns the house. We had safe houses that we used for interrogation, I know who owned one of those houses, I'd know the other house, but I don't know who the owner is, you know. Just because someone has actually used the premises to make a bomb doesn't mean that everybody knows them. They don't.**

**246 Q. Was anyone convicted of the Omeath bomb?**

**A. I believe that the man that owns the property, the actual owner, was convicted of that.**

**247 Q. He was convicted of possession of the bomb in December 1989, isn't that correct?**

**A. I don't know the exact date when he was convicted.**

**248 Q. And going back to my original question: Had you heard of Joseph Patrick Parker at the time in Omeath?**

**A. Not at that time, no, sir.**

**249 Q. When did you first become aware of him?**

**A. I became aware of him when he was convicted and then I had to look up when, roughly, for this bomb, exactly where it was, the Tribunal wanted to know, they wanted to pinpoint the date, which bomb it was on about. At that stage it was the biggest bomb that the guards found at that time.**

**250 Q. He was convicted of possession of explosives, isn't that correct?**

**A. If you say that is what --**

**251 Q. Do you believe he was a member of the IRA?**

**A. No, I don't. A lot of people that helped the IRA, sir, are not members of the IRA. A lot of people will give technical support, they'll give premises, they will let you use their house, their car, but they are not members of the IRA.**

**252 Q. When Mickey Collins said to you that "our friend" had sorted it out, did he go on and say that the fingerprints have been removed?**

**A. Well, that is what we took it as because we all knew our fingerprints were on things inside the garage.**

**253 Q. I don't want you to tell the Chairman what you took it as. Did he specifically state to you "our friend has got rid of the fingerprints"?**

**A. No, but we knew the fingerprints was on the things. That is why everybody was in trouble.**

**254 Q. So am I to take it that all he said to you was "our friend has sorted it out"?**

**A. Yeah. And I took it that the fingerprints had gone. When everybody was safe to come home, that is what it had to mean.**

**255 Q. And in order to sort out that issue with the fingerprints, Mr. Corrigan would have had to have been involved in the Omeath inquiry, wouldn't he?**

**A. I don't know why he has to be involved in it or have access to it, I don't know.**

**256 Q. Well, what do you think?**

**A. No, it doesn't matter what I think. You are now nitpicking on things. You are on to me about things, not what you think, what did he tell you? Now you are asking me what did I think.**

**257 Q. Mr. Keeley, you were trained by the British military?**

**A. Yes.**

**258 Q. You are a double agent, a successful one, according to yourself. I am just asking you to comment upon what I am stating to you. Would you agree with me that, in order for Owen Corrigan to compromise this investigation, he'd have to have been involved in the investigation?**

**A. He would have access to something; maybe not even involved but access to something. Yeah, you would need access to something or someone, yes.**

**259 Q. And you believe that Owen Corrigan compromised this inquiry don't you?**

**A. Which inquiry.**

**260 Q. The Omeath investigation?**

**A. That is what I have been led to believe, yes.**

**261 Q. But you believe it?**

**A. Well, that is what I believe because that is what I said, yes.**

**262 Q. And you have stated it to this Tribunal as a fact, that he interfered with that inquiry to the benefit of IRA men, isn't that so?**

**A. Well, that is what I believe, yeah.**

**263 Q. But you have stated it in your statement as a fact?**

**A. Yes, well that is what I believe, sir, yes.**

**264 Q. I want to suggest to you, Mr. Keeley, that this is but another example of you lying to this Tribunal?**

**A. No, sir, I am not lying to this Tribunal.**

265 Q. And let me tell you why it is an example of you lying to this Tribunal: Owen Corrigan was not part of the Garda team that raided the scene or investigated the scene at Omeath. That operation was run by Superintendent Tom Connolly. Mr. Corrigan did not work in any respect with Mr. Connolly on that operation. That is a matter that would be confirmed by An Garda Síochána. How do you explain that?

A. Well, you are just after explaining it, aren't you?

266 Q. How do you explain the fact that you have told this Chairman and this Tribunal that Owen Corrigan interfered with the Garda inquiry into Omeath and he wasn't even working on it?

A. Well, I have told the Inquiry "our friend" and I took that to be Owen Corrigan, sir.

267 Q. Are you suggesting that it may not have been Owen Corrigan?

A. No, but I am telling you, I believe that that was Owen Corrigan because when it was stated it was "our friend", and the only person that I knew of as "our friend" was Owen Corrigan, no other Garda.

268 Q. Would you not agree with me from your experience, Mr. Keeley, that it's simply not possible for Mr. Corrigan to have compromised that investigation since he didn't work on that matter with Superintendent Tom Connolly?

A. Well, basically, if he didn't work on it, had he any access to anybody on it or any access to the materials?

269 Q. No, he didn't, would be the answer.

A. I mean, I compromised IRA jobs that I wasn't even on, that is the best way to compromise it, when you are not actually on it.

270 Q. Well, do you have any other explanation for this obstacle in your story, other than what you have just said?

A. No, absolutely not, no.

271 Q. Of course, there is one other explanation, which is that you are telling lies about Owen Corrigan on the Omeath inquiry?

A. No, sir, I am not telling lies on the Omeath inquiry.

272 Q. You said in your statement that the Gardai got wind of the Omeath bomb factory?

A. Yes.

273 Q. If Owen Corrigan was an IRA mole, why didn't he tip you off about the fact that the Gardai were going to raid this factory?

A. I don't know. If other people is on it -- I mean, put it like this; IRA moles get into things, I mean IRA volunteers do things as well. I am sure agents have done things and didn't tip their handlers as well.

274 Q. You must have been furious with Mr. Corrigan after the Omeath factory was raided?

**A. No, why would I be furious with him?**

**275 Q. Because he was an IRA mole who was supposed to tip you off and didn't?**

**A. Why would I be cheesed off with that?**

**276 Q. Well, was Patsy O'Callaghan cheesed off, to use your words?**

**A. No. Put it like this: If the guards are going to raid somewhere and you have one mole there, just because your mole can't get to you, there is other people in their unit is going to raid the place anyhow. Your mole may not have had the opportunity to tell you or he just may not have told you.**

**277 Q. Did no one in the IRA say to you afterwards, why didn't our mole tip us off about this?**

**A. No, no one said anything like that.**

**278 Q. I have to suggest to you that if Owen Corrigan was an IRA mole, he would have tipped Patsy O'Callaghan off, as you suggest, about the Gardaí about to raid the Omeath factory, would you agree with that?**

**A. Maybe if he knew about it well in advance, he may have.**

**Day 67 CROSS – EXAMINATION BY COUNSEL FOR THE AGS**

**856 Q. Did you tell your handlers of the specific location in Omeath that was raided on the 28th of August, 1989?**

**A. No, I hadn't got round to that, but somebody else had told them, sir.**

**857 Q. And how long had you been using it without having told them?**

**A. When I went down to that Omeath, with that guards in Omeath I was only down in it once or twice. Sometimes you used a place, you might use it once and not use it for a year. Sometimes you moved somewhere else. But Omeath was a very prominent point for kicking off because it was very close to the border with Newry. It was a rural area, and there only was only one garda station with very few guards. Sorry, sir.**

**858 Q. Are you prepared to accept at this stage that Mr. Corrigan had nothing to do with that, that find?**

**A. Well, again, I was told that Mr. Corrigan had cleaned up, "our friend". And I took "our friend" to be Mr. Corrigan.**

**859 Q. And that in fact there are still extant the various samples that were taken --**

**A. From that, is there?**

860 Q. -- from that place?

A. Well, we were told it was safe to come back, that there was no fingerprints. And the thing is, nobody was arrested.

861 Q. Including overalls, clothing, gloves.

A. Is there fingerprints?

862 Q. And including some prints which were not identified?

A. Well, there you go.

863 Q. It wasn't a case that they had been cleaned up?

A. Well, that is what we took -- I mean, we would not have that information, sir. I did not have that information. I am not a police officer.

864 Q. Of course. I take it you knew that the man who was charged and convicted in relation to it, Mr. Parker?

A. I didn't actually know him. There would be no reason for me to know him, sir.

865 Q. But you would have known that he was prosecuted, presumably?

A. I knew a long time after the incident, yes, he was. The old man was actually done. There was him and his granddaughter, I think, were staying at the house. But I mean, when the team went down they would have no contact with the bombers, nothing.

866 Q. Well, would this not have been a matter that concerned you, that this raid had occurred?

A. Why would --

867 Q. And clearly somebody had provided information in relation to it?

A. No, sir, it happens all the time. I mean, in Newry different things -- some of my information was cross-referenced by -- I mean I was working as an agent within a unit, and it was quite clear there was one, maybe two more people within that unit that were also providing the information that I was providing, sir.

868 Q. Did this not concern you?

A. Would it concern me, sir?

869 Q. Because you told us that you were, maybe not at this stage but that you were in the Internal Security Unit?

A. Yeah.

870 Q. Is that not what internal security units are supposed to be finding out?

A. Internal security, sir, all that my job was to do usually was to get the van, to get the groceries, go with the arresting party, drive it and lift the person and give it in. I didn't question suspects or anybody else. And you have got to remember, sir, I was looking after myself because I knew what I was doing.

**Day 68 - Re-Examination by Tribunal Counsel**

**603 Q. Thank you. If I could -- just, again, a very quick matter. The Omeath bomb factory, that was on the 28th of the 8th, 1989?**

**A. Yes.**

**604 Q. And you said that there was concern about fingerprints?**

**A. Yes, ma'am.**

**605 Q. I think that you had been arrested in the South for the first time on the 30/6/'89, is that correct?**

**A. I can't remember the date, but I was only arrested once in the Republic of Ireland, yes.**

**606 Q. And were your fingerprints on file then?**

**A. Yes, they were taken by Garda Tom Molloy, who was very rough at taking my fingerprints. I will never forget it.**

**607 Q. Yes. And can you tell the Tribunal exactly what articles in that find were you concerned that fingerprints would be found on?**

**A. Everyone was concerned, because sometimes you wear gloves; there is other tools you would touch and not really worry about gloves, because we are only human.**

**608 Q. Specifically what --**

**A. There would be grinders and tools, saws, and everything else, that was in the place.**

**609 Q. So the grinder would be of significance?**

**A. Yes, yes, yes.**

**610 Q. Yes. And that -- would that have been one of the big grinders that you described before?**

**A. It would be one of the big grinders. And the thing is, when you are using those, rubber gloves have a tendency, always, to rip. And inevitably, everywhere you go you will leave fingerprints.**

**611 Q. So you would expect to find fingerprints primarily on the grinder?**

**A. On the grinder and other tools and inside the building.**

**You would have thought, when the police would go in, they would fingerprint the whole area, and any fingerprints they get they would look at the people, you know.**

**612 Q. Yes.**

**A. And some of the people who were there are all well-known,so they were.**

**613 Q. Thank you, because we want to just check that out a bit further. Now, I presume that the fingerprints of all the other people who participated in that bomb factory would have been on file from earlier occasions --**

**A. I am sure they would be on file, North and possibly South as well. Yes, they were all known IRA players --**

**614 Q. Yes.**

**A. -- who were actually on the run because of terrorist crimes in Northern Ireland.**

**3.4 Consideration of the transcripts of evidence shows that PETER KEELEY gave extremely detailed evidence given about this incident, which included the following**

- (i) The fact that it was a 1000lb bomb, making it one of the biggest finds by the AGS**
- (ii) The correct date of the incident was given (28/8/89)**
- (iii) PETER KEELEY was able to describe the type of building in which the bomb factory was located and its precise location in Omeath**
- (iv) PETER KEELEY described the van to include its make (Hiace) that was used to go to the garage, also describing where that van came from (Ballyholland, Newry)**
- (v) PETER KEELEY described the items that were left in the garage (grinders and saws)**
- (vi) PETER KEELEY stated that there would have been fingerprints on these items from a number of persons. This was confirmed by the evidence of John McGee on Day 79.**
- (vii) PETER KEELEY remembered that he had only been fingerprinted once before in the Republic of Ireland and the gard that took his fingerprints (Tom Molloy), thus confirming at the time of the raid his fingerprints would have been held by AGS. This was confirmed by Aidan Daly, garda fingerprint expert, Day 83 question 94 (pg25).**

- (viii) PETER KEELEY also confirmed that the other individuals present would also have had their fingerprints held by AGS and also in Northern Ireland.
- (ix) PETER KEELEY indicated that after the raid everyone had to go on the run for a period until he was told by Micky Collins that 'everything was clear'. This period was described as being 24-48 hours or maybe 3 days. This was confirmed by Doc 663, read into the record on day 112 by Brian Brunton:

***"Document Number 663.***

***Information received by An Garda Siochana in 1989 suggesting that a prominent PIRA activist was not residing at his home address for a period of some weeks during September 1989. The information further suggested that the reason for his absence was that he was in fear that his fingerprints had been identified on the bomb found in Omeath on 28 August 1989."***

- (x) PETER KEELEY was living in Newry at the time but he had to go and pick up Mooch Blair who didn't drive whenever they were given the all clear.

#### **Rebuttal of Criticisms of PETER KEELEY's evidence**

3.5 Counsel for Owen Corrigan (and indeed AGS) cross-examined PETER KEELEY very closely about the aspect of his evidence wherein he said that his cohorts knew the coast was clear because Micky Collins had told him "our friend" (whom he knew as Owen Corrigan) had sorted it. PETER KEELEY assumed this meant that "our friend" had actively got rid of fingerprint evidence. They criticised PETER KEELEY's evidence, and invited the Tribunal to draw adverse inferences in relation to his credibility on the basis that the evidence of McGee and Aidan Daly categorically demonstrated that in fact the fingerprint evidence had not been gotten rid of at all. When one considers the wording used in cross-examination, there was no ambiguity in this regard. At one point Counsel for Owen Corrigan stated "this is another example of you lying to this Tribunal" (Day 67, Q264).

3.6 However, this strident allegation is based upon a misapprehension of PETER KEELEY's evidence. *PETER KEELEY repeatedly made it clear that he was not specifically told that fingerprint evidence had been gotten rid of. He stated that that was what he assumed to have taken place:*

**Day 66**

**A322 "I don't know how he did it....."**

**Day 67**

**A204 "so I took it that the fingerprints and all had disappeared"**

**A224 – PETER KEELEY recounts how Micky Collins said "everything is all clear"**

**A227 – PETER KEELEY stated "don't pin me down to exact words"**

**A252 – "..that is what we took it as.."**

**253 Q. I don't want you to tell the Chairman what you took it as. Did he specifically state to you "our friend has got rid of the fingerprints"?**

**A. No, but we knew the fingerprints was on the things. That is why everybody was in trouble.**

**254 Q. So am I to take it that all he said to you was "our friend has sorted it out"?**

**A. Yeah. And I took it that the fingerprints had gone. When everybody was safe to come home, that is what it had to mean.**

3.7 The reason he assumed this was the case was because he knew that the fingerprints of those present in the garage were on the various items used in constructing the bomb. As noted above, this fact as been corroborated independently by John McGee. Mr Parker was the only person prosecuted (the owner of the property) however there were numerous fingerprints taken from the garage none of which matched Mr Parker's prints and that in respect of which no positive match was ever made.

3.8 PETER KEELEY concluded that if the coast was clear, then that meant that the fingerprints had been gotten rid of. However, he specifically said that was an assumption on his part. Another way of relaying that the "coast was clear" was if one had inside information that no fingerprint matches had been made of the samples lifted from the garage. That would have the same effect. The important point which flows from a close consideration of the transcripts set out above is that the suggestion that fingerprints had been destroyed was only an assumption on his part.

3.9 What the evidence of McGee and Daly did show clearly was that upon the technical branch receiving the lifts, it would have taken a couple of days for the forensic experts to establish whether or not there was a match.

*Cross-Examination by Counsel for PETER KEELEY (Day 79, McGee)*

**458 Q.** *Thank you. Can I ask you, the guards in charge of this investigation, particularly if there is fingerprints, would want a pretty quick turnaround; they'd want to know by a phone call at the very least quite quickly whether or not you had been able to identify anybody, wouldn't they?*

**A.** *I'm sure they would appreciate a phone call if an identification was made.*

**459 Q.** *And this would be prioritised in your work, when you did this scene, you would have been looking at the fingerprints immediately, wouldn't you?*

**A.** *Yes.*

**460 Q.** *And it would be the most natural thing in the world to ring them up within a day or so and say, "Look, I am sorry, no fingerprints." Wouldn't it?*

**A.** *Yes.*

**461 Q.** *So, the guard in charge of the investigation would have known within about 48 hours whether or not there were any fingerprints, wouldn't he?*

**A.** *He wouldn't know within 48 hours whether a search had been completed. I am sure it took more than 48 hours.*

**462 Q.** *Well, I am asking you in relation to when you lift the fingerprints, I asked you a couple of days, you said yes, and I am saying that's 48 hours, is it not?*

**A.** *Sorry, I believe counsel mentioned a couple of days, I didn't.*

**463 Q.** *Yes, I am asking you within a couple of days you would have looked at these fingerprints, the recovered fingerprints, wouldn't you?*

**A.** *Lifted them and recovered them, yes.*

**464 Q.** *And you would have not let them sit there, you would have looked at them?*

**A.** *Yes.*

**465 Q.** *And that's why I asked you within a couple of days you would have identified whether or not there were any useful fingerprints?*

**A.** *Oh, yes I would, yes.*

**466 Q.** *And within a couple of days you would have notified the investigating officers that there were or were not any good fingerprints?*

**A.** *Yes, that's correct.*

**467 Q. That's all I was asking you.**

**A. Sorry, I misunderstood you.**

**468 Q. I understand. You are just confirming that I am right on that, within a couple of days you would have told the IO that there were or weren't any fingerprints?**

**A. That's correct, Judge.**

**469 Q. Thank you.**

(See also Day 83, p58 – 59, questions 253 255 where Aidan Daly confirms that Magee would have carried out fingerprint procedure roughly within 48 hours and reported back to officer on the ground.)

3.10 Therefore after the passage of time of 2 days or so, the relevant fingerprint expert would have reported back to the Garda officer in charge of the investigation in Dundalk that there was no positive match. It is that information alone that would have been required by a garda colluding with the IRA to inform them that the “coast was clear”. This timeframe corroborates PETER KEELEY, he states that those involved were on the run for 2-3 days.

3.11 The assumption that PETER KEELEY arrived at, namely that the fingerprints had been destroyed, was not in fact necessary. The words “everything is clear” could equally mean that it was safe to come home, that there was no match. It is also the clear case that PETER KEELEY was saying that Micky Collins told him what “our friend” has said. One could not rule out that armed with the information that no match had been made, the person providing the information, in an attempt to ingratiate himself to those to whom he was providing the information, could overstate or exaggerate his role in order to raise his standing with those persons.

3.12 Counsel for Owen Corrigan also asserted that Owen Corrigan could not have been the person who relayed to those involved that the ‘coast was clear’ because he was not involved in the investigation. However, it is submitted that it is fairly obvious that one would not have to be involved in the investigation to simply learn that there had been no successful fingerprint match. Bearing in mind this was the biggest bomb find in history in the Republic of Ireland, one can easily conclude that it would have been a talking point amongst fellow gardai in Dundalk Garda station. Alternatively, one could simply become aware that there was no positive fingerprint match by having access to the file or other documentation that came into the station that recorded that fact. Owen

Corrigan was the Senior Detective Sergeant. It has no doubt not escaped the Tribunal's attention how 'up to speed' Owen Corrigan was in relation to other incidents even when was not centrally involved in investigations. See for example Owen Corrigan's lengthy testimony on the Breen and Buchanan murders where he referred to the many aspects of that incident based on 'intelligence' which he gathered of his own accord, notwithstanding that he was not in any way involved in the investigation (see Day 105 Q32, Day 104 Q215 and 216). All Owen Corrigan had to do was to be aware of the fact that no fingerprint match had been made in order to collude with PIRA in relation to the aftermath of the Omeath Bomb find.

- 3.13 Counsel for Owen Corrigan also asserted that if Owen Corrigan was indeed a mole, the raid would never have happened because he would have tipped off the IRA. That assertion only carries weight if Owen Corrigan knew about the raid in advance, and no evidence was given at all, least of all by Owen Corrigan, that this was the case. It is an agreed fact that Owen Corrigan was not involved in the investigation.

**Day 79, Cross Examination by Counsel for Owen Corrigan of John McGee**

**417. Q. Would you agree with me, sir, there is no mention of my client, Detective Sergeant Corrigan, anywhere there?**

**A. That's correct.**

**418 Q. On any of the documentation?**

**A. That's correct.**

**419 Q. As being involved in the investigation?**

**A. That's correct.**

- 3.14 Therefore, not being involved with the team that actually orchestrated the raid, it is submitted that he is extremely likely not to have known of the details of the impending raid which would rule out the possibility that he would be able to "tip off" those involved.

### **Corroboration of PETER KEELEY's evidence**

3.15 We refer to the matters set out at 3.4 above.

3.16 Reference is also made to the evidence of John McGee (Day 79) and Aidan Daly (Day 83) that there was indeed fingerprint evidence at the scene.

3.17 John McGee corroborated PETER KEELEY's evidence as to the items present in the shed, the Hiace van and the precise location of the garage.

3.18 Both fingerprint experts also indicated that a report would have been made to the Garda in charge of the investigation within 48 hours or so, which is precisely the time that PETER KEELEY says those involved were on the run for.

3.19 Doc 663 corroborates the fact that those involved went on the run. It is correct that the time period of the précis is different than the period given by PETER KEELEY, but this information upon which the précis is based has presumably come through a number of hands, and it is non specific as to the length of time. It could simply refer to "a week". Importantly it notes the right month and the right individuals insofar as Mooch Blair is a "prominent IRA activist".

### **Summary**

3.20 All in all, PETER KEELEY's evidence in this regard has been in depth and detailed, and has been corroborated. No aspect of it has been found to be contradicted in any regard. There are aspects of it which could, it is submitted, only be known by someone who was there, such as the make of the van, the type of equipment in the garage, the fact that fingerprints had been left. As stated above, the assertion that there is a flaw in his evidence because fingerprints were not destroyed proceeds on a misapprehension of PETER KEELEY's evidence as described above. Once that is appreciated, his evidence has stood up robustly and credibly to the closest of cross-examination and the further

adduction of specialist AGS evidence on the matter, and finally also by AGS' own intelligence précis (Doc 663). Document 663 clearly corroborates PETER KEELEY on the fact that those involved went on the run. One can also logically conclude that persons go 'on the run' to evade detection for a criminal offence. It is also an established fact that those person who had done so, came back. It is submitted one would only return once it was established that it was reasonably safe to do so. At the time, being linked by forensic evidence to such a find would have in all probability resulted in an extremely lengthy jail sentence. One can therefore also conclude that the persons who were involved in the Omeath bomb factory simply must have known that it was 'safe' to return, otherwise they would not have done so. It is submitted that the only way a suspect could reasonably take the view that the 'coast was clear' was if they had some insight or information into the status of the police investigation. It is also worth noting that upon their return there were no further arrests of those involved in connection with the bomb find. To that extent, the substance of the information which PETER KEELEY heard from Micky Collins was correct; the coast was clear and there were no further arrests.

3.21 Importantly, this is also evidence of collusion between AGS and PIRA by "our friend", namely Owen Corrigan.

## D. Breen and Buchanan Murders

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### The Evidence

3.1 It was accepted by PETER KEELEY in evidence that he had no direct evidence of collusion in relation to the murders which are the subject of the Tribunal's direct attention. He was also not involved in the operation as an IRA operative. To this extent, it is worth noting that PETER KEELEY has not in any way attempted to 'beef up' or add to his evidence in relation to these murders, which can simply be summed up by saying that in the aftermath of the operation he heard Micky Collins say "our friend helped out". It has been put to PETER KEELEY by Counsel for Owen Corrigan that his evidence has been manufactured and is not true, and it has also been asserted by Owen Corrigan that his evidence comes about by virtue of a British-led conspiracy on the heels of the Weston Park meeting. Perhaps at this juncture it is worth considering hypothetically for a moment that this contention is correct. If that were to be the case, would PETER KEELEY not provide information of a much more damning nature in relation to the Breen & Buchanan murders? If this was part of a plot or conspiracy to frame Owen Corrigan, or if PETER KEELEY wished to incriminate Owen Corrigan for his own ends (although it is completely unclear how doing so would assist PETER KEELEY), and in so doing manufacturing testimony, would his allegations on the murders which are the subject of the Tribunal's considerations not go much further?

3.2 The relevant excerpts of PETER KEELEY's statements and oral testimony in this matter are set out below.

#### ***Cory Statement (9<sup>th</sup> September 2003)***

*"I was in Dundalk on the day of the ambush of Breen and Buchanan. I am aware that, after the ambush took place, my senior IRA commander was told by a member of PIRA that Garda B had telephoned to PIRA to tell them that officers Breen and Buchanan were at the Dundalk station". – p2.149 Cory Report*

#### ***Statement to Tribunal***

*"I was in the home of Mooch. We heard murders on the news. Mickey Collins, who had a phone in his house and was nicknamed "reports coming in" told us about a shooting. He lived around the corner. I had no knowledge of the planned operation. Mickey Collins said he had been talking to people. He had news of a shooting. It turned out to be the two policemen. Mickey Collins said it was "our friend". He said this later in the evening. He said "our friend was involved in the operation". I believe that person to be Owen Corrigan because he is the same "our friend" who was involved in other things where things got cleared up. Passed on to MI5 and Military intelligence. I did not deal with the RUC. I did not work for SB." - p13.*

*"Reverting to the murders of the RUC officers, apparently the IRA were meant to abduct them and interrogate them but somebody let off a shot and this plan went to pieces. This I learnt from a discussion I had with Mooch Blair in the house the following day." - p16.*

*"Breen and Buchanan would have had to have been physically identified by a trusted person before the unit is ordered to go out." - p17.*

*"In terms of preparing for an operation the IRA rule was that it had to visually see the target on three consecutive days driving his vehicle before the OO gave permission to put the up and under and this was an operation to be carried out on one's own but that could change in a moment. If the IRA knew that two persons meet for a drink in a particular hotel once a month and want to get two individuals they would have somebody watching the hotel even for a period of five or six months if that is what it takes to carry out the operation. If somebody rings in and says "they are here" the IRA can assemble ten or fifteen people." - p18.*

*"In terms of setting up the operation to murder the RUC officers, I think it might have taken an hour or two to mount the operation. To revert to the analogy of people meeting in a hotel, you meet someone in the place, be it a waiter in the hotel. It is not feasible for a volunteer to sit and watch the hotel on the off chance. Such person would need to be really trusted by the IRA to go out like that. There would have to be no doubt about the target whatsoever. If you are a republican supporter and rang in with an identification the IRA wouldn't send anyone out on your word but if you were somebody who was 100% assigned, somebody trusted, the IRA would send the whole army out on your word" - p18.*

*"It is unlikely that a volunteer would sit outside a police station having it under surveillance. The gardai were honest most of the time. The stake out in an empty house is not necessarily reliable because people can become bored and turn to watching TV or something else. Volunteers don't sit on standby all the time. Something has to activate the stand-by. It does not pay to have IRA men sitting waiting, even in Dundalk, sitting with their guns ready to go. There is a good chance they*

*could be bumped by the security forces. My view is that there was something definite; an item of positive information came from someone that the RUC officers were there. In this case it would have come from our friend. I have no reason to doubt what I was told. I didn't know of any other gard as "our friend". – p19.*

*Aside from Judge Cory, my handlers, some journalists and Jeffrey Donaldson I have not spoken to anybody about Owen Corrigan's involvement. – p19.*

### **Evidence to Tribunal**

- Day 66 - pages 3 – 34 (e-in-c)
- Day 67 - pages 34 – 96 (Cross Ex by Counsel for Owen Corrigan)
  - Pages 97 -104 (Cross Ex by Counsel for Owen Corrigan)
- Day 68 - Pages 104 – 107 (Cross –ex by Counsel for Mooch Blair)

#### **Day 66 p82 (lines 20 onwards)**

**284 Q. Now, do you recall the day of the Breen and Buchanan murders which, of course, is why we are here today?**

**A. Yes.**

**285 Q. And where were you on that particular day?**

**A. I was down at 'Mooch's' house. Most days I was down in 'Mooch' Blair's house.**

**286 Q. When you say "down," that means you would have travelled from Newry?**

**A. Yes, from Newry; I would call it going down to Dundalk.**

**287 Q. Yes. OK. And was he there himself?**

**A. He was there, yes.**

**288 Q. He actually told us that he was gone out of the house for several hours, four hours, I think, that day?**

**A. No, no, he was in the house. Most times when I would be down he would be with me.**

**289 Q. Had you any reason to be there if he wasn't there?**

**A. No, if he wasn't there I would have no reason to be there at all.**

**290 Q. Yes. And when you were there, were you working together or talking or what were you doing?**

**A. We'd always be talking. Sometimes we would be in his kitchen, he would be soldering things, he would be making things with plastic tubing.**

**291 Q. And on this particular day, was it any different to any other day, as far as you were concerned?**

**A. At the time I was down, no, it was no different than any other day until then, A came over and basically say "reports coming in".**

**292 Q. Was A living nearby?**

**A. A lived in the next square, it was, like, across the road and in another street.**

**293 Q. And he was part of your unit, is that right?**

**A. He was part of that unit, yes.**

**294 Q. Yes, and he came over and he said?**

**A. Well, we always nicknamed him "reports coming in" because he had the phone, he always watched the TV and people would ring him.**

**295 Q. Did 'Mooch' Blair have a phone?**

**A. No, not at that time, no.**

**296 Q. And he didn't have a car either?**

**A. He didn't have a car either, no.**

**297 Q. So "reports coming in"?**

**A. Yes, it was a nickname we gave him because usually when TV channels and things happen, reports are coming in of a shooting or bombing so we nicknamed 'A' that: "reports coming in".**

**298 Q. A when did he come over to the house, do you think?**

**A. He came over, basically, after the incident had happened.**

**299 Q. So this would have been sort of late afternoon?**

**A. Yes.**

**300 Q. About perhaps after five?**

**A. At tea time, yes.**

**301 Q. Yes. And did you know anything in advance about this?**

**A. No, absolutely not, no.**

302 Q. Did any of you know anything about this?

A. No, I don't think he knew anything about it either. None of us did. The thing is, South Armagh was a different unit than us in Dundalk. Sometimes the people in the unit in Dundalk were used with South Armagh. A lot of times you wouldn't have got much warning, they would come in and what you'd call "bumped", so they'd come in and say "we need five, six people" and in IRA terms, you can be away for an IRA minute, which could be two days, or you could be away for a normal minute which would be five minutes in ordinary time. IRA time was different than real time.

303 Q. So you might be "bumped" into an operation, to use your expression, in other words, you would be asked to join into something?

A. You could be. I remember one time I went up to meet with 'Mooch' and others, just my normal daily routine, and I was told by his wife that he was gone. And at that time he was away for, him and a few others, there was about four of this team were all gone, and I think it was two, maybe two days before they came back. But at that time there was an attack in Derryard, which was a PVCP, which was a permanent vehicle checkpoint, and again, when 'Mooch' and all came back and said "you were lucky because if you had have been here you would have been away with us." South Armagh came and took people and they didn't know where they were going until they got to their place and got their weapons and did the attack. That attack, there was actually one Scottish soldier was shot dead and I think there was -- it sounds maybe hard for people outside the IRA to understand but there was, there was a very dark sense of humour within people in organisations, I think it helps them cope with what they do. But they actually took the Browning 9mm pistol, and it was a great trophy, off the young soldier that was shot down, so they stole his 9mm pistol, and I got that confirmed from handlers as well, that that did happen. I don't believe that was in the papers, but the IRA attacked the Derryard checkpoint, they drove a massive lorry bomb in, it didn't detonate, but they -- I think they killed the one soldier and the army actually ran from the PVCP. The IRA shot everything up. They blew the Sangers up, everything. It was a major, major attack by the IRA. But the unit -- our unit didn't know anything about that.

304 Q. Yes.

A. And I was not on it.

305 Q. So on the 30th -- the 20th of March 1989, your unit didn't know anything about the murders of Breen and Buchanan?

A. Not that I knew of in advance and not from my -- not from A or 'Mooch'.

306 Q. Yes. Well when Man A came in, what was the information that he had?

A. Well, basically, that there was this shooting and "our friend" -- sometimes we would use the thing as "our friend". "Our friend" at that time, which was the Garda, there was only one garda that I knew as "our friend".

307 Q. So, just be very careful with this now. You are saying that there was a member of the Garda who was a friend?

A. Yes.

308 Q. Of the IRA or of your unit?

A. No, no, of the IRA. It wasn't actually our unit. This Garda was a friend of, it would have been that man from -- I am allowed to say his name, aren't I?

309 Q. Yes, you are indeed?

A. Patrick O'Callaghan.

310 Q. Just for the sake of the record, Chairman, the Tribunal did write to Mr. O'Callaghan in relation to your statement, Mr. Fulton, and he said that he "was aware of a person called Kevin Fulton. This person has been referred to in the media on numerous occasions over many years as a British agent who infiltrated the IRA. I believe that Kevin Fulton is an alias for a person called ..." and he refers to your name. "This is widely known in the wider Newry and south Armagh area. I will refer to this person as Kevin Fulton in this statement. Kevin Fulton was never at my home had Hackballscross that I am aware of, or with my assent. I have never had a friendship or any sort of relationship with a member of the Garda Síochána. I believe that Kevin Fulton is delusional. I believe he is confusing facts with the fiction of his own delusions. He has referred to matters concerning myself that never occurred, and with or without any semblance of truth. Therefore, I have no interest in viewing his intended evidence or meeting counsel for the Tribunal."

So Mr. O'Callaghan knows he is being referred to.

A. Yes.

311 Q. So, you were aware or you had a perception that there was a friend, that the IRA had a friend in the Garda?

A. No, no, I was aware of it.

312 Q. You were aware of it?

A. Yes.

313 Q. And did you, at that stage, know who it was?

A. Yes.

314 Q. Did you always know? How long had you been aware of --

A. It was actually one of worst kept secrets within our unit. I mean this person had helped on a number of occasions when things went wrong, when there was explosive finds in Omeath as well, "our friend". There was fingerprints on equipment inside in a place in Omeath, I think it was 1000lb bomb, at that stage it was one of the biggest bombs ever found in the Irish Republic.

DAY 66 continued

A. Now, the -- on the day of the murders, was there -- besides the notification that there had been murders, was there any other communication from the neighbour?

A. The neighbour: basically after that had happened, when they had spoke a bit more, it was actually turned out that the IRA had planned, well this was what I was told by them, by 'Mooch' and that, they had planned to actually abduct the two officers and take their notes and I think after that actual thing, the IRA issued a thing to all IRA volunteers, I think they gave them 48 hours or something amnesty, that they had taken the notes from these policemen and got information of it. They give volunteers an amnesty to come forward and that they wouldn't be shot down if anyone gave themselves up.

324 Q. How were you aware if that?

*A. Because we were told it. I mean everybody was told it.*

*325 Q. Was this ever in the papers?*

*A. I think it may have been, yeah.*

*326 Q. So in any event, there was an amnesty offered?*

*A. There was an amnesty to IRA volunteers: if you have been compromised, you have given information, you can come forward. I think they said, you know, you can bring a priest with you, and it would have been a way of them to purge people. People panicked. And, you know, when things like that actually happen, informants and agents do panic because I mean, at times when bodies were found on the side of the road I would get a call from my handlers and say "come down". They would give you comfort and reassurance, because everybody panics.*

*327 Q. Well, was there any other chat the day of the murders about how it might have taken place or who was involved?*

*A. Yeah, well actually what was said to me was that the IRA had actually closed, that they had volunteers on every route coming from Dundalk. That was every main road was covered. Now that would have took a lot of men and a lot of planning to do that. I don't believe that that could have been done in an hour. You know, this would have took a lot of planning, preplanning as well. I mean --*

*328 Q. How come you didn't hear about it then?*

*A. Because our unit wasn't involved in it.*

*329 Q. And so, is it the case that every volunteer has particular job to do within the IRA structure and doesn't talk to anyone else about it?*

*A. That's supposed to be the way it works, but what actually happens is I mean, if stuff happened in Newry, you sort of knew who did it. You are not supposed to and you are not supposed to talk about it, but people did talk, you know. If someone was knee-capped, you know, and you are not supposed to know who the other units are in the local area but everybody knew each other, so it was not working.*

*330 Q. And was there any other reference the day of the murders by volunteer A?*

*A. Just that "our friend" had helped on the operation.*

*331 Q. He said that on the day?*

*A. That "our friend" had helped, that is -- "our friend", yes.*

*332 Q. Yes. And what did that suggest to you?*

*A. Well, it would suggest to me someone would have to tell the people on the operation that -- it's like somebody has to tell that you your target is there. You know, normally people don't sit for days watching a place. You'd be tipped off. I mean --*

*333 Q. Would the car be enough? The fact that a car had arrived, would that be sufficient?*

*A. I can't say that. I don't know.*

334 Q. But you think that --

A. Unless someone was sitting physically watching the whole time, but was somebody physically watching, sitting outside from the IRA? I don't know.

335 Q. Well you were told at the time that all the roads in and out of Dundalk were covered, so that is a lot of men; it's a lot of exposure?

A. Yes.

336 Q. Am I correct in thinking that the IRA normally didn't work like that during the day?

A. No, you wouldn't work like that during the day. You only put your area men out when you know your target is there. I mean, when the IRA put land mines in or do an up-and-under on a car, they physically have to see, for an up-and-under, three consecutive days that your target gets into the car with no other member of the family. The IRA do have rules like that to try and stop civilian casualties.

337 Q. So there would need to be some kind of confirmation, you believe?

A. Absolutely, yes.

338 Q. And could that be -- could the confirmation be carried out by, perhaps, an ordinary vomiter or would it take somebody more important?

A. Well the thing is, an ordinary volunteer -- who has the credibility? You need pure credibility to put a unit out like that there. I mean, if someone had have went to 'Mooch' or anybody, if they have no credibility, you wouldn't put an active service unit out.

339 Q. So it would have to be somebody who was very trusted, is that right?

A. I would say very, very trusted, yeah.

340 Q. And are you suggesting that this person referred to so far as "our friend", was involved in this?

A. Well that's what I took it to be, "our friend" and there was only one person I knew as "our friend" in the Garda.

341 Q. And who was that?

A. That was Owen Corrigan.

342 Q. And did you know who Owen Corrigan was?

A. I had seen him before, as well, yes.

343 Q. So, was the reference specifically to Owen Corrigan that day or was the reference to "our friend"?

A. "Our friend".

344 Q. So it might not necessarily have been Owen Corrigan?

A. Well I took it that it was Owen Corrigan.

345 Q. *And that is because you didn't know of anyone else?*

A. *I didn't know of anyone else in the Garda, no.*

346 Q. *Could there have been someone else in the Garda?*

A. *I did not know of anyone else. Could there be? Of course there could be anybody but I only knew of "our friend".*

347 Q. *So, because we have to be obviously -- obviously we are trying to find the truth here --*

A. *Yes.*

348 Q. *-- Mr. Fulton. There was a reference on that particular day to "our friend" --*

A. *Yes.*

349 Q. *-- lending assistance to the operation?*

A. *Yes.*

350 Q. *Was there -- there wasn't mention of his name on the day?*

A. *No, it was "our friend."*

351 Q. *"Our friend". And you took that to mean Owen Corrigan?*

A. *Absolutely, yes.*

352 Q. *And subsequently, the -- when the bomb factory in Omeath was discovered on the 28th of August, 1989, was his name mentioned?*

A. *That was "our friend" again.*

353 Q. *Was his name mentioned at that stage?*

A. *No, it was "our friend".*

354 Q. *"Our friend"?*

A. *The Garda, yeah.*

355 Q. *Was there any discussion about "our friend"?*

A. *No, it was actually one of the worst -- we all knew who "our friend" was in the Garda. When I say "our friend", he wasn't anybody in our unit, nobody there was working with him, he always worked with Patsy O'Callaghan.*

356 Q. *And you knew that from?*

A. *I knew it from 'Mooch' and the people in our unit. I mean, it was one of the worst kept secrets. It wasn't even -- I mean people say "Oh God, how would you know that?" It was -- you had people from different backgrounds everywhere helping people. It was nothing -- you know, I didn't see it as --*

**357 Q. Well, do you think that this was -- I mean, did you get the impression that this was because of political conviction or was it for money or what was the impression you were getting about the assistance of "our friend"?**

**A. Well, we all knew he sold cars, he sold cars, he done wheeling and dealing, do you know what I mean? It's normal around the border.**

**358 Q. Mm-hmm.**

**A. Was he doing it for money? I don't know. Was he doing it for political conviction? I don't know. I wouldn't ask.**

**359 Q. But in any event, you don't specifically remember his name being mentioned on both -- on either of those occasions; it was just "our friend"?**

**A. It was just "our friend", and I took that to be Owen Corrigan.**

**360 Q. You took it to mean Owen Corrigan?**

**A. Yeah.**

**Cross Examination by Counsel for Mooch Blair**

**453 Q. Now, on the day of the murders, on the 20th of March, could you tell me again where you were?**

**A. I was in Dundalk. I was in Muirhevnamor, in Patrick Joseph Blair's house, madam.**

**454 Q. And what time would that have been?**

**A. Again, I didn't look at my watch. I was there most of the day, as I was most days during the week with Patrick Joseph Blair.**

**455 Q. Could you give us an indication, would it have been morning, lunchtime, afternoon?**

**A. I would have been there mid-morning and stayed, usually, until after teatime, almost six days week I would have been up with 'Mooch'.**

**456 Q. And was Mr. Blair's wife in the house at that time?**

**A. Eileen would have been there, yes.**

**457 Q. OK. Well, I put it to you that Mr. Blair was not in his house on the day in question; that he was down in the pub and in bookies and that when members of the gardaí called to his house that evening, they could see by his demeanour that he was in the pub for the day?**

**A. No, madam, he was in the house that day with me.**

3.3 To summarise, PETER KEELEY's evidence in relation to the Breen and Buchanan murders is as follows. PETER KEELEY was in Mooch Blair's house in Dundalk, and initially Micky Collins, who lived nearby came over to tell them that there had been a shooting. Later on that day, at early teatime, Micky Collins returned to the house and said to Mooch Blair in front of PETER KEELEY that "our friend helped out in the operation". The name Owen Corrigan was not mentioned, but PETER KEELEY only knew of one person that was referred to as "our friend", so he took that to mean Owen Corrigan. PETER KEELEY also gave further evidence that plan was to in fact abduct the officers, and that the PIRA had taken their notes. This evidence was corroborated by Roy McComb. As a result the IRA informed its own people of this fact and there was also an amnesty whereby those who were giving information to the RUC against the IRA, in that if they came forward no action would be taken.

3.4 PETER KEELEY was careful to say that he did not have actual knowledge of the operation or of the fact that Owen Corrigan assisted, he merely gave evidence as to what he had been told.

#### **Rebuttal of Criticisms of PETER KEELEY's evidence**

##### *Difference between Statement to the Smithwick Tribunal and to Judge Cory*

3.5 PETER KEELEY was cross-examined by Counsel for Owen Corrigan on the basis that what he had included in his statement to Judge Cory was in fact different for the evidence he had given to the Tribunal. However, PETER KEELEY explained that he did not purposely mislead Judge Cory (Day 67, Q497 onwards). It is fair to say that PETER KEELEY made assumptions based on what Mickey Collins had said. He assumed that if "our friend had helped out" that that meant that Owen Corrigan was in a position to confirm to the IRA that the targets were at Dundalk station. As Owen Corrigan's contact within the IRA was Patsy O'Callaghan, PETER KEELEY assumed that he passed this information to Patsy O'Callaghan on the day in question by telephone. PETER KEELEY made it clear when he was being cross-examined that that still was his belief (see Q733 "No, but it is correct. I mean, it was my belief that he did telephone them"). His evidence to the Tribunal made it clear that he had no direct evidence as he was not involved in the operation, and that an assumption had been made that Owen Corrigan has used a telephone to inform PIRA

members that the two RUC officers were in Dundalk station (see Day 68 Q70 "Well, that's what I assumed, yes, that's it sir"). Similarly, when providing a statement to Judge Cory, upon hearing that "our friend helped out", PETER KEELEY made the assumption that this meant Owen Corrigan was at the station, saw the officers and then telephoned his contact. The Tribunal has obviously questioned PETER KEELEY much more closely, both during the private investigative phase and then during the public hearings, than was the case whenever Judge Cory was conducting his enquiries. It is submitted that there is no material difference between what he told Judge Cory and subsequent evidence to this Tribunal. The statement to Judge Cory was a short statement which contained an assumption. The portion which concerned the Breen and Buchanan murders was only a matter of sentences; it is obvious that when it came to this Tribunal a lot more detail and information would be provided and questions asked by various representatives which would clarify and/or add to this information without in any way detracting from what PETER KEELEY told Judge Cory. For example, PETER KEELEY was able to provide additional information to this Tribunal which related to the murders which he found out from Mooch Blair in the aftermath of the murders, in relation to the plan to abduct the officers and the detail about the proposed IRA amnesty which is contained in his evidence.

#### *Timing/Logistics*

3.6 With respect to logistics, it was put to PETER KEELEY by Counsel for Owen Corrigan that if his assumption about the telephone call was correct, then Owen Corrigan could only have done this after 2.10pm (when the police officers had arrived at the station). On behalf of Owen Corrigan, evidence given by the British Army was put to PETER KEELEY to the effect that the operation had commenced at 11.30 am that morning (Q539). This evidence came from Brigadier Lisle on Day 63 (read into the record on Day 72):

*Question: Now, in 1989, specifically on the 20<sup>th</sup> March, you told us on the last occasion, of course that you weren't in Northern Ireland, but when you took up your post sometime later, did you have any opportunity to access materials of an intelligence-based nature, or otherwise, in respect of the murders of Chief Superintendent Breen and Superintendent Buchanan?*

**Answer: Yes, I did when I arrived, some weeks after it. The follow-up inquiries and collation of intelligence was still very much going on, and what could be learned from it was really the order of the day.**

**Question: Did you have an opportunity to see any intelligence analysis in respect of the day?**

**Answer: I did, yes.**

**Question: And what was it that you saw?**

**Answer: In short, after a considerable analysis, it was quite clear that this was an IRA operation, that it started between 11.30 and 12.00 hours that morning. It involved up to 70 personnel. Not all of them would have known what was happening, there is no doubt about that, and this would have included what we referred to as dickers, look-outs, people checking for helicopters, checking roads for army and police patrols."**

**Question: Take it step by step. When you say that the operation commenced sometime between 11.30 and midday, what was your basis for that?**

**Answer: Well, that was when the intelligence traffic started.**

.....

**Answer: That was the time that there was communications that would have been related to IRA activity started on that day.**

- 3.7 In attempting to criticise PETER KEELEY's evidence, Counsel for Owen Corrigan relied on this information to demonstrate that Owen Corrigan could not have informed Patsy O'Callaghan after 2.10pm if the operation had started earlier. Insofar as the Tribunal are being exhorted to accept that criticism by the legal representatives of Owen Corrigan, then that means that they are accepting the evidence of the British Army. If that is the case, then it is also beyond dispute that the IRA knew to put the operation into motion before Chief Superintendent Breen had even left Armagh.

*IRA statement*

- 3.8 PETER KEELEY was very clear that the IRA would not put numerous operatives out onto the roads unless they had clear information, because they were risk adverse and would not want to unnecessarily put volunteers at risk (Day 67, Q553), especially so many.

PETER KEELEY also attested to the fact that the IRA would only have put their men out on the road when they knew the target was there, and that they would only do that on the word of someone very "trusted". (Day 66, Q338 and 339).

3.9 PETER KEELEY also gave evidence that the operation itself would take at least two hours to mount. Whilst the IRA have given a self-serving statement, untested by cross-examination and anonymously, that this knowledge was simply gained through observation, it is submitted that one needs to consider whether in fact the IRA would have been likely to risk so many men simply on the basis of a best guess that the car would be in Dundalk that day because of prior observations. Also, the IRA statement indicated that specifically that use would not be made of the radios beforehand.

*The Active Service Units were involved in no radio activity at that time on that day as it was operational practice not to activate radios prior to an operation actually going live. Active Service Units were fully aware such activity would put British Army, RUC on a state of alert. The first radio activity was after Harry Breen and Bob Buchanan arrived at Dundalk Garda Station. (Day 125, p101, line 27)*

3.10 This contradicts directly the evidence of Brigadier Lisle, which was based on the obviously neutral and objective knowledge gleaned from how the listening machine was operating on the morning of 20<sup>th</sup> March 1989. The IRA have also indicated that the fact that Chief Superintendent Breen was in the car was merely a coincidence. It is submitted that this is inherently lacking in credibility. Chief Superintendent Breen, following Loughgall, had gained notoriety in PIRA circles and was well-known. The IRA also seem to have put significant resources on the ground for the operation on 20<sup>th</sup> March 1989. It seems to be quite a coincidence that PIRA had, according to their statement, launched failed attempts on previous occasions, and on the day when it was successfully carried out, it just so happened the Chief Superintendent Breen was present in the vehicle. Indeed, the one IRA member who has given evidence, namely Mooch Blair, was asked what the target was and he replied "obviously the people in the car" (Q152, Day 59).

3.11 From a point of view of the chronology of matters, the spike in radio traffic at 11.30am was of course before Chief Superintendent Breen had left Armagh, but was in fact after the first phonecall in connection with arranging the meeting was made.

Reference is made to the chronology as set out in the Cory Report at paragraphs 2.24, 2.25 and 2.31:

*On 20 March at 9.20am Superintendent Buchanan phoned to Dundalk to arrange a meeting for that afternoon. Following the murders the Gardai carefully reviewed their records of the arrangements for the meeting. They indicate that at 9.20am Superintendent Buchanan rang Dundalk station and asked to speak to either Superintendent Tierney or Chief Superintendent Nolan. Neither office was available at the time, but a message was left with the District Clerk of the Gardai, George Flynn. At 10.00am Garda records reveal that Superintendent Tierney returned the call to Armagh RUC but Superintendent Buchanan was unavailable.*

*In any event, at 10.03am Superintendent Buchanan called Superintendent Tierney in Dundalk and told him that Chief Superintendent Breen wanted a meeting with Chief Superintendent Nolan in Dundalk. Superintendent Tierney told him to call Chief Superintendent Nolan directly to arrange the meeting. At 10.15am, Superintendent Buchanan called Chief Superintendent Nolan and arranged the meeting at the Dundalk station for 2.00pm.*

.....

In any event, Chief Superintendent Breen left the Armagh Station and drove to Newry to meet Superintendent Buchanan. He arrived there at approximately 1.40pm. The officers then left Newry at 1.50pm and drove to Dundalk in Superintendent Buchanan's car.

3.12 The IRA claim it was Superintendent Buchanan's car that was the target. Therefore, the first time it was on the move was from 1.50pm at Newry. Brigadier Lisles gave clear evidence that the radio traffic started at 11.30 – 12pm. This evidence, in and of itself, debunks the IRA's assertion that this operation was solely mounted on observation.

3.13 Moreover, the premise that the basis upon which "our friend helped out" is solely confined to Owen Corrigan providing information to Patsy O'Callaghan between 2.10pm and the point when the officers left the station is not correct. If an officer overheard a member of AGS on the telephone that morning when the meeting was being arranged, or heard it being discussed between members, or saw something written down, then of course that officer would be privy to the information that the RUC officers were coming to Dundalk.

3.14 It is of course entirely possible, plausible and indeed probable, that the operation was mounted by the PIRA through a combination of both surveillance and intelligence. There has been detailed evidence as to the amount of men that were committed to the operation, the fact that South Armagh PIRA were an extremely well informed and tightly disciplined unit. They were also described as being cautious and risk-averse. It would seem likely, on balance, that South Armagh PIRA were far too sophisticated to risk putting so many men on the ground simply on previous observations. It seems to have been assumed by certain parties that the two means of getting the requisite information to carry out the operation are mutually exclusive. This, it is submitted, is a central flaw. Not only is it incorrect, it can easily be envisaged that because the IRA would wish to be as sure of their information as possible, and they would attempt to have it confirmed by other means. PIRA have been commended, if that is not an inappropriate word, by members of the Special Branch both North and South and by W82 **CHECK** for their counter-intelligence sophistication and capabilities. One matter that can surely be agreed in the world of intelligence and counter-intelligence is that what is sought for on all occasions is the solace of corroboration, without which it is difficult to be sure of the information one holds. If the PIRA were indeed so sophisticated in matters of intelligence, then one would assume that corroboration, where it was possible to obtain it, would be looked for before risking so many of their men and also wishing to avoid the PR disaster (in their eyes) of moving on the wrong target. What better way to seek corroboration of information obtained by their own surveillance tactics than to get confirmation of the impending arrival of the officers to Dundalk from someone inside the station. This was confirmed by Witness 79 on Day 86:

**268 Q. So, for instance, they could have been targeting Superintendent Buchanan's vehicle for a period of time in the lead-up to this particular incident and had a plan in mind, but that doesn't mean that they would have put the plan into effect until they got a final signal that the target had arrived at the destination, would you agree that's correct?**

**A. That is agreed.**

**69 Q. So merely the fact that they were following Superintendent Buchanan, did not mean that they could carry out the operation until they received that final piece of intelligence, would you agree?**

**A. Yes.**

3.15 Peter Kirwan accepted that the IRA statement could contain false information. The Tribunal has heard from Mooch Blair, a former IRA man, and has been privy to his views on loyalty, namely that he would never betray a friend. It would inimical to suppose senior figures in the IRA would not have similar views. Therefore, one must bear in mind when reading the IRA statement that they are highly unlikely to reveal the involvement of those persons who assisted, helped or who were associated to the Tribunal. One is also mindful of the first piece of intelligence adduced by Roy McComb on Day 95 which indicated that the IRA were anxious to conclude its hearings and were aware that deliberately false information had been given to the Tribunal. It is also of course of note that none of those behind the statement attended to give evidence under oath and allow themselves to be cross-examined, even with the guarantee of anonymity and other means that could have been employed to protect identity (such as giving evidence under a cipher, video link etc).

3.16 The IRA statement of course got the name of Mr Day wrong. Whilst there are morsels of information contained in the statement that might be verifiable, it would be naive to assume that in constructing the statement the IRA had not specifically got this in mind. The information about Mr Day attending at Dundalk station with Mr Buchanan, thus allegedly providing the RUC link to Mr Buchanan's car, could of course have been obtained from other sources, not least the person or persons within AGS who may have been assisting the IRA. It is also worth noting that the IRA took documents belonging to the victims. Whether some of that material was contained in items seized by them is perhaps also a possibility.

3.17 In any event, given the refusal to give evidence, the intelligence précis suggesting false information and views of Mooch Blair on loyalty, it is submitted that the weight to be attributed to this self-serving statement is minimal.

#### **Corroboration of the Evidence of PETER KEELEY**

3.18 Below is a summary of information or evidence which the Tribunal has had at its disposal which is corroborative of PETER KEELEY's evidence that he heard from Micky Collins that "our friend", namely Owen Corrigan, helped out. It is corroborative in a

number of respects. It is evidence which suggests Owen Corrigan had connections with PIRA, or evidence which refers to members of AGS colluding with the IRA in connection with the Breen and Buchanan murders or in a more general sense. Finally, there is evidence which suggests Owen Corrigan was corrupt or engaged in unlawful activity. Each of these is capable of corroborating the substance of that which PETER KEELEY heard, either by providing contextual corroboration, or specific corroboration in relation to the murders or collusion in a more general sense.

3.19 Staff sergeant Alan Mains – he gave a formal statement dated 22<sup>nd</sup> March 1989 which was contemporaneous. In it he noted that Chief Superintendent Breen had expressed concerns and that “he felt uneasy about travelling down to Dundalk” and that he felt “Slab Murphy had contacts within the Garda and to this end he felt that he could not trust certain Garda Siochana members. To use his own words, he felt that certain members of the Garda were on Murphy’s payroll”. The fact that the evidence is contemporaneous is obviously an important factor in assessing this information. In 2000, Mr Mains gave a further statement to indicate that the Garda Officer to whom Chief Superintendent Breen was referring was Owen Corrigan. Mr Mains gave evidence that the name had initially been left out of the formal statement for Owen Corrigan’s own protection. (The statements were read out on Day 101, Page 36, line 17 onwards). It is submitted that is over simplistic at best to imagine that Mr Mains was not being truthful in his evidence because he was part of some conspiracy or that he had some agenda or bias. Insofar as this has been directly alleged by any party, it is clearly unsustainable and no obvious facts have been placed before the Tribunal that would allow it to conclude that there was such a risk with Mr Main’s evidence. That being so, it is submitted that the evidence is nothing other than entirely correct; Chief Superintendent, the day before he was killed, told his staff sergeant that he did not trust Garda Siochana, and that he specifically referred to Owen Corrigan. It is also worth pointing out that Chief Superintendent Breen referred to those members of AGS as being on the payroll of ‘Slab Murphy’. It is an established fact that the murders were carried out by South Armagh PIRA, of which ‘Slab Murphy’ was the head and Patsy O’Callaghan was No.2. (See statement of evidence of W82, amongst others.)

3.20 Superintendent Buchanan told Inspector Tom Curran that “the RUC had information that Detective Sergeant Owen Corrigan in Dundalk was associating, unnecessarily

associating with the IRA, and the RUC were concerned about it". Inspector Curran went on to say "I gathered that the association that Detective Sergeant Corrigan had with them went far beyond that, and that I got the impression that he was assisting the IRA" (Day 14, Q42, 43, Pg 7 and 8). This information was relayed to the Assistant Chief Commissioner of AGS, namely Eugene Crowley. Again it is difficult to conceive that Inspector Tom Curran had either (i) got this completely wrong and had somehow imagined that this took place when in fact it did not, or (ii) that he was being deliberately untruthful. Again, it is submitted that this evidence is nothing other than entirely honest and correct. That being so, it is another example of one of the men that was killed relaying concerns in relation to Owen Corrigan associating with PIRA. This information was given to Tom Curran in 1987. The Tribunal is invited to prefer the clear evidence of Tom Curran over that of Eugene Crowley in relation to their recollection of whether this information was passed on by Tom Curran.

3.21 The second piece of intelligence adduced by ACC Harris on Day 124, Q55 and classed as 'reliable and accurate' (Day 124, Q33) states:

*"Kevin Fulton is understood to have received information regarding the murders of Chief Superintendent Breen and Superintendent Buchanan from a PIRA member linked to a senior figure".*

This corroborates precisely the evidence he has given to the Tribunal, namely that he received the information from Micky Collins who heard it from Patsy O'Callaghan who was a senior figure in PIRA.

3.22 Peter Kirwan noted that it was important to consider whether PETER KEELEY was in fact the source of this information himself. However he conceded that he was arriving at no conclusion in relation to that. On Day 128 he stated as follows:

*90 Q. Now, just to stop you there. Am I right in saying that you are actually stating that that's something that should be considered and that you haven't yourself reached a conclusion on that?*

*A. Yeah... I mean, it would be impossible for me to reach a conclusion on that, Chairman.*

**91 Q. Right. So, just so I'm clear, you are not saying that it's your opinion or your considered opinion or your conclusion that the source of that information, item number 2, is Kevin Fulton; you are just saying it's something that should be considered?**

**A. Absolutely, Chairman. I'm not offering an opinion. I'm not offering -- I had no knowledge of it. But I do put it forward, you know, in the context of the overall statement, I put it forward as a consideration, that I consider that should be applied to this item of information or intelligence.**

3.23 It is also of course the position that this intelligence was received in the lifetime of the Tribunal and therefore could not be linked in any way to PETER KEELEY in that respect. ACC Drew Harris is also a very experienced and decorated intelligence officer; he was very careful that there was no "circular reporting" or repetition of evidence which had been given at the Tribunal:

**A. Except that we are careful to avoid circular reporting in terms of how matters are expressed and going back into the raw material to make sure that, in effect, we are not getting an echo from, be it media reporting or other conversation in respect of the Tribunal, so that test has been applied.(Day 124, Q61)**

3.24 One can therefore conclude that Drew Harris is not likely to have given the status "reliable and accurate" to this piece of information if he was of the view or felt that there was a possibility that the person from whom the intelligence ultimately derived was in fact merely regurgitating what PETER KEELEY had told him many years ago.

3.25 W82, member of British military intelligence, gave a statement in which stated "I was also provided with information that the operation was conducted by South Armagh PIRA and that it was overseen by the OC of South Armagh, Patrick Patsy O'Callaghan, and sanctioned by Thomas 'Slab' Murphy, who I believe was the officer commanding PIRA's Northern Command at that time". PETER KEELEY's evidence was that Owen Corrigan's contact within PIRA was Patsy O'Callaghan. He also states that the information that Micky Collins relayed came from Patsy O'Callaghan. The evidence of W82 provides independent verification that Patsy O'Callaghan was centrally involved in the murders and oversaw the operation, which means that if that which PETER KEELEY heard from Micky Collins was right, then that 'help' would have had to have been provided to Patsy O'Callaghan. This fits entirely, therefore, with the evidence of PETER

KEELEY. W82 also mentioned in his statement that "I was made aware at some point subsequent to the murders that PIRA knew that the RUC officers were at Dundalk and that a number of ambush teams were deployed to cover the likely routes of travel from Dundalk back to Armagh. I do not recall whether "Stakeknife" or other intelligence assets provided this information". He was asked under cross-examination of how he came by the information that he was made aware that PIRA knew that the RUC officers were at Dundalk, and he stated "that was the whole point of having agents in PIRA" (Day 93, Q913). This oblique reference also confirms at the time of the operation FRU had "intelligence assets", ie in the plural, on the ground. W82 did not handle PETER KEELEY.

3.26 Deputy Superintendent Tom Connolly stated in evidence that he heard "somewhere in conversation before I went to Dundalk I heard it mentioned that the individual was possibly involved or suspected of being involved in some form of smuggling and/or involved in some way with the IRA". He came by this information in Garda HQ, and then later from the RUC, and he indicated that he did not report it because it was generally known. (see Day 17, p64 onwards).

3.27 Detective Inspector Sean O'Connell (of Special Branch) heard that Owen Corrigan was "dodgy" in general terms while he was based in HQ (Day 33 ).

3.28 W62, a SB officer, gave evidence on Day 51 Q87 that he had heard of Mr Corrigan being a very severe problem for AGS in that he was very close to IRA members. He heard this from other members of SB after the murders.

3.29 W65 gave evidence on Day 53. He was describing how he had struck up a professional relationship with Inspector Dan Prenty from about 1986 and on occasion would have been in Dundalk Garda Station. On one particular day when he met Inspector Prenty he stated as follows:

*490 Q. And then I think you also met Mr Corrigan in the detectives' room, is that right?*

*A If you would like me just to explain what happened.*

*491 Q. Yes, please?*

*A There was several of us in a meeting one day back in the detectives' office, which I can remember was towards the rear of the station, and a chap walked in, and Dan Prenty turned to me and just said "don't speak". And a chap walked about the office with no seeming purpose and came over and stared at me and walked out again. And I just remember asking a question "Is that who I think it is?" and "yes". And it just went unspoked as to who it was. And the conversation continued and that was it.*

**492 Q. And you are clear in your memory of this incident, is that right?**

*A Absolutely clear.*

**493 Q. Right. What was the view about Mr Corrigan and his attitude towards the IRA?**

*A There was a general held view which was given to me when I first went down to Bessbrook in the early 1980s, that he was not friendly towards the RUC Special Branch, and it was proven to us just in his general attitude when you would have phoned up. You would have been phoning down to the Garda station, you wouldn't have known who would have answered the phone, but it was always clear when Mr Corrigan answered the phone.*

**494 Q. But as you know, Detective Sergeant Corrigan's job was to deal with subversives, isn't that right?**

*A That's correct.*

**495 Q. What is your view about how he conducted his job or have you any view on that?**

*A I actually don't, really, have any view on it and didn't have any view at the time. My view was tainted by what I had been told, in that it was believed that there were connections, wrong connections into the Provisional IRA and that we should be wary, and that was sort of the mindset that there was at the time*

**496 Q. Now, just to be clear, when we speak about wrong connections, is that between the IRA and Mr Corrigan?**

*A That's correct, yes.*

**497 Q. Can you recollect what sources you had for that?**

*A At the time of going down first to Bessbrook, I was told it by the senior officer who was there at that time, though he has since passed away. And it was just a general view that was held and, like anything to do with the intelligence world, in any dealings you just have to keep this type of thing in the back of your mind.*

**498 Q. This view, was it given to you in writing or was it expressed orally?**

*A It was expressed orally.*

**499 Q. Was this the only occasion on which this view was expressed to you?**

*A I would say specifically, yes, so it was, apart from the incident where it was just said "don't speak", I mean just, to me, emphasised the attitude that there was at the time, and that had been passed on to me all those years before.*

3.30 W73 gave evidence on Day 77. He was formerly a Detective Chief Inspector in the RUC, and from April – August 1979 he was based in Bessbrook Mill. He gave evidence that he was warned by members of Special Branch to be careful of what he said in front of Owen Corrigan on a number of occasions. He indicated in his evidence that the reason for this was that it was suggested that Owen Corrigan was passing information to the IRA (Q21). W73 relayed this information to his Divisional Commander, Mr McCullough, and to the Head of Operational CID, Billy Mooney (Q22). He also gave evidence that a Garda Sergeant told him to be careful of Owen Corrigan, and that there was a concern over leaks. (Q68)

3.31 W68 was a former Detective Chief Inspector who gave evidence on Day 78. He stated at Q5:

*“ a number of people with whom I worked down the years instructed me that I was to deal with them; that I was not to go generally to the An Garda Siochana, but to check through them because there were problems of leakages, they asked me that I would observe that in my future dealings with An Garda Siochana”.*

He further specifically referred to Owen Corrigan, for example he stated at Q39:

*“the briefing was that Detective Chief Superintendent Mooney, in consultation with other people, that we were not to discuss anything with Mr Corrigan, as it was felt there was a risk of a leak...”*

3.32 W70, who was an RUC detective, gave evidence that he was aware of an officer in AGS that was actively sympathetic with the IRA, and he named Owen Corrigan and he heard that from Special Branch. (See Day 65, pg 3 line 21 and Q10).

3.33 Witness 69 was told not to be trusting Owen Corrigan, he believed that he was involved in nefarious activities including smuggling and had a suspiciously close relationship with PIRA in the area. (See statement dated 31<sup>st</sup> January 2012.)

3.34 Witness 67 (Raymond White) gave evidence on Day 71 that he had heard the name of Owen Corrigan mentioned in a “precautionary way in terms of not doing business with Mr Corrigan”. (See Q 283).

3.35 Witness M, a customs officer, gave evidence that his deceased colleague, Barry Connolly, pointed Owen Corrigan out at a Christmas meeting and warned him about Owen Corrigan and stated that he was alleged to be leaking information to certain people. (See statement dated 12<sup>th</sup> June 2012.)

3.36 Witness Z gave the following evidence on Day 98:

**55 Q. Now, did you have dealings with Dundalk Garda Station?**

**A. I did, yes.**

**56 Q. And, in particular, did you have dealings with one Owen Corrigan?**

**A. On a number of occasions, yes.**

**57 Q. Did you meet him?**

**A. I did.**

**58 Q. Was that in Dundalk Station that you met him?**

**A. Correct.**

**59 Q. Yes. And --**

**A. The first time, actually, I met him was, one time I met him in Dundalk Garda Station, I was accompanied by a detective inspector, along with another colleague, to Dundalk, to meet Dan Prenty, and we were sitting in the main office talking to Dan, and I had been introduced to him, and Owen Corrigan walked in, and Dan Prenty sort of made the notion at the table, you know, don't say anything. You know...**

**60 Q. Had anything ever been said to you about Owen Corrigan before then?**

**A. Yes. By RUC officers?**

**61 Q. Yes?**

**A. Yes. Shortly after I arrived as a detective constable down in Newry, I was told by my detective inspector that as far as Dundalk was concerned, Owen Corrigan was not to be trusted and nothing sensitive was to be passed to him.**

**62 Q. And who had that information, do you know?**

**A. All the colleagues that I had worked with in Newry Special Branch were aware of that context.**

3.37 On Day 42, Detective Inspector Dan Prenty gave evidence. He had a career in AGS spanning 47 years, joining in 1959 and retiring in 1995. Having gained the rank of Inspector in 1983, he was transferred to Dundalk Garda station in or about 1985,

remaining there for the rest of his career. He received promotion to the rank of Detective Inspector in 1985. He was responsible for supervising the detectives, ensuring that they were properly detailed for work and that they did whatever work was given to them. He was asked by Counsel for the Tribunal about his experiences of dealing with Detective Sergeant Owen Corrigan. Suffice it to say, he had a very dim view of him. From Q94 -130 he gave detailed evidence about his professional opinion of Owen Corrigan. Whilst he does not give evidence about Owen Corrigan being involved with PIRA or colluding either generally or in connection with the murders of Breen and Buchanan, the evidence is nonetheless from an experienced senior officer and paints a picture of Owen Corrigan which is relevant when it comes to consider the substance of the evidence of PETER KEELEY.

3.38 Detective Superintendent Tom Butler gave evidence day 122. He stated that he was aware that Owen Corrigan was reporting directly to Phoenix Park in relation to intelligence connected with subversives and in order to get that information he was associating with subversives. He gave the following evidence:

**299 Q. And just finally, then, in relation to effectively having to get close to subversives or subversives or people of that nature, is it effectively the upshot of your evidence that it can be a bit dangerous if you fly too close to the sun you could end up being compromised?**

**A. When I was in Harcourt Square dealing with ordinary criminals we had to live off information and criminal intelligence, otherwise we'd never have solved anything. And I was always conscious of the fact that in getting information, the detectives getting it could be open to compromise, and I wouldn't say I was paranoid about it but I was certainly very strict on how it was handled. And it was no different in Monaghan. Of course you can fly too close to the sun. It depends on what the contacts are and what the association is. My belief is that there is a price to be paid and that one has to be very, very careful in getting that information.**

3.39 The SB50 (RUC intelligence document) from 1985 stated

*"PIRA activity. Owen Corrigan, a Sergeant in the Garda Special Branch in Dundalk, is helping out the PIRA. Corrigan is keeping both the boys in the organisation well-informed and he lets the boys know what the security forces are doing in the North when he can."*

3.40 It transpires that this was given a grading as C6. McConville confirmed that 6 just meant at the time that information was received it was incapable of being tested then and there. C was of medium grade – this was because the informer was a “casual contact” (Day 98 Q52).” Witness Z and Witness Q, who handled the source of this intelligence indicated that it was believable and probable” Q130. As the two men who actually knew and met the late Mr McNulty, they are uniquely placed to assess the information with which they were provided (Q329 and 330). The grading given to the information simply meant that Mr McNulty was a casual contact and that the information at the time it was given was not capable of corroboration or assessment. Again, Mr McNulty ultimately ended up being killed by South Armagh PIRA. If those assessing this information had been privy to all of the above information, then it would immediately have been capable of corroboration and would presumably have received a much higher number than “6”. It is submitted with the benefit of hindsight, if one was putting a value to this information now, employing that system of lettering and numbering, one would arrive at a completely different alphanumeric categorisation. Reference is also made to Day 108 pg 14-18 (David McConville).

3.41 Garda Intelligence précis no 542 stated as follows:

*"Garda information indicated by way of double hearsay that there was a contact in the Gardaí who had passed information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station."*

This is information which corroborates that a member of Gardai was involved in the shooting of Breen and Buchanan.

3.42 The additional intelligence precis provided by PSNI, which were graded as ‘reliable and accurate’, substantially corroborate the substance of the information which PETER KEELEY heard.

From Roy McComb, Day 95

*Item 3 – “indicates that a senior AGS member in Dundalk provided the IRA with the intelligence that enabled PIRA to murder Chief Superintendent Breen and Superintendent Buchanan”*

*Item 4 – “Additional intelligence regarding the murders of Chief Superintendent Breen and Superintendent Buchanan indicate that an AGS officer played a role in passing the details of the officer’s movements to PIRA. Intelligence also exists to link a criminal from the border area to their targeting”*

*(These pieces of intelligence were noted as being “identification neutral” – get reference)*

*Item 5 – Intelligence indicates that a former AGS officer, Jim Lane, who was based in Dundalk area frequently expressed his concerns to associates that fellow AGS officers Finbar Hickey and Leo Colton and Owen Corrigan had unethical relationships with PIRA members in the border area.*

*Intelligence produced by Drew Harris*

*Item 1 – “PIRA traditionally obtained extremely good intelligence from Dundalk Garda Station. When in PIRA X was involved in intelligence gathering operations and would have been aware of PIRA’s contacts in the Garda”.*

*Item 2 – “Kevin Fulton is understood to have received information regarding the murders of Chief Superintendent Breen and Superintendent Buchanan from a PIRA member linked to a senior figure”*

*Item 3 – “In summer 2011, Mooch Blair commented that he was not involved in the murders of the RUC officers Breen and Buchanan as was claimed during the Smithwick Tribunal in Dublin. Blair stated that he was actually engaged on a separate operation at the time of the murders. Blair also confirmed that there was a Garda spy involved. This fact has been speculated during the Tribunal”. This is of course to be contrasted with the evidence set out above, where Mooch Blair’s counsel put the case to PETER KEELEY that he was “in the bookies” on the day in question. Whilst this intelligence alleges he was “engaged on a separate operation” there is no detail provided nor does it suggest that he was not present in his own house. Importantly, of course, this information, recorded as “reliable and accurate”, has Mooch Blair confirming that a Garda spy was involved. This directly corroborates PETER KEELEY’s evidence.*

*Item 4 – “During 2011, a senior PIRA member confided to an associate their personal fears concerning the ongoing Smithwick Tribunal, particularly that the AGS personnel that were previously under the PIRA’s control would potentially highlight the level of cooperation previously provided”.*

*Item 6 – “A senior PIRA figure had several AGS officers passing information to PIRA, including officers of a more senior position than Owen Corrigan”.*

*Item 7 – “In relation to the murder of Lord Justice Gibson, a senior member of PIRA has since revealed that the information which led to the PIRA operation emanated from An Garda Siochana”.*

*Item 11 – Intelligence suggests that Owen Corrigan engaged in corrupt activity targeting criminals, and was motivated by greed. The intelligence also suggest that he did provide sensitive information to PIRA and that he did so for reasons of self preservation.*

3.43 Some of the précis appear to point away from Owen Corrigan, namely Items 1 and 2 introduced by Roy McComb, which state as follows:

**Item 1**

***'intelligence relating to PIRA indicates that PIRA had received information regarding Chief Superintendent Breen and Superintendent Buchanan from a Detective AGS officer who had not been publically associated to the Smithwick Tribunal and that this individual had been paid a considerable amount of finance for this information.'***

**Item 2**

***"Intelligence indicates that this An Garda Siochana officer also provided information in relation to Tom Oliver and continued to provide a variety of information to PIRA for a number of years. It's believed that this An Garda Siochana officer is now retired. This AGS officer was handled as a source by a senior member of PIRA."***

3.44 However, as confirmed by Drew Harris on Day 124 under cross-examination, that conclusion is only valid if one forms the view there was only one source of information within AGS.

**513 Q. Yes, indeed. But I suppose the point I was driving at is that it was put forward or submitted to the Tribunal on behalf of retired Detective Sergeant Corrigan that the content of the first piece of information was wholly exculpatory, and what I am saying to you is that only - that that is based totally on the logic that there is only one leak?**

**A. Yes, that's correct, yes.**

3.45 It is of course entirely possible that there was more than one source, either at different times or at the same time. Indeed the possibility that there was more than one AGS officer who assisted or colluded with the IRA is demonstrated clearly by the fact that there are 3 members of AGS with representation before the Tribunal. Moreover, several of the above précis specifically refer to garda personnel (ie in the plural) providing information. Again, this was confirmed by ACC Drew Harris on Day 124

**505 Q. If you look at number 4, it refers to AGS personnel?**

**A. Yes.**

**506 Q. Would you agree with me that that obviously refers to more than one member of An Garda Síochána?**

**A. It does, yes.**

**507 Q. And similarly, if you look at number 6 --**

**A. Yes.**

**508 Q. -- again there is a reference to several officers passing information?**

**A. That's correct, yes.**

**509 Q. So, bearing that in mind, the information you would have would tend to suggest that, unfortunately, the information is that there was multiple leaks, if I can put it like that, or at least more than one?**

**A. Well, it would suggest on that reading at least three, in terms of number 6.**

3.46 ACC Drew Harris also stated on Day 124 in response to Q270 "there is so much information gathered up through the years in respect of this, that each of these strands of information will contradict something else which has been said in relation to the case." He also said at Q322 "the difficulty we have with this material is here is so much

material has been said, particularly in respect of ex-sergeant Owen Corrigan, and so nearly anything that we would say would have, would find a contradiction somewhere. " This can perhaps be best demonstrated in the intelligence précis that stated as follows:

***"Intelligence dated March 1989."***

***It goes as follows: "Reference the double murder of Superintendent Buchanan and Chief Superintendent Breen. Intelligence indicated that a 'Hard Bap' Hardy and a male known as 'Mooch' from the Dundalk area would have been deeply involved in the murder."***

This piece of intelligence is clearly incorrect. It is a fact that the murders were carried out by South Armagh PIRA, not South Down, to which Mooch Blair was connected. Hard Bap Hardy was also not a member of South Armagh PIRA.

3.47 Finally it is also worth bearing in mind that PIRA were well versed in generating 'misinformation' and had intelligence previously given indicated that PIRA were aware that deliberately false information had been given at the Tribunal.

***"The current Smithwick Tribunal has become a significant issue among leading republicans. In the course of the current Smithwick Tribunal, members of PIRA are concerned that individuals associated with PIRA's testimony to the Tribunal will lead to other material coming to light. By this they mean information about past murders and leaks from An Garda Síochána. For these reasons, members of PIRA are anxious that the Tribunal should complete its work as soon as possible. Key PIRA members are aware that some of the testimony to the Tribunal is deliberately false and is intended to bring it to an early conclusion." (intelligence introduced on Day 95 by Roy McComb)***

### **Summary**

3.48 As described in detail above, the limited information which PETER KEELEY was able to give as been corroborated in many respects. One must also consider the sheer weight of evidence that members of AGS and RUC have given where they all independently of each other, attest to hearing that they had heard that Owen Corrigan assisted PIRA. This fact, in and of itself, almost demands that the idea of a Weston Park conspiracy be dismissed out of hand. The recent intelligence given by the PSNI to a large degree corroborates much of what PETER KEELEY has said. The pieces of intelligence that suggest another Garda was involved is only exculpatory of Owen Corrigan if there was only one source of information. Alternatively one must be alive to the fact that

those pieces of intelligence may not have been accurate, and an analogy is drawn with the 'Hard Bap' Hardy intelligence. Unfortunately the information refers to the fact there was more than one Garda who assisted the PIRA. This contention is in any event patent; there are three separate members of AGS that are represented before the Tribunal.

3.49 One must also consider the evidence Owen Corrigan gave himself in relation to these murders, he had an awful lot of information that the Tribunal has not heard before in connection with the murders, notwithstanding that he had nothing to do with the investigation. This information which he gathered allegedly through his own inquiries after the event, was not reported on to his superiors despite the fact at that stage he was still an acting Detective Sergeant (see Day 105 Q32, Day 104 Q215 and 216). In addition on Day 101 Jimmy Spratt also gave evidence that he had heard, as a driver, senior police men refer to Owen Corrigan in particular with incidents. He referred to infamous attacks at the Killeen Border crossing, including the murder of the Gibsons and Brinks-Mat murder in 1985.

## E. Tom Oliver murder

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### The Evidence

- 5.1 This aspect of PETER KEELEY's evidence is unique in that it is the only piece of direct evidence which if accepted is definitive proof that Owen Corrigan colluded with the IRA. If PETER KEELEY's evidence on this matter is accepted, then it also demonstrates that Owen Corrigan colluded with PIRA in a scenario where he would reasonably have been aware that Mr Oliver would have been killed. It therefore is an extremely grave and serious aspect of his evidence which no doubt the Tribunal will wish to consider extremely carefully and closely.
- 5.2 It is worth repeating that this Tribunal is investigating the murders of Breen & Buchanan. It has, to be blunt, been suggested by counsel for Owen Corrigan that PETER KEELEY has come forward to give evidence at the Tribunal and deliberately manufactured testimony either because of a British-led conspiracy of which he is part or because to give that information will inure some benefit to him. The other suggestion put forward by, for example, Patsy O'Callaghan (in his letter to the Tribunal; he refused to give evidence and stand over these comments), is that he is delusional or a fantasist.
- 5.3 Again, as stated above, if one hypothetically considers that these contentions are correct, then one has to wonder why the manufacturing of that evidence was not done in connection with the murders which the Tribunal are actually investigating.
- 5.4 It is submitted that the Tribunal will wish to consider all other aspects of PETER KEELEY's evidence in coming to a conclusion as to his evidence on this point. The Tribunal will also consider all of the other information, whether that be from members of the RUC or AGS and all documentary intelligence which is corroborative of what PETER KEELEY has given direct evidence (ie collusion by Owen Corrigan with PIRA).

5.5 The Tribunal has of course had the benefit of watching PETER KEELEY, Owen Corrigan and Mooch Blair give evidence before the Tribunal and being cross-examined at length. Unlike other species of evidence, which can unwittingly be falsely remembered or exaggerated or subject to the corrupting influence of the effluxion of time, this evidence is of a different category. It is stark and clear evidence of a most sinister interaction. There can be no middle ground with evidence such as this. Either PETER KEELEY is lying, or Owen Corrigan and Mooch Blair are lying. On behalf of PETER KEELEY, the factors noted by Lord Pearson referred to in the *Onassis* case (see paragraph 1.7) are relied upon support of PETER KEELEY's evidence in this matter.

5.6 It is important to set out all evidence and statements PETER KEELEY has made in this regard.

#### **Cory Report**

*"On one occasion in the late 1980s, I was with my senior IRA commander and another individual in my car. I knew the other individual to be Garda B. I was introduced to Garda B. I knew that Garda B, who was stationed at Dundalk, was passing information to the IRA" – p.2.149 Cory Report*

#### **Statement to Tribunal**

*I met Corrigan once when I had to drive Mooch out to Fintan Callan's Ceili house, outside Dundalk. I pulled the car into the car park and Mooch went into the ceili house and came back out with Corrigan. I don't remember exactly the year, but just before Tom Oliver was arrested by the IRA the first time but was released. I knew Corrigan was a policeman and he was with Special Branch. We knew most of the Special Branch people in Dundalk. – p12.*

*Corrigan got into the car and Mooch got into the front. Corrigan got into the back. I kept looking out the front. I overheard the conversation. I did not know in advance what the purpose of the meeting was. Mooch wouldn't share that. The conversation was basically about a person whom I didn't know, who was Tom Oliver, who had been caught with a shotgun by police, one he had no license for and that he had agreed to give information. He had become an informant for the Garda. After this Corrigan got out of the car and we went back to Dundalk. Mooch said on way back he would blow the back out of TO with an AK. – p12.*

*1<sup>st</sup> kidnap – Mooch, Tony Hughes, Joe Duffy, Sean (OTR from Belfast), me van driver. Three people from Cooley. One called "the Minister". – p12.CHECK*

*"His first arrest was a few months before he was murdered. I handed him over to James Morgan and Scappaticci. He was held for a couple of days. He was released. Van hired from satellite filling station in Rathfriland. Owners were friends of James Morgan" – p15.*

#### **Evidence to Tribunal by PETER KEELEY**

**Day 66** – Q367 – 426 (cross-examination by Counsel for the Tribunal)

**Day 67** – Q279 – 467 (cross-examination by Counsel for Owen Corrigan)  
Q885 - 895

**Day 68** – Q22, 25, 26 (cross examined by Counsel for AGS)  
Q 389 – 393  
Q 403, 408 – 412, 424 (cross examined by Counsel for Scapatucci)  
Q 426 - 458 (cross examined by Counsel for Mooch Blair)

### *Summary of that evidence*

5.7 Without setting out the transcript evidence *in extenso*, the evidence at the Tribunal can be summarised as follows.

5.8 Mooch Blair was covering for Patsy O’Callaghan on the date in question as he was elsewhere. The reasons PETER KEELEY’s IRA unit were close with Patsy O’Callaghan was because of his involvement in the internal security unit. As Mooch’s driver, PETER KEELEY was drove him to Fintan Callan’s Ceili House. PETER KEELEY parked in the car park, Mooch Blair got out and went into the bar, a few minutes later he came out followed by Owen Corrigan. They both got in the car, Owen Corrigan seated in the back. Corrigan was talking to Mooch and said that Tom Oliver had been caught with an unlicensed shot gun and had been passing information to AGS. The conversation last only minutes, then Owen Corrigan got out of the car. Mooch said afterwards “I’ll blow the f-ing back out of him with an AK”. PETER KEELEY then drove back to Mooch’s house in Dundalk.

5.9 As a result of this conversation, PETER KEELEY some time after was told to go and get a van. He hired a van with a sliding door, the unit got together and Tom Oliver was taken away. PETER KEELEY named persons who were involved in this operation. The van was driven to Ballymascanlon car park, where PETER KEELEY got out and got in a car with another man from the Cooley area. The team went in the van and took Tom Oliver. PETER KEELEY and the other man drove out of the car park and waited near where there was a phone box. AGS on patrol approached in a Jeep and asked who we were. PETER KEELEY told the AGS that he was giving the other man a price for painting his house. AGS took notes and went on their way. The van pulled up. PETER KEELEY got into the driver’s seat in the van, Mooch got into the back and drove the van to a pre-arranged place in

Kingscourt. The boys that were in the van went back to Dundalk in the car. When PETER KEELEY arrived in the van at the pre-arranged place, James Morgan and Scappatici were waiting. Tom Oliver was tied up with cable ties and was blind folded. James Morgan put him in the boot of a car. PETER KEELEY drove home through Crossmaglen and into Camlough, he pulled into an estate and checked the back of the van. There was a wellington boot in it so he threw it over the wall. PETER KEELEY remembers that Tom Oliver was a slight man. PETER KEELEY described how when suspected informants are arrested they are only killed if they admit it. If they deny everything they are released. Tom Oliver was released on that occasion. Then PETER KEELEY left to go to Eurodisney, and whilst he was in Eurodisney he learned that Tom Oliver had been killed by PIRA (19<sup>th</sup> July 1991).

5.10 Peter Keeley confirmed under cross-examination by Counsel for Owen Corrigan that the incident at Fintan Callan's Ceili House occurred about a month before the first abduction, it would have been sometime in April, May or June of 1991 (see Day 67, Q300). Peter Keeley was also able to describe the surface of the car park (gravel) and its precise location (Day 67 Q303, Day 68 Q444). PETER KEELEY did not know what type of bar it was as he did not normally associate with PIRA operatives from that area. However he was familiar with the area because Patsy O'Callaghan used to live on that road (Day 67 Q319). As indicated above, the precise information which PETER KEELEY recollects Owen Corrigan conveying was that Tom Oliver was caught with an unlicensed shot gun and was passing information to AGS.

#### **Rebuttal of Criticisms of Keeley's evidence**

*Whether it was reckless for Owen Corrigan to speak in front of PETER KEELEY*

5.11 Firstly, as PETER KEELEY pointed out, the conversation did not take place in the toilets or in the pub. The purpose, presumably, in Mooch going into the pub to get Owen Corrigan so that they would speak in the car was in order to be discreet. PETER KEELEY also gave evidence that he had been in meetings before where people who were not in PIRA gave information in front of him (Day 67 Q336). PETER KEELEY also stated that if Corrigan was told by Patsy O'Callaghan that he would be meeting Mooch he'd be

entirely comfortable with it. When being cross-examined by Counsel for AGS on Day 67, at Q893 PETER KEELEY states "people will talk because they will automatically take it that you are one of the people and trusted, you know".

5.12 At this stage one must also bear in mind the Garda Intelligence précis which stated that PETER KEELEY was a driver for Mooch Blair and a 'trusted friend' of the IRA:

***"Document No. 622: On the 22nd August, 1988 Gardaí stopped a car driven by a person who gave his name as Peter Keeley with an address in Newry, County Down, Northern Ireland. When asked what was he doing in Dundalk, he replied that he was visiting the wife of a named member of PIRA. The report further states that he was observed again in Dundalk on the night Robert Russell was extradited to Northern Ireland. Russell was extra kite indicted on the 27th August, 1988 and was handed over to the RUC at 6:15 a.m. on that day. He was driving around with leading members of PIRA, including P.J. 'Mooch' Blair and Mickey Collins. The report further states that it would appear at this stage that he is a trusted person within the PIRA."***

5.13 W62 noted that PETER KEELEY was registered as an informant almost straight away with Special Branch because of the level of association he had with senior members of PIRA, specifically Mooch Blair. (See Day 51)

*Owen Corrigan – sick leave*

5.14 The central focus of cross-examination, and thus rebuttal, of PETER KEELEY's evidence by Owen Corrigan's counsel was that PETER KEELEY had revealed himself to be a "pathological liar" because at the time at the alleged passing of the information Owen Corrigan was on sick leave from 4<sup>th</sup> December 1989 up until he retired in 1991. It was clearly and categorically put to Owen Corrigan that he "totally unavailable to AGS in 1990 and 1991" (Q363). At Q364 Counsel for Owen Corrigan asserted, in an attempted refutation of PETER KEELEY's evidence, that Owen Corrigan "had no access to any Garda information about such sensitive matters".

5.15 It is submitted that this contention, that Owen Corrigan was "totally unavailable" and had "no access to Garda information" is patently untrue, and therefore this attack on PETER KEELEY fails utterly. The reasons for this submission are as follows.

5.16 Owen Corrigan was still a Garda, albeit he was on sick leave.

5.17 Owen Corrigan has given evidence that after going on the sick leave was asked to assist in a matter involving 'the General' by Noel Conroy which involved him meeting with the General. After this operation, Noel Conroy then asked him to come and work for him. Owen Corrigan, therefore, was still available, and indeed apparently sought after by AGS. The suggestion that he was totally unavailable to AGS is not correct.

5.18 Owen Corrigan has demonstrated that he is privy to detailed information about incidents in which he is not involved. For example, in relation to the Breen and Buchanan murders, he alleges the information he got was not gathered from other Gardai but from his own enquiries (see Day 105 Q32, Day 104 Q215 and 216). Therefore not being involved in an investigation did not seem to inhibit Owen Corrigan's ability to come by useful information. He also stated on Day 111, pg 15 line 28 that despite being on sick leave he would "always maintain contact". On Day 109 pg 5 line 26, Owen Corrigan professes to give a lot of information about PETER KEELEY, and when the Chairman asked him how he came by that information he indicated it was through intelligence that he gleaned afterwards.

5.19 Owen Corrigan's counsel put to PETER KEELEY on Day 67 the following question:

**342 "We have to be fair to the late Tom Oliver here, there is no evidence he was an informant.**

**A Right.**

5.20 However, when Owen Corrigan was giving evidence he explicitly referred to the fact that Tom Oliver was an informer. On day 109, p30 at line 15 he stated that Tom Oliver was a "decent man doing his duty. I don't wish to go into details because the family have suffered enough, but it was an horrific episode to know what they done". Therefore Owen Corrigan did in fact know that Tom Oliver was assisting the AGS, and yet he claims through his attack on PETER KEELEY that he could not have known this fact as he was on sick leave. This of course contradicts what he told Sean Camon and Peter Kirwan about the matter. He told them he knew nothing about the incident because he was not working at the time. Therefore that whole line of cross-examination was built on the supposition that Owen Corrigan did not know something (that Tom Oliver was an informant) when in fact he did. In addition, as well as establishing the obvious, namely

that just because a member of AGS is off on sick leave it does not mean he cannot come by sensitive information known only to AGS, it also in this particular case corroborates PETER KEELEY's evidence because Owen Corrigan has demonstrated that he knew what PETER KEELEY says he told Mooch Blair. One therefore has to also ask why it was that Owen Corrigan denied knowing anything at the time. There is no obvious explanation for that. On Day 114, whilst he stated that he knew Tom Oliver's brother in law, he said that he didn't speak to him at the time because he was very upset. It also appears his anger may have been directed at AGS.

5.21 This point was explored further in cross examination by Counsel for PETER KEELEY on Day 117. The exchange that took place clearly shows that Owen Corrigan (i) knew Tom Oliver was an informant, and (ii) knew this at the time. It also confirms that the substance in relation to PETER KEELEY's evidence, that Tom Oliver was providing information having been caught with an unlicensed shotgun was correct. This information would have been known only by a very select number of persons.

**Day ENTER**

**391 Q. Mm-hmm. You recall earlier on I asked you about touts and you called them low calibre human beings?**

**A. Yeah.**

**392 Q. What do you think of Tom Oliver?**

**A. A gentleman.**

**393 Q. A gentleman?**

**A. Yes.**

**394 Q. And indeed, you have told us that you know the family?**

**A. Pardon?**

**395 Q. That you know the family?**

**A. Absolutely. It was one of the most dastardly, disgraceful things that ever was perpetrated by anyone in this country.**

**396 Q. I agree with you.**

**A. To see six little kids like steps of stairs --**

**397 Q. Seven, sir.**

**A. Yes, walking behind --**

**398 Q. Six daughters and one son.**

**A. And walking behind a coffin. I thought it was the most chilling episode, and the people that took him and tied him up and did what they did with him, I'll tell you, it was barbaric is an understatement for a description of those individuals.**

**399 Q. Absolutely, sir. There was outrage in the Cooley Peninsula?**

**A. There was indeed. And rightly so. And still is.**

**400 Q. Outrage. And still is?**

**A. Yes.**

**401 Q. This is close to home, sir, isn't it?**

**A. Very much so.**

**402 Q. Can I ask you, sir, you knew he was an informant, did you?**

**A. I didn't, no.**

**403 Q. You didn't?**

**A. No.**

**404 Q. Are you serious?**

**A. No, no. What's the basis for that from you?**

**405 Q. Well, can we have -- at Day 109, page 31, you refer to it as a dastardly murder?**

**A. Yes.**

**406 Q. For a man who was doing his duty and paid the price?**

**A. Yes.**

**407 Q. That's your word?**

**A. Yes.**

**408 Q. Those are your words: doing his duty and paid the price?**

**A. Yes.**

**409 Q. What duty was he doing, sir?**

**A. He was doing his duty to society and was answerable to members of the people that you are here representing.**

**410 Q. Sir, I represent Mr. Keeley every day --**

*A. Including your client who was in there and brought forward a second alleged kidnapping of Tom Oliver.*

*411 Q. We'll leave the second alleged --*

*A. I'll outline that to you if you wish.*

*412 Q. No, sir, you'll answer what I'm asking you. What do you mean by saying he was doing his duty and paid the price?*

*A. Yes.*

*413 Q. What did you mean by that?*

*A. He pointed out to the garda something that he had come across.*

*414 Q. So you did know he was an informant?*

*A. He wasn't involved. Isn't that some conclusion for to you jump to? The man was a struggling farmer with seven little kids. He had taken adjoining farmland on-grazing, on-grazing, and if you don't know what I mean it's an eleven-month system --*

*415 Q. I know exactly what you mean, sir.*

*A. It's an eleven-month system and came across something and did his duty and reported it to the lawful authority of the State. Now, is that a fair comment to say?*

*416 Q. What did he report, sir?*

*A. What he found.*

*417 Q. What did he find?*

*A. A firearms of some sort.*

*418 Q. So you did know that he reported something to the --*

*A. Yes. So is that -- what do you describe that as now?*

*419 Q. Why did you just lie to the Chairman about knowing he was an informant?*

*A. He is not an informant. He did his duty; I said it originally. He is not an -- is reporting something that he found put in the category of informer?*

*420 Q. You told me and the Chairman that doing his duty was just doing his normal duty to society?*

*A. Yes, which is that anyone would find anything, report it to the lawful authorities. Have you a different interpretation of it, Mr. Rafferty?*

*421 Q. And you knew that, sir, at the time that he had reported a firearm?*

*A. Yes.*

*422 Q. So you did know at the time when Mr. Keeley --*

*A. I didn't know at the time, but I have learned since.*

423 Q. You have learned since. You realise, sir, that the difficulty about knowing at the time is that that's exactly what Mr. Keeley says you passed onto the IRA about Tom Oliver, that he was cooperating with the garda?

A. Yeah, sure...

424 Q. Yes.

A. Does that justify Mr. Keeley having Mr. Oliver, tying him up in the back of a van like a chicken.

425 Q. None of that's justified, sir, but none of it is justified by a detective sergeant in the garda?

A. I hope you realise now the ramifications of the statement you are making.

426 Q. Oh, I do.

A. That he was part of the hero Irishman that tied Tom Oliver with ropes and put him in the back of a van and put --

427 Q. I am putting to you, sir, that you gave the information about Tom Oliver that put him in the grave. You gave that information, sir, and you have just revealed knowing what that information was for the first time.

A. And I'm the cause of Tom Oliver's death? That the IRA seek to rule this country, that I am a man that cooperates with the lawful police force of the State, should be taken out and tied up like a chicken in the back of a Hiace van by clients of yours, and he created a second, a second, a fake kidnapping in order to justify himself and get himself off the loop to go to Eurodisney.

428 Q. Do you know what the IRA said about the murder?

A. I am not interested in what the IRA said about it.

429 Q. The IRA said that -- "the IRA alleged that he had aided the organisation by providing sheds for the storage of weapons, explosives and vehicles but said he had passed information to Garda over a six-year period leading to the arrests of several IRA members." You knew that, sir, didn't you?

A. If you are parading, if you are parading the IRA and your client, Mr. Keeley, I can assure you one thing, you are running very short of credible witnesses if that's the calibre of witness you are seeking -- taking extracts from what the IRA said.

430 Q. But Keeley is right, sir, about this: you knew that Tom Oliver had given information about a firearm, didn't you?

A. Of course. Does that entitle them to go out and tie him up in a van and shoot him and leave seven little kids walking behind a coffin?

431 Q. No, sir, but --

A. Don't try --

432 Q. That's the first time we have heard from you that you knew that information.

A. That's attempting to make the justifiable unjustifiable.

**433 Q. Tell me, sir, you have told us that this is a conspiracy, this whole inquiry is a conspiracy -**

**A. Totally.**

**434 Q. -- by the Brits?**

**A. Yeah.**

**435 Q. Why in the name of heavens would the Brits send their man, Peter Keeley, on your case, to --**

**A. Well they didn't send him --**

**436 Q. To make up a story about Tom Oliver when the Inquiry is about Breen and Buchanan, why would they do that, sir?**

**A. Oh, I can't answer for the Brits.**

**437 Q. That's because there is no answer to it, sir.**

**A. You are not surprised at the word --**

**438 Q. It doesn't make sense, does it?**

**A. I mention the word "Brits", you are not starting, Mr. Rafferty, are you, no? Because you were astounded here the last day I mentioned it.**

**439 Q. Sir, quite frankly, sir, there is nothing you could say that would startle me.**

**A. That's okay. I am surprised. You are coming accustomed to my deliberations.**

**440 Q. Oh, no sir...**

**A. Maybe it was my accent that was astounding you.**

**441 Q. No, no, no, I am quite happy with your accent, sir.**

5.22 The IRA, for what its worth, said in their statement that Tom Oliver had been helping the IRA for six years. As PETER KEELEY indicated in evidence, he did not know to what period of time the allegation about being caught with unlicensed shot gun related. As he stated, that could have been the initial basis for Tom Oliver beginning to assist the AGS, and therefore that incident, namely the finding of the gun, could have occurred a significant time before 1991 when Owen Corrigan was not off on sick leave.

5.23 What is absolutely crucial about this information is the information that Owen Corrigan was privy to and how long he has known it for. AGS have never publicly conceded that Tom Oliver was providing information to them. His handlers either have

not given evidence, or if they had they were never asked about this point. The only information that was in the public arena was what was in the IRA statement at the time of his murder. Owen Corrigan did not handle Tom Oliver. Notwithstanding this, Owen Corrigan gives precise detail what is was Tom Oliver found, and where he found it. He described how Tom Oliver had "pointed out to the garda something he had come across", that he'd taken on adjoining farmland on-grazing and he came across something on this land and reported it to the lawful authority. He was asked what he reported, and Owen Corrigan replied "what he found" namely "a firearms of some sort". This chimes very closely with what PETER KEELEY says Owen Corrigan told Mooch Blair, namely that Tom Oliver had been caught with an unlicensed shot gun. It was specifically put to him that he knew at the time that Tom Oliver had reported having a firearm, and he responded "yes". He then tried to backtrack from this. But the direct question was put to him: "But Keeley is right, sir, about this: you knew that Tom Oliver had given information about a firearm, didn't you?", and Owen Corrigan responded "Of course."

5.24 Therefore having cross-examined PETER KEELEY on the basis that he was off on sick leave and knew nothing about this case, Owen Corrigan has subsequently revealed that in fact he did know that information, and the substance of it tallies with what PETER KEELEY says he told Mooch Blair, that Tom Oliver had been "caught with an unlicensed shot gun". One has to consider why Owen Corrigan tried to maintain that he knew nothing about this when in fact the opposite is true. The information which Owen Corrigan had at his disposal is also extremely sensitive information which has not been put in the public domain. This can only be information that he came by as a result of his activities as a garda. The fact he lied about knowing this information demonstrates that Owen Corrigan was trying to distance himself from the allegation, and tried to cast doubt on PETER KEELEY's credibility by putting something to him that was not the case.

### *Two Kidnaps*

5.25 It is PETER KEELEY's clear evidence that Tom Oliver was abducted twice, one in which he was involved and the other, when Tom Oliver was killed in July 1991.

5.26 PETER KEELEY was cross-examined as to the effect of Owen Corrigan passing this information to Mooch Blair and it was put to PETER KEELEY that there was "no doubt" it

mean that Tom Oliver would be murdered. PETER KEELEY stated "if he admitted it, absolutely". (Day 67 Q344) PETER KEELEY went on to clarify as follows "the thing is, sir, when the IRA arrest someone they suspect of being an informer, what actually happens is, and it is usually their rule, is if that person doesn't break down and admit it, nothing happens to them, and that has happened a few times when people get arrested by the IRA, get interrogated and do get released, and, if the proof is not there for them, the rules state that they can't kill them. I know there have been incidents where people have been put down holes and disappeared, but the main rule with the IRA: if they do not admit it, you can't touch them" (Q354). PETER KEELEY gave examples of what had happened to him when he was interrogated in 1994 and also in relation to Mooch Blair when he was suspected of being an informer (see Day 67, Q423). He also gave detailed information about an individual living in Warrenpoint who was an Irish citizen who had been abducted for being an informer (see Day 66, Q384 onwards). PETER KEELEY spoke about how a person whom Mooch had suspected of informing against the IRA had been abducted by Mooch Blair and during the course of his interrogation Mooch wrapped his private parts around his leg. That person however was not killed, he subsequently gave an interview to a newspaper and told the journalist about this interference and the person also named Mooch Blair. Blair also was asked directly about what happened to informers, he said usually they were executed but some "were put out of the country" (Day 59, page 59, line 26).

5.27 We also know by way of analogy that McAnulty and Francie Tiernan were both kidnapped on more than one occasion, demonstrating that kidnapping did not always result in execution. For references showing the existence of more than one kidnap see Day 108 Q184 (McAnulty) and Day 111 Q325 (Tiernan)). On Day 108, Owen Corrigan gave the following evidence under cross-examination by Counsel for the Tribunal in relation to McAnulty:

**183 Q Right. Now, the next sentence: "He had been detained for a period of two weeks before he was finally taken away and shot". So apparently he was taken twice by the Provisional IRA, is that right? "He had been detained for a period of two weeks before he was finally taken away and shot".**

**A Yes, that is correct.**

**184 Q So he was in fact kidnapped twice, are you saying?**

**A He was, yeah.**

**185 Q Why didn't the second kidnap come to light?**

**A Pardon?**

**186 Q Why didn't the second – sorry, we'll call it the second kidnap, clearly it was first in time but we'll call it the second kidnap, why didn't that come to light?**

**A I don't know. Sure somebody has to report it, you know. The second one was very public and they were acting on information, as I told you.**

**187 Q. You see, again we have to go on the evidence of his handlers, he doesn't appear to have reported to his handlers that he was picked up by the IRA?**

**A Well I can't comment on that, Mr Dillon**

5.28 It is worth pointing out that there were many similarities between the murders of Tom Oliver and John McAnulty. Firstly, both were allegedly informants, and this was ultimately the cause of their death. Secondly the murders happened in and around the same period, namely the late 80s/early 90s. Thirdly the murders were carried out in the same geographical area, and fourthly, the murders were carried out by South Armagh PIRA. The final piece of PSNI intelligence, read out on Day 124, stated as follows:

**12<sup>th</sup>**

**"A senior PIRA member revealed that he was responsible for the murder of John McAnulty. Intelligence indicates that someone informed PIRA that McAnulty was meeting with RUC officers. The senior PIRA member was subsequently informed of the allegations and McAnulty was later murdered."**

5.29 This information, ultimately originating from PIRA, links perfectly with what Owen Corrigan noted in his C77s – however he gave a completely different reason for the ultimate execution.

5.30 One can easily conclude that from an operational or executive level, the same persons within the IRA were involved in both murders. Evidence has been given that South Armagh PIRA were an extremely tight unit. Finally, both men were kidnapped in advance of being killed. PETER KEELEY also states that Tom Oliver was kidnapped twice. It now appears from the evidence of Owen Corrigan that John McAnulty was kidnapped twice as well. Much has been made of the lack of other verifying information that Tom Oliver was kidnapped previously in order to attempt to undermine PETER KEELEY. However it is important to point out that the disclosure by Owen Corrigan at the Tribunal that John McAnulty had previously been kidnapped was the first time this

information had come to light. There was no other verifying documentation in respect of that aside from that produced by Owen Corrigan. It is submitted therefore that one should not pay too much heed to the fact that there may not be stand alone evidence which speaks to the issue of the second kidnap.

5.31 It has also been confirmed by many witnesses that the IRA attempted to wage a propaganda war and were wary of their perception in what they would deem to be their own community. For South Armagh PIRA, where their targets were military or security forces, that was not such a concern. However Tom Oliver was a completely different proposition altogether. He was a well-respected, much liked farmer from the Cooley Peninsula who was not only a Roman Catholic but also a father to seven children. It would have been within the PIRA's contemplation that to execute such a person could serve to alienate the local population. Indeed, one only has to look at the well-documented out pouring of local anger after his murder to demonstrate just how controversial such an action was by the IRA. The relevant excerpt from David McKittrick's book "Lost Lives" states as follows:

*"Civilian, 37 years old, married with seven children, farmer from Riverstown on the Cooley Peninsula near Dundalk, he was found shot dead near Belleek, Co Armagh, 15 miles from his home. He had been abducted by armed IRA men near the border on 18<sup>th</sup> July. The IRA claimed he had been passing information to the Gardai. The killing provoked an outcry in the Cooley Peninsula which although close to the border had largely escaped the effects of the Troubles.*

*One local man said that the population was quite traumatised by this thing to the extent that even weeks later whenever you see two or three people talking you what it is about. There was tremendous anger that the IRA should do this and seek to terrorise the area. The IRA alleged that he had assisted the organisation by providing sheds for the storage of weapons, explosives and vehicles but said he had passed information to Gardai over a six year period leading to the arrest of several IRA members.*

*Speaking at Tom Oliver's funeral, a Catholic Bishop said he was a hard working man and the people of the parish reject claims made by his assassins. Members of the local GAA Club formed a guard of honour at his funeral and the local team played their next match wearing black armbands. Local people formed the group called STOP TERRORISM OPPRESSION AND PAIN which organised a protest rally at the local GAA ground. Around 5,000 people attended the rally.*

*Tom Oliver had 6 daughters and a son.*

*On 24<sup>th</sup> of November 1991 Frank Burn reported in the Irish press*

*"In the pubs now at night, the talk is still about Tom Oliver and his barbarous death. The men who delivered him to his execution are known in the locality. To a large extent that have been ostracised and told in some pubs that their custom is not wanted and their company is not welcome. In some cases, their families have disowned them".*

5.32 Given what PETER KEELEY said about how the IRA would not necessarily execute someone if they did not admit being an informer, one can well imagine how the IRA would have been very slow to act in such a case and would have proceeded with extreme caution. They would want to be completely sure of their information. In addition to this, the recent intelligence précis corroborates this suggestion, it also shows that there were concerns from the rank and file within PIRA in relation to this murder, and that authorisation had to be sought from a high level.

(Read into record on Day 124)

8<sup>th</sup>

*"Sinn Fein/PIRA members remain concerned that the Smithwick Tribunal continues to disclose possible damaging information. Sinn Fein/PIRA members remain concerned that specific detail relating to the murder of Tom Oliver may be disclosed."*

9<sup>th</sup>

*"Intelligence indicates that a senior PIRA Army Council member was directly involved in ordering the murder of Tom Oliver. The senior PIRA Army Council member had been approached by several PIRA members and others requesting that Tom Oliver not be killed. Despite these requests, the senior PAC member directed that Oliver be executed."*

10<sup>th</sup>

*"Further intelligence suggests that a senior PIRA figure sought direction and instruction from a senior PIRA Army Council member in relation to the discovery of allegations of Tom Oliver being an AGS informant. The senior PAC member subsequently ordered Oliver to be executed."*

11<sup>th</sup>

*"Intelligence suggests that..." now, it refers to somebody who is involved in the Tribunal, has been a witness in the Tribunal, and I think in closed session the name has to be mentioned. "Intelligence suggests that Owen Corrigan engaged in corrupt activity targeting criminals, and was motivated by greed. The intelligence also suggests that he did provide sensitive information to PIRA and that he did so for reasons of self-preservation."*

5.33 On Day 124, Drew Harris gave the following evidence

**525 Q.** *Just in relation to matters surrounding the unfortunate Mr. Oliver, and obviously you have a number of pieces of intelligence that relates to that. You mentioned earlier on about the IRA using him as propaganda. Wouldn't it also be right that they would have effectively one eye open to the mood and the sentiment within the local population at the time?*

**A.** *Well, that's correct, yes. Very much so.*

**526 Q.** *We know that Mr. Oliver was a local man, well-respected and well-liked. He was the father of seven and also a Catholic. So, from the IRA's perspective, one could almost*

*envisage the backlash if steps were taken by the IRA. Wouldn't it be right that that would lead to a degree of reticence on their part before they would take any steps?*

*A. The murder of individuals who were suspected of being informants did, would go through a decision-making process, in effect, and different levels of authorisation were required depending on an individual's position. And therefore, that would have been considered, I presume. Given the general manner in which these things were conducted, one would assume that that was thought through in terms of the impact of murdering Mr. Tom Oliver.*

**527 Q.** *And again because of who Mr. Oliver was, as I say, that would explain some of those précis of intelligence that you have today. It would merely underline the fact that there was probably reticence within the organisation before that step was taken?*

*A. Yes, and even in the other context of how many operations in the Provisional IRA's view had gone wrong leading up to that, in terms of the intended target not being murdered and then some other unfortunate being murdered, and then the murder, as I say, of a local man.*

**528 Q.** *Now, that being the case, would you agree with me that the Provisional IRA would have wanted to have been very careful before they acted and they would have needed to be very sure of their information, rather than, if you like, taking the steps that they did based on hearsay or barroom talk?*

*A. Well, certainly, yes, they would have engaged in a process, and that would have been made, that would have been doubly emphasised by murders of individuals which were in their view just operations gone wrong*

5.34 It is submitted that No.11 above corroborates PETER KEELEY's evidence as to Owen Corrigan assisting the IRA. The other pieces of intelligence demonstrate just how controversial this murder was. It also corroborates PETER KEELEY's evidence on two kidnaps. The fact that the Senior PIRA Army Council member who sanctioned the murder was approached by several IRA members suggests strongly that this process of making representations took a period of time which, had the murder happened at the first kidnap, could not have elapsed. This is further corroborated by the piece of intelligence which indicates that a senior PIRA figure sought direction and instruction from the PIRA Army Council member having discovered he was an AGS informant. Again this suggests a period of time had to elapse for that to be considered. As stated in that piece of intelligence, the senior PAC member "subsequently ordered Oliver to be executed" ('subsequently' suggesting the passage of time).

5.35 All of this suggests there was a passage of time where the IRA were of the view that Tom Oliver was an informer but did not know what to do about it. Ultimately the decision was taken to execute him. This fits in with two kidnaps. The information is initially provided by Owen Corrigan, a short while after that the first abduction occurs,

he was released either because he did not admit anything or because PIRA realised to kill such a person they would need authority from the Army Council (or both) and during the ensuing period the IRA were deciding what to do. Once the ultimate decision was made, Tom Oliver was abducted as second time and killed, the latter being in July 1991 when PETER KEELEY was in Eurodisney.

5.36 Witness Z also stated on Day 98 that he could recollect a reference to there being "two kidnaps" of Tom Oliver, although he could not remember precisely from where, save to say that he thought it was from the public arena. It is submitted that one can discount that this was a recollection of something he had read reporting on the press coverage of the Tribunal as he would at the very least been aware of this. This recollection he had was of a much older vintage, although he couldn't say from where. He also gave the following evidence on Day 98:

**355 Q. Well insofar as the reaction was a fairly predictable reaction. You are talking about a local man established within the community, a popular man, a family man, and it would be fairly predictable that it would cause a degree of upset and outrage to the members of the community in the area?**

**A. Yes.**

**356 Q. And would you accept, then, that that would, quite understandably from the IRA's viewpoint, put an even added degree of caution in relation to steps they took against Mr. Oliver and it might be a reason, would you accept, for explaining why there were effectively two kidnaps?**

**A. Yes, that is a suggestion that it would, yes, for veracity, yes, I could agree with that. I can't confirm it, but I could agree with it, yes, from their point of view, that it would be something this they would consider and look at.**

5.37 This evidence demonstrates that the IRA would have been very careful when it came to Tom Oliver. Authorisation would have been sought from on high in light of Mr Oliver's local profile. In addition, before making the request for a direction from the Army Council, and in light of the high esteem within which Mr Oliver was held, the IRA, it is submitted, would want to have been a sure as they could of their information that he was an informer. It is submitted that to be sure, they would have wanted to have information from an official source, such as someone from within AGS.

5.38 Whilst the handlers of Tom Oliver have not given evidence before the Tribunal, or if they have no evidence was given on that issue by them, we do not know whether they may have been aware of the first kidnapping of Tom Oliver. If they were not aware of an initial kidnap then this does not mean it did not happen. John McAnulty's handlers did not know about the first kidnapping.

5.39 In this regard, whilst some store has been put in the fact that no record has been found of the first kidnap of Mr Oliver, one has to consider the following. If the first kidnap did not take place publicly, then it would not have been witnessed. Therefore the only way of finding out about it subsequently would be from one of the kidnapers or from Tom Oliver himself, or from persons they told about it. The fact that his handlers may not have known about it is in some respects not surprising. The whole basis upon Mr Oliver being abducted by the IRA was because he was suspected of being an informer. It is a fact that he was ultimately executed. Therefore one can only imagine the fear and pressure under which Tom Oliver would have been placed. He might also have wondered how this information came into the hands of PIRA. He may have considered that the IRA had found out about it somehow from AGS. One would consider that he would then have had good cause not to report anything further to AGS – to do so might have led to a confirmation of what PIRA suspected.

5.40 Raymond White also stated in evidence on Day 71:

***585 Q "So, I mean, if it was the case that the agent was involved in an abduction in the Republic of Ireland and police might not hear about it, you wouldn't hear about it necessarily?"***

***A It would have been entirely at the remit of the military as to what went into the MISR. If it wasn't in the MISR and we didn't have any sources of our own reporting on the issue of the Garda didn't have any sources reporting on it, well then you're quite right, it was at the behest of the military whether we heard or not"***

5.41 Clearly this would apply to the kidnaps of Tom Oliver which would give an explanation why there was no report of it the first kidnap from intelligence assets.

#### *Distance from murder*

5.42 The other aspect to the "two kidnap" issue is that it was put to PETER KEELEY by Counsel for Owen Corrigan that he had invented the "two kidnap" evidence to distance himself from the murder of Tom Oliver. The evidence which PETER KEELEY described of the first abduction was characterised by Counsel for Owen Corrigan (attempting to

refute the evidence of PETER KEELEY that there 2 kidnap) as being “the last moments of Mr Oliver’s life”. However, if PETER KEELEY was wishing to distance himself from the murder of Tom Oliver, then one wonders would he make reference at all to himself being present at the first abduction? In addition, PETER KEELEY gave evidence that James Morgan told him not to come back because Mr Oliver would not be coming back. Therefore one would question how that information equates to distancing himself from murder. He also says that when he was involved in the kidnap, he knew who it was they were kidnapping. Therefore he knew that the person who was being arrested was suspected of being an informer. It is submitted that this does not ‘distance’ him.

#### **Corroboration of Keeley’s evidence**

5.43 Corroborating factors in relation to PETER KEELEY’s evidence have already been mentioned in the context of the section above, which dealt with rebuttals of criticisms levelled at PETER KEELEY by other represented parties. In addition to those factors, the evidence of PETER KEELEY is corroborated in the following way.

5.44 The very fact that Mr Oliver ended up being executed by South Armagh PIRA in many ways corroborates the evidence which PETER KEELEY gave as to the conversation between Mooch Blair and Owen Corrigan. Tom Oliver was subsequently kidnapped and killed by PIRA, which is what the effect of the imparting of that information from Corrigan to Mooch Blair would likely have been. In addition, Owen Corrigan (not AGS) has himself confirmed, independent of anyone else, that Tom Oliver was providing information to AGS, which in turn underlines that he was privy to the information which PETER KEELEY alleges he imparted to Mooch Blair, despite his protestations that he could not have had this information as he was on sick leave.

5.45 PETER KEELEY was also cross-examined by Counsel for Owen Corrigan on the basis that he had got his dates all wrong which proved that he was lying in relation to Tom Oliver and two dates. Counsel was trying to demonstrate that PETER KEELEY was in the country in July 1991. However in doing so, Counsel referred to an assassination attempt on Joe Haughey in Belfast which was reported on a website called Newshound. Joe Haughey was in Eurodisney with PETER KEELEY. That article referred to the assassination attempt in 1991 and said that it was a year before that he was in Eurodisney, ie 1990. However this article carried an incorrect date. The article written by Barry Penrose in the Sunday Express which referred to PETER KEELEY and his cohorts being in Paris was actually dated 29<sup>th</sup> September 1991. This was read into the record on Day 72. Therefore this line of attack in cross-examination was similarly misconceived.

*Patrick 'Mooch' Blair*

5.46 The statement that PETER KEELEY says Blair made after hearing the information, that he blow the f'ing back out of him with an AK" was entirely in keeping with the sort of person Mooch Blair was and is a demonstrative of the ruthlessness which Mooch Blair displayed in other murders at that time. In Mooch Blair's own evidence he referred to "psych ops" in relation to the allegation that he had telephoned a police station after the murder of some police men, allegedly taunting them (although he did not admit doing it).

5.47 He denied flatly the evidence given by Peter Keeley, however it is worth pointing out that Blair holds an extreme animosity, to put it mildly, against PETER KEELEY for acting as an informant against PIRA. He tried during his evidence to distance himself from PETER KEELEY and yet Garda Intelligence clarifies that PETER KEELEY was the driver and trusted friend of Mooch Blair. Garda Intelligence Precis No 662 stated as follows:

*"On 22<sup>nd</sup> August 1988 Gardai stopped a car driven by a person who gave his name as Peter Keeley with an address in Newry, County Down, Northern Ireland. When asked what he was doing in Dundalk he replied that he was visiting the wife of a named member of PIRA. The report further states that he was observed again in Dundalk on the night Robert Russell was extradited to Northern Ireland. Russell was extra kite indicted on the 27<sup>th</sup> August, 1988 and was handed over to RUC at 6.15am on that day. He was driving around with leading members of PIRA, including PJ 'Mooch' Blair and Mickey Collins. The report further states that it would appear at this stage that he is a trusted person within PIRA".*

5.48 The above précis therefore shows PETER KEELEY been in Dundalk on two separate occasions only 5 days apart, and on each case in a car and linked with IRA members.

5.49 He also tried to state that PETER KEELEY was not a “volunteer” and yet it is commonly accepted that PETER KEELEY was part of the IRA at that time. On this issue of course, one must refer to the Omeath Bomb find and the level of detail PETER KEELEY gave; clearly he was there. It is also of note that when PETER KEELEY was arrested by AGS on the Long Avenue Road in Dundalk in June 1989 he was in the company of Mooch Blair who was also arrested (see Day 67 Q126 and 129). Mooch also accepted that given the role he held in the IRA he was just the sort of person the intelligence services would have wished to get an informer next to. (Q276 Day 59). Mooch Blair was also asked whether, with hindsight he could pinpoint a period when he was informing, he said “the late 1980s because he kept disappearing”. Disappearances or “unexplained absences” have been noted by intelligence experts (Blair Wallace) to be a possible sign of having an informer in one’s midst – this applies both to the PIRA and AGS.

5.50 Of course the most important aspect of Mooch Blair’s evidence, it is submitted, is the interchange under cross-examination by Counsel for PETER KEELEY where Mooch Blair accepts quite openly that he would not “give up a friend” because it would not be in his nature.

**Day 59**

**337 Q. Yes. Sorry, would you just give me one moment. Would you ever name an IRA man?**

**A. I would never inform on anyone, no.**

**338 Q. So if someone was giving information to the IRA, would name them, either?**

**A. Name them to whom?**

**339 Q. To this Tribunal?**

**A. Well, I don’t know, because I did not receive or know of any detective, North or South, supplying information.**

**340 Q. I am just asking you, if you did know that, would you tell us?**

**A. Well, it wouldn’t be in my thing to tell.**

**341 Q. No, it wouldn’t be in your nature to tell?**

**A. No.**

**342 Q. Even if you knew that information, it wouldn't be in your creed to tell us, would it?**

**A. Well, I would like to think I would be loyal to any organisation I was in. I wouldn't betray anybody.**

**343 Q. Yes. Sorry, Assistant Chief Constable Egan – Garda Commissioner, rather, said that if Owen Corrigan was your friend, you would be unlikely to give him up. Is that your view as well?**

**A. As I said, I would not give up a friend.**

**344 Q. Thank you very much.**

5.51 Therefore, obviously Mooch Blair has accepted that he would not admit the allegation levelled by PETER KEELEY even if they were accepted without scrutiny of PETER KEELEY's evidence. Therefore his denials of PETER KEELEY's case are effectively worthless – the Tribunal can put no credence in them whatsoever, especially when one considers on top of that the motivation that Mooch Blair would have to attempt to contradict PETER KEELEY.

5.52 Mooch Blair also gave evidence that Fintan Callan Ceili House was a republican bar – therefore one might surmise it was just the place where such a meeting would take place.

5.53 Also it is worth noting that when Blair was asked about whether he knew Corrigan he said "I don't know any garda in the terms he is saying" (Q89) and Q322 "well, I didn't meet Mr Corrigan and I got no information from any gard, that is what I am telling you I didn't do. I was a volunteer during them [sic] times and I was available". He further went on to give the following evidence:

**Q. Would it be fair to say that Mr Corrigan was regarded as a gard who had anti-republican views?**

**A. Yes he definitely would have been**

5.54 As stated above, again these comments must be considered against Mooch Blair's self confessed stance that he would not give up a friend. But additionally, one must also consider that on the one hand Mooch Blair states he didn't meet or even know Mr Corrigan, and on the other hand he professes to know his reputation at the time. In some respects one can see parallels with the evidence of Owen Corrigan Day 112

"wouldn't even know what he looked like if he walked into a room", and his responses to Counsel for PETER KEELEY as appears below.

**MR. RAFFERTY:** *Sir, I am going to move on now to the third allegation, which is the Tom Oliver allegation. For the avoidance of doubt, if you'll give me one moment, Sir, I want to get the actual transcript portion.*

**369 Q.** *Do you remember I said to you that there was a theme in your evidence about Keeley, that you say you weren't there or that you distanced yourself from any of the places that he says you have been?*

**A.** *Yes, that's right.*

**370 Q.** *Well, I want to ask you again about something you said in relation to, it was put to you by Mr. Dillon, Day 109, line 17, page 30, Mr. Dillon put it to you that you had met 'Mooch' Blair and Peter Keeley at Fintan Callan's Ceili house, and your response to was: "Absolute lies all the way. I never met 'Mooch' Blair in my life and let you recall him and prove that. This is more of it now. Never met him in my life." Are you serious you have never met 'Mooch' Blair in your life?*

**A.** *That's right. And his legal team are here and I am sure it wouldn't be a great difficulty to have him here within an hour so we can put that to him, you know.*

**371 Q.** *Sir, with respect to you, I cross-examined Mr. Blair and Mr. Blair, at the end of his evidence --*

**A.** *Did he say -- Mr. Blair?*

**372 Q.** *Sorry, yes, Mr. Blair. Mr. Blair, at the end of his evidence, said that he wouldn't be informing on anybody and the last thing he would give up was a volunteer or a helper.*

**A.** *Did you ask if he knew me? Did you ask him that question?*

**373 Q.** *He was asked, sir.*

**A.** *Did you ask him that question?*

**374 Q.** *Yes, sir.*

**A.** *What he did he say.*

**375 Q.** *He said the last thing he said he would do is give up a volunteer. But I want to move on, sir. You are serious that you have never met him?*

**A.** *Never met him.*

**376 Q.** *And that he lived in Dundalk?*

**A.** *That's right.*

**377 Q.** *Sorry, I have just been passed a note, as it were. When -- it was a question I asked you earlier. When someone like that lives in Dundalk, would he not be somebody that you would be keeping a close eye on?*

**A.** *Oh, yes. Not me, the whole collective team.*

**378 Q.** *The whole collective team?*

**A.** *Yes.*

**379 Q.** *But you would do that too?*

**A.** *Oh, absolutely, yeah.*

**380 Q.** *You see, you said to the Tribunal, on Day 112, that: "Question: Have you even met him professionally, professional even? Answer: Never met him. Wouldn't know what he looked like if he walked into the room."*

**A.** *Yes.*

**381 Q.** *That's what you said about 'Mooch' Blair?*

**A.** *Yes.*

**382 Q.** *Are you serious that you wouldn't know what 'Mooch' Blair looked like?*

**A.** *I don't know him. Never met him.*

**383 Q.** *This is a top Provo that lived for years --*

**A.** *I am sorry, I can't reincarnate him. I can't make him out something that he is not or that my knowledge is something that it's not.*

**384 Q.** *I'll ask you -- sorry, would you give me a moment, Mr. Chairman? How do you actually do surveillance on somebody who you don't know what they look like?*

**A.** *How do you mean?*

**385 Q.** *Well, how would you do surveillance, sir, on 'Mooch' Blair if you didn't know what he looked like?*

**A.** *Well, I'd be with other members, I'd never be out on my own, you know.*

**386 Q.** *And would you rely, you, the jewel in the crown, rely on others to point out who 'Mooch' Blair was?*

**A.** *Not again, Mr. Rafferty...*

**387 Q.** *Would you rely on junior members of your team to point out who the officer commanding south Down IRA and chief gun-maker of the IRA living in Dundalk is? Are you serious, sir?*

**A.** *Every one of them, that team were highly trained and highly motivated.*

**388 Q.** *Clearly more highly trained than you, sir, because if they knew what 'Mooch' Blair looked like and you didn't, then that doesn't speak very well for you?*

*A. Yes, they would, but I would know anyone that I had occasion to arrest and interrogate.*

*389 Q. Yes. But –*

*A. But I didn't arrest Mr. Blair and I didn't know, I didn't know what he looked like.*

*390 Q. You are --*

*A. Remember now, we're talking in terms of upwards of 500 activists in Dundalk, you know.*

5.55 It is also worth remembering that Owen Corrigan went from saying that he “wouldn’t know Mooch Blair if he walked into a room” or knowing what he looked like on several occasions, to accepting on Day 132 that he did in fact know what he looked like. This is dealt with below.

## F. Peter Keeley

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### Career as an Informant

- 6.1 In dealing with Mr Keeley's evidence, one must of course also look at his background in order to evaluate it fully.
- 6.2 PETER KEELEY has given a very detailed statement outlining how he came to be involved as an agent. He was recruited specifically with a long term view in mind. He was from the right area (Newry) and of the right religion (catholic) to have potential as an informer. His detailed statement is obviously relied upon to establish his background, none of which has being disputed by any party.
- 6.3 Many aspects of his statement are corroborated as discussed in all the separate events which have been discussed herein. On a more general basis, one could also pick out other matters. For example, PETER KEELEY provides the identities of various people that were involved in the Internal Security Unit, or "nutting squad" of PIRA. Raymond White, a very senior officer who rose to the rank of ACC and was previously the head of Special Branch in Belfast, stated for example that John Joe Magee and Scappaticci worked in that group (Day 71 Q596-587). He also indicated in relation to the Tom Oliver kidnap that if he [Scappaticci] "was in that security team, as it was referred to, and Mr Oliver was being questioned in relation to, shall we say, their belief that there had been a security breach, it is an expectation that "Stakenife" would have been there"(Q594). This confirms PETER KEELEY's evidence in that regard.
- 6.4 PETER KEELEY gave evidence in relation to examples of how he assisted the police and the security forces on Day 68 from Q543 onwards. In this regard, the Tribunal has heard considerable evidence in relation to circumstances where PETER KEELEY provided valuable life saving information, and also information which saved lives.

The details of same can be summarised as follows

- (i) PETER KEELEY provided information about a motar attack planned for Newry courthouse as a result of which the RUC put up height restricters in the car park

opposite the police station. This prevented a bomb attack on Newry courthouse. The mortars were moved and fired from another location and they went into a field. See Day 65, W71, Q424

- (ii) PETER KEELEY was with Joe Haughey when his in-law gave him information an individual in Bramblewood being a UDR man. This information was passed along to PETER KEELEY's handlers and the UDR officer was evacuated from his home.
- (iii) There was a planned bomb attack for Patrick Street in Newry. PETER KEELEY showed his handlers the area where it was going to be. A covert unit of soldiers was put into the area, and two IRA volunteers, Marks and Coyle, were caught with a two kilo semtex bomb and prosecuted.
- (iv) A cleaner man who would go to get his papers in a shop on Sugar Island had been targeted by the IRA. PETER KEELEY passed this information on and the old man retired.
- (v) PETER KEELEY brought his handlers a flash unit for detonating bombs, it was a coded system that was triggered by infrared light which matched that code. This unit was on the bomb that killed Colleen McMurray. As a result of this new counter-measures were adopted by the security forces to prevent that from blowing up troops.
- (vi) When working for customs and excise, PETER KEELEY assisted in targeting people who were taking in tobacco and drugs, as a result of which his handlers in Northern Ireland were able to inform the Irish customs authorities as a result of which on one of the biggest consignments of hash was seized and those involved were arrested. See W62's evidence, Day 51, pg 41 lines 5 -7, pg 47 lines 28-30 and pg 139 lines 12-16.
- (vii) When working for CID, PETER KEELEY was involved in a number of significant operations, including the £18 million computer chip fraud. There was a factory in Derry that made computer chips . A married couple in Derry were going to arrange with IRA persons to hijack a 40-foot container coming from the factory.

They were then going to be sold to an individual called Luigi Marotta. PETER KEELEY gave this information to his handlers. He was granted "participating informant" status. (See Day 65, Q402 onwards)

- (viii) PETER KEELEY was also an informant in a £1.25 million cheque fraud. Persons with IRA connections got cheques from a box of cheques that went into a computer in a St Brendan's Liquour brewery. These cheques were brought to Marotta again. PETER KEELEY told his handlers about that and he was given PI status again to work and get the information on the crime that was taking place. PETER KEELEY was set up with a contact in the anti-terrorism police in the Metropolitan police because of the people involved in the crime, surveillance was put on them and they were able to trace the whole crime and stop the offence taking place. See Day 65 Q375 onwards (W71's evidence).
- (ix) In May 1999 there was a raid on a drug warehouse in Belgium, which involved agencies from Northern Ireland, Belgium and the UK. PETER KEELEY also had participating informant status in that matter. (see Day 65, Q369 (W71))
- (x) In early 2000, PETER KEELEY stated that Mooch Blair became a member of the Real IRA and were looking to try to raise funds. He said he had access to Viagra tablets if I could get a buyer. PETER KEELEY told him he knew a drug dealer in England who would pay for them. He told his handlers about this and they asked PETER KEELEY to get a sample of the Viagra. A sample was obtained which PETER KEELEY gave to his handler. W 71, PETER KEELEY's handler, stated "I passed this to the Garda Fraud Squad who subsequently confirmed that Pfizer was able to identify it as one of their tablets not yet issued to the market". This particular operation is dealt with in more detail below

6.5 As to Keeley's reliability and accuracy as an informant, reference is also made to the evidence of W67, W70 and W71.

**W70**

6.6 W70 was a Detective Inspector in CID. He was introduced to PETER KEELEY by W71 in or around 1998 as one of his informants (Day 65, Q48). He was asked how he assessed the quality of information that PETER KEELEY gave him as an informer, he described it as being "reliable" (Q69). W70 also said that he was aware that Special Branch had a different opinion but he stated that that would have been normal "in that Special Branch officer would not have wanted any person giving intelligence to Special Branch to have any association with CID" (Q69). He also stated that at that time he was satisfied with the information that PETER KEELEY was giving him and reiterated that it "didn't surprise me that Special Branch would have assessed him as a nuisance factor because Special Branch would not have wanted an informant of theirs talking to a CID officer" (Q76). He stated this was because there was a jealousy, and that Special Branch would have been "protecting their own area of work and would not have wanted a CID detective to know anything about the terrorist knowledge that was being passed to them" (Q78). At that time PETER KEELEY was providing information to W71 which related to subversives. W70 was aware also that PETER KEELEY had previously given information to Special Branch and to military (Q70). He also said that PETER KEELEY had given intelligence that led to successful convictions (Q72). W70 was asked by Counsel for AGS the following:

**145 Q I see. Did he give you any information which turned out to be false?**

**A I'm not aware of any.**

**W71**

6.7 W71 was a Detective Sergeant in the Drug Squad. He also gave evidence on Day 65. In or about 1996 PETER KEELEY made contact with him and offered him information in relation to drug activity. When doing background checks on PETER KEELEY he was able to ascertain that PETER KEELEY was "registered with a Special Branch office" (Q348). Over the period that PETER KEELEY worked with CID he met W71 at least once a week (Q357) and providing "credible information. He was giving information concerning stolen goods, counterfeit goods, information of the movement of cigarettes and some intelligence on drug trafficking. He gave information in relation to high profile figures involved in cheque fraud and other types of activity." (Q358). PETER KEELEY got

remunerated depending on results. Sometimes he was paid more where there was a successful conviction. He was not paid for failure. PETER KEELEY was paid significant sums of money for the information which was provided. However W71, who met him on many occasions and was in a unique position to assess the man. He stated that whilst informants are motivated by money, he thought he "had a certain conscience in terms of activity of the IRA"(Q363)/ PETER KEELEY received approximately £20,000 from CID, which is representative of the quality of the information he provided. W71 graded Mr Keeley as "A1" (Q366) which is the highest rating.

6.8 W71 also described how PETER KEELEY began to give him information on subversives, including the IRA and the Real IRA in Dundalk, some of it relating to Mooch Blair (Q409). W71 described in detail the evidence that PETER KEELEY gave him in relation to a meeting he had with Mooch Blair in the run up to the Omagh bomb in August 1998. PETER KEELEY informed W71 that the Real IRA was about to move a bomb (Q422).

6.9 Importantly, W71 gives interesting evidence in relation to the chronology of events. As described in W70's evidence, there was a difference of opinion between Special Branch and CID as to the reliability of PETER KEELEY, but as PETER KEELEY was providing evidence about subversives to CID, he was not in any way surprised about this because it was treading on their territory. As described in W71 testimony, PETER KEELEY gave his handlers information on 12<sup>th</sup> August 1998 before the Omagh Bombing that there was a bomb on the move, he had also given information about Mooch Blair smelling of diesel fertilizer and being "high as a kite" and PETER KEELEY suspected something big was going to happen. (Q420) However on the weekend on which the bomb exploded, W71, his handler was on leave. PETER KEELEY was in Tenerife and when he heard about the bomb he phoned his handler (Q423). On the 18<sup>th</sup> August, 3 days after the bombing, W71 had a meeting with senior members of his own department and subsequently with Special Branch. It was on the 20<sup>th</sup> August 1998 that W71 was informed by Special Branch that PETER KEELEY was to be regarded as an intelligence nuisance and that he was not to be involved with people in Dundalk or make contact with the Real IRA (Q427 and Q428). Thereafter PETER KEELEY was only involved in relation to the Luigi Marotta matter.

6.10 W71 confirmed that PETER KEELEY was one of the best informants he ever had (Q442) and that he regarded him as a "very credible informant". It is only fair to point

out that W71 was asked during his evidence if he was aware of any incidents where PETER KEELEY had given him inaccurate information. He referred to PETER KEELEY's involvement with Luigi Marotta and the people he was reporting on in the iRA. They were making a trip to Turkey to rebels in the mountains there who had a lot of artefacts which were stolen during the Kuwait war and one artefact in particular was a Torah. PETER KEELEY supplied photographs of this and the information relating to it. W71 stated " I was aware of the people in Derry going to Turkey to view this material and it didn't materialise. And it just, everything just seemed to disappear." However, W71 was at pains to point out this was not a criticism of PETER KEELEY. He stated "I'm not saying that it's something that wasn't going to happen, it just didn't happen and I never actually found out the reason why it didn't happen". PETER KEELEY was able to state in evidence on Day 67 at page 3 line 26 onwards that the information was not inaccurate. He said: "those people in Derry did go to Istanbul, they then did meet with members of the PETER KEELEYK, and eventually the Torah was recovered by Israeli special forces. So the thing is, the operation may not have went ahead with the RUC. The RUC should have been aware that those people did travel, the same people that I named, to Istanbul and meet with those people". PETER KEELEY was able to give chapter and verse as to how he became aware of this Torah (see Day 67, pg4 lines 6 -30).

6.11 W71 also gave the following evidence on Day 65:

**601 Q. Can I ask you, did you ever have an informant like Peter Keeley or as good as Peter Keeley in your career?**

**A. I had a number of informants in Loyalist areas and Republican areas, and I have to be honest and say that no, I haven't had one like Peter Keeley before.**

**602 Q. Not one as good as Peter Keeley?**

**A. That's correct.**

**603 Q. Do you believe him?**

**A. Do I believe him?**

**604 Q. Yes.**

**A. In relation to?**

**605 Q. In relation to intelligence he gave you?**

**A. Well, I got results from it, so yes, I do.**

6.12 When his cover was blown by the newspaper article in April 2000, W71 found him premises in the UK and made arrangements for the payment of his accommodation and living expenses. W71 also attempted to negotiate a settlement with a government department. (Q451).

#### **W67**

6.13 W67 gave evidence on day 71. He was previously an Inspector in the RUC who worked in Special Branch and dealt with intelligence in that role. He was then promoted to the position of Detective Superintendent with CID based in Belfast. After time in America training with the FBI he was further promoted to Detective Chief Superintendent and made head of Special Branch in Belfast until 1989. He then left to attend Bramshill in England, he returned to uniformed duties as Divisional Commander in Belfast. In 1993 he was then appointed as Assistant Chief Constable and took up the role as head of CID "C" Department. In the final year of his career he was also the ACC in charge of Special Branch as well as CID.

6.14 Mr White has therefore had a long and distinguished career in the RUC/PSNI and has considerable experience in intelligence matters.

6.15 Mr White never met PETER KEELEY, but he knew of him as a registered informant for a period as a CID source at the time when he was ACC. Raymond White was the boss of W71, who approached him and asked for approval to run PETER KEELEY as an informant. Raymond White then stated in evidence "when I heard, basically, who it was, the name was familiar to me from previous conversations with Special Branch, and, as I say, I made further enquiries as regards his standing with them". The response Mr White got from Special Branch was reflected in his evidence at Q312, day 71. Special Branch had conveyed to Mr White that their view was "not to touch him". At Q506 Mr White gave evidence that the reason for this related to information that PETER KEELEY had provided in relation to an operation in England. He also stated that there was other information but "Special Branch didn't go into detail" (Q506). However, Mr White gave evidence that "that doesn't rule him out, as it were, of being considered by ourselves". He gave W71 approval, and PETER KEELEY was afforded "participating informant" status. He then describes the relationship with PETER KEELEY growing and PI status being granted to him

on other occasions. Mr White stated that when PI status was given it came with a narrow set of areas within which that informant could act and there were restrictions put upon him. He confirmed that PETER KEELEY complied with those restrictions successfully and convictions resulted (Q533). Mr White was asked whether PETER KEELEY's involvement as an informer yielded results. He stated:

*"It did. There was – I think, in relation to it, there was very substantial sums of money recovered in relation to a bank, where cheques had been the subject of fraud. And in relation to, I think, an operation with the Post Office and it was Customs, that resulted, as it were, in a substantial, shall we say, degree of criminality being intercepted and individuals being prosecuted before the courts.*

**316 Q So it is fair to say you were satisfied with his productivity as a source?**

*A Certainly, as a criminal informant, I would have liked to have had more, Mr Chairman, in that respect. It panned out extremely well for us in that respect, but.."*

6.16 He further stated at Q521 that PETER KEELEY was a "stand out in terms of only the criminal intelligence that I am aware of. Now, he performed extremely well in that respect".

6.17 Mr White also gave evidence that he would have been within the readership of MISRs when he was in Special Branch. He was asked whether he saw any military report or MISR relation to Mr Fulton which suggested that a Garda passed information (Q332). He indicated that the name of the individual would never have appeared in the MISR, and that he was "very parochial in terms of what he paid attention to". There was also a large volume of intelligence generated and a "need to know" policy which operated in intelligence matters (Q374). He also pointed out to Counsel for AGS that once he left Special Branch he lost all access to the MISRs (Q441). He was asked however to accept by Counsel for the AGS that if had read any MISR suggesting that an agent had named a garda as assisting the IRA in these murders, he would have remembered that. Mr White answered:

*"No, I wouldn't accept that I would remember. I could have read it and noted that it had no, as it were, bearing on the area I was responsible for and, as it were, have forgotten it in the intervening period, so I couldn't confirm or deny that aspect of it". (Q443)*

6.18 Mr White was asked whether there was a perception abroad that the FRU were more interested in gathering intelligence as a first priority, and that preventing murders and crime was a secondary consideration. He responded by saying that the security

services' lords and masters had been told that "this was an intelligence-led war against terrorism" (line 4, pg 145). He confirmed by saying that intelligence-gathering would have been to the fore in that respect, and that the military did not have to obtain criminal intelligence. Mr White was asked whether there was a concern that FRU agents were getting too close to the action. He demurred from that proposition. However he did confirm that "there was a [sic] historical dimension to the intelligence as it flowed through, but you know, I can't gainsay that by saying that he [Stakenife] knew in advance or didn't know in advance. All I can say the information that came through had a historical dimension to it". (Q581) He further stated "I think a fair amount of intelligence came through that would have been post events occurring. Whether that was deliberate or whether it was simply the fact that the knowledge wasn't there in advance, I can't answer to that now" (Q582). Mr White also confirmed that as the RUC did not have access to FRU agents, "it would have been entirely at the remit of the military as to what went into the MISR. If it wasn't in the MISR and we didn't have any sources of our own reporting on the issue or the Garda didn't have any sources reporting on it, well then you're quite right, it was at the behest of the military whether we heard or not". (Q585).

6.19 The point about that is that reference has been made to the absence of documentary evidence in relation to what PETER KEELEY says he reported to his handlers at the time. PETER KEELEY's military handlers did not give evidence to the Tribunal, only W82 did and he did not handle PETER KEELEY. No MISRs at all were produced to the Tribunal, which is obviously relevant to the Tribunal consideration of the assertion that as there was no documentary proof of PETER KEELEY's reporting to his handlers, this should allow the Tribunal to draw an adverse inference. If no documentation at all has been produced then that largely negates that criticism. The Tribunal are also no doubt aware of the activities of Brian Nelson, FRU agent, and the criticisms that were levelled by the Stevens Inquiry in that regard. The suggestion was that agents were being allowed to participate in the most serious of crimes, in return for intelligence, perhaps on the basis that FRU were taking a long term approach to the Troubles rather than being concerned with individual murders. Raymond White confirmed that the same Colonel was the head of FRU when Brian Nelson was being operated as an agent as when Stakenife was a live asset. He also confirmed that unless

the military recorded something in a MISR from their agent, then the police would not hear about it.

6.20 Therefore the criticism that is levelled at PETER KEELEY, namely that there is no evidence of him reporting to his handlers that members of AGS were involved in colluding with the IRA, is significantly if not wholly weakened in the following regard: (i) No MISRs at all have been produced, (ii) PETER KEELEY's handlers have not given evidence, (iii) RUC (and of course AGS) would be totally ignorant of that which a FRU agent reported unless it was put in a MISR to the RUC. Ray White's evidence was not that he did not see a MISR which referred to Garda collusion, but that he could not recollect it. He did indicate that he had heard from colleagues in Special Branch that Owen Corrigan was to be avoided, whether that could imply that some of his colleagues were privy to either a MISR or the original SB50 is of course a matter of debate.

#### **Pfizer incident**

6.21 PETER KEELEY gave the following evidence in relation to the Pfizer operation:

*Day 66, pg 114 line 9*

*At this time, 'Mooch' Blair had come to me. They had access to one million Viagra tablets held in a secure store in the Irish Republic. Now, at that time Viagra tablets sold for £10 a tablet on the black-market, and I told him I had someone, a drug dealer, again it didn't exist, from London who would give him £5 per tablet -- this was for the Real IRA. He says "Right." I says "But I need samples." Again I reported this to the CID and my handler says "Get samples". So, 'Mooch' did get samples. He had blister pack of four but two were taken out of it, so he gave me the blisterpack and the serial number was still on it. I gave that to my handler and he then did his inquiries and it came back that yes -- he must have been to the Pfizer company and they confirmed that this stuff was theirs, it was not in circulation, and at that time [deleted] was trying to organise an operation to do a sting to arrest Blair and these people who were going to rob these tablets. And that was actually stopped. I got a phone call from [deleted], he says "I can't talk to you any more. I am not allowed to meet you." Because, basically, Special Branch stopped the operation and stopped my handler from speaking to me.*

*Day 67 p153, line 9.*

*A. So, the thing is, we were targeting Mooch. These things were all adding up to Mooch's as well connection with the Real IRA team. So at that time Mooch Blair knew that I was travelling back and forth to London, I was doing different things. So we met up. He thought I was dealing with drug dealers, but of course I knew drug dealers because I was hanging them to the police and customs. He said he access to a million Viagra tablets. So I says right, I told 71 that Mooch has access to a million Viagra tablets, At the time they were selling on the black market for £10. So I told him my friend, the drug dealer, rich guy in England would come over and give him £5 a tablet, but he needed a sample. So I remember*

*I got a blister pack off Mooch, it was a four pack with blisters but two tablets were missing. So I handed the sample to 71, my handler, and he checked this out with – it must have with the garda and everybody else, and the factory. And I think Pfizer told him at that time, yes, that is their tablet and it is not in the public – you know it came from a secure place, it wasn't released to the public. So 71 was in the process of setting up a team to basically Mooch Blair and those people.*

*Q. Where did you, did you understand that Mooch Blair was already in possession of these items?*

*A. No, no Mooch said he had access to them so he got me a sample. So I brought the sample – things were in secure storage. So they had access to the secure storage. So usually when it's that, it is usually I can't say it's definite, a security man, a helpful hand inside would normally give them the insider information, which he must have had because apparently the blister pack was not on public – it was not out in public. It was supposed to be in a secure storage place, but quite clearly Mooch got hold of it. So, the RUC, it would have been the RUC at the time, 71 was setting up a thing and whatever way he put it through the system, it was blocked by special branch. So there was an operation where Mooch again was going to be targeted. There was evidence that Mooch Blair had access to Viagra tablets for a terrorist organisation that were in secure storage. It was quite clear, he gave us sample. And they were going to make, possibly, 5 million pound. That's what they thought they were going to make, the Real IRA.*

(Under cross-examination by counsel for AGS)

*Q. There appears to be no, no record of any such allegation with the Fraud Squad and the Garda Síochána.*

*A. With the Viagra tablets?*

*Q. Um-hmm*

*A. I don't think that is right sir.*

*Q. There is no record of any such item?*

*A. Well, I think we would need to call witness 71 again, sir, and ask him that. I think maybe, sir, you are not playing with all the notes. Maybe you don't have a copy of all the notes do you? It is my understanding it is known about.*

*Day 68 p25 line*

*"well you want him to be a criminal or a terrorist with the Real IRA, had come up with a million Viagra tablets, that he was willing to take £5 a tablet. That's £5 million. So even on a criminal enterprise that's a pretty big operation even for police to go for, which I think police would be happy with. And again, Mooch supplied, I told him I needed a sample, so he gave me this sample. There was a blister pack of four, there was two missing...*

*I gave it to my handler. He did his checks within the police and he came back and concluded that these, indeed, were genuine Viagra tablets and they were held with Pfizer, they were not in circulation, they were held securely. And at that stage, my handler came back and said he wasn't allowed to talk to me anymore, and the operation was scrapped, sir.*

(Under Cross-Examination by Counsel for PETER KEELEY at p.103)

*Q. The Garda have said they have no record whatsoever of Witness 71 ever passing that information on to the Garda. Tells us about the Viagra, please?*

*A. In the Viagra case, Patrick Joseph Blair, was working with, he was a member of the Real IRA and at this stage they were looking to raise finds and everything else, because of my background with Mooch, the things we had done together sir, with that knowledge of my handlers, he said about the Viagra tablets, he could get them, could I get a buyer. And of course I said yes I know a drug dealer in England, he would buy them. So I went to my handlers and told my handlers about this and they said to get a sample of Viagra. So I went back to Mooch and said, I can get the going price on the street was £10 a tablet on the black market.*

*Q. Now you obviously don't know what your handler told the Garda?*

*A. No sir I would not be privy to that.*

*Q. But can you see witness 70 getting into his car and driving ...sorry, 71 getting into his car and driving down to Cork to find out if Pfizer are missing a few blue tablets.*

*A. I have no idea, but he would have been through all the official channels. That officer 70, 70 and 71, did everything by the book and all the i's would be dotted and the t's crossed.*

*Q. So when the officer says in his evidence that he supplied a sample tablet and says "I passed this to the Garda Fraud Squad who subsequently confirmed that Pfizer was able to identify it as one of their tablets not yet issued to the market" when he says that, you'd trust him to be right?*

*A. Absolutely, sir, yes.*

*Q. And that was sometime after April 2000.*

*A. Yes*

6.22 As appears from the above evidence, PETER KEELEY gave clear and unequivocal evidence that Mooch Blair said he had access to a significant amount of Viagra tablets which he was offering for sale. He says that he posed as an intermediary to facilitate this criminal enterprise in order to try and apprehend Mooch Blair, in that he was acting as an agent for W70 and W71 under the direction of Raymond White.

6.23 It is important to note that parties represented at the Tribunal have attempted to undermine PETER KEELEY's evidence in this regard, and thus presumably to demonstrate his lack of reliability as a witness of fact. However, again one must consider what motive PETER KEELEY would have to lie about this particular incident, it is submitted there is none that is readily identifiable. One also can, and must, consider that his evidence in this regard was wholly corroborated by the evidence from his handler, W71, who was an

experienced and respect policeman, who would have absolutely no conceivable motive to give incorrect evidence in this regard. He gave evidence as follows:

Day 65, p80 (Evidence of Witness 71)

**A Keeley supplied information relating to the theft of Viagra tablets from Pfizer in Cork. He supplied a sample tablet. I passed this to garda fraud squad who subsequently confirmed that Pfizer was able to identify it as one of their tablets, not yet issued to the market.**

**Q. And I think that subsequently Mr Keeley supplied you with certain information relating to the theft of the Viagra tablets from Pfizer in Cork?**

**A. That's correct**

**Q. And he provided you with a sample tablet?**

**A. Thats correct**

**Q. I believe you passed this to the Garda Fraud Squad?**

**A. I did and they were able to identify that as one of their tablets, but it was not yet issued on the market.**

**Cross ex (O'Callaghan)**

**Q. The information he provided about the Viagra tablets, that ultimately was brought to the attention of the Garda Fraud Squad, is that correct?**

**A. It was brought to my attention and I sent that off to --**

6.24 As a result of this evidence being given, other witnesses came to the Tribunal to give evidence on the matter, namely DI Heneghan and Conor Hanlon of Pfizer. Seemingly these witnesses attended at the behest of AGS and not as a result of the Tribunal's own activities. The evidence of Conor Hanlon was given on Day 94:

**Very good, OK. I am asking until you were contacted, had you followed at all the workings of the Tribunal?**

**A. Just what's on the media.**

**58 Q. Fair enough. I think you were approached by a Detective Inspector Heneghan, do you remember that?**

**A. That's correct, yes, I received a phone call on a Friday evening.**

**59 Q. Roughly, when was that phone call?**

**A. That was the last day of January.**

**60 Q. Of this year?**

*A. Of this year, 2012.*

*61 Q. Have you ever dealt with this Detective Inspector before?*

*A. No, sir.*

*62 Q. This is like a cold call, is that right?*

*A. Yes, we had received information through our legal counsel that the -- these are my notes --*

*63 Q. There is no difficulty about that at all.*

*A. We had -- Deirdre O'Sullivan, Pfizer legal counsel, contacted me asking that there was an inquiry regarding a theft of Viagra from Pfizer and could I assist, that she had received a call from Mary Cummins from the Chief solicitor's office.*

*64 Q. OK. Just to be quite clear, the sequence of events. So it was Pfizer's legal counsel who was approached in the first instance, is that right?*

*A. Yes, correct.*

*65 Q. And that was an approach through the Chief State Solicitor's Office, isn't that right?*

*A. That is the information I have.*

*66 Q. OK. And then this gentleman got in touch with you, is that right?*

*A. Yes, she asked, Deirdre O'Sullivan, our legal counsel, asked could she provide my telephone number and I said she could, and she did, and I received a phone call.*

*67 Q. And that is when, it's on foot of that that you received the phone call?*

*A. On the Friday evening I received the phone call asking that could I assist the Tribunal and I would be in a position to give a statement at Carrigaline Garda station.*

*68 Q. Did you ever meet the Detective Inspector?*

*A. No, sir.*

*69 Q. So it was entirely telephone communication?*

*A. Yes, sir.*

*70 Q. And he asked to you assist the Tribunal, is that right?*

*A. Yes, he explained to me did I know about the Tribunal. I said I knew about it through media coverage. He gave me some background to the Tribunal and asked me I would be in a position to give a statement on a theft of Viagra from Pfizer.*

6.25 Conor Hanlon of Pfizer Ireland gave evidence having provided two witness statements. His evidence, as described above, set out how he came to appear as a

witness before the Tribunal. As appears from his witness statement he said "evidence was read to me that included an allegation of the theft of Viagra tablets from Pfizer's Ringaskiddy plant in Cork". He stated that the finished tablets were not held at the plant in Cork, and that therefore no theft of the finished tablets was possible from that plant. He also noted that within Pfizer's own internal records no thefts similar to that alleged have been reported. In another statement, taken by Sargeant Pat Murphy, Mr Hanlon stated "I have been made aware of evidence supplied to the Smithwick Tribunal in relation to an illegal theft of one million tablets from Pfizer". He stated that Pfizer have no record of an inquiry in the year 2000 or subsequently, by An Garda Siochana in relation to such a large theft of Viagra. Conor Hanlon confirmed (i) that finished tablets were held in storage in Ireland, and (ii) that there could be a million tablets held in storage in Ireland:

**96 Q. The tablets are made elsewhere, is that the idea?**

**A. Correct.**

**97 Q. And they are packaged and sent back for sale in Ireland?**

**A. Correct.**

**98 Q. Are they sent back through Pfizer Ireland for distribution?**

**A. No, no they are sent back to distribution companies, like United Drug, Cahill May Roberts, other distribution companies.**

.....

**QUESTION 109**

**....it comes back to my earlier question, was therefore a time when there was in or about a million of the tablets in Ireland?**

**A. I can't say, sir.**

**110 Q. OK.**

**A. Tablets are sold in a packet of four.**

**111 Q. Yes.**

**A. So you could have up to a million tablets in storage, potentially. I find it hard, but you could, potentially, have a million tablets.**

6.26 Insofar as Conor Hanlon states that it would be 'hard' to accept that there were 1 million tablets in storage, one must remember that if the product came in packs of 4

that would mean that 250,000 packets would have to be held in storage to amount to 1 million. It is submitted that for the whole of Ireland this is hardly a large amount. In any event, PETER KEELEY was only relaying on what Mooch Blair told him he had access to, and no more. PETER KEELEY was not personally certifying that there was 1 million tablets available to sell on the black market; he had not inspected or seen the tablets save for the sample he was given.

6.27 In many respects the upshot of Conor Hanlon's evidence, namely that there was no theft of 1 million tablets, is hardly surprising. One would imagine that if such an amount had been stolen in 2000 it would have been reported in the media at least in some circles. In no way does it contradict PETER KEELEY in any shape, way or form. In fact, quite the opposite, his evidence corroborated PETER KEELEY's information.

**154 Q.....- you can confirm that the packs of the tablets comes in fours, isn't that correct?**

**A. Correct.**

**155 Q. And that of course is what was contained in Mr. Keeley's evidence of the transcript that was read out to you, that there was a blister pack of four tablets, and that's correct?**

**A. Correct.**

**156 Q. And you'd also, then, confirm that there are -- there is a serial number, and that that can be tracked, is that right?**

**A. Correct.**

**157 Q. And you are aware, having been shown Witness 71's evidence in the matter, that he says when he was provided with a sample, being the handler for Mr. Keeley, that he passed this information to Garda Fraud Squad and he said "I did and they were able to identify it as one of their tablets but it was not yet issued on the market." You are obviously, I take it, not in a position today to contradict Witness 71's evidence, namely that he told the Gardaí, or that he got feedback in relation to that the tablets seemed to be one of theirs but not yet issued on the market?**

**A. I am not in a position to confirm or deny that.**

6.28 Conor Hanlon also confirmed that his evidence was limited to enquiries he had conducted in relation to *actual* thefts (as opposed to proposed thefts).

**150 Q.....-y ou have obviously given a statement and very helpfully come to the Tribunal today, but isn't it right to say your focus has been to concentrate as to whether there had been an actual completed theft?**

**A. Correct.**

**160 Q. And insofar as what Mr. Keeley actually said was that he was talking about a prospective theft, and, in fact, his role, as it were, would be to ostensibly provide a buyer for this person who was meant to be carrying out the operation, and that was obviously halted. I take it, then, you didn't make any inquiries in relation to prospective or intended matters; indeed, you mightn't even find out about that?**

**A. Well, I can't tell what is going to happen tomorrow.**

**161 Q. No.**

**A. If I could, I would be a millionaire. No, we had no recorded thefts or losses of that at any stage.**

**162 Q. Yes.**

6.29 Mr Hanlon did say he had no record of enquiries from An Garda Siochana in relation to a theft. He did point out that the tablet was on the market in 1997. PETER KEELEY's information from Mooch Blair was that the sample he had had a serial number which was traced back and it was not released on the market. However, Mr Hanlon's evidence is directed towards the product Viagra generally. He was simply saying that it was available in Ireland from 1997. However, PETER KEELEY was linking the serial number on the packet to that fact that it had not been released on the market, in the sense that it had not been sold yet and was still in storage. Presumably Pfizer would be able to trace through a serial number where their batches of product were located. Peter Maguire confirmed this on Day 94:

**156 Q. And you'd also, then, confirm that there are -- there is a serial number, and that that can be tracked, is that right?**

**A. Correct.**

6.30 If an individual box from a certain box contained a serial number from which Pfizer were able to tell was from a batch that had not entered the market, then one could conclude that the box came from a storage site and had not been sold in the usual manner. Mr Hanlon was merely stating Viagra was on the market which deals with a different point.

6.31 Detective Inspector Heneghan gave evidence on day 122. He was responsible for investigating the substance of W71's evidence set out above, and also in following matters up with Pfizer. He gave evidence that the query which W71 says he raised with

AGS fraud squad was not recorded as a job that was conducted by any member of the Bureau at that time (Q103). He was asked as follows:

**104 Q** Yes. Well, would I be right in saying that what you are actually saying is that you have been unable to find a record of that?

**A.** Yes

**105 Q** Now wouldn't you accept that's different from saying it wasn't conveyed in first place?

**A** Yes

6.32 It was also put to him the record for this query raised by W71, if one was made, could be held anywhere in a vast number of places, and that there are potentially "tens of thousands of files which could have relevance in this matter" (Q106) and he replied that this was possible. He confirmed that no physical search had been conducted (Q115), but rather the computer system was checked. He also gave the following evidence:

**110 Q** *Right. And if the information was conveyed by telephone, I mean, with the best will in the world, you can't say whether every single officer working in An Garda Siochana would have always made a telephone memo?*

**A** *I cant absolutely, no.*

6.33 He also confirmed that it was a possibility that if there is a record of W71's query it could be sitting in a filing cabinet somewhere (Q113). DI Heneghan also confirmed that of the 80 members of fraud squad, he only spoke to 4 in relation to the evidence of W71. However, as he did not have the actual name of W71, nor did he have any information as to whom W71 had professional relationships with, DI Heneghan was not able to pinpoint who, out of that corp of 80 gardai, who he should speak to. It was put to him that as he only spoke to 4 out of 80 it was more likely than not that he did not speak to the gard or gardai to whom W71 relayed this query. He accepted this. In summation, DI Heneghan conceded the following:

**119 Q** *I think you have already accepted that, but Witness 71 obviously came here and gave evidence under oath about what he did personally. Now, I think you accept, I mean you have already accepted, there is no way you can gainsay that?*

**A.** No.

**120 Q. And from that regard, then, I mean, it's difficult not to just take Witness 71's evidence as what he said in the Tribunal. You are not trying to suggest something different, are you?**

**A. No, I'm not, no.**

6.34 Finally on Day 122, DI Heneghan was asked to confirm that enquires with Pfizer and Mr O'Hanlon were actioned at the behest of AGS and that Conor Hanlon's statement was taken by Sergeant Murphy. It seemed from Conor Hanlon's statement that he had been asked to conduct enquiries as to whether a theft of a million Viagra tablets had ever been recorded, when the evidence of PETER KEELEY and W71 was not that a theft had actually happened, in fact the operation had been stopped. DI Heneghan was asked at Q127 "it seems to be the case, in some respects, that the witness was asked to answer the wrong question" (transcript says "their own", it is believed this should actually be "the wrong"). DI Heneghan said he could not comment on that.

**128 Q. MR. SMITH: So, in the final analysis, then, you would obviously accept that you are not in a position to gainsay what Witness 71 said and you also accept that no one had ever alleged a theft had actually taken place?**

**A. I'll accept that from the records of the Tribunal or from what you say to me, but, as I said, I had no direct involvement in interviewing Mr. Hanlon, so I'm not aware what information was put before him before he made his witness statement.**

### **Summary**

6.35 It is submitted that there is a central importance to this module of the Tribunal. It is the contention on behalf of PETER KEELEY that subsequent to the evidence he gave, there was a clear attempt to arrange for witnesses to attend at the Tribunal to give contradictory evidence in relation to the Viagra operation, with the purpose of thereby undermining PETER KEELEY's credibility. The mechanics as to how Conor Hanlon and DI Heneghan were brought before the Tribunal seem a little unclear, but it seems to be the case that rather than the witnesses being approached by the Tribunal, this was arranged by or on behalf of AGS through the Chief State Solicitor. It is submitted that the evidence of Hanlon and DI Heneghan does not in any way undermine or contradict what PETER KEELEY stated in evidence for the simple reason that they were asked the wrong

question in providing witness statements. Conor Hanlon was asked to investigate whether a theft of a million tablets had taken place. PETER KEELEY never said the theft had taken place. Perhaps because it was PETER KEELEY's evidence that Moch Blair was able to get access to a sample, an assumption was made by others that the theft had already taken place. However, PETER KEELEY himself actually referred to the tablets from which the sample came being in "secure storage". He stated "So I brought the sample – things were in secure storage. So they had access to the secure storage. So usually when its that, it is usually I can't say its definite, a security man, a helpful hand". Peter Keeley did not state that the tablets had actually been stolen or removed from wherever they were being held. Nor did he state that they were stolen or accessed from a plant in Ringaskiddy. Ultimately before the transaction could take place, CID were told to no longer deal with PETER KEELEY and the whole operation was scrapped. Therefore the tablets were never stolen. Quite why Conor Hanlon was asked to find out whether there had been an actual theft is unclear. It seems the Tribunal were being asked to draw and adverse inference in relation to the evidence of PETER KEELEY on the basis that his evidence was wrong or untruthful on this issue. However, it is submitted that if this was indeed the purpose of adducing that evidence, it proceeded on a misconception.

- 6.36 It is also submitted this is yet another example of PETER KEELEY giving detailed and specific evidence which later is corroborated by independent evidence. For example, PETER KEELEY referred to the tablets being blue, in packs of four, and having serial numbers. This was also correct. He also referred to "secure storage", indeed Conor Hanlon confirmed that the finished tablets would be held in distribution in Ireland, that within those centres there could indeed be a million of them, and that they had serial numbers. The point about the tablets being released on the market has been dealt with above. PETER KEELEY's evidence has also been corroborated independently and directly by the evidence of W71. Therefore rather than this being an example of incorrect or uncorroborated testimony, the opposite is true.

**Rebuttal of General Criticisms of PETER KEELEY**

7.1 There are certain aspects of PETER KEELEY's evidence which have been put to him in order to criticise him. They are as follows.

*The evidence of W64*

7.2 Witness 64 was an RUC officer who was for the most part of his career in Special Branch (23 years – see Q2 day 53). When he retired he had risen to the rank of Detective Inspector in Special Branch. In terms of his dealings with AGS, his principal contact was Inspector Dan Prenty.

7.3 W64 said that he was aware of no intelligence that was ever passed from Mr Fulton about Mr Corrigan (Q36). At the time of the murders, however, PETER KEELEY was being handled by the British Army (FRU). As W64 confirms, Special Branch only started dealing with PETER KEELEY from 1992 (Q222). This is also confirmed in the evidence of W65 who gave evidence on Day 53:

***609 Q...Mr Fulton, to your knowledge, wasn't working, certainly wasn't working for the RUC between 1986 and 89, isn't that correct?***

***A That is definitely correct.***

7.4 W64, when asked to comment on the quality of information provided by PETER KEELEY, stated that "the quality of information was very mixed. There was obviously some truthful information and some information useful to us, but there was also difficulties from very early on in the relationship about inaccurate information and false and misleading information" (Q46). It was pointed out, and W64 agreed, that information can be inaccurate and that was a different thing from "false and misleading" information. W64 was asked whether he could recollect occasions when information provided was accurate and led to the lives being saved. He replied:

***"I can certainly think of one occasion where there was information supplied that led to the recovery of a explosive device, which, if detonated at the right time, could have killed a member of the public or a member of the security forces" (in response to Q50, Day 53).***

7.5 W64 then confirmed that at some point in time Special Branch brought to an end their relationship with PETER KEELEY and at that point he was then handled by CID. At the

time that happened, W64 was not in Newry, he had moved to police headquarters (Q53). W64 believed that the relationship with PETER KEELEY ended some time in late 1994 (Q55). W64 was asked by Counsel for AGS whether PETER KEELEY was Mr Blair's driver (Q170) or associate (Q171) and in response to each W64 said that he was not aware of that and would not have thought it was a close association. It is submitted that this is important because it demonstrates either (i) that W64's information upon which he bases his evidence is incorrect, or (ii) he is deliberately trying to minimise and play down PETER KEELEY's level of infiltration into PIRA because of emotional reasons that led Special Branch and PETER KEELEY to go their separate ways. It is fairly patent that Blair was regularly driven by PETER KEELEY and a trusted friend of PIRA (for example Garda intelligence document referring to this, Blair and PETER KEELEY being arrested together in June 1989, the detail given by PETER KEELEY in relation to the Omeath Bomb factory, PETER KEELEY knew where he lived (Muirhevnamor, also confirmed by W65), PETER KEELEY's detailed evidence about other murders Mooch Blair was involved in, how he phoned up the RUC afterwards to laugh, his connections with Blair around the time he was working with CID, Blair confirmed he had an ice cream van etc etc). Witness 65, RUC officer, also gave evidence to the effect that even after 22 years or so he could still remember an association between PETER KEELEY and Mooch Blair (Day 53 Q602). W62, who was also a Special Branch officer, gave the following evidence on Day 51 at Q463:

***Yes, yes, I would say that -- I don't know how long he[PETER KEELEY] was recruited as an SB source, the length of time that he was actually handled by the branch, but during that period he had sufficient closeness to members of the Provisional IRA in Newry to gain the interest of SB in Newry and to be recruited as a source and was not recruited as a casual contact, he was recruited as a full-blown agent very, very quickly. He was given a number very, very quickly indeed.***

7.6 Therefore, W64's opinion that Mooch Blair was unlikely to have had a conversation with Owen Corrigan is of limited effect and in any event this point has been dealt with in detail above. It is also important to remember that W64 was not in fact PETER KEELEY handler. If one compares the evidence from CID, from Raymond White and W70 and W71, one gets a much more complete picture than one would have got simply from Raymond White. Indeed PETER KEELEY himself indicated that he never even met W64 personally, and he gave the Tribunal the names of his actual handlers. For whatever reason, they never came forward to give evidence.

7.7 Counsel for AGS stated that "one gets the impression that perhaps Mr Fulton is not entirely reliable, and certainly that ended up being the police view," to which W64 replied "that's correct". That is also inaccurate, as W64 is only speaking on behalf of Special Branch (and not CID, customs and excise, nor indeed FRU).

7.8 W64 was asked by Counsel for Owen Corrigan to give examples of occasions when PETER KEELEY was alleged to have provided misleading information. He answered as follows (Q228):

*"one particularly interesting one was we were given intelligence about an IRA active service unit planning to travel to Great Britain to carry out a series of attacks there, and Mr Fulton told us that he had been asked to prepare weapons hides in Great Britain to facilitate the logistics of that unit travelling to Great Britain. Police operations were put in place in England and Scotland, and quite considerable police time, effort, resources went into carrying out preparatory work to try and catch the alleged active service unit, only for Mr Fulton to subsequently state that it was something he had made up and, as you can appreciate it, it caused us considerable embarrassment because the intelligence had been relayed across Great Britain."*

7.9 PETER KEELEY had this evidence put to him when he gave evidence. His response was as follows:

Day 66

**542 Q. What's your recollection of the incident recounted by Witness 64?**

*A. At that time I was working with GHQ staff in Belfast. At this time the ceasefires were on, weapons were handed over as well. I was asked to go to England and purchase firearms. I was told to dig in two bumps: one outside England and one at Scotland. When an agent goes to England to the mainland, you are guaranteed you are going to get stopped, it's going to be finished, you're gone. At that time, I was to buy guns and put them in the two dumps for the GHQ staff in Belfast. My handlers had told me I had to do the dumps. It was my handlers said, "No, this isn't about guns, this is about bombs." I said, "OK, yeah, it's a bombing campaign" because I knew a bombing campaign would never be allowed to happen. Anything that happens in England, the agent is automatically burnt. Was I afraid? Yes, you better believe I was afraid but for this officer to say that is actually wrong.*

**543 Q. Just so that you are aware, Mr. Keeley, what Witness 64 said is that you admitted to him that you had made this whole story up. Are you saying that is incorrect?**

*A. I actually don't know this person personally. I know the name, I have never met him. I can give you the names of the two Special Branch officers that always handled me.*

**544 Q. I just want to ask you the question --**

**MR. RAFFERTY:** *I just want to make a point of query. In relation to Witness 64, my recollection is he was in charge of the team that handled, not the --*

**CHAIRMAN:** *Sorry?*

**MR. RAFFERTY:** *That Witness 64 was in charge of the team that handled Mr. Fulton, not that he personally was the handler. And that is what was being represented and that's what's being put as Witness 64 as his handler saying that you have told him this. As I have understood it, Witness 64 only ever said that he was in charge of the team that handled this man.*

**MR. O'CALLAGHAN:** *Well the evidence given was: "Could I ask you, sir, were you his handler, were you the person to whom he gave information? Answer: I was in charge of the Special Branch team that would have handled him, yes." And the evidence he gave, Chairman, when I asked him was that, he said that Mr. Keeley gave information which Mr. Keeley subsequently admitted was false. And I am asking Mr. Keeley is the evidence of Witness 64 wrong?*

**A.** *Well, I am explaining to you, sir, what it was. I never said that I was going over for a bombing campaign in London. I told my handlers that I was there for arms and that's what I was there to buy. My handlers from MI5 and Special Branch travelled to London with me and to Scotland; they knew it was to buy firearms. And when it didn't materialise, then they said, "No, this is bombing." And I did, I said, "Yes," because I was panicking. That's what it is. My handlers knew it was firearms I was to buy for GHQ staff.*

**545 Q.** *So, you are saying he was giving false evidence to the Chairman?*

**A.** *You will need to ask him to rephrase it again. I am just saying to you that my handlers knew it was for firearms.*

**546 Q. OK.** *But the important point, from the Chairman's point of view, Mr. Keeley, and from my point of view, is that you are stating to the Chairman that you didn't state to him that you made the whole thing up?*

**A.** *No, I did not state that I made the whole thing up. They knew that I was there to buy the firearms, they knew who the person was to ask me, who was 'Whitey' Bradley, Gerry Bradley who was dead, the same person involved in the Martin Dale stuff.*

**547 Q.** *And I asked him why it was that somebody would make such a story up, and in response, he said the following, he said: "I think it was probably a complex mixture of things. There was obviously financial reward, and sometimes greed can triumph over common sense. I think also attention seeking ego, there are lots of factors that could play in there but you would really need a good psychiatrist or psychologist to give those answers." Do you agree with that assessment of you provided by Witness 64?*

**A.** *No, sir, I don't, because, number one, you get your basic wage from your department, whether it be MI5 or Special Branch. There would be no financial gain for something that did not happen. This is a nonsense. I mean you don't get a bonus for the work that didn't turn up, so that is absolute rubbish.*

7.10 He further reiterated that W64 had lied in his evidence to the Tribunal (Day 67, page 5, line 16-17). He stated "the real reasons why those dumps went in was to purchase weapons, and Special Branch were aware of that. And it was wrong for that same witness that lied to this Tribunal to say that they were not aware of it." (Day 67, page 5, line 30, page 6 lines 1-2). As stated above, PETER KEELEY's handlers never gave evidence to the Tribunal, despite the fact their names were provided to the Tribunal. PETER

KEELEY was able to dispel the idea that there would be a financial reward for providing the information and he gave detailed evidence about how the incident over the dumps in England and Scotland actually arose. It is worth pointing out that he gave specific information such as "my handlers from MI5 and Special Branch travelled to London with me and to Scotland". W64 was not his handler, and is not best placed to give evidence about what actually happened. It is also worth pointing out that no contemporaneous documentation was produced by W64 which would corroborate the evidence he gave when presumably he would have been in a position to do so. Surely if PETER KEELEY was noted following this operation as having admitted to making something up, this would be reflected in the relevant file.

7.11 PETER KEELEY also gave information to his handlers about a particular timing device on a bomb that PIRA had began to use. A bomb with this type of device exploded killing Colleen McMurray and Patrick Slane subsequent to this information being given. There was an Ombudsman investigation and W64 was criticised in same. PETER KEELEY gave evidence that W64 had lied about going to see the families subsequent to the killings (W64 denies he did this). PETER KEELEY was able to say that he had met representatives of one of the families and a friend of the victims. He wrote the names of the representatives on a piece of paper and handed it into the Chairman (see Q531 and 532 of Day 68). The Tribunal were invited to investigate this point further. This was also presented as an example of W64 not giving accurate or truthful evidence and also establishing further motive to attempt to want to undermine PETER KEELEY.

## **W62**

7.12 The evidence of W62 was also put to PETER KEELEY on Day 66 as follows:

**551 Q. Well, he [W62] gave evidence to the Chairman under oath that, in his opinion, from his experience, that you were "a compulsive liar, a fantasist, and a con-man of the highest order." He also said you were an intelligence nuisance. Do you agree with his assessment of you?**

**A. No, I don't, because number one, I don't know who he is. In what context does he know me? And what jobs, name some jobs he was on with me or whatever. I mean, it's a name that I have never heard, I have never seen.**

**552 Q. He gave evidence of the following, Witness 62, because I asked him could he give an example of stories that you invented and he said, yes, he can give examples -- this is on Day 51, page 120, and he said the following: "I can recall very clearly on one occasion his, one of his handlers coming to the regional headquarters and explaining that he had**

*intelligence to the effect that Keeley had taken part in the grinding of explosives where fertilisers were ground down into a fine powder to be made into a large bomb, and he then described to his handlers where the journey had started and where it had ended up, and it was a series of left turns, right turns, drove half a mile, drove a mile, drove a mile-and-a-half, crossroads, T-junctions etc., etc. We then spent the best part of an hour of poring over a map of north Louth, staring at where he said he started and trying to work out where this farmhouse would have been where they ground the explosives. Our intention was to pass this intelligence to Garda Siochana so that they could mount a raid, a destructive raid on this. It all turned out to be fantasy. We couldn't work it out and later on we found out it was purely invented by him." Do you recall giving that information to your handlers in the RUC?*

*A. No, and was I supposed to be in the car with them and they were doing left turns, right turns to find the house?*

*553 Q. You had given them information as to where this bomb factory was.*

*A. Was I with them when they went looking for the bomb factory?*

*554 Q. No.*

*A. Well then how can I say where they were looking?*

*555 Q. Did you give this information that I read out to you to the RUC?*

*A. Any information I gave where bombs were being made, that's where the bombs were being made. Whether they got their map reading right or wrong is not my concern."*

7.13 Several points are to be noted. Again W62 did not meet PETER KEELEY, nor did he handle him. Secondly, despite his very unambiguous evidence about PETER KEELEY being a "con-man" he was only able to refer to one incident. Thirdly, he provided no dates as to when this occurred to allow for PETER KEELEY to respond to it properly (one mentions this because we know that PETER KEELEY gave detailed evidence about a bomb making factory in Omeath in 1989). Fourthly, as PETER KEELEY points out, W62 alleges he was giving them details and they were trying to check it out on a map. There are many reasons why that might not have been the easiest task. Fifthly, and perhaps most importantly, W62 states "and later on we found out it was purely invented by him" without giving any specific evidence of when, how and from whom this alleged fact was discovered. Akin to W64, no corroborating documentation was ever produced. Nor was this witness able to name any other operations or jobs that PETER KEELEY was involved in. Finally, he was, of course, a Special Branch officer. It was put to W62 during cross-examination by Counsel for PETER KEELEY that Special Branch had failed to give him any credit for all the other successful dealings PETER KEELEY had had with CID. W62

professed not to know about this and indicated he would be surprised if this was shown to be the case (which it ultimately was by Raymond White, W70 and W71). It was also put to W62 that the reason PETER KEELEY was providing misleading information to Special Branch in 1994 was because he feared that he was being set up by his handlers, and that the IRA suspected him of being an informer. As a result he broke off contact with Special Branch and he left the country for a while. (See Questions 503-547 on Day 51).

*Paddy Shanaghan incident*

7.14 The other incident which was specifically put to PETER KEELEY was the murder investigation of Paddy Shanaghan. PETER KEELEY had travelled to Dublin with RUC Special Branch officers ostensibly to point out an address of relevance to the investigation. There was liaison between RUC and AGS in this respect. The Tribunal heard evidence from Assistant Commissioner Joe Egan in relation to this, and of course from PETER KEELEY. It is worthwhile setting out relevant excerpts from the transcripts in relation to this incident.

**(Day 66) – Cross Examination of PETER KEELEY by Counsel for Owen Corrigan**

*Did you ever hear of a man called Paddy Shanaghan?*

*A. Paddy Shanaghan - the name doesn't actually ring a bell, no.*

**503 Q.** *He was a man who was murdered in Dublin in 1993. Do you recall informing the RUC that you had information outlining where the murder weapon used in his murder was kept?*

*A. Yes. I will explain that to you as well. At that time, I was having great problems with my handlers. It's not that I contacted the RUC to tell them I had information. I was actually working with MI5 and the RUC at that time, and basically, we were having problems together, me and my handlers; they were lying to me, so I lied to them. And I said that basically, I had been tipped off by another handler that what was happening, so I told them "Yeah, I had something to do with the murder." My handlers arranged to meet me and they took me down to Dublin and they said, "Right, show us where you dumped, you know, the motorbike and the gun." I says, "It was Ballymun, the tower blocks. A doorway," I says "that doorway there." And when we got back to Belfast they were saying that is a lie. I says "Of course it is. You lied to me." What actually they were doing with me, they were telling me lies and then I told them lies back to catch them lying out, so we caught each other out.*

**504 Q.** *Mr. Keeley, I will go back to my first question again: Did you ever hear of a man called Paddy Shanaghan?*

**A. The name doesn't ring a bell but the murder does. He was shot by someone on a motorbike in Dublin.**

**505 Q. So you are distinguishing between the name of a man and the fact that he was murdered, is that correct?**

**A. What do you mean distinguishing between?**

**506 Q. Did you ever hear --**

**A. I had nothing do with the murder.**

**507 Q. So clearly you did hear of a man called Paddy Shanaghan?**

**A. Well I know the situation, the circumstance you are talking about now.**

**508 Q. Just answer the question. You do recall a man called Paddy Shanaghan?**

**A. Not the man. I remember the incident.**

**509 Q. And you do recall going to the RUC and informing them that you knew where the murder weapon used in his murder was kept, isn't that correct?**

**A. I was actually working with the RUC at the time; I was one of their sources, along with MI5 and the army. At that time we were having arguments and problems with each other; they were lying to me, putting my life in danger, and I lied to them about that.**

**510 Q. And tell us about your lie to the RUC in respect of Mr. Shanaghan's murder. You brought them down to Dublin, isn't that so?**

**A. No, they brought me to Dublin, actually, and quite clearly, my handlers were looking rid of me, I had already been told that, so what were they going to do? They were going to get the guards to -- I found out since, they had arranged with the guards to follow me with them. They were looking to the guards to arrest me, hopefully, for a murder, but of course I didn't do it.**

**511 Q. Did you tell the RUC, or your handlers, that you knew where the murder weapon was hidden?**

**A. No, it was actually the motorbike it was supposed to be, not the murder weapon.**

**512 Q. Did you tell your RUC handlers that you knew where the motorbike was hidden?**

**A. Yeah.**

**513 Q. Where did you tell them it was hidden?**

**A. It was a store door at the bottom of a block of flats in Ballymun.**

**514 Q. Did you travel down to Dublin with your RUC handlers?**

**A. They weren't my handlers. These were two Special Branch branch men that assisted my handlers, yes.**

**515 Q. You travelled down to Dublin with them?**

**A. Yes, I did.**

516 Q. And you were aware that they had contact with a member of Garda Siochana, former Garda Assistant Commissioner Joe Egan, are you aware of that?

A. No, I am aware now of that, but at that time, I wasn't.

517 Q. And you travelled around in the car with the two RUC officers, isn't that correct?

A. That is correct, yes.

518 Q. And Mr. Egan was travelling behind you in his car, isn't that correct?

A. I didn't know that at the time, no.

519 Q. And your function in that car was to point out, and I have to put it to you, it was the weapon as opposed to the motorbike?

A. No, it was actually the motorbike.

520 Q. Well, you were to point out, whether it's the weapon or the motorbike, you were to point out where this incriminating piece of evidence was in the murder of Paddy Shanaghan, isn't that correct?

A. Because my handlers thought I had taken part in it.

521 Q. Isn't that correct?

A. That is correct, yes.

522 Q. And tell the Chairman, what did you point out to the RUC and the member of An Garda Siochana?

A. I pointed out a doorway at the bottom of a block of flats, a big high block of flats, because it was on a Saturday that my handlers had bumped me and said "Come on with us, we were going down to look at" because I had already told them it and they knew I had lied and I said, "Yes, I have lied to you because you have lied to me." They had actually sacrificed my life on other things as well, so I did it exactly on them.

523 Q. And you pointed to the premises of a senior Dublin politician, isn't that correct?

A. No, I had never even seen the Dublin politician thing. It was a door at the bottom of a high-rise block of flats, a small door, because I remember when we got back to Belfast my handlers were able to tell me the next day that you couldn't put anything in there, it's such a small room.

524 Q. Mr. Egan gave evidence to the Chairman yesterday that the premises that were pointed out were the constituency office of a senior politician in Dublin. Are you saying that he was giving false evidence to the Chairman?

A. Well I don't know any senior politicians in Dublin that were there. I did not see any names of a doorway, we actually drove past it on a roundabout and I pointed a door, there was no sign on it, I didn't know any politician's office there.

525 Q. But you pointed to a premises that was occupied, isn't that so?

A. It was a doorway in a multi-storey block of flats, a doorway with no sign on it.

**526 Q. So you were prepared to incriminate the wholly innocent people who were behind that doorway, isn't that correct?**

**A. Oh, get away. I was showing my handlers where the doorway, I pointed any doorway out to where it was. I lied to my handlers because they lied to me. My handlers had set me up to be murdered, yeah.**

**527 Q. And you were prepared to incriminate the individual who resided behind that doorway in order to facilitate and uphold your lies, isn't that correct?**

**A. No, sir, that is not correct.**

**528 Q. You subsequently retracted the story to the RUC. When did you tell them that your story was a tissue of lies?**

**A. They knew the next day.**

**529 Q. How did they know?**

**A. Because they had a meeting and we thrashed it out. They had lied to me and I had lied back to them.**

**530 Q. And you admitted to them that this was all a lie?**

**A. Absolutely, yes.**

**Day 65 – Cross Examination of Assistant Commissioner Egan by Counsel for PETER KEELEY**

**THE WITNESS WAS CROSS-EXAMINED BY MR. RAFFERTY AS FOLLOWS:**

**.....**

**301 Q. I am going to suggest to you that that was why Peter Keeley was down in Dublin that day. In any event, this was late 1994/1995?**

**A. Yeah.**

**302 Q. Now, were the people in the car with him, were they RUC officers or were they Special Branch officers?**

**A. Well, I wouldn't differentiate if they are either RUC or they are not. What specific designation they have within the Force, I wouldn't really know that.**

**303 Q. So two officers came down, you don't know whether they were CID or whether they were Special Branch?**

**A. No, I don't.**

**304 Q. Are you aware that Mr. Keeley and Special Branch were coming to the end of the parting of their ways in '94/'95?**

**A. No, I wasn't aware of his relationship with the RUC.**

**305 Q. Are you aware that Mr. Keeley has accounted for how and why he was telling lies**

*to the Special Branch in '94/'95 to the Ombudsman in Northern Ireland?*

*A. No, I have no knowledge of that.*

*306 Q. But from your record, you are able to put this in and around that time?*

*A. That's correct, yeah.*

*307 Q. Were you following him in a marked Garda car?*

*A. No, in a plainclothes Garda car.*

*308 Q. But he knew that you were there as a member of An Garda Siochana?*

*A. Oh most certainly, yes.*

*309 Q. Would it be normal for police forces in one jurisdiction to make an informant known to this extent to a police force in another jurisdiction?*

*A. Well, I think in the circumstances that he was made known, I find it, you know, normal procedure, because it's in the context if Mr. Keeley was known in relation to the actual murder, you know, which would have a bearing on whether he had knowledge of it or not.*

*310 Q. Sorry, explain that to me again. It would be known in the context of whether Mr. Keeley actually had involvement in the murder?*

*A. No, no, I'm not saying that. What I'm saying is, if he had any connection with the murder in any shape or form, he could be a witness, he could be anything, you know.*

*311 Q. So, sorry, I am struggling to understand, possibly you can help me. Would it be normal, then, for a police force, the RUC to make an informant known to you in An Garda Siochana?*

*A. It would depend on the circumstances. I mean, over 40 years it has happened numerous times to me.*

*312 Q. And from what we have learnt in this Tribunal, one thing is certain: Peter Keeley was working for Special Branch and informing on the IRA up until 1994, an active informant?*

*A. Well, I can't comment on that because I have no personal knowledge of it. It would be wrong of me to say such a thing about anybody.*

*313 Q. I see. I'm going to suggest to you, Keeley thought he was being set up and the moment he pointed out where the gun was he was going to be arrested by An Garda Siochana?*

*A. No, there was no such indication was communicated to him or to any of the RUC officers with him.*

*314 Q. Very well. Can I ask you: In relation to -- that's not -- is that the only meeting you have ever had with Peter Keeley?*

*A. That's all, yeah.*

*315 Q. Were you assisting with the Cory Inquiry?*

*A. Well, when you say "assisting" with it, I was head of the Crime and Security when Mr. Cory was here and I had a number of meetings with him.*

*316 Q. A number of meetings, and you gave him your full cooperation?*

*A. Indeed I did, yeah.*

*317 Q. And there wasn't going to be an inquiry right up until Keeley came forward at the last minute?*

*A. That's correct, yeah.*

*318 Q. Would it be fair to say that you regard Keeley as really the fly in the ointment, without him no Smithwick inquiry?*

*A. Oh, not at all. I have no predetermined thing on anybody. I know nothing about him.*

*319 Q. Lastly, you are aware of Judge Cory's view, and I quote: "In delivering his statement to me, Fulton knowingly placed himself in a dangerous position. He had reasonable grounds to believe that by doing so he made himself a threat to and a target of some organisations. Those charged with making findings of fact may conclude that this adds to his credibility of the documents." Were you -- are you aware of what Judge Cory thought of him?*

*A. Well, I am aware of his report. Not from Judge Cory, but just of his report.*

*320 Q. And are you aware of any of the other bona fide A1 intelligence that he provided either to CID or to Special Branch?*

*A. That Mr. Keeley provided?*

*321 Q. That Mr. Keeley provided?*

*A. No, I am not, no.*

*322 Q. So you based your assessment of him on one incident?*

*A. Well, I based an assessment --*

*323 Q. Thank you.*

*A.-- on one, yeah.*

7.15 It is the case that by late 1994-1995 PETER KEELEY's relationship had deteriorated significantly. In fact, he believed that his life was at risk and that his handlers knew about this. At that time he was working with MI5 and RUC together. This was confirmed by Ronnie Flanagan in the aftermath of the Ombudsman's report into the Omagh Bombing where he stated that PETER KEELEY "had worked for Special Branch in partnership with another agency between 1992 and 1994 at least". W64 confirmed on Day 53 at Q273 that the other agency was the Security Services. The specifics of how his life came to be

at risk were after the Martindale affair, when PETER KEELEY was interrogated by an individual, and he was being encouraged to meet up with that person again. Because of the complete breakdown in trust, he admitted providing incorrect information because they were lying to him. The persons he went to Dublin with were special branch officers, however they were not his handlers. He was worried and concerned as to what their real agenda was. The next day he met his handlers and "thrashed it all out". It also transpired that the involvement of AGS was, at the time of the trip, unknown to PETER KEELEY. He subsequently became aware that he thought the Special Branch officers may have been trying to get him arrested. The persons who attended W61 DAY 40 CHECK

7.16 The other feature, which is common with other negative evidence which has come from the RUC about PETER KEELEY, is that yet again it emanates from Special Branch.

#### **PETER KEELEY and Special Branch**

7.17 The deterioration of the relationship between PETER KEELEY and Special Branch happened in and around 1994,1995. PETER KEELEY at that time was interrogated by Scappaticci following a planned IRA operation where the police made a number of arrests. As is widely known in the public arena, Scappaticci is reported to have been the FRU Agent "Stakeknife". He was alleged to have held a senior position within PIRA for a number of years, and specifically to have been part of the ISU known as the "nutting squad". To that extent there is the strong suspicion that Stakeknife may have been involved in or party to operations where people were killed notwithstanding that he was an agent. It is worth bearing in mind at this point that the FRU and a particular Colonel within the FRU, had been subject to significant adverse criticism during the Stevens Inquiry for its agents running amok, in particular Brian Nelson. This was put to Raymond White on Day 71.

7.18 PETER KEELEY had been interrogated at length by Scapaticci because of the foiled operation. Given his role, PETER KEELEY was obviously extremely concerned that he was suspected of compromising the operation and that he himself would be killed. However, his handlers were exhorting him to meet Scapaticci again. This led to the difficulties in

the relationship – he felt his handlers were putting his life in danger. Around that time PETER KEELEY admitted giving false information (Paddy Shanaghan incident). The relationship broke down at that stage. In 1994 PETER KEELEY stopped working with Special Branch and left the country (which incidentally provides corroboration to his assertion that he felt his life was under threat). When he returned he was then dealing with CID. W70 and 71 have indicated in their evidence reasons why Special Branch were not happy about this; despite the fact he was working for CID and thus involved in ordinary criminal activities, the contacts and information he had emanated from subversives, and information or intelligence in this regard was jealously protected by Special Branch.

7.19 It is of note that PETER KEELEY's Special Branch handlers have not given evidence, despite the fact that W64 came to the Tribunal. If it was simply that false or inaccurate information was provided by PETER KEELEY, then this would have been the simplest thing in the world to attest to, with corroborating documentation to hand. It is worth pointing out that in relation to John McNulty, both handlers came to the Tribunal and gave evidence. With regard to PETER KEELEY, however, was never done. Nor indeed did PETER KEELEY's handlers in the Security Services give evidence. It is also the case that Scappaticci, although represented, did not give evidence at the Tribunal. Therefore the Tribunal has been prevented from exploring at length all these issues to get a clear picture of the reasons why the relationship with PETER KEELEY broke down (or indeed the detail and extent of his intelligence output). The Tribunal of course needs to be sure that the evidence of PETER KEELEY, and his background, has been tested as fully as possible. Indeed PETER KEELEY came to the Tribunal and gave evidence for 3 days under armed guard and submitted himself to cross-examination on all these issues by counsel for all parties represented by the Tribunal. He did this with no benefit to himself whatsoever. He gains no advantage, in fact by appearing physically at the Tribunal, he is of course putting himself in mortal danger.

#### Omagh Bombing

7.20 Following on from that, the bad feeling between Special Branch and PETER KEELEY was further exacerbated by the Omagh Bombing, into which the Ombudsman of Northern Ireland had delivered what can only be described as an excoriating report into

Special Branch and how it was a “force within a force”. PETER KEELEY was central in such a finding. He had provided information in relation to meetings with Mooch Blair in the run up to the Omagh bombing. The Ombudsman’s office felt that this information had not been properly considered. This led to a criticism by the Ombudsman’s office that Special Branch were a “force within a force” and that a review needed to take place into their role. It is also worth pointing out that the Omagh Bombing was one of the worst atrocities in the history of the Troubles and caused untold carnage. The suggestion that somehow Special Branch were either in part responsible for failing to prevent such carnage or had in some other way acted that made the event more likely to occur was an incendiary one. This was demonstrated in some public pronouncements made at the time. For example at a news conference on Wednesday 12<sup>th</sup> December 2001 the then Chief Constable Ronnie Flanagan, who was responding to the Ombudsman’s report, stated that if he felt the allegations in the report were true “ I would not only resign, I would publicly commit suicide” ([http://news.bbc.co.uk/1/hi/northern\\_ireland/1707299.stm](http://news.bbc.co.uk/1/hi/northern_ireland/1707299.stm))

7.21 To rebut criticism contained in the report it was necessary for RUC/SB to deal with the suggestion that they had failed to adequately consider the information provided by PETER KEELEY and failed to share it. The way to do this was to make it clear that PETER KEELEY was not worth believing, and that it was valid not to pay close attention to the material he provided. This culminated of course in Special Branch seeking to portray PETER KEELEY as a “fantasist”. Of course it also the case that their dealings with PETER KEELEY in 1994 had ended acrimoniously and there had been a complete breakdown of trust. It is fair to say there was no love lost between them at that stage. It is submitted that to therefore have such entrenched criticism levelled against them, where such a finding is primarily based on the information provided by PETER KEELEY, was very difficult for the organisation to stomach. This has led to an obvious animosity towards PETER KEELEY and provides clear motivation for former Special Branch officers to speak negatively of PETER KEELEY.

7.22 The level of animosity towards PETER KEELEY was made clear in what followed after publication of the report. In a complete break with normal policing operation procedure, the RUC, through the Chief Constable, publicly confirmed in a written statement that PETER KEELEY worked for Special Branch in partnership with another agency between

1992 and 1994 at least. Whilst this has happened with John McNulty, this was not without strenuous objection from Counsel for PSNI, and is of course distinguishable on the basis that Mr McNulty is now deceased. It was neither confirmed nor denied that Tom Oliver was a garda informant. The identity of "Stakeknife" has not been confirmed or denied. To date this is perhaps one of the few occasions in the history of modern policing where confirmation has been given that a person was an informer. When one considers that this was done at a time when PETER KEELEY's life was under clear threat, with the possible effect of increasing the level of risk against him, and in a complete break to the "neither confirm nor deny" principle, it is made clear how much ill will was held by Special Branch against PETER KEELEY.

7.23 The Special Branch officers who have attended have given their evidence at the Tribunal as to what information was provided by PETER KEELEY which was false and misleading. That has been set out in full above and rebutted. It is submitted that what is clear is that there is a clear unwillingness for the Special Branch to accept the numerous occasions where valuable life saving information was provided. These all had to be put to W64 for example, he would not otherwise have referred to them. He also said his information was "mixed", which is a far cry from describing someone as a "fantasist". The level of detail in relation to other incidents was either lacking in the extreme (the map incident) or given by a witness who was not centrally involved in the operation (arms dump). That really just leaves the Paddy Shanaghan case upon which PETER KEELEY has given his evidence. That was an isolated incident, upon which it is difficult if not impossible to arrive at the description of PETER KEELEY as a "Walter Mitty" character.

7.24 It is a matter of plain fact that this so called "fantasist" went on to give A1 information to CID for a number of years thereafter, receiving significant payments because of the numerous successful operations.

7.25 The evidence of W71, PETER KEELEY's handler is centrally important in considering the interplay between PETER KEELEY and Special Branch. It was given on Day 65 as follows:

**409 Q. Now, possibly going back a bit in time. In January 1998, I think Mr. Keeley started to give you intelligence in relation to subversives, including the IRA and the Real IRA in**

*Dundalk?*

*A. That's correct.*

*410 Q. And I think some of this related to 'Mooch' Blair?*

*A. That's correct.*

*411 Q. And how did he describe 'Mooch' Blair to you?*

*A. 'Mooch' Blair was a killer, a very dangerous man. Although he could get on with him okay, he was a very dangerous person. He was looking for bullet-proof jackets and targets for robberies to buy weapons.*

*412 Q. And I think Mr. Blair was also looking for coffee grinders, is that right?*

*A. That's correct.*

*413 Q. What use are coffee grinders put to?*

*A. Well, coffee grinders are used to grind down the fertilizer to make bombs.*

*414 Q. Now, in June 1998, I think Mr. Keeley told you that 'Mooch' Blair was driving a particular car, is that right?*

*A. I have information that he was, 'Mooch' Blair was driving a silver Ford diesel Sierra.*

*415 Q. Was this something Mr. Keeley told you specifically?*

*A. It is, and I have a document that mentioned that specifically, and I don't know in which context that I wrote it down because I was aware that he was a driver for 'Mooch' Blair earlier. I can only assume that because Peter Keeley was out of the scene a bit more, that 'Mooch' Blair was driving himself from place to place.*

*416 Q. Now, I think the information you received from Mr. Keeley was recorded -- there was a particular form you had to use, is that right?*

*A. That's correct.*

*417 Q. And I think if the information related to criminal activity, the form went off to one particular department of the RUC, as it then was, isn't that right?*

*A. The information went to one particular office and then it would be divided into the different areas.*

*418 Q. And then, in relation to subversive activity, it went to another department, isn't that right?*

*A. It goes -- subversive activity would go to Special Branch in the area that it related to, and similarly with the criminal activity.*

*419 Q. And I think in addition, you also verbally informed south region Special Branch officers of whatever information you had received relating to that area, isn't that right?*

*A. That's correct.*

420 Q. Now, what information did Peter Keeley give you in the run-up to the Omagh bombing in August 1998?

A. He gave me specific information in relation to a meeting that he had had with 'Mooch' Blair; that he had met him, that he stinked of the smell of diesel fertilizer, which is also the product of bomb making, and that he was high as a kite, which is another term for whenever you are making the explosives, that it's like sniffing glue, you get quite high. And he felt that something was, big was going to happen.

421 Q. And what did you do with that information?

A. Similarly with the previous information, I put that on a document and I also phoned it through to various departments.

422 Q. I think specifically on the 12th August, he gave you information that the Real IRA was about to move a bomb, is that right?

A. That's correct.

423 Q. Now, I think on the weekend in which the bomb exploded in Newry, were you on leave?

A. I was -- it was at a weekend. I was off on the Saturday, and he was in Tenerife on holiday, and he had phoned me later on that evening about the bomb that had went off in Omagh.

424 Q. Had Mr. Keeley ever provided you with any information, other information relating to a bomb going North or being set off in the North?

A. It was actually prior to the Omagh bomb, I think, that he supplied information that a bomb was moving North, and subsequently, a couple of days later, a bomb did go off in Newry, at Newry courthouse.

425 Q. I see. Did Mr. Keeley know where the bomb was going?

A. No, in all of these instances, he did not know the location and he did not have sight of the bomb or bombs, but it was, I believe, through the activity of certain individuals that he had met in the border area.

426 Q. I think on the 18th August, which was some three days after the bombing, you had a number of meetings with senior members of your own department and subsequently with members of the Special Branch, isn't that right?

A. That's correct.

427 Q. And then I think on the 20th August, you were informed by a senior member of the Special Branch that Keeley was now regarded as an intelligence nuisance, is that right?

A. That's correct.

428 Q. And that he should not be involved with people in Dundalk or make contact with the Real IRA, is that right?

A. That's correct.

429 Q. I think you passed this information to your own direct line supervisors?

**A. That's correct.**

**430 Q. And I think you were told that Mr. Keeley was not to have contact with 'Mooch' Blair or Real IRA members and that his status, which you have described, related only to the Luigi Marotta matter?**

**A. Yes, that's correct.**

**431 Q. And he had to provide you with advance information of all his travel arrangements?**

**A. Yes, that's correct.**

**432 Q. Now, did you maintain contact with Mr. Keeley after that?**

**A. Yes. He was involved, still involved in the Luigi Marotta case, and contact still maintained in relation to that.**

**433 Q. Now, I think in April 2000, a newspaper published an article which Mr. Keeley feared might identify him as an agent, isn't that right?**

**A. That's correct.**

**434 Q. I think you asked for a risk assessment to be carried out?**

**A. I did.**

**435 Q. And did this happen?**

**A. It did not.**

.....CONTD.....

**439 Q. Now, before we come to the end of your dealings with Mr. Keeley, what is your view about Special Branch and its relationship with, or its work, I should say possibly, in regard to 'Mooch' Blair and how Mr. Keeley might have been, might have affected that work?**

**A. I think there was, around that time there was a lot of things happening. There was a lot of articles in the press, there was a lot of Real IRA activity and Peter seemed to be in the middle of it. He was reporting stuff to me and, I believe, possibly the Branch were doing their own thing in terms of 'Mooch' Blair, and that possibly Pete might have been a hindrance more than a help at that stage in terms of what they were trying to do.**

**440 Q. Were personality clashes unknown?**

**A. I believe so. I had a very good relationship with him. It's based on honesty and straight talking. I know he didn't like a lot of his handlers because he thinks they tried to destroy him and I think the relationship fell because of that.**

**441 Q. I think your view is that Mr. Keeley supplied you with some very credible information?**

**A. He gave me product. He was well paid for it. And therefore, I think him a very credible informant, yes.**

.....CONTD.....

**471 Q. You knew now that he had worked for Special Branch and you knew he had worked for the military?**

**A. That's correct.**

**472 Q. And did you go to either to check up on him?**

**A. No, I didn't.**

**473 Q. Did you know that a decision had been made in Autumn 1994 by Special Branch to cease dealing with him?**

**A. No, I didn't.**

**474 Q. On the ground that he had been fabricating evidence?**

**A. No, I didn't, and when he was registered with the department within the RUC, I would be surprised if they hadn't have seen his details coming through, whenever I registered him.**

**475 Q. And in fact, he was declared to be an intelligence nuisance back in 1994?**

**A. I am aware that Special Branch have suggested that he is an intelligence nuisance and I was warned off meeting him because of that, but I can only go on the results that I achieved with him and I cannot go back to what their relationship was with him.**

**476 Q. Because the Tribunal has had evidence from former Special Branch members who had dealt with him, and two indicated they thought he was a fantasist or a Walter Mitty, and that he was being more trouble than he was worth?**

**A. That's quite possible, but he got paid £17,500 for nothing then.**

**477 Q. But I don't understand how, when you went to register him, that you weren't told of all of this?**

**A. No, I definitely wasn't.**

**478 Q. Well, were you registering with somewhere different from where the Special Branch would have had him registered or are all these things central? Because I think you said he was registered with the informant handling branch in Knock Road, isn't that also the Special Branch Headquarters?**

**A. It is, yes, that's correct. I am just trying to remember the layout of the office. But, yes, it is correct that Special Branch would have been aware of the registration at the time.**

**479 Q. But you weren't told of his previous unreliability?**

**A. No, I wasn't.**

**480 Q. Would you have thought that an important thing to be told?**

**A. Yes, I would, yes.**

**481 Q. But you weren't?**

**A I wasn't.**

7.26 W64, when being cross-examined by Mr McAtamney on Day 53, gave the following evidence:

**355 Q. Well, you are aware that that report led to entrenched criticism of Special Branch?**

**A I am very aware of it.**

**356 Q. They were a force within a force, they didn't pass information on to CID?**

**A Yes, I believe there was highly unfair, highly prejudicial, highly critical unfair comments made at that time.**

**357 Q. Yes. They say they "didn't properly analyse Fulton's information and a review should be held into the role and function of Special Branch"?**

**A Correct.**

**358 Q. So it's correct to say a huge political controversy erupted in Northern Ireland as a result of this report?**

**A Yes**

**359 Q. And Special Branch was at the centre of that outcry?**

**A Yes**

.....contd

**361 Q. And the man blamed for all of this was Kevin Fulton?**

**A No, I don't think you could attribute all the blame for everything that was in that report to Kevin Fulton. I don't accept that.**

**362 Q. You would attribute some of the blame to Kevin Fulton, would you?**

**A I think Mr Fulton's contribution was unhelpful.**

7.27 It is submitted that this evidence is essential in a number of respects.

- (i) W71 is a respected police officer with absolutely nothing in relation to his background or policing career that would lead to any caution with accepting his evidence.

- (ii) He has no motivation or a desire that is apparent to give evidence leaning one way or the other.
- (iii) He actually handled PETER KEELEY directly, he had face to face contact with him and got to know him. In that sense his weight as to the type of person PETER KEELEY was carries more weight than someone who has never met him (such as W64).
- (iv) The information PETER KEELEY gave him in relation to Mooch Blair was documented and passed to SB orally and by onward transmission of the paperwork. The information was prior to the Omagh Bomb and included information that "the Real IRA were about to move a bomb". By virtue of what ensued, in hindsight this information was obviously accurate and correct. W71 also confirmed that PETER KEELEY had previously provided information successfully in relation to the movement of a bomb.
- (v) W71 met Special Branch officers on the 18<sup>th</sup> August, 3 days after the bomb, and it was only on the 20<sup>th</sup> August that CID were informed that he was regarded by Special Branch as an "intelligence nuisance" and that PETER KEELEY was not to be involved with any individuals connected with subversives (hence the plug being pulled on the Pfizer operation).
- (vi) W71 has corroborated PETER KEELEY's reasons for lying to his handlers in connection with the Shanaghan incident – he stated that he was aware PETER KEELEY and Special Branch had fallen out because PETER KEELEY believed Special Branch tried to destroy him. Therefore the evidence given by PETER KEELEY at the Tribunal can clearly be shown to have been what he told W71 at the time and not an attempt to provide *ex post facto* rationalisation.
- (vii) W71 felt that there was another permutation, namely that PETER KEELEY was unwittingly treading on the toes of Special Branch in that they may have had another informer active in those subversive circles.

(viii) Most important of all, W71 was completely unaware that Special Branch had in fact noted PETER KEELEY as being an intelligence nuisance when he registered him as a source in 1996. This was notwithstanding the fact that upon registration, Special Branch should have seen his name on the system. He confirmed that he was definitely not told about PETER KEELEY being an intelligence nuisance before 20<sup>th</sup> August 1998 which was after the Omagh Bombing. W71 was not even told PETER KEELEY was an intelligence nuisance during the meeting on 18<sup>th</sup> August 1998. He confirmed that he considered that this would have been an important thing to be told but he was not. This is also despite the fact that W71 had submitted reports which were sent to Special Branch in writing and also orally from June 1998 in relation to the information that PETER KEELEY had provided him on Mooch Blair. One would imagine that on any one of those occasions, Special Branch officers would have been able to convey to W71 their view of PETER KEELEY as an intelligence nuisance if that was actually a view held by them at the time.

7.28 It is submitted that the true position is as follows. Special Branch and PETER KEELEY's relationship fell apart for the reasons discussed in 1994. As a result Special Branch stopped dealing with him. However subsequent to that, PETER KEELEY started working with CID. He was registered by CID and this would have come to the attention of Special Branch at the time. Thereafter PETER KEELEY provided information which was accurate and led to successful operations and PI status being granted and significant sums of money being paid to him. In addition to this, he started to provide information that related to subversives. This strayed into Special Branch territory. This information was provided by CID to Special Branch and in it referred to specific pieces of information which, with hindsight, seem to have been accurate and important. For whatever reason, perhaps because of the bad feeling from the breakdown in relations from 1994, or because there were other assets which were being handled in that arena at the time, little or nothing was done with this information and the dots were not joined up. At this stage no-one in Special Branch appears to have told CID that PETER KEELEY was an intelligence nuisance. It is worth noting that the Police Ombudsman Report on the Omagh Bombing notes at paragraph 11 as follows:

*"Kevin Fulton was, and has been, a source of significant information and intelligence in the past. His grading as an informant in and around the time of the Omagh Bomb consistently reflects the fact that he was regarded as 'reliable'.*

*No evidence has been found to justify the contention that he was regarded by the RUC at the time of the Omagh Bomb as unreliable."*

7.29 The Omagh Bombing occurs on 15<sup>th</sup> August 1998. A meeting takes place with CID and Special Branch 3 days later. At that point, Special Branch realise that they had intelligence which, if pursued further, may have prevented the Bombing (assuming there was enough detail in it to do so, which is another question). Special Branch realise that this could leave them subject to severe criticism. The Ombudsman Report stated at paragraph 9

*"Records for the meeting with Fulton on 12 August 1998, three days before the Omagh Bomb, and for the meeting with him on 23 July 1998 cannot be found within Special Branch. The information was passed by the CID handler to the Force Intelligence Bureau. The Force Intelligence Bureau passed this information to Special Branch. The CID handler, additionally, verbally briefed Special Branch about this information but no records exist of this verbal exchange. A Special Branch officer remembers he received calls but cannot provide any details. Special Branch states that they have never received these HIGHLY SIGNIFICANT DOCUMENTS. The Police Ombudsman's Office is satisfied that the intelligence was given to Special Branch. The fact that Special Branch states that it never received these documents represents, at the very least, a very serious breakdown in communication."*

7.30 The Ombudsman Report also notes that as a result of an article in the Sunday People newspaper, the Chief Constable wrote a letter to the paper noting that PETER KEELEY's information was "retrospective" and "without any foundation whatsoever". As the Ombudsman established at paragraph 7 of her report, this was factually inaccurate. The material was not retrospective, and it did have foundation; there was 59 second phone call between Mooch Blair and a person identified by the RUC as being on the bomb team.

7.31 It is submitted that in an effort to lessen the likelihood of that conclusion, Special Branch then, for the first time, inform CID that PETER KEELEY is an "intelligence nuisance". Thereafter, his cover is blown, W71 asks for a risk assessment for PETER KEELEY and one is not give. He ends up having to make representations on PETER

KEELEY's behalf. Ultimately the Ombudsman report comes out, and relies on the reporting of PETER KEELEY to criticise Special Branch.

7.32 In light of all of that it is very easy to imagine why the Tribunal has been given evidence from Special Branch officers alleging that PETER KEELEY is an intelligence nuisance. It is submitted that explains their evidence. The evidence of all other police officers not in CID has not referred to PETER KEELEY in that way, critical evidence only comes from Special Branch. As noted above, specific information PETER KEELEY has given on a whole host of other matters has been analysed and in many respects corroborated by independent sources. It is submitted that PETER KEELEY is the antithesis of a Walter Mitty type.

7.33 It is also worth remembering another vitally important aspect of W71's evidence:

**628 Q. Absolutely. Now, in relation to the attack which was mounted on him by the Chief Constable, Sir Ronnie Flanagan, after the Ombudsman's report, did you ever have any contact with Sir Ronnie Flanagan about Peter Keeley directly?**

**A. I did.**

**629 Q. When was that?**

**A. It was after the Omagh bombing.**

**630 Q. Right.**

**A. Before the Ombudsman's report, I believe, I received a phone call from him.**

**631 Q. That's from you as a Detective Inspector?**

**A. That's correct.**

**632 Q. You, as a Detective Inspector in Drugs at that stage, received a telephone call from the Chief Constable of the RUC--**

**A. Sorry, can I -- I think I was still a Detective Sergeant at that stage.**

**633 Q. Right. You were a Detective Sergeant in the Drug Squad and you received a phone call direct from the Chief Constable**

**A. Can I just clarify, Detective Sergeant within the Financial Investigation Unit.**

**634 Q. Sorry, okay. But you received a telephone call from the Chief Constable of the RUC?**

**A. I did.**

**635 Q. Can you relate to us what that said?**

**A. The call related to Mr. Fulton and that was I aware that he was an intelligence nuisance and that he would be recording me on the telephone, and that I think prior to that some that Mr. Fulton had been working for me from 1996 and that had been very successful in relation to a number of operations, and he had been paid a substantial amount of money. And I got the impression that the Chief Constable wasn't aware of that information.**

**636 Q. And did anything else happen?**

**A. Well, immediately after that I reported the call to my senior officer and I got an apology later on.**

**637 Q. From who?**

**A. The Chief Constable.**

**638 Q. He rang you to apologise?**

**A. Yes.**

**639 Q. About what?**

**A. That he wasn't -- he was concerned that I may be tape recorded and that I think he wasn't aware that -- the work that he was doing for me.**

**640 Q. So the Chief Constable of the RUC takes time to ring a Detective Sergeant to inquire about a registered informant that's been registered, at that stage, for about three or four years, that's correct, is it?**

**A. It appears that way.**

**641 Q. It doesn't appear, that's what happened, isn't it? And then he rang you to apologise for criticising you for using him?**

**A. That's correct.**

7.34 It appears that Ronnie Flanagan, who did not give evidence to the Tribunal, also apologised to W71, PETER KEELEY's handler in CID after his statement where he referred to PETER KEELEY as a fantasist and a "Walter Mitty" type, stating that he had been provided with the wrong information. This is also borne out in the evidence of Jeffrey Donaldson given on Day 64:

**20 Q. And what steps did you take, then, to verify what he may have told you or his position or his identity or his credibility, put it like that?**

**A. Well, I spoke with a senior member of the security forces, who I had reason to believe would have knowledge of such matters, and sought to confirm that Fulton was who he said he was, and that was confirmed to me.**

**21 Q. That he was an agent?**

*A. That he was an agent of the security forces.*

*22 Q. Yes. And were you told any other information about him?*

*A. No.*

*23 Q. Was it suggested to you at the time, as has been suggested on many occasions here, that he was a fantasist or making up stories?*

*A. No.*

*24 Q. Or an intelligence nuisance?*

*A. No.*

*25 Q. Walter Mitty is another expression that has been --*

*A. Indeed, and that was not a term used in the conversation that I had with the senior member of the security forces.*

7.35 In light of all of the above, it is submitted that the criticisms levelled against PETER KEELEY cannot be sustained and that the segment of evidence which portrayed PETER KEELEY in a negative light emanated solely from Special Branch. For the reasons set out above it is submitted that there is a clear motive for Special Branch to give this negative evidence, which stands in contradistinction from other evidence on PETER KEELEY's career before the Tribunal. The suggestion that PETER KEELEY is a "fantasist" or a "Walter Mitty" character has been oft referred to, perhaps by virtue solely of the catchiness of the phrase. However one closely inspects all the evidence in the case it is submitted the use of that terminology was entirely unjustified. One can also conclude that the information provided by PETER KEELEY in relation to Omagh, was, in hindsight accurate and reliable.

## G. Owen Corrigan

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### Background

8.1 One of the central issues for the Tribunal to decide upon is that of witness credibility. This is particularly so when it comes to the evidence of PETER KEELEY and Owen Corrigan in relation to the incident at Fintan Callan's Ceili House. In this regard, it is of course important to consider other evidence adduced in respect of the attitudes and activities of Owen Corrigan in a wider sense, and indeed to consider the evidence he has given himself. From that, it is submitted that adverse findings could be made by the Tribunal in relation to the credibility of Owen Corrigan as a witness of fact. In positing that submission, it is now intended to set out the matters of evidence upon which such adverse credibility findings could be based.

### *Witness Statement*

8.2 Within his witness statement, Owen Corrigan sets out various letters of commendation and references provided by his authorities which portray him in a positive light, however latest of these commendations is in 1983. There are no such references or commendations at any stage after that. His production of C77s, in volume, seems to fall off significantly after 1985, which coincides with the period from 1985 to 1991 which spans the murders that have been referred to at the Tribunal.

### *Evidence given by members of RUC and An Garda Siochana*

8.3 The evidence of other officers, stating that they had heard of rumours that Owen Corrigan had been involved in assisting the IRA, or corrupt, or to be avoided, and more particularly the evidence of the two men who were murdered has been set out in detail above. Suffice to say that there is a substantial body of opinion in this respect, including the following witnesses:

- (i) Staff Sergeant Alan Mains
- (ii) Superintendent Bob Buchanan (as alleged by Inspector Tom Curran)
- (iii) Chief Superintendent Harry Breen (as alleged by Alan Mains)

- (iv) W70 (RUC detective sergeant)
- (v) W69
- (vi) Witness M (Customs Officer)
- (vii) Deputy Superintendent Tom Connolly
- (viii) Detective Inspector Sean O'Connell
- (ix) Inspector Dan Prenty
- (x) Superintendent Finnegan (report on kidnapping incident)
- (xi) Jim McHugh (recounting intelligence received re kidnap)
- (xii) Fergus Dogget
- (xiii) Richard Cottrell (recounting negative evidence given by others)
- (xiv) W62
- (xv) W65

*Weston Park conspiracy*

8.4 Owen Corrigan has suggested that everything said about him has been based on rumour and that PETER KEELEY was acting as part of conspiracy which was agreed at Weston Park as a balancing exercise because of the investigations into collusion that were to be pursued in the North in relation to controversial matters, such as the Pat Finucane murder. However, all of the witnesses listed above gave evidence which related to a period of time which was many years before Weston Park, thus establishing that this aspect of negative evidence against Owen Corrigan cannot have been anything to do with a Weston Park conspiracy. The evidence of PETER KEELEY was what caused Jeffrey Donaldson to make a speech naming Owen Corrigan in April 2000, which again was approximately a year before Weston Park even happened.

*Rumours of Collusion solely a "northern" rumour*

8.5 Owen Corrigan stated on numerous occasions that the allegations he was involved with the IRA were a Northern Ireland construct; there were no such rumours being aired south of the border. This was clearly not the case. See for example Day 109, Q79 lines 20

– 22: “there was no allegation on this side of the border”. However, Doc 542, a garda intelligence précis, being a contemporary document, clearly demonstrates that this is false. It stated “Garda information indicated by way of double hearsay that there was a contact in the Gardai who had passed information that facilitated the murder of Lord Justice Gibson and the shooting of the two RUC officers after their visit to Dundalk Garda Station”. Owen Corrigan also gave evidence that he had spoken to Jim Sheridan about rumours about him, although he could not recollect precisely when this was (there was a suggestion it may have been in 2000 after he read something in the paper, perhaps the Phoenix). Whilst there might be a lack of clarity as to when he had this conversation with Jim Sheridan, Owen Corrigan himself gave evidence which made it clear that not only were there rumours about Garda involvement with the IRA south of the border, but that there were rumours involving him. On Day 109, at page 4, line 29-30, Owen Corrigan stated

***“the IRA in Dundalk, they were linking my name to the RUC and drawing money on a weekly basis in the process”***

8.6 On Day 108, page 44, line 3, he stated

***“what he told the RUC was no different from what other members of the IRA said about me. Like, it was nothing of any relevance. There is nothing specific about it. It was a general comment, like, that I was supposed to be assisting the boys”.***

8.7 In relation to the conversation with Jim Sheridan possibly relating to an article in the Phoenix magazine, in accordance with Owen Corrigan’s own evidence, it is worth pointing out that Dan Prenty gave evidence on Day 42 as follows:

***125 Q. Now, the Chairman has heard this evidence from Mr Cottrell and you’re aware Mr Cottrell is deceased. It was taken at an early stage. This has been put to Mr Corrigan as well I might add. “He is greedy for money and I doubt very much he pays his way. He has at least three houses; one in Drogheda, one in the Navan area and a rather expensive [sic] one in Dundalk. In addition he owns a valuable building site in Drogheda within the town limits. He was always subject of rumour and all kinds of people saying he is not paying his way and attributing all sorts of rackets to him. I don’t believe they’re all true but I believe some are. However, to be fair to him, nobody ever offered one iota of evidence to any discreditable thing attributed to him” Now does that accord with your knowledge of Mr Corrigan?***

***A . Well I know of one incident which occurred in Pennies stores and the year – I would be surprised if Cottrell was not in Drogheda at the time. As a consequence of that I think, it’s a long time ago now, he was transferred to Cork. I thought that that – there was some kind of an investigation went into that. As regards rackets and what not and the rest of it there***

***were people calling to the police station very regularly and in particular a China man who wasn't paid for meals and an article appeared in the Phoenix Magazine about this....."***

*Corrupt police officers – 'tell tale' signs*

8.8 Counsel for the Tribunal, at the outset of his cross-examination, put to Owen Corrigan the evidence of Blair Wallace as to what matters one would look at if there were concerns about a member of your police force assisting criminals or subversives. Owen Corrigan accepted that the criteria which Blair Wallace listed were valid. In addition, various police officers who appeared before the Tribunal were asked to confirm that if a police officer himself became involved in nefarious activities such as smuggling or some other criminal enterprise, that this would bring you the attention of South Armagh PIRA and could compromise you. In this regard, the evidence of W82, a member of FRU, gave similar evidence from Q931 – Q935. Owen Corrigan himself accepted this. On Day 108, page 26, line 17 he stated:

***"people, north and south, who find themselves in compromising situations are prepared to sell their souls, so to speak, and park that benefit-in-kind until the next occasion...and if he was caught in a compromising situation he would, you'd have no alternative but to assist them....They (the IRA) were very professional, I will say that much, that they never let an opportunity stop without availing of devious means..."***

*Page 45*

***"the IRA were a very articulate & professional unit, and they kept abreast of everything, and they are working 24/7, and people don't realise how active they are and how up to date that are with their intelligence and there is very little that goes on that they don't know, that they are not abreast of".***

8.9 That being so, one must bear in mind specific incidents in which Owen Corrigan was involved which are, it is submitted, highly suggestive of him being involved in nefarious activities which could have led to him being compromised or put under pressure by PIRA. One also must consider the incidents, such as the unexplained absences, which fall within the criteria noted by Blair Wallace and accepted by Owen Corrigan (and indeed former Commissioner Pat Byrne) as providing tell tale signs as to whether the police officer involved has indeed been compromised and/or is assisting subversives/criminals. In addition to the evidence of Inspector Prenty and others, set out above, these are now dealt with below.

*Allegations of Tom Connolly*

- 8.10 On Day 26, Tom Connolly gave evidence firstly of a general nature wherein he recounted that he had heard rumours about Owen Corrigan's connection with the IRA when he was in Garda Headquarters. However, Tom Connolly also gave specific evidence in relation to an incident in December 1988. There was an incident in relation to the unofficial use of one of the police cars in the station, as a result of which he submitted a report to his superiors dated 21<sup>st</sup> January 1989 (only 3 months before the murders of Breen & Buchanan). It was read into the record by Counsel for the Tribunal on Day 26 and stated as follows:

"On 15 the 14th December, 1988, D/Sergeant O. Corrigan, Dundalk Station, was listed for duty from 9 a.m. to 5 p.m.. The member was engaged on indoor duty on completion of an investigation file for transmission to the Chief State Solicitor's Office in the case of a particular individual charged with the possession of an explosive substance, nitrobenzene. I saw the member on several occasions in the station on that date. "At 7:10 p.m. on the same date I returned to Dundalk Garda Station and saw that three of the official cars allocated to Detective Branch were not at the Garda station. I was aware that two of the vehicles should have been absent on duty in the district. I discussed the absence of the third car with the Detective Sergeant in charge, Sergeant J Gannon. He was not aware of the car being used on duty by any member. I went to the Communications Room and had the three cars called on radio. The two cars known to be officially on duty responded to the radio call immediately. Several calls were made to the third car on this occasion without any response. The car in question was a Toyota Camry, registration number ZS2187, and the radio call sign was PAPA 73. At 8:20 p.m. I had the car called on radio a number of times and there was no response. At 8:50 p.m., 10:10 p.m. and 12:05 a.m. I had the car called on radio and each time there was no response. I left the station at 12:15 a.m. and the vehicle had not returned. "At 9 a.m. on the 15th December, 1988, the car was at the station. At lunchtime on the 15th December, 1988, I examined the logbook of car ZS2187 which was carried in the car. I also took the speedometer reading of the car on the occasion and it was 96,477 miles. This car had been used on duty from 9 a.m. that morning. The last entry in the logbook was made by Garda E McArdle in respect of a tour of duty from 5 p.m. on the 13/12/'88, to 1 a.m. on the 14/12/'88. The miles travelled on this duty was recorded as 30 miles and the speedometer reading on completion of duty was recorded as 96,208 miles. I made a photocopy of the page of the logbook containing the entries. "In the afternoon of the 15th December, 1988, I spoke to D/Sergeant O. Corrigan and asked if he or any of his unit were using official car ZS2187 the previous night. He replied 'No.' He took a few paces away and returned and said 'I had the car out, why?' I informed him that the logbook had not been completed and to put it in order."Later on the same date I again examined the logbook. I saw that D/Sergeant O Corrigan had completed entries in the logbook for the periods 9 a.m. to 5 p.m. on the 14/12/'88 showing 90 miles travelled on duty, and from 5 p.m. to 1 a.m. on 14/15/12/88 showing 97 miles travelled on duty. I saw that the original entries of D/Garda E McArdle for the 13th/14th December, 1988, had been altered as follows: Speedometer reading 96,208 altered to read 96,258, and miles travelled 30 miles altered to read 80 miles. I produced a photocopy of the page made on the 15th December, 1988, to D/Garda E McArdle and he then stated that he is in no doubt that on completion of duty on the 14th December, 1988, he entered the correct mileage in the logbook. I consider him a very reliable member. I am now in possession of the logbook containing all original entries. I have not discussed the matter further with

Detective Sergeant Owen Corrigan. "D/Sergeant Owen Corrigan did not seek permission to perform duty after 5 p.m. on the 14th December, 1988. It now appears that the vehicle performed 237 miles while D/Sergeant Corrigan was driving on the 14th December, 1988. And I am aware he spent a considerable amount of the time in the station between 9 a.m. and 5 p.m.. When making entries in the logbook D/Sergeant O Corrigan did not enter the nature of duty for the period 9a.m. to 5 p.m., and for the period 5 p.m. to 1 a.m. he entered for nature of duty 'Night patrol and inquiries.' The duty alleged by D/Sergeant O Corrigan was not authorised and I am not aware where the member or vehicle was during the periods in question."

And then you go on to deal with questions of overtime, and you make the point that Mr. Corrigan didn't claim any overtime. And you go on to say: "I am satisfied D/Sergeant Owen Corrigan was not on duty as he is recorded in the car logbook, and judging by the mileage recorded he could well have been many miles from Dundalk. In view of the fact that there was no response to many radio calls over a nearly five-hour period, it was very likely that he was many miles away. I requested the Communications Room at Dundalk to call the car on radio on the morning of the 15th December, 1988, after 9 a.m.. The member on duty in the car responded to the test call. "Sometime ago the present District Officer at Dundalk, Superintendent P Culhane, received information that RTE were going to show a programme relating to smuggling in the border areas. The information indicated that a member of the Detective Branch at Dundalk was going to be publicly named as being involved in smuggling. Superintendent P Culhane made inquiries into the matter and he had an interview with the producer of the programme. Superintendent P Culhane was informed by the producer that the programme was in fact being produced and that D/Sergeant Owen Corrigan was going to be named in the programme. Superintendent P Culhane made a report on the matter. The programme has not been shown to date and I have no information as to whether it will ever be shown."

"In relation to smuggling, suspicious activity of a vehicle owned and in possession of D/Sergeant Corrigan at the time was observed by a known Customs official a short time prior to the 1st December, 1988. The circumstances were as follows:-

"The Customs officer were on a roadway near the border at Swanlanbar, County Cavan, at night time. They were on a special assignment expecting a load of smuggled goods to arrive from across the border. The Customs official saw a car on the roadway where they were. It passed them four times and as a result they were of the opinion that the driver was scouting for Customs officers. They took the number of the car and it transpired to be that D/Sergeant O Corrigan. The Customs officers remained on duty for sometime and the expected load of goods did not arrive. There is no evidence that D/Sergeant Corrigan was involved in any smuggling activity on the occasion. However, when the matter is viewed in the light of the information received by Superintendent Culhane, I feel it is worthy of note."

Then you go on to deal with another matter which does not seem to be relevant to the terms of reference. For the record, it related to some minor damage to a patrol car. Then you go on, at page 5, in the third paragraph: "I have known D/Sergeant Owen Corrigan for a number of years and I was well aware of the many alleged escapes attributed to him in the past. Many matters have been brought to my notice by all ranks in Detective Branch in Dundalk since I came to transfer to Dundalk. D/Sergeant Owen Corrigan has a bad reputation amongst both members of the public and his colleagues in the Dundalk area. I am not satisfied that he is a fit member to be in charge of a unit of the Detective Branch in Dundalk. He has shown and continues to show bad example to many of the younger members to Detective Branch, of which there are many. I am not satisfied that his integrity is up to standard. I have no confidence in the member and I feel he is prone to fabricate pieces of evidence. I have no wish to become involved in any disciplinary proceedings, protracted or otherwise against D/Sergeant Corrigan. however, I feel I cannot allow the

member to continue as he has been doing in the past. I know that the majority of Detective Branch members feel that he can just do what he likes without being brought to heel."

And then you attach a series of documents on which you rely for the purpose of your report. That concludes your report.

8.11 This evidence clearly is unambiguous. It speaks of the bad reputation of Mr Corrigan. It questions his integrity. It details the unofficial use of a garda car and failure to respond to radio calls, and also the altering of a logbook. The second incident at Swanlinbar also refers to a car registered to Owen Corrigan acting suspiciously on a road where a customs operation was being effected. This is not rumour, these are actual incidents which imply criminal or nefarious activity on behalf of Owen Corrigan. Indeed, in relation to the report submitted by Tom Connolly, disciplinary proceedings were instigated which levelled a number of charges against Owen Corrigan, and in respect of which some were upheld and Owen Corrigan was fined.

8.12 Owen Corrigan gave evidence on Day 112 in relation to the incident of the unexplained absence on Day 112 (page 54) as follows:

**CHAIRMAN:** But where actually were you?

A. I can't recall. That's twenty-two years ago.

**CHAIRMAN:** I know it was, but I mean shortly after that there were disciplinary proceedings and therefore it must have been a very important piece of recollection in your mind then, because you were subject to disciplinary proceedings, surely you addressed it in your mind then and you could then remember what you had been doing on the night in question?

A. I honestly feel now I cannot recall. It never crossed my mind to even -- because I had been suffering this type of treatment from this individual, and I didn't -- I couldn't assist them in any way possible. I could have been anywhere. Like, that was nothing for me to travel. I was dealing with very, very important business and meeting people, that it could have been easier for me to be at home with my wife and family.

**CHAIRMAN:** But you weren't at home. I mean, you had the disciplinary proceedings followed, which the issue of where you took the car, it was a very important one; you must have remembered it during the disciplinary proceedings, and I am surprised that you can't remember even now --

A. Well, I can't, but I will try and recall it in the next few days and I will see what I was doing.

8.13 In relation to the incident at Swanlinbar, Owen Corrigan's evidence was as follows:

*So, I mean, just so I am clear about this, are you saying that it was you?*

*A. No, I am not saying it.*

*258 Q. You are saying it might have been you?*

*A. I don't know. I am only pointing out the fact I was born and reared down there, so there would be nothing unusual for my car -- I hope that it would be all right to drive my own private car.*

*259 Q. How many cars did you have?*

*A. I had numerous cars. That is why I was asking you what car you are talking about.*

*260 Q. How many cars is "numerous"?*

*A. Hmm?*

*261 Q. How many is "numerous"?*

*A. Well, two or three.*

*262 Q. Two or three cars. And they are all registered in your name?*

*A. Oh, yes.*

*263 Q. Did you have a licence?*

*A. Yes.*

*264 Q. Now, so you say it might have been you. Can you think why, if -- let's say for one second it was you, why you would need to travel up and down the same road four times?*

*A. I don't know.*

*265 Q. Because the Customs officer who was waiting there took the view that this car was on a scouting mission?*

*A. That is his opinion, yes.*

*266 Q. And no doubt if it had have been you in the car and you'd seen this activity, perhaps, as your experience of a policeman, you might have come to the same conclusion?*

*A. Absolutely, yes.*

*267 Q. And then, funnily enough, the consignment that they were awaiting to arrive, part of the smuggling, it never turned up?*

*A. I don't know. I couldn't comment on that.*

*268 Q. Do you think maybe that it's possible that you were actually involved in some nefarious activity?*

*A. No, I wasn't. I am only pointing out the fact that it could possibly have -- where I live and where I travelled throughout my -- if I was home on holidays, or anything.*

*269 Q. Well, can you remember where you were that night? I mean, this formed part of all the disciplinary --*

*A. How would I remember where I was on a particular night?*

*270 Q. I am just thinking because of the -- in the context of the fact that there was disciplinary proceedings?*

*A. No.*

*271 Q. Would you agree it sounds extremely suspicious, as a policeman?*

*A. What?*

*272 Q. What I have just read out to you. When you think of it, two weeks later, on the 14th of December, you have gone AWOL; the jewel in the crown has taken a car, he has disappeared off for the night, he doesn't answer the radio, there is an issue about the logbook, he doesn't say where he has been, initially he says he didn't take the car and then he says he did. You didn't claim overtime, so you weren't working. I mean, taking the two together, what sort of picture do you think it paints?*

*A. Oh, I have no comment to make about that.*

*273 Q. No comment?*

*A. No. I am only trying to assist the Chairman, and I can't remember what I was doing in 1988 or if my car was seen. I asked you what make of a car, so, I mean, I'd have to know the make and colour of the car?*

8.14 Owen Corrigan clearly accepts that it was entirely possible that it was him in the car. This should be taken with the fact that the observations of the Customs Officer included noting the registration of that vehicle, which in turn shows it was registered to Owen Corrigan. This fact, taken with the evidence of Owen Corrigan himself, not just that it may well have been him but that he lived near there, would clearly allow the Tribunal to conclude that it was his car and that Owen Corrigan was driving on the night in question. That being so, then the suspicious activity noted by the Customs Officer in connection with a live undercover operation must be attributed to Owen Corrigan. That clearly shows that Owen Corrigan was taking part in some degree in a smuggling enterprise and therefore engaged in criminal activity.

*Incident involving Patrick Gallagher*

8.15 The Tribunal has also heard detailed evidence in relation to an alleged road traffic collision in which a car being driven by Owen Corrigan was meant to have been struck by a Mr Gallagher. Owen Corrigan alleged that his car had significant damage to it, and as part of the vouching documentation for this he alleged his vehicle was fixed by Fintan Dillon. Owen Corrigan made a claim for damages and was paid same by the Norwich Union. However, it later transpired from Owen Corrigan's own evidence that he in fact got blank receipts and had them typed up somewhere else. Mr Gallagher always maintained that Owen Corrigan's car had not been damaged. In a response to a question by Counsel for Owen Corrigan, he stated:

***A But that's all right. You keep saying about the statement, the statement, the statement. I am only here to tell you I did not cause multiple damage to Mr Corrigan's car. He made a fraudulent claim against me. He discredited me from getting work with other employers that I wanted to go to work because of this claim.***

8.16 In addition, at the Tribunal, Owen Corrigan wrongly alleged that Mr Gallagher was a member of PIRA (Day 112, pg 64 lines 3-4). In any event, as a result of the claim by Owen Corrigan, he received damages from Norwich Union. An investigation was conducted and eventually criminal charges were laid against Owen Corrigan to bring him before court on a charge of obtaining a benefit on false pretences. As part of the case against Owen Corrigan, Patrick Gallagher was due to give evidence. However Mr Gallagher did not attend at court. The reasons why were set out by him at the Tribunal on Day 29. He stated that he and his wife received several phone calls advising him not to go to court. On the morning before the case, Mr Gallagher was stopped by several men near his home and he was told not to attend court. Superintendent Finnegan said that of that group of men one was Francie Tiernan. His report said that Francie Tiernan was a very close associate of Owen Corrigan, and also alleged that Francie Tiernan was associated with PIRA.

8.17 When these allegations were put to Owen Corrigan on Day 112, his evidence was as follows:

***293 Q...Mr. Gallagher had said men turned up to tell him not to go to court and that he received phone calls. Are you saying he is a liar?***

*A. I am not saying he is a liar at all, but it's nothing got to do -- that was the very thing that I didn't want -- I was anxious that he turn up in court because the District justice would hear two sides of the story and dismiss the case.*

*294 Q. So --*

*A. He done me no favour by not turning up, I can assure you.*

*295 Q. -- if he is not a liar, OK, then would you accept that men turned up to tell him not to go to court?*

*A. No, I will accept what he says, that men turned up. The point I am making is, it was very damaging to me that he didn't turn up.*

*296 Q. Can you explain why a group of men would involve themselves in this dispute?*

*A. I can't speak for any men.*

*297 Q. I mean, you have accepted, very fairly, I might add, that -- well, maybe you didn't, but it was beneficial to you that the case didn't proceed, I think you've said --*

*A. No, no, it was not -- excuse me, it was beneficial to me --*

*298 Q. You were looking forward to having your day in court?*

*A. Yes, that I was looking forward to having the thing clarified.*

*299 Q. Does it not strike you as an amazing coincidence that here is a prosecution against you, a very damaging prosecution?*

*A. Yes.*

*300 Q. And, out of the blue, a group of men turn up and tell this man not to come to court?*

*A. Yes.*

*301 Q. You do accept that that is an amazing coincidence?*

*A. Oh, absolutely, yes.*

8.18 As can be seen from the above evidence, Owen Corrigan did not in fact seek to dispute the evidence of Mr Gallagher at all. In fact he was willing to accept that men did turn up to prevent him giving evidence. Nor did Owen Corrigan dispute that Francie Tiernan, a man with whom he associated, and who was alleged to have links with PIRA, was one of the men involved. Therefore, there is no issue with accepting Mr Gallagher's evidence, indeed, he would have little or no motive or reason to give anything other than an honest account of what occurred.

319 Q. Now, Mr. Tiernan, isn't it right to say that, to put it bluntly, he is a fraudster?

A. Oh, absolutely.

320 Q. And I think he was convicted of a million-pound fraud, is that right?

A. Numerous crimes, yes.

321 Q. And I think Inspector Prenty had also said he was caught trying to cash a stolen Garda pay-cheque?

A. That's right, yes.

.....

323 Q. And he was an associate of yours, wasn't he?

A. He was, yes, I know on -- him, yeah.

324 Q. Have you ever heard the phrase: you can judge a man by the company he keeps?

A. Perhaps. Unfortunately, I couldn't be more selective in the company I kept. Perhaps, in hindsight, I should have been.

8.19 The Tribunal has therefore heard evidence about witness intimidation which has not been disputed by Owen Corrigan. This is of course a very serious offence. A group of men turned up to dissuade Mr Gallagher from going to court, and telephoned his house. That group of people knew his phone number and his address. They also must have known about the case against Owen Corrigan. The suggestion that there is no connection between Owen Corrigan and this group of men, given that Owen Corrigan stood to benefit from the witness not turning up, is, respectfully, far-fetched. Insofar as Owen Corrigan is exhorting the Tribunal to accept this contention, it is submitted that it is an example of him being untruthful. It is submitted that the Tribunal has enough evidence to conclude to the requisite standard that a witness was intimidated for the benefit of Owen Corrigan. When one also considers that one of those men was a person with which Owen Corrigan accepted he associated, one has an even stronger basis upon which to reach conclusions. Mr Tiernan, as has been accepted by Owen Corrigan, was a fraudster. He has been convicted of a £1.3 million fraud, involving the smuggling of cigarettes and spirits. He was also, according to the report of Superintendent Finnegan associated with PIRA in some way.

8.20 Not only can one conclude on this incident alone that Owen Corrigan was involved in nefarious or criminal activities, it puts his honesty in question as the claim for damages

in the first place gave rise to charge of obtaining monies by false pretences. But further to that, the witness intimidation suggests a total lack of respect for the rule of law, especially considering the person involved was a Detective Sergeant in AGS. If the Tribunal accepts that Owen Corrigan was dishonest, associated with significant criminals, and prepared to effectively pervert the course of justice, then it is submitted that it provides strong contextual corroboration to the evidence given by PETER KEELEY, and the evidence heard from numerous other quarters, that Owen Corrigan was assisting the IRA.

#### *Kidnapping Incident*

8.21 Owen Corrigan was kidnapped by the IRA in December 1995 with Francie Tiernan, who, as is noted above, is a convicted smuggler. Owen Corrigan accepted that he was an associate of Francie Tiernan, and yet when he was originally asked about how he knew him he gave the following evidence:

Day 107, pg 17, line 14

*"I had met him before because he had been kidnapped sometime earlier, and a man came to me on his behalf, to ask you to search houses in Hackballscross."*

8.22 He then described how he had met him a couple of times in Dundalk, and on one occasion he asked me if he knew anyone within An Bord Plenala. On the day of the kidnap Owen Corrigan stated that Francie Tiernan had phoned him at home and said that he was just passing through, and asked to see Owen Corrigan. Owen Corrigan states that he did not specifically say what the meeting was about.

8.23 For some reason, rather than simply meeting in Owen Corrigan's house, he agreed to meet Francie Tiernan in the car park of the Boyne Valley. He told police that he had only met Francie Tiernan once before at the Boyne Valley Hotel. Owen Corrigan got into the back of Francie Tiernan's car. It is submitted that the meeting was clearly clandestine, otherwise he would have simply met him in the public area of the hotel. PETER KEELEY of course has given evidence about another clandestine meeting involving Owen Corrigan in a car park – in relation to the Tom Oliver incident.

8.24 In any event, whilst in the car park, a van pulled up and both men were kidnapped and taken away. Owen Corrigan was severely beaten up and hospitalised. Owen Corrigan

alleged that he was kidnapped and tortured by the IRA as they were trying to elicit from him the names of persons who were providing information to AGS. As a result he put in an application for a claim for compensation to AGS for his injuries. This application was never proceeded with. In the context of that Jim McHugh submitted a report to his authorities on the matter. It was read into the record on Day 107 at page 41:

**"intelligence received in the matter. This indicates both men owed the PIRA money and could not give it to them. It is alleged that it concerned a lorry load of spirits which both men disposed of for the organisation and this theory would be consistent with the character and activities of both men. There is no evidence whatsoever to support the view and it is not accepted that the abductions and subsequent beating of both men had anything to do with Owen Corrigan's previous service in AGS".**

8.25 As noted above it is worth pointing out that Francie Tiernan, an associate of Owen Corrigan, was also convicted for the smuggling of cigarettes and spirits. This clearly demonstrates that an associate of Mr Corrigan was involved in the type of activity alleged in the intelligence received by Jim McHugh.

8.26 Owen Corrigan was aware of this report, indeed it was put to him at the Tribunal. Tellingly, Owen Corrigan stated on Day 107 as follows:

**200 Q. And his conclusion is: "The truth as to why Corrigan and Tiernan were abducted at the Boyne Valley Hotel on 13th of December 1995 will probably never be established. This is entirely due to the parties involved.**

- 1. Corrigan and Tiernan who refused to cooperate with the investigation.**
- 2. The Provisional IRA who were suspected of having carried out the abduction.**

**We are therefore forced to rely on intelligence received in the matter. This indicates that both men owed the PIRA money and would not give it to them. It is alleged that it concerned a lorry-load of spirits which both men disposed of for the Organisation and this theory would be consistent with the character and the activities of these men. There is no evidence whatsoever to support the view and it is not accepted that the abductions and subsequent beatings of both men had anything to do with Owen Corrigan's previous service in An Garda Siochana." That's pretty clear, isn't it, Mr. Corrigan?**

**A. What's clear?**

**201 Q. That the Garda authorities do not accept your explanation?**

**A. That's Mr. Finnegan's opinion. What grounds has he for making that statement? Not one iota. Nothing. Speculation like we have heard before in so much of this Tribunal, not one thing. Let him come and tell you what -- you come and ask him, the same as you are cross-examining me, what evidence he has to make that opinion. That's more of what we have listened to throughout the Tribunal.**

202 Q. Bear with me a second.

A. In addition to that, he said that it was connected with the sale of drink for my pub. An absolutely outrageous statement.

203 Q. He didn't say it was your pub. He just simply said the sale of drink. Why do you say your pub?

A. Why would he be selling -- he did say it, if I recall now.

8.27 It is submitted that the evidence of Owen Corrigan in fact adds further information than that which is contained in Jim McHugh's report; he made no reference to Owen Corrigan's pub. This extra level of information could easily be a slip of the tongue on Mr Corrigan's behalf which indicates specifically what the intelligence above related to, thus corroborating and affirming that intelligence. Obviously that additional information could only be known by those involved.

8.28 In addition, following this incident where he was severely beaten, Owen Corrigan refused to give any statement to the authorities. He says he did this because he was in fear. However on Day 101 pg 60 he stated

*"I was very honest, fearless in everything and there was nobody going to push me about"*

8.29 In addition, intelligence from RUC/PSNI was read into the record on Day 99, which stated:

*"Intelligence dated 1996":*

*"Intelligence indicates that PIRA abducted Owen Corrigan and Frank Tiernan on 13 December 1995 from a hotel in Drogheda. It is believed the two men mounted a scam on a business. PIRA subsequently interrogated the two men for two days before being released on 14th December 1995."*

*"Intelligence indicates that south Armagh PIRA were involved in the abduction and interrogation of Owen Corrigan and Francis Tiernan from the Boyne Valley Hotel in Drogheda on 13/12/1995. Corrigan and Tiernan are believed to have been involved in a major property scam which PIRA wanted to investigate."*

*Further "Intelligence dated 1996":*

***"Intelligence indicates that PIRA were responsible for the kidnapping of Owen and Francis Tiernan on 13th December 1995. A number of leading PIRA members were involved. The two hostages were released on 14/12/1995."***

And the last précis of intelligence is also dated 1996:

***"Intelligence indicates that following his abduction by south Armagh PIRA, Frank Tiernan was told his life was under threat. PIRA/Sinn Fein held an inquiry into the inquiries held into the abduction by PIRA PSF found that a number of their senior members acted without authority from senior command. These members became the subject of a PIRA/Sinn Fein disciplinary investigation."***

This is clearly corroborative of the information received by AGS. Importantly it also refers to South Armagh PIRA specifically – the group that were responsible for the murders the direct attention of the Tribunal and with whom Owen Corrigan was meant to have associated.

8.30 This kidnap again provides evidence of nefarious activities, association with undesirables, and the parties involved coming to the attention of the South Armagh IRA. This all feeds into W82's evidence about how you could be compromised if you involved in certain activities which would bring you to the attention of South Armagh PIRA. What is also worth pointing out is that kidnapping took place in 1995. Owen Corrigan's version was that the IRA wanted information about informers, however, at that stage Owen Corrigan had been out of AGS for a significant period of time. This presumably would have been public knowledge, he did after all own a pub at that stage. Quite why the IRA would kidnap someone who had been "out of the loop" for so long (since 1991) to gain information is not at all clear. The fact that he was not a garda at the point weakens, it is submitted, his assertion as to why his was kidnapped. It also does not explain why he was kidnapped with Francie Tiernan. If the IRA wanted to interrogate him for information about who was giving information to AGS, one wonders why Francie Tiernan was kidnapped at all. In any event, the authorities in AGS clearly took the view that their information was in no way linked to garda work. If this accepted by the Tribunal, then it is a further example of Owen Corrigan proposing to make a claim for monies on a false basis. There is evidence to suggest that would not be the first time Owen Corrigan attempted that (see Gallagher incident). It is submitted that on the balance of

probabilities it is clear that the kidnapping had nothing to do with Owen Corrigan being interrogated for information, but arose because he fell foul of the South Armagh PIRA in his nefarious activities.

*John McNulty incident*

8.31 As the Tribunal has heard, the SB50 from 1985 was generated as a result of information provided by John McNulty to Witness Z and Witness Q, with the information being passed up to Witness X. Mr McNulty was killed in July 1989 after being taken by PIRA. On the night of his abduction, again it was noted that Owen Corrigan was the senior detective sergeant on duty however he was not contactable and had disappeared that night. This is another example of an unexplained absence, this time it happened on the night John McNulty was abducted. (See Day 30, evidence of Chief Superintendent John Nolan).

8.32 In defence of his position, Owen Corrigan relied upon his C77s which were generated by him around that time. In particular he produced two. The second C77 stated as follows

***"Report dated 27th July 1989, outlining Garda information concerning John McNulty who was murdered by PIRA in 1989. The report refers to a previous related report dated 17th July 1989.***

***The report (27th July 1989) outlines the business and smuggling activities of Mr. McNulty and the assistance that he was providing to PIRA, which included getting 'stuff' into Northern Ireland. PIRA became suspicious of Mr. McNulty following occasions where he was arrested and released without charge and following searches of premises in south Armagh. He had been detained for a period, two weeks before, he was finally taken away and shot."***

***"The report names two suspects who form the nucleus of a vicious and dangerous unit within PIRA. The report further details a threat to unnamed persons who may suffer the same fate as Mr. McNulty, North and South."***

8.33 Dan Prenty, who was responsible for the murder investigation into John McNulty, when giving evidence on Day 112 commented upon Owen Corrigan's on the second C77:

***346 Q. Now, we know that, and the Chairman has been told this, that this document was certainly in the possession of Chief Superintendent Nolan because he sent it to Detective***

**Superintendent Tom Connolly. Do you recall seeing this document?**

**A. No, I don't, and I am pretty sure -- I'd be surprised if Superintendent Connolly got it -- that it certainly would have to be an oversight on his behalf not to show it to me, because I was investigating a murder.**

**.....contd**

**351 Q. I think it follows from what you just said to the Chairman that this particular C77 wasn't comprised within your investigation or your report, is that right?**

**A. No.**

**352 Q. Thank you.**

**A. Well, there was nothing in it which would -- what's in it is general information which you could hear in any pub or any inn along the border. I mean, this went on all the time, people were threatened and people were afraid, this one's life and that one's life is in danger, but, no, I wouldn't assess anything of value to that information at all at all.**

8.34 In addition to Dan Prenty forming the view that the information in the C77 (which Owen Corrigan had put forward to allegedly demonstrate the assistance and help he was providing to the murder investigation) was of a generalised nature and in any event common knowledge, he also gave clear evidence that he did not have sight of this C77 during his investigation. In relation to the numbering of the various C77s and intelligence documents lodged by Owen Corrigan, they were asserted to be in chronological order. However each document had document number printed on it, and it appeared after scrutiny of the relevant documents that whilst the documents went in order of time, the document numbers were not in sequence. Dan Prenty gave the following evidence

**Q. Can I make this proposition, Mr. Prenty? Could it be that these C77s were backdated?**

**A. Well you could draw that conclusion from it.**

8.35 Therefore, there is the suggestion that one of the C77s generated by him was actually back dated.

8.36 Owen Corrigan had also given evidence that he was aware of a previous potential threat on Mr McAnulty's life. However Dan Prenty confirmed that no such information ever made its way to him.

**354 Q. Did you have any information that Mr. McNulty's, either liberty or life were under threat for some time prior, under threat from the Provisional IRA?**

**A. Absolutely not.**

**MR. DILLON: Thank you.**

**A. And I think that would have been included in my report if -- and I don't think there is any reference to that in my report, if that became -- his brother would have known about that, I have no doubt about that, if he was under threat by the IRA.**

**.....contd**

**Q397**

**A. Show me -- explain -- it's up on the board there. All that's on that is general information. There is no -- there is no specific identification of suspects or locations or weapons used, or anything else. There is an allegation, I think, somewhere in it there, that he had been detained on an occasion two weeks previous to him being shot. No such information was available at any time to me or to his brother, who would certainly know if he had been taken, and his brother spoke to us freely and without fear, and I have no doubt if he had been taken prisoner and interrogated by the IRA, that he would have known about that.**

8.37 Bearing in mind the definition of "collusion" that the Tribunal will be applying, which includes omissions, the evidence of Owen Corrigan appears to demonstrate that he knew that Mr McNulty's life was potentially under threat and he did not report it to AGS, RUC or to John McNulty.

8.38 As stated the second C77 from 27/7/89 stated "PIRA became suspicious of McNulty following occasions where he was arrested and released without charge following searches of premises in South Armagh". Owen Corrigan gave evidence on Day 108 that "McNulty had been arrested on a number of occasions, at least three or four, and was never charged, including two cases of drunken driving, and those things are known to the security -- the intelligence section of IRA". The 12<sup>th</sup> intelligence précis introduced by ACC Drew Harris on day 124 stated as follows:

**"A senior PIRA member revealed that he was responsible for the murder of John McNulty. Intelligence indicates that someone informed PIRA that McNulty was meeting with RUC officers. The senior PIRA member was subsequently informed of the allegations and McNulty was later murdered."**

8.39 Owen Corrigan in his official reports gave a completely different reason for why PIRA abducted and executed John McNulty. Importantly, however, he clearly demonstrated in his evidence to the Tribunal (before the précis had been adduced into evidence) that at the time of his murder he knew that John McNulty was meeting with the RUC. He displayed having this knowledge on Day 108, pg 36, line 2, where he stated:

***"he featured regularly in discussions with the RUC. He figured largely in our joint discussions. He was one of the people that was top of our agenda in relation to finding out what was happening on the border".***

8.40 One can clearly imply from this that Owen Corrigan knew he was a source of information for the RUC. Owen Corrigan was also aware that John McNulty had been kidnapped twice by the IRA. On Day 108 Q183 he stated as follows:

***Right. Now, the next sentence: "He had been detained for a period two weeks before he was finally taken away and shot." So apparently he was taken twice by the Provisional IRA, is that right? "He had been detained for a period two weeks before he was finally taken away and shot."***

***A. Yes, that is correct.***

***184 Q. So he was in fact kidnapped twice, you are saying?***

***A. He was, yeah.***

***185 Q. Why didn't the second kidnap come to light?***

***A. Pardon?***

***186 Q. Why didn't the second -- sorry, we'll call it the second kidnap, clearly it was the first in time but we'll call it the second kidnap, why didn't that come to light?***

***A. I don't know. Sure somebody has to report it, you know. The second one was very public and they were acting on information, as I told you.***

***187 Q. You see, again we have to go on the evidence of his handlers, he doesn't appear to have reported to his handlers that he was picked up by the IRA?***

***A Well I can't comment on that, Mr. Dillon.***

8.41 It is known that South Armagh PIRA abducted and executed John McNulty. It appears that John McNulty may have been murdered because of the fact that he was

an informer, or had been talking to the RUC or arrested on a number of occasions, as appears from the 12<sup>th</sup> intelligence précis. As is demonstrated above, Owen Corrigan was privy to this information, he knew that he was meeting with the RUC. And yet his reporting gave another reason for the abduction and execution. As discussed he was also missing from his post that night and gave no satisfactory explanation as to his whereabouts. He also seems to have gone looking for Mr McAnulty before it was even reported by his family to the Gardai that John McAnulty had been abducted. Whilst C77s have been produced, Dan Prenty says he never saw one of them and there is a real concern about whether one of them was backdated. When one considers that John McAnulty was the source of the SB50 from 1985, indicating to his handlers that Owen Corrigan was colluding with PIRA, there is a considerable air of suspicion about what went on that night. We know from the 1995 kidnapping that Owen Corrigan certainly had some connection (albeit one that had gone wrong) with South Armagh PIRA, being the group that murdered John McAnulty.

#### **Attitude/Motivations of Owen Corrigan**

8.42 In considering the allegations against Owen Corrigan, and indeed the credibility of Owen Corrigan, the question of what motivates him or what attitudes he holds is an important factor in the balancing exercise. With respect to subversive actions, at one end of the scale one can place dogmatic ideologues, who have entrenched and unyielding views on matters. Similarly, persons could harbour personal grudges which lead them to act in a certain way (as opposed to basing their actions on abstract beliefs) by reason of things that happened to them or persons close to them. There are then people that act in certain ways in response to certain vices held by them, for example in relation to money or drugs. Of course a person may act in a certain way, or throw his lot in with a group through a combination of political views and desire for money. A person may also take part in actions out of self-preservation. It is submitted that all of these motivations apply to Owen Corrigan and this has been demonstrated by the evidence adduced before the Tribunal, including his own evidence. In the context of the allegations which have been put to Owen Corrigan at the Tribunal, there is of course also an obvious motive for self-preservation in denying same, notwithstanding the understanding in relation to immunity from prosecution.

8.43 It is accepted that there is perhaps scant evidence of Owen Corrigan being ideological, but it is submitted there is an anti-British sentiment which has emerged from his evidence which could lead one to the conclusion that at the time in question he held sympathies for subversives. It is also submitted that the evidence clearly demonstrates that Owen Corrigan was involved in smuggling and criminal activity (Swanlinbar, Gallagher incident, kidnapping by IRA) which could have led to him being put under pressure and compromised and/or acting for money or self preservation. As motive is important when it comes to reaching conclusions on credibility or lack thereof, this contention is relied upon to allow the Tribunal to conclude that Owen Corrigan gave untruthful evidence.

8.44 In assessing the allegation that Owen Corrigan assisted the IRA, and indeed the direct evidence of PETER KEELEY that he told Mooch Blair that Tom Oliver was an informer which was tantamount to arranging his murder, the Tribunal will no doubt wish to consider what motives Owen Corrigan may have had, or what beliefs he had, as part of its assessment of this important piece of evidence.

8.45 In that regard, it is submitted that on occasion during his evidence before the Tribunal, Owen Corrigan's feelings and personal views have risen to the surface, either by implication or explicitly, thereby exposing to the Tribunal his attitude towards, for example, British army agents or where his allegiances may have lain with respect to the political situation in Northern Ireland. Examples are given below.

8.46 Mooch Blair gave evidence on Day 59. He tried to deny the evidence given by PETER KEELEY, but concluded by stating that he would "never give up a friend", and that it wouldn't be in his nature to tell. When Owen Corrigan was giving evidence on Day 112, the following exchange took place. Owen Corrigan, being a Special Branch officer whose job relied on output from sources and informants:

144 Q. You have given your views on loyalty, OK? And what I am putting to you is that it's remarkably similar to the evidence that Mr. Blair, gave. You know who Mr. Blair is?

A. Yeah.

145 Q. And he said -- the question was asked of him:

"Question: Would you ever name an IRA man?"

**Answer: I would never inform on anyone, no.**

**Question: If you knew of any detective supplying information, would you tell us?**

**Answer: It wouldn't be in my thing to tell.**

**Question: It wouldn't be in your nature to tell?**

**Answer: No, I would like to think that I would be loyal to any organisation that I was in, I would not betray anybody."**

**That is almost a mirror image of the evidence you have given to the Tribunal, wouldn't you accept that?**

**A. Absolutely.**

**146 Q. You are accepting that?**

**A. No, but Mr. Blair -- who was asking that to Mr. Blair?**

**147 Q. Never mind who was asking it of him. Do you agree with what he said?**

**A. Yeah, that he was loyal. It's not -- it's not in relation to your client.**

**148 Q. So you respect Mr. Blair, then, for being loyal?**

**A. Yes.**

**149 Q. And you think less of Mr. Keeley because --**

**A. Absolutely.**

**150 Q. -- because he was informing against the IRA?**

**A. Sure Mr. Blair never knew me. He said that on oath here. I never met Mr. Blair in my life, and he has given that on evidence.**

8.47 Unusually, this is explicit evidence of Owen Corrigan saying he respected a senior and prominent member of PIRA for his loyalty. Considering Mooch Blair's own evidence, which was put to Owen Corrigan, it is submitted that the Tribunal could on balance easily conclude that Owen Corrigan would also be unlikely to "give up a friend" or be disloyal. Any attempt to suggest that Owen Corrigan's evidence was simply clumsily expressed, and that he may simply have been commenting about loyalty to one's organisation, can be discounted when one considers that Owen Corrigan himself had fallen out with his superiors and had opted out and was doing as "little as possible" from 1985 onward. He clearly had a little or no loyalty to Dundalk Garda station at that stage.

It is also worth bearing in mind what Owen Corrigan said when he was asked whether he knew Mooch Blair or Patsy O'Callaghan.

Patsy O'Callaghan

Day 109, Q112

**Q Yes. We will move on to another matter. Sorry, I beg your pardon. Just before we go away from that, in the context of your employment as a detective sergeant, did you ever meet Patsy O'Callaghan?**

**A. Pardon?**

**112 Q Did you ever meet Patsy O'Callaghan?**

**A. No, I don't even know him.**

**113 Q You didn't know him?**

**A No.**

Mooch Blair

(see answer to Q150 above)

**155 Q. Now, just in relation, you were mentioning about Mr. Blair, I think you had said you didn't know him at all?**

**A. Pardon?**

**156 Q. You didn't know Mr. Blair at all?**

**A. No.**

**157 Q. Never met him?**

**A. No.**

**158 Q. Professionally even?**

**A. Never met him. Wouldn't know what he looked like if he walked into the room.**

8.48 In what is almost a mirror image, Mooch Blair gave the following evidence:

Mooch Blair on Owen Corrigan

**Q79 Q. Did you know Detective Owen Corrigan?**

A. No.

.....

240 Q. Would it be fair to say that Mr. Corrigan was regarded as a guard who had anti-republican views?

A. Yes, that definitely would have been --

8.49 Patsy O'Callaghan also attempted to distance Owen Corrigan from having any sympathies or allegiances with the IRA (in taking this précis at face value).

Patsy O'Callaghan on Owen Corrigan

Intelligence Précis No.5 (ACC Drew Harris)

*"In late 2011 a senior PIRA member commented to his knowledge AGS Sergeant Owen Corrigan had no time for the IRA, but was a gangster who was out for money"*

(The senior PIRA member was later stated to be Patsy O'Callaghan by ACC Harris on Day 124 Q63)

8.50 However, it is submitted that importantly, there were pieces of information that exposed the fact that the 'lack of knowledge', which was supposed to undermine PETER KEELEY's evidence, was a smoke screen. Mooch Blair, for example, said he did not know Owen Corrigan but then proceeded to give direct evidence of how Owen Corrigan was renowned for being a foe of the IRA. The obvious weakness in his evidence is that if a person does not know someone at all, then they cannot have an insight into their attitudes. Patsy O'Callaghan on the other does seem to have known Owen Corrigan; he is able to state he is a "gangster who was out for money". (*Quaere* whether this unwittingly provides a corroborating link with the 1995 kidnapping). Both Mooch Blair and Patsy O'Callaghan were senior figures in the PIRA, it is difficult to understand how one can know Owen Corrigan was a gangster but the other did not know him, even though he lived in the town that Owen Corrigan was based in. It is also important to consider the evidence of Dan Prenty given on Day 112:

**432 Q.....I just want to confirm, Mr. Prenty, would it be stunning that Mr. Corrigan did not know who Patsy O'Callaghan was?**

**A. I am shocked, but to the best of my knowledge and belief and memory, he would have been fingerprinted and photographed in Dundalk and there would be a special file on him in Dundalk.**

**433 Q. And it couldn't have escaped a Detective Sergeant's knowledge, would that be correct?**

**A. Well, I'd be in danger of upsetting his barrister if I answer that question.**

**434 Q. We can take it, Mr. Prenty, that one can assume that a Detective Sergeant, the jewel in the crown of An Garda Siochana, would know who Patsy O'Callaghan was?**

**A. Well, without doubt. There is no question about that.**

8.51 As to the suggestion in the précis that Owen Corrigan was "no friend" of the IRA, it is worth bearing in mind the first piece of additional intelligence brought by Roy McComb. namely IRA involved in misinformation and were aware evidence before the Tribunal was deliberately false (Day 95).

8.52 Most importantly of all, Owen Corrigan gives startlingly contradictory evidence in relation to his knowledge of Mooch Blair. He gave evidence on another occasion, on Day 132, as follows:

**10 Q. Now, you may remember that you were questioned on the issue of whether you knew who 'Mooch' Blair was, whether you'd recognise him or not?**

**A. Yes.**

**11 Q. And you told the Chairman you wouldn't recognise him, you wouldn't know who he was?**

**A. No.**

**12 Q. How is it that you were able to recognise two members on the occasion that Witness X was there, two members of the IRA on the occasion that Witness X was there, but you didn't recognise or you don't know who 'Mooch' Blair was, a man who lived in the town from time to time?**

**A. I don't know -- when I say -- I can't honestly -- like, it's a long time ago and I can't give a definitive answer as to who I recognised or who I didn't. All I can tell you is that I recognised an awful lot more than anyone else in the station.**

**13 Q. Mr. Mills, would you put number 1 of the loose leaves up. This can be dealt with very quickly. Lines 15 and 16, you were being questioned about, I think it was Mr. O'Callaghan who was questioning you at the time, but you say there at line 15: "I wouldn't have spent ten hours on outdoor duty in the week, because I was fully flat out in**

*administrative work..." and so on and so forth. So, is it the case that you spent only ten hours a week out of doors, as it were?*

*A. Roughly, yeah. An extraordinary amount of administrative work. I had a full-time secretary dealing with the correspondence and typing and whatnot. I had the supervision of and allocation of different duties that those men, as every different situation, circumstances changed. There was -- and these things started from six o'clock in the morning and went on to the night, and I didn't get opportunities to get out, because I had nobody there in a supervisory capacity to assist me.*

*14 Q. So, it was in the ten hours a week, which is two hours a day --*

*A. Yes.*

*15 Q. -- give or take, that you were able to generate all those C77s, is that right?*

*A. Well, I don't know... if that's the way you put it.*

*16 Q. That you were able to generate, as you put it yourself, your extensive knowledge of members of the IRA in and around the Dundalk area?*

*A. Yeah, well I had been there in Dundalk a long time. I went there --*

*17 Q. And still 'Mooch' Blair never registered with you, is that right?*

*A. Oh, he did, I knew him, I had a profile of him. I knew him, but I didn't know him well. I knew of him. I knew what he looked like, but I didn't know him as such knowing them.*

8.53 The discrepancy in his evidence is fairly blatant. How could a person on one day when asked if he knew someone, state no and go on to say that they would not recognise that someone if they walked into the room, and then give clear evidence at a later point that he "knew what he looked like".

8.54 Whilst it is of course accepted that when one is giving evidence over a number of days and been questioned closely about numerous topics and having various theories and hypotheses put before you, differences can occur, this is an example of a type of question that is devoid of nuance. There is only one answer. You either know what someone looks like or you do not; it does not matter how many times you are questioned on this or by whom, the evidence will always be the same. It is also submitted that whether a person knows what someone looks like is not really the type of knowledge that is easily eroded by time, and certainly not during the passage of time from 25<sup>th</sup> July 2012 (Day 117) to 31<sup>st</sup> May 2013 (Day 132). The only conclusion one can draw is that Owen Corrigan was trying to distance himself from PETER KEELEY's allegation by saying that he did not even know what Mooch Blair looked like, which was

later shown to be a lie by virtue of the fact that he subsequently admitted that he did know what he looked like.

8.55 In addition to Owen Corrigan's desire to distance himself from the allegations, the evidence given by Mooch Blair and the précis are examples of each of them being loyal to the other. It fits with the views on loyalty as espoused by Mooch Blair and Owen Corrigan.

*Informers lowest calibre of human life*

8.56 Owen Corrigan also displayed a naked contempt for an agent or informer, not least in the language he used to describe such a person, namely by referring to them 'touts'.

**Day 102, Q41**

**41 Q Why do you think your name was top of the list?**

**A. Because it was leaked by the touts. First of all, the IRA, vwho was I was the arch enemy, I was the number one, I wasthe man, and that's the oldest trick of the trade in warfare is to do down the enemy, Mr. Dillon, I am sure you know that yourself.**

**Day 109, pg 59 line 6**

**....So effectively what he is saying is that the fact that these posters went up, wasn't a sign that the IRA hated you, but, on the contrary, was giving you credibility. Could you offer the Chairman your view on that?**

**A. I think it's the most ridiculous suggestion was ever made, in view of the suffering that I endured and my wife and family. I think it's a direct insult and very offensive on your part to even mention it, two little kids coming from school. I don't want to go into it now, but to compare that and the opinion of a full-time British spy that tried to bring some equation or... I could elaborate on that whole thing, but I don't want to, in relation to -- my family have suffered enough, Mr. Chairman. To have this thing dragged up in this context here and to equate it with something that a British Army spy, who is touting for the RUC, and to put me in the same category, I think it's deeply offensive.**

8.57 Not only in the language he used, Owen Corrigan then gave evidence that he felt that 'touts' were a low calibre of human being:

**Day 112**

**125 Q. But I mean, you just agreed with me that the word "tout" is -- that's not something your superiors in An Garda Siochana would have said to you, "what are the touts at today?" or anything like that. They would have referred to them as source or agent, wouldn't they?**

**A. The type of work I was doing was very thankless, murky, dangerous, and you didn't have to be selective in any description of the association -- they were a certain low calibre of human being so...**

**126 Q. The sources?**

**A. Yeah, the sources, yeah; they were used for --**

**127 Q. They were a low calibre of human being?**

**A. Oh, yeah, absolutely.**

**128 Q. Why is that?**

**A. Anyone that grasses on their own colleagues, what would you describe them as? People have been subjected to horrible beatings or even shootings and they didn't disclose who was with them. But these other people -- like the individual that you are saying is a typical example, we needn't go further than him. His best friend was 'Mooch' Blair. He stayed with him in his house, and he was up there and still he turns around and told everyone that 'Mooch' Blair was -- all the activities, he gave a whole life story about 'Mooch' Blair's activities.**

**129 Q. So let me get this straight, retired Detective Sergeant Corrigan. You were, as you have said, the jewel in the crown, and was that of An Garda Siochana or just Dundalk?**

**A. Oh, I don't know.**

**130 Q. And you were a Special Branch officer and you have paraded your wares in the form of C77s generated by you in front of the Tribunal. You have given evidence that intelligence is the lifeblood of any police force?**

**A. Yes.**

**131 Q. That was effectively what you dealt in?**

**A. Exactly.**

**132 Q. And you are here today describing them as the lowest form of life?**

**A. Who?**

**133 Q. Informers.**

**A. Oh, yes, that's what they are.**

**134 Q. And you used the word "tout"?**

**A. Yeah.**

8.58 It is again submitted that this clearly exposes to the Tribunal his views on 'informers', notwithstanding that he professed to be the 'jewel in the crown' of AGS by virtue of his contacts with those self same informers. He clearly had complete contempt for informers. When one links this up with his earlier evidence on loyalty, it is made clear that this contempt applies specifically to someone informing against the IRA. It is submitted that this is a vital piece of evidence in that it discloses Owen Corrigan's attitudes and views. This was demonstrated in his attempt to row back from his own words when he gave evidence on Day 117. It is vital for the following reason: Tom Oliver was alleged to have been providing information against PIRA. He was the sort of person that one can conclude from Owen Corrigan's own evidence that he detested.

8.59 Owen Corrigan also used other language which lifted the veil on his personal views, such as the word "Brits". He also stated on Day 109 that "there was no allegation on this side of the border, and our government for whatever reason, never pursued the matter, and the British, true to their form, followed it up and gathered all their troops in behind it" (Q79). It is subtle and perhaps hard to notice, but the words "true to their form" demonstrate an Anti-British sentiment. Owen Corrigan has repeatedly espoused his view that the whole Tribunal, and the presentation of PETER KEELEY, is some conspiracy arranged by the British authorities to effectively frame Owen Corrigan:

**A. And that is the basis for this whole inquiry, it's totally political, and our government didn't follow it up. The British took it up and ran with it all the way. It permeated the whole system down through the RUC, some of them now, I am not saying all of them because some of them were very good and worked closely with me, and this borne out of the fact that the immediate boss of the people who issued the SB55 said in evidence that he was quite happy to continue working with me. But he came – and our government, for whatever reason, never pursued the matter and the British, true to their form, followed it up and gathered all their troops in behind it, and with the result that we are here today as a result of a British agent who was paid on a full-time basis by them and various other members who have rowed in behind them to strengthen their case, and all there is is a British agent and Mr Donaldson.**

8.60 When speaking about the deaths of the IRA members in Loughgall he referred to them being "wiped out by the SAS" which is language which shows an additional level of emotional response to the killings and the actions of the SAS. GET REF

8.61 When being questioned on Day 117, Owen Corrigan gave the following evidence:

**520 Q. And you were an observer on the Falls Road in 1970?**

**A. Yeah. On the Falls Road, and there was no volunteers to go to -- '69 actually now, I'm sure you should be aware it was August '69 the outburst started on the Falls Road and that's when the whole troubles came to the fore.**

**521 Q. And you volunteered to go down, did you?**

**A. Yes, yes.**

**522 Q. Did anybody else volunteer to go down?**

**A. There were a couple, yeah. It was on request of the government and was purely voluntary, you know.**

**523 Q. A request of the British government or a request of the Irish government?**

**A. I wasn't that hard up for a job to go working for the British government.**

**524 Q. No, you wouldn't be, sir. You detest the British government, don't you, sir?**

**A. I have made my speak now.**

**525 Q. You detest the British government, don't you, sir? Sir, I have to put it to you the only volunteer that you were was a volunteer to help the IRA. Thank you very much.**

**A. Good man...**

8.62 Owen Corrigan's belief that the British state would go to such convoluted and Machiavellian ends simply to frame him (Weston Park conspiracy) demonstrates a paranoid and deeply suspicious view of the British authorities, which of course sheds light as to where his personal allegiances may have lain during the Troubles.

8.63 These observations are relevant when it comes to assessing Owen Corrigan's - credibility in relation to the specific allegations.

## H. CONCLUSIONS

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There will be never be a 'smoking gun' or proof positive beyond reasonable doubt in relation to whether there was collusion between An Garda Siochana and the murders of Chief Superintendent Breen and Superintendent Buchanan. The test to be applied is upon the balance of probabilities. It is accepted that the more serious the allegation, the more cogent the evidence will have to be.

It relation to the evidence of Peter Keeley, it is submitted for the reasons outlined above that there is an abundance of corroboration, both contextual and specific. It is also submitted that there is again an abundance of corroborating evidence in relation to the allegation that (i) there was collusion between AGS and PIRA, (ii) that Owen Corrigan was a corrupt individual and (iii) that he colluded with PIRA. In summary the weight of evidence, on the balance of probabilities, supports Keeley and damns Corrigan.

As to the allegation that Owen Corrigan colluded in the murders of Chief Superintendent Breen and Superintendent Buchanan, it is submitted there are two central witnesses; Peter Keeley and Owen Corrigan.

Peter Keeley was not a compellable witness. He had nothing whatsoever to gain from attending at the Tribunal and no other motive other than to tell the Inquiry what he knew and what he heard. This he did in an uncomplicated, direct and straightforward manner without any embellishment, aggrandisement or exaggeration. Where there were concessions to be made; he made them. For example he was clear that he had no direct evidence in relation to Narrow Water or Breen and Buchanan. Over 3 days, he submitted himself to thorough and robust cross-examination on a whole array of matters. He also attended under armed guard; he took a considerable personal risk in attending.

It is submitted that on a number of different issues, ranging from the Pfizer incident to the Omeath bomb factory Peter Keeley gave consistent and credible evidence which was corroborated in many respects.

Owen Corrigan, on the other hand, singularly failed to deal with many of the central allegations levelled against him. He accepted a group of men went to the house of Patrick Gallagher with a view to enticing him not to give evidence against him in the prosecution for obtaining monies by false pretences. He gave sworn evidence that they did completely unbeknownst to him, notwithstanding that one of the men present was an associate of his. The evidence was so lacking in credibility that one can only conclude on balance that Owen Corrigan attempted to pervert the course of justice, and then lied about it under oath in the Tribunal. He failed to provide any satisfactory explanation that was worthy of credit for why he would go and meet a known criminal in the car park of a hotel and sit in the back of his car. It transpires that he was then kidnapped by South Armagh PIRA, the very unit that carried out the murders to which this Inquiry attention has been directed. His evidence that he was interrogated by PIRA for information which AGS held was again not only dismissed out of hand at the time by members of AGS dealing with a proposed application for compensation, but, it is submitted, not capable of belief especially when one considers that he had not been a member of AGS for 4 years and Francie Tiernan, who was not a Garda was also kidnapped. He then refused to make a statement. The incident at Swanlinbar was evidence of Corrigan's involvement in smuggling, he accepted in evidence that he may have been in the car. His absences from work were not just unexplained but inexplicable. It is of particular note one absence occurred on the night John McNulty, who had given intelligence about Owen Corrigan to the RUC, was abducted and eventually murdered. Time and again the Tribunal heard negative evidence about Owen Corrigan from both members of AGS and the RUC which was suggestive of corruption, a complete lack of professional integrity and association with PIRA.

Against that backdrop, one is left with the testimony of Peter Keeley. In this regard, it is submitted that Owen Corrigan told direct lies to conceal his involvement and to mislead the inquiry. A clear case was put by his Counsel, on instruction from Owen Corrigan, that he was "not involved on the ground" at Narrow Water. This transpired to be false. It was only after

the evidence emerged clearly demonstrating this that Owen Corrigan tried to say that he could not recollect if he was present at the scene of what was perhaps the most singularly memorable incident of the Troubles. Secondly, and most importantly, Owen Corrigan admitted under cross-examination that he knew that Tom Oliver had provided information to AGS, and he gave detail as to what the information was. However, when his counsel cross-examined Peter Keeley, it was indicated that Owen Corrigan knew nothing about Tom Oliver and had been "totally unavailable to AGS". This transpired to be utterly false. Not only did Owen Corrigan admit this under cross-examination, but he admitted knowing the information which Peter Keeley says he told Mooch Blair. Thirdly, Owen Corrigan repeatedly said he did not know what Mooch Blair even looked like. However, on the very last day of the Inquiry, he stated that he did know what he looked like as he had photographs of him. One can only conclude these lies were an attempt to minimise and undermine the evidence of Peter Keeley and also to distance himself from the allegations themselves.

Owen Corrigan also demonstrated his anti-British sentiment in his use of language (Brits, touts) and in his contention that the British state had orchestrated an elaborate conspiracy, "true to their form" to effectively frame him. He openly demonstrated his respect for a certain member of PIRA and he described informers, persons such as Tom Oliver and John McAnulty, as the "lowest form of life". That, combined with his nefarious activities which caused him to fall foul of South Armagh PIRA, exposed the motivation in the man to act in the way alleged. It is of note that there were a number of murders around this period that occurred in the same geographical area and were perpetrated by the same group within the IRA (South Armagh PIRA), the hallmark in common with all was that sensitive information was needed to carry them out. After 1991, all of these murders stop.

Owen Corrigan, it is submitted, is an accomplished liar, whose only rationale for these lies was to distance himself from the allegations and to undermine the evidence of Keeley in a deliberate and calculated effort to mislead this inquiry.

## I. APPENDIX

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1. Excerpts of Transcripts of Peter Keeley's evidence in relation to Breen and Buchanan murders.

**Day 67**

4 468 Q. I now want to take you to the events of the 20th of March,

5 1989, when Chief Superintendent Breen and Superintendent

6 Buchanan were murdered. It's correct to say, I think, that

7 you have no direct knowledge as to whether or not Owen

8 Corrigan was involved in their murders?

9 A. Well, I was told, as you are rightly aware, that it was

10 "our friend," and I took that to be Owen Corrigan, yes.

11 469 Q. So I am correct, you have no direct knowledge?

12 A. No, I have no direct knowledge, no, and I wasn't involved

13 in that murder, either.

14 470 Q. Yes. Your evidence is that you assume or you speculate

15 that Owen Corrigan was involved, isn't that correct?

16 A. That is correct, yes.

17 471 Q. And just so as we can recount, your evidence is that on the

18 20th of March, 1989, you were in 'Mooch' Blair's house?

19 A. House in Dundalk, yes.

20 472 Q. Tell us what happened?

21 A. It was just we were in the house, we would have been

22 talking about stuff, and Mickey came over, reports coming

23 in there has been a shooting, and then we found out that it

24 was the police, and this is when it was said "our friend,"

25 so that is why I took it that it was "our friend," Owen

26 Corrigan.

27 473 Q. Just take it slowly, Mr. Keeley. You are in 'Mooch'

28 Blair's house?

29 A. Yes.

30 474 Q. What time of the day is this at?

1 A. I would have been there most of the day.

2 475 Q. What time did Mickey Collins come over?

3 A. I didn't look at a watch.

4 476 Q. Morning?

5 A. Listen, you are trying to pin down. I don't know what

6 colour his shoes were, either.

7 477 Q. I am not asking you the colour of his shoes.

8 A. No, but I am only saying I didn't look at a watch in the

9 house there.

10 478 Q. Mickey Collins came over to 'Mooch' Blair's house, but you

11 don't know at what time?

12 A. No, I didn't look at a watch, no.

13 479 Q. What did Mickey Collins say to you?

14 A. He was actually saying it to 'Mooch'. I would have been

15 there in the room as well. Just about reports coming in of

16 a shooting. And we later found out it was two police

17 officers.

18 480 Q. OK. Let's take it slowly, Mr. Keeley. So he starts by

19 stating there are reports coming in of a shooting?

20 A. Yeah.

21 481 Q. And then there is a pause after that for a period of time,

22 is that correct?

23 A. No, later on he would have come over and told us and then

24 he would have said that is "our friend".

25 482 Q. So Mickey Collins comes into 'Mooch' Blair's house and

26 tells you there are reports coming in about a shooting. He

27 then leaves?

28 A. And then he came back at another time and said -- gave the

29 details, "our friend" was involved, yeah.

30 483 Q. OK. So he comes back later that day, is that correct?

1 A. Later. I don't know at what time.

2 484 Q. And what does he say when he comes back?

3

4 CHAIRMAN: Can you give -- I mean, generally, people can

5 arrange to give a time relating to meals. It wasn't at

6 breakfast time --

7 A. No, no, it wasn't breakfast or dinner. It would be late

8 afternoon, early teatime.

9

10 CHAIRMAN: Very well.

11

12 485 Q. MR. O'CALLAGHAN: So Mickey Collins then comes back a

13 second time, Mr. Keeley, is that correct?

14 A. He would have been back over again later.

15 486 Q. Just don't do "would have been". You are the person who is

16 giving us this evidence, so be specific. If you don't

17 remember, you don't remember.

18 A. At this moment in time, I just don't remember.

19 487 Q. But you think that Mickey Collins comes back a second time

20 and tells you that the incident was the killing of two RUC

21 officers?

22 A. Yes.

23 488 Q. And are you stating on that occasion he says to you about

24 the friend?

25 A. "Our friend," yes.

26 489 Q. And what words did he use?

27 A. Just, it was "our friend" helped out.

28 490 Q. That is all he said?

29 A. Something like that, yeah.

30 491 Q. OK. And --

1 A. I took it to be Owen Corrigan.

2 492 Q. OK. He didn't mention Owen Corrigan?

3 A. Not by name, no, no, no.

4 493 Q. He didn't mention that Owen Corrigan had seen the officers

5 in the station?

6 A. No, he didn't say that.

7 494 Q. He didn't say that?

8 A. No, no.

9 495 Q. OK. This is what you said to Judge Cory: "I was in

10 Dundalk on the day of the ambush of Superintendent Buchanan

11 and Chief Superintendent Breen. I am aware that, after the

12 ambush took place, my senior IRA commander" -- presumably,

13 'Mooch' Blair --

14 A. Yes.

15 496 Q. -- "was told by a member of PIRA" -- presumably, Mickey

16 Collins -- "that Garda B had telephoned to the Provisional

17 IRA to tell them that officers Breen and Buchanan were at

18 the Dundalk Station."

19 A. No, well that wouldn't be totally correct, no.

20 497 Q. OK. In your statement to Judge Cory, there are two

21 substantive paragraphs, the one about Fintan Callan's Céilí

22 House and this one here. You are now stating that what you

23 said to Judge Cory is incorrect?

24 A. I can't remember it totally. If you are saying that is

25 what is written down on the statement --

26 498 Q. Yes, that's incorrect?

27 A. It's not totally correct.

28 499 Q. Yes, it's incorrect, you have said it already?

29 A. Yes.

30 500 Q. Why did you mislead Judge Cory?

1 A. I would not have purposely misled Judge Cory, sir.

2 501 Q. You agree that he was misled?

3 A. Well, thinking back now, I couldn't remember the statement

4 I've made, it's so many years ago.

5 502 Q. But, sorry, your evidence here is completely different to

6 what you told Judge Cory, isn't that so?

7 A. Well, it's -- yeah.

8 503 Q. Why did you mislead Judge Cory?

9 A. I didn't purposely mislead Judge Cory.

10 504 Q. You agree that he was misled by you?

11 A. No, I am not saying that he was misled. If I've stated

12 that on the statement, that is what it said, but from what

13 I can remember now, years later, that is what I made the

14 statement here, yes.

15 505 Q. Well, your evidence is what is relevant, Mr. Keeley. Your

16 evidence yesterday and today is that the only thing that

17 was said to you by Mickey Collins was "our friend helped

18 out in the operation".

19 A. Yeah, yeah.

20 506 Q. You didn't say that to Judge Cory. You told Judge Cory

21 that you had this information that Owen Corrigan had seen

22 the officers at the station and he'd given that information

23 and you'd been told it was Owen Corrigan?

24 A. That is what I had took, yes.

25 507 Q. Yes. And that is completely inconsistent with what you

26 have told this Tribunal, do you agree?

27 A. Well, I said -- "our friend," I took, was Owen Corrigan.

28 508 Q. Yes.

29 A. Yes.

30 509 Q. You don't even mention "our friend" in your statement to

1 Judge Cory, do you?

2 A. No. As you said, I named him by name in that one.

3 510 Q. Yes. In your statement to Judge Cory, you state that your

4 "senior IRA commander was told by a member of PIRA that

5 Owen Corrigan had telephoned to the Provisional IRA to tell

6       them that officers Breen and Buchanan were at the Dundalk

7       Station." Where did you get that information from, since

8       it wasn't given to you on the day of the murders?

9       A. That would have been at a later date talking with 'Mooch',

10      because, remember, in the same -- one of the statements

11      where I was already told, after the operation, that the

12      intention was to capture the two officers alive and take

13      all their papers and that every road was covered. We

14      didn't know that at the exact time, either.

15   511 Q. You are now raising a new issue that the Tribunal and I

16      haven't heard of before, that, at a later date, 'Mooch'

17      Blair allegedly told you --

18 A. Or at a later time, yeah, 'Mooch' would have said that,

19 yeah.

20 512 Q. When was that said?

21 A. It could have been late that night or the next day.

22 513 Q. I have to suggest to you, Mr. Keeley, that, once again, you

23 are telling lies?

24 A. No, sir, I am not.

25 514 Q. But you believe that this is correct, what was said to

26 Judge Cory, do you?

27 A. I believe the main part of it -- yeah, that is correct,

28 yeah, even the account that it was "our friend," Owen

29 Corrigan, yes.

30 515 Q. And you believe that what happened and how these RUC

1 officers were set up was that Owen Corrigan spotted them

2 when they were at the station?

3 A. That is what I believe.

4 516 Q. Yes. And that he phoned the Provisional IRA to tell

5 them --

6 A. He would have told, more than likely, Patsy O'Callaghan

7 and --

8 517 Q. And that is how this whole operation was sorted out?

9 A. Possibly, yes.

10 518 Q. Are you aware that the two RUC officers arrived in Dundalk

11 Station at ten past two on the day of the murders?

12 A. No, I wasn't aware of that.

13 519 Q. Are you aware that they left the Garda station at

14 twenty-five past three on the day of the murders?

15 A. No, I wasn't aware of that.

16 520 Q. So, according to your analysis, Owen Corrigan would have

17 had to have seen them between those times and reported to

18 the Provisional IRA, isn't that so?

19 A. Yes.

20 521 Q. So the Provisional IRA operation on the day must have

21 started after ten past two?

22 A. If you say that is the times and they are correct, yeah.

23 522 Q. You are the double agent.

24 A. I am the double agent, but I am the person just picked up

25 the information. I did not go and investigate it or look

26 at it and I was not part of it.

27 523 Q. You are an intelligent man, Mr. Keeley.

28 A. I am not actually, no.

29 524 Q. Well, my assessment of you is that you are. But you have

30 stated that the RUC -- or, sorry, the RUC officers arrived

1 at ten past two. On your analysis, Corrigan must have

2 tipped off the IRA after ten past two?

3 A. Well, he couldn't have tipped them off before it, could he,

4 unless he knew there was a meeting on.

5 525 Q. Yeah, he couldn't have tipped them off?

6 A. Unless he knew there was a meeting on, yeah.

7 526 Q. You have said in your statement that he saw them at the

8 station?

9 A. Yes.

10 527 Q. You have said in your statement to Judge Cory?

11 A. Yeah.

12 528 Q. So he saw them at the station, is what you believe?

13 A. That is what I believe, yeah.

14 529 Q. How do you -- who did he phone?

15 A. The only person I know that he would have phoned would have

16 been Patsy O'Callaghan, because that was his contact.

17 530 Q. Do you think if the IRA were informed that -- or if Patsy

18 O'Callaghan informed at, say, quarter past two, that the

19 officers were in the station, that the IRA would have been

20 able to mount and launch an operation that was carried out

21 at ten to four?

22 A. Not at that short a notice, no.

23 531 Q. It's just not possible?

24 A. I think it's very short notice, yeah.

25 532 Q. And would you agree with me it's just not possible?

26 A. They would have to have known well in advance to make

27 advance plans and, you know, you'd need to know what day

28 they are coming up. You know, I don't think anybody

29 spotting them there, and then, just on a wing and a prayer,

30 could get that amount of people together. I don't think

1 it's possible, no. Not to cover every road, that is what I

2 was told, every road was covered by IRA units.

3 533 Q. If evidence was given that the IRA operation on the morning

4 started at half past eleven, that would have given them

5 sufficient time, wouldn't it?

6 A. From half eleven in the morning, yeah.

7 534 Q. Yes. Are you aware what time the IRA operation started?

8 A. No, I had no part in it so I would have no knowledge of it

9 at all, sir.

10 MR. O'CALLAGHAN: Chairman, there is a matter that I

11 probably should just mention to your counsel before we

12 proceed, and maybe if you wouldn't mind, Chairman, could we

13 rise now? There is just an issue as to evidence that has

14 been given to the Tribunal and as to whether or not it

15 could be put to the witness.

16

17 CHAIRMAN: Certainly, I think this would be appropriate.

18 We would normally be rising in about eight minutes, so I

19 might as well rise now until after lunch, and if you

20 continue with your cross-examination then.

21

22 MR. O'CALLAGHAN: Yes. Thank you, Chairman.

23

24 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

25

26

27

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

2

3 CHAIRMAN: Right, Mr. O'Callaghan, if you want to begin.

4

5 MR. O'CALLAGHAN: Thank you, Chairman.

6 Good afternoon, Mr. Keeley.

7 A. Good afternoon.

8 535 Q. Mr. Keeley, before lunch we were talking about the fact

9 that the deceased RUC officers arrived in Dundalk Garda

10 Station at ten past two?

11 A. Yes.

12 536 Q. And they left the station at 3:25, isn't that correct?

13 A. Yeah.

14 537 Q. And you have stated that it is your belief that Owen

15 Corrigan saw them at the station and that he tipped off the

16 IRA about their presence there, isn't that correct?

17 A. Yeah.

18 538 Q. And your basis for that is just your own assumption,

19 really, isn't that so?

20 A. That was -- what were the conversations, yeah.

21 539 Q. The Tribunal has heard evidence that the British Army has

22 information that the IRA operation on the ground on the

23 20th of March, 1989, started at 11:30 a.m.?

24 A. Right.

25 540 Q. What do you think of that?

26 A. Well, if you are saying they have evidence of that, well,

27       you know...

28   541   Q. Would you agree with me that if that evidence is correct,

29       that Mr. Corrigan couldn't have tipped off the IRA after

30       ten past two that afternoon?

1       A. Well, let's see the evidence. I mean, you can't say that

2       he couldn't have, you know. I mean, my view would be the

3       IRA couldn't conduct an operation of that scale in a very,

4       very short period of time, you know.

5   542   Q. I understand and I appreciate what you are stating there.

6       I am, however, asking you something slightly different,

7       which is that if there was evidence that the British Army

8       had information that the IRA on the ground were -- and the

9       British Army, as you are aware, has means of identifying --

10 A. Oh, absolutely.

11 543 Q. Isn't that correct?

12 A. Yes, they would have, yes.

13 544 Q. And if the British Army have that evidence, indicating that

14 the operation of the IRA started at 11:30 a.m., then it

15 would mean that the operation had started before the

16 officers ever arrived in Dundalk?

17 A. Well, it seems to me what you are saying, that they had

18 information that maybe those officers were going to come to

19 the place, yeah.

20 545 Q. Just deal with specifically what I am asking you,

21 Mr. Keeley.

22 A. Right.

23 546 Q. If the British Army had information that the operation

24 launched by the IRA commenced at 11:30 a.m. that morning,

25 isn't it correct that that would mean that Mr. Corrigan

26 wasn't the cause of the officers being attacked when he saw

27 them in the station at ten past two?

28 A. Let's go to other things. I have been on IRA operations

29 where you know where an army patrol comes down a certain

30 street every day or some days at such a time, but sometimes

1 you need a trigger-person to give you the heads-up, you

2 know, when they are coming. I am just saying you know they

3 use a certain street, so what you do is you put your

4 trigger-man out, or your dicker as the army would call

5 them, and your dicker gives you the heads-up of when they

6 are coming, and then you do your job. If you know people

7 are going to a certain place at certain times, you know,

8 you still need your dicker to give you the heads-up that

9 the target is coming.

10 547 Q. And isn't that the likely way that the IRA launched this

11 attack on the two officers, that they kept them under

12 observation and maybe they did have dickers, as you call

13 them, around, notifying?

14 A. It is quite possible, I don't know. I was not part of that

15 operation, I know nothing about it.

16 548 Q. Okay. But you don't know that Owen Corrigan tipped off the

17 Provisional IRA, sure you don't?

18 A. Well, from the conversation with Mickey Collins, and that,

19 I said that is what I assumed, it is "our friend," yeah.

20 549 Q. You assumed that?

21 A. Do I have actual evidence? Of course not.

22 550 Q. Okay. That is an important admission, Mr. Keeley. In

23 terms of the point that I was making about the British Army

24 evidence, however, is it not the case that if the operation

25 had started at half eleven, that the IRA were waiting for

26 these men as and from half eleven in the morning?

27 A. If that is what they were waiting on. I mean, I don't

28 know, I have never heard of it or seen it.

29 551 Q. If that was the case, you would accept that, that the IRA

30 were waiting?

1 A. You would have to look at that, wouldn't you? I mean, I

2 don't know, I haven't seen --

3 552 Q. I know you haven't, but, from your experience, you would

4 agree with me that that would indicate that maybe,

5 actually, there wasn't a tip-off from the Garda station?

6 A. Well, the way you are speaking there, I would nearly think

7 did the IRA know they were going to come down that day.

8 553 Q. You may --

9 A. I mean, the IRA would not sit out -- I mean, it wouldn't be

10 my experience that the IRA would sit in a border road, or

11 somewhere, waiting for an army patrol to come with a

12 landmine on the off-chance hoping that they came. They

13 would have to know, you know, they come this way or they

14 should be coming today, you know. You wouldn't sit out,

15 waiting. Number one, it puts volunteers, IRA volunteers,

16 at risk, great risk of getting caught, shot dead, you know.

17 The IRA just don't do that, you know. You would have to

18 have some sort of information that, you know, this is going

19 to happen, or whatever, before you would do it -- sorry.

20 554 Q. But it is the case, Mr. Keeley, you don't know how this

21 operation was launched by the IRA?

22 A. No, I wasn't there, I wasn't part of it.

23 555 Q. Do you suggest that Owen Corrigan was handled by

24 Mr. Freddie Scappaticci?

25 A. No, I don't. I have never said that.

26 556 Q. Ian Hurst, are you aware of who he is?

27 A. I am indeed, yes.

28 557 Q. He has stated that in a statement to this Tribunal which he

29 has put on the Internet. He is wrong about that, is he?

30 A. I haven't seen his statement.

1 558 Q. I am not going to open all the statement of him to you, but

2 it is on the Internet, and he says on it that Freddie

3 Scappaticci was Mr. Owen Corrigan's handler. You never

4 heard of that in all your time?

5 A. No, no. Patrick O'Callaghan was.

6 559 Q. Okay. You also stated in your statement that the IRA

7 planned to abduct and interrogate the two RUC officers?

8 A. Yeah.

9 560 Q. From whom did you hear this?

10 A. 'Mooch'.

11 561 Q. When did he tell you this?

12 A. After the incident had happened and then -- sorry, go on.

13 562 Q. How long afterwards, sorry?

14 A. It would have been in days, because then the IRA issued a

15 statement to their own volunteers, because, I mean, it was

16 big news that they had captured the books, you know, of the

17 police officers and they had worked out the codes, and it

18 gave informants' names, and it would have scared everybody.

19 563 Q. And is it your evidence that the IRA did actually seize the

20 officers' notebooks containing names of informers in code?

21 A. That was what we were led to believe. I don't know whether

22 they did or not. I wasn't part of the operation.

23 564 Q. You don't know whether that happened?

24 A. I don't know whether it happened. Of course I don't.

25 565 Q. But the only reason I ask you is, because in The Observer

26 article on the 14th of November, 2004, this is what

27 Mr. McDonald says about what you said to him. He says:

28 "Fulton claims that the murders of Breen and Buchanan on

29 the main Dublin to Belfast road was a major coup for the

30 IRA because the hit-squad involved seized the officers'

1 notebooks containing names of informers in code."

2 Did you say that to Mr. McDonald?

3 A. Maybe not in those words. I might have told him what I was

4 actually told. He edited and produced his own story.

5 566 Q. So you think he got that wrong?

6 A. Well, I mean, I have never seen the books, but the IRA did

7 tell people, their own IRA people, that they had got the

8 names. They gave them an amnesty to come forward and they

9 wouldn't be shot dead. So whether any people did come

10 forward, I don't know.

11 567 Q. Now, after you received this information on the 20th of

12 March, 1989, and your supposition was that Owen Corrigan

13 had provided the tip-off, to whom did you report that?

14 A. I remember telling it to a mixture of MI5, there was army

15 and police would have been at a meeting.

16 568 Q. Could you write down the names of the people --

17 A. It would have been the same people.

18

19 CHAIRMAN: The same people you have already given me the

20 names of?

21 A. Yes.

22

23 569 Q. MR. O'CALLAGHAN: And when did you tell them this?

24 A. At a hotel in London. I can't remember the exact date.

25 570 Q. Was it a couple of weeks or months after?

26 A. It could be weeks after it or months after it. I can't

27 remember.

28 571 Q. Weeks or months after. It was certainly in 1989?

29 A. I think it was, yeah.

30 572 Q. Okay. What was their reaction?

1 A. A lot of these meetings, people don't give a reaction; they

2 just take notes of what you are saying.

3 573 Q. Did they appear to you to be outraged or concerned at this

4 information?

5 A. No, no more than any other thing, no.

6 574 Q. Did they ask you to try and obtain further information on

7 Owen Corrigan?

8 A. No. They would have known if I got any more information, I

9 would have handed it over. It is just the way you do it.

10 575 Q. You were then arrested, of course, and interrogated in

11 Dundalk Garda Station, some three months after the murders

12 of Breen and Buchanan, isn't that correct?

13 A. Aye.

14 576 Q. And you saw Owen Corrigan in the station?

15 A. Yeah.

16 577 Q. That must have aroused your interest and attention?

17 A. Not really, no.

18 578 Q. Did you --

19 A. When you went in there, you just don't answer questions.

20 579 Q. Did you not think to yourself, there is the guy who is

21 working with the IRA?

22 A. Not really, no.

23 580 Q. What did the handlers ask you to do in respect of getting

24 information about Owen Corrigan?

25 A. You see, that's what you're thinking there, you think the

26 task is specifically -- what you do is, just any

27 information you'd get, you give. You know, it could be we

28 have done nothing this week, we made incendiary bombs, we

29 are testing explosives. You just go and report your stuff.

30 581 Q. What, specifically, did you state to your handlers in the

1 weeks or months after the murders of Breen and Buchanan?

2 A. All I would have stated was exactly what was said by

3 'Mooch' Blair and Mickey, and that, nothing else. I mean,

4 I didn't know anything else about it.

5 582 Q. But did you tell them just that you heard "'our friend' had

6 helped us," or did you go further and say "Owen Corrigan"?

7 A. I would have said "our friend" and I would have used the

8 word "Corrigan". I mean, my handlers knew who Owen

9 Corrigan was as well.

10 583 Q. I am concerned when I hear you use the words "I would have

11 said". Is that what you did say to them?

12 A. I am sure I would have. You are talking many years ago. I

13 would have told them about it. I mean, I can't remember

14 exactly word-for-word what I have said. You are asking

15 impossible questions for anyone to remember.

16 584 Q. I don't think so, Mr. Keeley.

17 A. Well, I think -- well, in my type of work -- maybe, in your

18 type of work, you are very specific. In my type of work,

19 words, you don't remember exact words that you are using,

20 sir.

21 585 Q. But you understand the importance of the position of my

22 client?

23 A. I do understand the importance to you, yes, I do.

24 586 Q. And you are effectively accusing my client of being a

25 murderer and breaching his fundamental duty to serve this

26 State, by giving information to the IRA?

27 A. He was a police officer.

28 587 Q. It is a fairly serious allegation?

29 A. Absolutely, it is, yes.

30 588 Q. And as I said to you before, your story doesn't stack up.

1 A. Well, I know I am telling the truth, sir.

2 589 Q. Well, is there any reason why you would go out of your way

3 to damage Owen Corrigan? Does it assist you?

4 A. No, absolutely not.

5 590 Q. But does it not assist you -- you have gone to individuals

6        who have expressed an interest in this, isn't that so?

7        A. Who has expressed the interest?

724 Q. Mr. Keeley, I would ask you to be fair to Owen Corrigan --

5        A. Oh, no, no -- yeah.

6    725 Q. -- for a moment of time, because the allegations you are

7        making against him are, I submit, lies?

8        A. No. Well, I am saying they are not lies, sir.

9    726 Q. But from his point of view, you have got to recognise that

10       the basis for your allegations are very slim --

11       A. Yeah.

12    727 Q. -- in respect of the murders of Breen and Buchanan. Do you

13 accept that?

14 A. All I know is what I know about Mr. Corrigan.

15 728 Q. Yeah. And all you know in respect of the murders of Breen

16 and Buchanan is that somebody told you, Mickey Collins told

17 you that "our friend" helped out, and you supposed that was

18 Owen Corrigan?

19 A. I take it that as Owen, yeah.

20 729 Q. Then you went to Judge Cory and you told him something

21 completely different, didn't you?

22 A. No, sir, I don't remember the statement, but it was the

23 same thing, it was about Owen Corrigan.

24 730 Q. Well, this Tribunal was set up on the recommendation of

25 Judge Cory, isn't that correct?

26 A. Yes, sir.

27 731 Q. And he set it up because you put in a statement to him on

28 the 9th of September, 2003. And in that statement, you

29 say: "I am aware that after the ambush took place, my

30 senior IRA commander was told by a member of PIRA that

1 Garda B had telephoned to the Provisional IRA to tell them

2 that officers Breen and Buchanan were at the Dundalk

3 station." And you accept that is incorrect?

4 A. What year was that?

5 732 Q. September 2003.

6 A. 2003, a long time, yeah.

7 733 Q. It is incorrect, though, isn't it?

8 A. No, but it is correct. I mean, it was my belief that he

9 did telephone them.

10 734 Q. You didn't say that to the Chairman in your evidence. Your

11 evidence is different, Mr. Keeley; your evidence is that

12 all that was said was "our friend" helped out?

13 A. Yeah.

14 735 Q. So are you saying that's correct?

15 A. I am saying the basis of that is correct, yes, sir.

16 736 Q. You didn't give that evidence here. One of them is

17 incorrect, isn't it? It is -- either your evidence here or

18 your statement?

19 A. Well, part of it is not in it, that I say to you all the

20 time, it is a long period of time between the two, sir, but

21 it basically means the same.

22 737 Q. I want to give you an opportunity, Mr. Keeley, to withdraw

23 the false statements and false claims you have made about

24 my client, Owen Corrigan. I would ask you to withdraw

25 them.

26 A. Absolutely not, sir. I can't.

27 738 Q. I want to suggest to you that the only reason you have made

28 these claims against my client is to ingratiate yourself to

29 certain parts of the political establishment in order to

30 assist you in your claim against your former employers?

1 A. Oh, absolutely not, sir. That is not correct.

2

3 MR. O'CALLAGHAN: Thanks, Mr. Keeley.

# **SMITHWICK TRIBUNAL OF INQUIRY**

Binse Fiosrúcháin Smithwick

**SUBMISSIONS ON BEHALF OF MR FREDDIE SCAPPATICCI**

# IN THE MATTER OF THE SMITHWICK TRIBUNAL

## SUBMISSIONS ON BEHALF OF MR. FREDDIE SCAPPATICCI

### 1. General

1.1. It is submitted that this Tribunal should make no findings in respect of Mr. Freddie Scappaticci.

1.2. The Tribunal is tasked under its terms of reference to enquire into:

*“suggestions that members of the Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan on the 20<sup>th</sup> of March 1989.”*

1.3. According to the rules of procedure of this Tribunal:

*“The Tribunal shall, in its report, set out its findings together with any recommendation on any matter arising from its Terms of Reference.”*

1.4. There has not been, throughout the course of the entire of the oral hearings of this Tribunal, any evidence to connect Mr. Scappaticci to the tragic events of the 20<sup>th</sup> of March 1989.

### 2. ‘Stakeknife’

2.1. An allegation has been made in the course of this Tribunal, by two individuals, namely Kevin Fulton (aka Peter Keeley) and Ian Hurst (aka Martin Ingram) that Mr. Scappaticci worked as an agent for the Force Research Unit (FRU) of the

British Army under the code-name 'Stakeknife'. This allegation has been in the public arena for some time. This allegation has always been, and continues to be, vehemently denied by Mr. Scappaticci.

- 2.2. It is notable that the only two witnesses who bring this allegation before the Tribunal both have a history of headline-grabbing and sensationalist publications. It has also become clear from evidence given to the Tribunal that the sole source of this allegation is Mr. Hurst, who told the Tribunal that: "*[Kevin Fulton] knew nothing of Mr. Scappaticci's role until I informed him...*"<sup>1</sup> And later: "*...he had no knowledge of Mr. Scappaticci's role as a State agent, fullstop, until the moment I told him at a meeting and he changed colour.*"<sup>2</sup>
- 2.3. Mr. Hurst has persisted in repeating the 'Stakeknife' allegation since 1999 and this allegation has fed in to a more general claim that for much of the Troubles in the North of Ireland, the number of informers was so great and so highly placed within both loyalist and republican organisations that the British Government effectively controlled or were in a position to prevent many of the tragic incidents which occurred at that time. This theory has proved attractive to journalists but has failed to stand up to objective scrutiny.
- 2.4. Mr. Scappaticci has always denied the allegations made about him and went as far as to bring an application in Northern Ireland High Court against the Minister of State Ms. Jane Kennedy, seeking to judicially review her decision to neither confirm nor deny the allegations made in the press that Mr. Scappaticci was "Stakeknife".
- 2.5. In his evidence to the Tribunal, Chris Ryder, a journalist with some 40 years experience of covering events in Northern Ireland, and specialising in policing and security matters, commented with regard to the rumours about a "mole" in Dundalk Station that<sup>3</sup>:

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<sup>1</sup> Transcript Day 92, question 300.

<sup>2</sup> Transcript Day 93, question 433.

<sup>3</sup> Transcript Day 63, page 50.

*“(T)hese things sort of took on a life of their own. You know, once somebody started a rumour, this took a life of their own and then, you know, you would read it in a magazine or a paper or some article, and then it was accepted as fact without ever being subjected to rigorous forensic tests as to its truth.”*

- 2.6. It is submitted that the allegations that Mr. Scappaticci is ‘Stakeknife’ has, without any foundation whatsoever, taken on a life of its own in exactly the manner described.
- 2.7. The allegations have resulted in grave consequences for Mr. Scappaticci. He has been forced to leave his home and family. The IRA has publicly made it clear as to how they deal with those within its ranks who are suspected of being informers and it is submitted that it is indisputable that the “Stakeknife” allegation has put, and continues to put, Mr. Scappaticci’s life at risk. The threat to his life was emphasised publicly in 2009 following the murder of Denis Donaldson when the Real IRA issued the following threat in its Easter Statement:

*“Let us give our one-time comrade an example. Denis Donaldson was a traitor and the leadership of the provisional movement, under guidance from the British Government, made provision for Donaldson to escape republican justice in the same manner as Freddie Scappaticci. It fell to the volunteers of Óglaigh na hÉireann to carry out the sentence and punishment demanded in our Army Orders and by the wider republican family. No traitor will escape justice regardless of time, rank or past actions. The republican movement has a long memory.”*

**3. Allegation that Mr. Scappaticci acted as a handler for Mr. Corrigan.**

3.1. Mr. Hurst claims that the agent known as "Stakeknife" who he alleges is one and the same person as Mr. Scappaticci, acted as a handler for Mr. Corrigan within the IRA.

3.2. Mr. Hurst does not suggest that Mr. Scappaticci was involved in handling information from Mr. Corrigan which led to the murders of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan. When asked about this he stated:

*"No, no, no, no. I am not saying the information was leaked to Mr. Scappaticci, what I am saying to you is that Mr. Scappaticci was making it aware that Mr. Corrigan had leaked it to members of the IRA."<sup>4</sup>*

3.3. Mr. Hurst does not connect Mr. Scappaticci in any way with murder of the two officers.

3.4. Mr. Hurst's contention that Mr. Scappaticci acted as a handler for Owen Corrigan is, on Mr. Hurst's own evidence, hearsay. He contends that he was told this information by 'Stakeknife's handler in the Force Research Unit, a man known to this Tribunal as "Witness 82".

3.5. "Witness 82" voluntarily appeared before the Tribunal, in order to address the issues raised by Mr. Hurst. "Witness 82" cannot be accused of having any motives in doing so, other than to assist the Tribunal in its work. "Witness 82" expressly denied ever imparting this information to Mr. Hurst. Furthermore, he denied that he was ever aware of any such information<sup>5</sup>.

3.6. "Witness 82" did not comment on the identity of the agent "Stakeknife". He did however state that he never saw intelligence linking "Stakeknife" to Owen

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<sup>4</sup> Transcript Day 92, question 441

<sup>5</sup> Transcript Day 93, question 822.

Corrigan<sup>6</sup>. Furthermore he confirmed that the agent “Stakeknife” did not have a role in obtaining information from sources whether Garda or otherwise.<sup>7</sup> “Witness 82” says that he thinks he would recall if there had been any mention of any Garda Officer passing information to the IRA to facilitate these murders.<sup>8</sup>

3.7. It is notable that Mr. Hurst’s book entitled “Stakeknife”, which dealt comprehensively with his allegations about Mr. Scappaticci, did not make any mention of the claim he makes to the Tribunal that Mr. Scappaticci was acting as a handler for Mr. Corrigan. It is submitted that this claim has been fabricated purely for the purposes of attempting to form a link between Scappaticci and this Tribunal – a tactic used in order to create an opportunity to further his personal interest in speaking publicly about Mr. Scappaticci.

#### **4. The credibility of Ian Hurst**

4.1. It is submitted that the evidence of Mr. Hurst must be disregarded by the Tribunal of Inquiry on the basis that both he and his evidence are lacking in any credibility. For the following reasons:

- (a) Mr. Hurst has admitted under oath to being a liar.<sup>9</sup>
- (b) Mr. Hurst, by virtue of his training within the FRU and elsewhere, is trained, to an exceptional level, in deceit.
- (c) In the context of his report on the Bloody Sunday Inquiry, Lord Saville of Newdigate came to the following conclusions about the evidence given to him by Mr. Hurst:

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<sup>6</sup> Transcript Day 93, question 845.

<sup>7</sup> Transcript Day 93, question 847.

<sup>8</sup> Transcript Day 93, question 898 and 899.

<sup>9</sup> Transcript Day 92, question 872; Transcript Day 92, question 880.

- 1) *“We formed the view that Martin Ingram had at best an imperfect recollection of events and that it would be unwise to rely upon his evidence.”*
  - 2) *“We are of the view that martin Ingram to a substantial degree exaggerated the importance of his role at HQNI and his level of knowledge and access to intelligence.”*
- (d) Mr. Hurst is the subject of a “gagging order” type injunction by the British Government, due to his former exploits in revealing classified information.
- (e) Mr. Hurst has made a career out of the publication of sensationalist material.
- (f) It is plainly apparent that Mr. Hurst’s motives for appearing at the Tribunal were not to provide legitimate assistance. Mr. Hurst has engaged in a prolonged personal campaign against Mr. Scappaticci, and his appearance at the Tribunal can clearly be seen to be an attempt to further this campaign. He posted his statement of intended evidence on the Internet, a move which showed a flagrant intent to gain publicity. Furthermore, he made exhaustive attempts to introduce extraneous evidence about Mr. Scappaticci to the Tribunal, in spite of the fact that the Tribunal did not entertain his efforts. Having failed in his attempt to publicly air this information, Mr. Hurst posted a recording on the internet. Furthermore, Mr. Hurst himself in response to questions from Mr. O’Callaghan on behalf of Mr. Owen Corrigan stated *“my primary aim is not to expose your client”* and later, *“your client I can honestly and absolutely assure you is not of primary concern to me”*.<sup>10</sup>
- (g) It is notable that in spite of the fact that Mr. Hurst informed the Tribunal that he had in his possession a collection or “library” of stolen intelligence

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<sup>10</sup> Transcript Day 92, question 693.

documentation, he has been unable to produce any evidence to support his claims about Mr. Scappaticci.

- (h) Mr. Hurst seeks out every possible opportunity to publicly air his views in relation to Mr. Scappaticci – as well as appearing at this Tribunal, Mr. Hurst has in the past engaged in the enquiries of Lord Stevens; Judge Leveson and Judge Barron.<sup>11</sup>
- (i) The evidence introduced to this Tribunal by Mr. Hurst was contradicted by a host of credible witnesses. Assistant Chief Constable Ray White, former Head of Special Branch, says he saw no intelligence documents relating to Owen Corrigan, in spite of Mr. Hurst's claims that he himself had.<sup>12</sup> There was no evidence amongst the gardaí either that any such documents had been seen by them.<sup>13</sup> Mr. Hurst also claims that he discussed Owen Corrigan with Mr. Walsh and Mr. Maguire at their meetings, but they both contend that he didn't.<sup>14</sup> Mr. Walsh expressly denied what Hurst had said in evidence about what was discussed at these meetings<sup>15</sup>, and Mr. Maguire gave evidence that Mr. Corrigan's name was never raised in the course of their meetings, which he had documented comprehensively.<sup>16</sup> Furthermore, Detective Chief Superintendent Duirmuid O'Sullivan gave evidence that in a meeting in 2004 Mr. Corrigan's name was not mentioned; nor was it stated that there "*were rotten apples in every organisation*" as alleged by Mr. Hurst.<sup>17</sup>
- (j) Detective Chief Superintendent O'Sullivan gave evidence to the effect that the matters discussed in a meeting with Mr. Hurst were not to be disclosed and that he was "taken aback" when the Sunday Times printed information about it<sup>18</sup>. This information came from Mr. Hurst, whether directly or

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<sup>11</sup> Transcript Day 92, page 127.

<sup>12</sup> Transcript Day 92, question 264.

<sup>13</sup> Transcript Day 92, question 538.

<sup>14</sup> Transcript Day 92, question 634.

<sup>15</sup> Transcript Day 93 INSERT

<sup>16</sup> Transcript Day 94, question 36.

<sup>17</sup> Transcript Day 95, question 104.

<sup>18</sup> Transcript Day 95, question 111.

indirectly. It was also inaccurate. It also appeared to be contrary to the terms of the injunction in place against Mr. Hurst.

## 5. Kevin Fulton

5.1. The other witness who makes the allegation that Mr. Scappaticci is the agent known as “Stakeknife” is Kevin Fulton (aka Peter Keeley). The source of Kevin Fulton’s information in this regard is Mr. Hurst, and his evidence in this regard must be discounted for the reasons set out above.

5.2. Mr. Fulton also makes various allegations with regard to Mr. Scappaticci’s involvement in the IRA. In particular he states that Mr. Scappaticci was involved in an alleged interrogation of Tom Oliver some months prior to Mr. Oliver’s unfortunate death on the 18<sup>th</sup> of July 1991. This allegation, it is submitted, is wholly implausible for the following reasons:

- (a) No evidence whatsoever has been found to support this allegation;
- (b) Mr. Fulton himself did not make this claim in his book “Unsung Hero”<sup>19</sup>;
- (c) Mr. Fulton claims he told Jeffrey Donaldson about the Tom Oliver abduction in 2000, but he did not mention Mr. Scappaticci.<sup>20</sup>
- (d) Retired Assistance Chief Constable Raymond White, the former Head of Special Branch, gave evidence to this Tribunal that he never heard this allegation;<sup>21</sup>
- (e) The Tribunal has heard evidence that Mr. Corrigan, who it is alleged was involved in providing information leading to this alleged interrogation, was

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<sup>19</sup> Transcript Day 68, question 403.

<sup>20</sup> Transcript Day 68, question 412.

<sup>21</sup> Transcript Day 71, question 590.

no longer working in an Garda Síochána at the time it is alleged he passed on such information<sup>22</sup>;

- (f) Mr. Corrigan gave evidence that he was a long-standing friend of Mr. Oliver's brother-in-law. He said he was friendly with him both before the murder of Mr. Oliver, and in subsequent years. He says he did not ever hear any suggestion that Mr. Oliver was abducted on a separate occasion prior to his murder on 18<sup>th</sup> of July 1991<sup>23</sup>.
- (g) Assistant Chief Constable Drew Harris gave evidence to the effect that he was not aware of any intelligence suggesting that there had been two kidnappings.<sup>24</sup>

## 6. The credibility of Kevin Fulton's evidence

6.1. It is submitted that Kevin Fulton's evidence to this Tribunal must also be discounted for the following reasons:

- (a) Kevin Fulton told lies to the Stevens Inquiry.<sup>25</sup>
- (b) "Witness 62" gave evidence that in his opinion and from his experience that Kevin Fulton was "*a compulsive liar, a fantasist and a conman of highest order*". He also said that Mr. Fulton was an intelligence nuisance.<sup>26</sup>
- (c) Assistant Chief Constable Drew Harris stated in his evidence that "*...at this moment in time...one would view any information from Mr. Fulton with some degree of scepticism...*"<sup>27</sup>

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<sup>22</sup> Transcript Day 75, question 246.

<sup>23</sup> Transcript Day 114, question 412.

<sup>24</sup> Transcript Day 124, question 353

<sup>25</sup> Transcript Day 71, question 452.

<sup>26</sup> Transcript Day 71, page 140.

<sup>27</sup> Transcript Day 119, question 454.

- (d) Kevin Fulton has made a career from making sensationalist allegations. Chris Ryder gave evidence that *The Mail on Sunday* offered Kevin Fulton £50,000 in the summer of 2001 for a story relating to the Omagh bombing<sup>28</sup>. Kevin Fulton himself admitted to having made money from selling his stories to *The Mail on Sunday*.<sup>29</sup>
- (e) On 24<sup>th</sup> January 2002, Mr. Ronnie Flanagan published a report following the Ombudsman Report of December 2001 into the Omagh bombing. This report at paragraph 4.5 stated in relation to Mr. Fulton:

*“However, it emerged that he was becoming increasingly unreliable and deliberately fabricating information. He admitted as much to the Stevens Inquiry and to the Ombudsman. And in the autumn of 1994 all contacts with Fulton were severed. From that point on, he was consistently treated as an unreliable source by Special Branch.”*

The report goes on to say at paragraph 4.6:

*“From 1996 to 2000 he provided information to the CID with regard to criminal, as opposed to terrorist matters.*

*At that stage, as a result of his behaviour becoming steadily more erratic and counterproductive, for example, manufacturing information, passing material to the media and taping phone calls with police officers, the RUC decided in April 2000 to have no further contact because the risks he posed to the police outweighed any potential gain.”*

At paragraph 4.8 the report says:

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<sup>28</sup> Transcript Day 65, pg. 63.

<sup>29</sup> Transcript Day 67, question 661.

*"This information and the distortions and inaccuracies it was found to contain illustrate the problems with working with Peter Fulton. Police had intelligence that this was Fulton and not A who was attempting in June to acquire deactivated weapons. He was subsequently arrested for this but the evidence was insufficient to substantiate criminal charges, and further intelligence indicated that he had been purchasing these weapons apparently to reingratiate himself with paramilitaries. It was Fulton who obtained body armour during this period. He is also believed to have been the individual attempting to orchestrate a show of strength in early August. Some parts of his information appear to have been prompted by publicly reported events... Other parts were already well known to police; ... His unreliability is demonstrated by the fact that he changed the date, when interviewed by the Ombudsman's staff, on which he claimed to have told his handler that A had smelled of fertilizer from the 23<sup>rd</sup> July, the occasion confirmed in police records, to the 11<sup>th</sup> August, presumably to apply some kind of link with the Omagh attack, as fertilizer is an ingredient of homemade explosives. In fact, as noted above, on 23<sup>rd</sup> July, when he reported that A at one time was smelling of fertilizer, in fact a check with forensic experts should have indicated that the fertilizer-based bomb mix used by Republican dissidents since 1991 had been virtually odourless in contrast with earlier periods when there was a strong smell of fertilizer in fuel oil. Amidst all of this, as the Ombudsman confirms, Fulton never claimed in these contacts with police that he had known of a bomb intended for Omagh. None of the information he supplied, accurate or otherwise, provided any link to the Omagh attack or could have in any way helped to prevent it."*

- (f) Retired Assistance Chief Constable of the RUC, Raymond White, gave evidence that when he consulted Special Branch about Kevin Fulton *"their belief was that the information he had produced on them had led them to*

*believe that there was an element of manufacturing going on.*"<sup>30</sup> He said that the inquiries made to Special Branch "*came back, more or less, do not touch...*". He described Kevin Fulton as an "intelligence nuisance".<sup>31</sup> He said:

*"What was conveyed to me indicated that he had provided some information, I think in England, that had led to considerable expenditure by MI5, and that it had turned out to be of no value. And I think there was other information but, again, they didn't go into the detail of it, simply it was suffice for me to know that they did not regard him with any high degree of trust in relation to subversive intelligence."*

He went onto say:

*"I don't think their attitude changed, to my recollection, throughout the period. I think they were fairly adamant that he had burnt his bridges, put it that way in relation to them..."*<sup>32</sup>

- (g) Ex-Commissioner Eugene Crowley says he would be "amazed" if Kevin Fulton did not tell his handler within the Security Services about Owen Corrigan, in which case he said he would have been told about it at the time by the RUC or "the security fellows".<sup>33</sup>
- (h) Detective Chief Superintendent Kirwan gave evidence that in his view "*...if it is [Kevin Fulton] that is giving that information...it probably needs to be taken with some degree of caution*"<sup>34</sup>
- (i) "Witness 60" said that Fulton was "an intelligence nuisance"<sup>35</sup>

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<sup>30</sup> Transcript Day 71, question 448.

<sup>31</sup> Transcript Day 71, question 505.

<sup>32</sup> Transcript Day 71, question 523.

<sup>33</sup> Transcript Day 85, page 54.

<sup>34</sup> Transcript Day 137, question 101.

<sup>35</sup> Transcript Day 40.

- (j) Kevin Fulton served two and a half years in a Northern Ireland jail for hijacking of electrical goods<sup>36</sup>
- (k) “Witness 64” had served as a detective inspector in charge of Special Branch Newry from 1988 to 1994. He was in charge of the team that handled Fulton. He gave evidence that:

*“Fulton never said anything about Owen Corrigan. He never said anything about being ‘mooch’ Blair’s driver. His information was false and misleading on other matters.”*

When dealing with Kevin Fulton’s unreliability, he gave the following example:

*“well, there was probably a number I could give, but one particularly interesting one was, we were given intelligence about an IRA active service unit planning to travel to Great Britain to carry out a series of attacks there, and Mr. Fulton told us that he had been asked to prepare weapons, hides in Great Britain to facilitate the logistics of that unit travelling to Great Britain. Police operations were put in place in England and Scotland and quite considerable police time, effort, resources went into carrying out preparatory work to try and catch the alleged active service unit, only for Mr. Fulton to subsequently state that it was something he had made up. And as you can appreciate, it had caused us considerable embarrassment because the intelligence had been relayed across to Great Britain.”*

When asked about possible motives for making up such a story, “Witness 64” said:

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<sup>36</sup> Transcript Day 102, question 40.

*"I think it was probably a complex mixture of things. There was obviously financial reward, and sometimes greed can triumph over commonsense. I think also attention-seeking ego, there are lots of factors that can play in there but you would really need a good psychiatrist or psychologist to give those answers."*<sup>37</sup>

- (l) Henry Gerard McCann on day 79 stated that he did not think that "Witness 64" was a man who would make things up.
  
- (m) "Witness 71" worked in the Drug Squad with Keeley from 1996 until 2001. He said that he was told by Special Branch that Kevin Fulton was an intelligence nuisance and he was warned off meeting him. He went on to say that Kevin Fulton *"has made quite a bit of money out of supplying information"* and that *"informants are motivated by money..."*<sup>38</sup> During the period they worked together, he himself paid him £17,500 and knows that he received £5,000 from a Northern Irish bank.

## **7. General**

- 7.1. It is submitted that the sole matter in issue with regard to Mr. Scappaticci is the allegation that he is the agent "Stakeknife". This was expressly acknowledged by the Honourable Chairman when he said that:

*"[Mr. Scappaticci] is represented because he made the point that he – there was an allegation, which he denies, that he is a person under the sobriquet of 'Stakeknife'. He denies that that is so, and it's been said by various people that he is and denies it and he wanted to make sure that his interest in denying that he was 'Stakeknife' would be – that he would be represented before the Tribunal, and he was given representation for that purpose alone."*<sup>39</sup>

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<sup>37</sup> Cross-examination of Kevin Fulton by Jim O'Callaghan, Transcript Day 66, question 547.

<sup>38</sup> Transcript Day 65, question 363.

<sup>39</sup> Transcript Day 120, pg. 16.

- 7.2. The only people who assert this position are Mr. Fulton and Mr. Hurst. For the reasons set out above, it is contended that both of these men have proven to be unreliable witnesses. Their allegations concerning Mr. Scappaticci are wholly inaccurate. They have abused their opportunity to give evidence to the Tribunal and used it as a platform on which to make sensationalist claims and further their campaign against Mr. Scappaticci. They are both individuals who have been trained in deceit and it is submitted that they have both used those skills in an attempt to deceive the Tribunal.
- 7.3. In those circumstances, it is submitted that Mr. Scappaticci could not and should not be the subject of any findings on the part of the Tribunal.

MARTIN O'ROURKE Q.C.  
EAVANNA FITZGERALD B.L.

# **The Smithwick Tribunal**

Established by Order of the Minister for Justice, Equality and Law Reform, Michael McDowell TD, made on the 31<sup>st</sup> May, 2005. Made consequent on the adoption of resolutions by Dáil Éireann and Seanad Éireann, on 23<sup>rd</sup> March 2005 and 24<sup>th</sup> March 2005 respectively, that it was expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Acts 1922 – 2002

**Tribunal of Inquiry into suggestions that members of An Garda Síochána, or other employees of the State, colluded in the fatal shooting of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan, on 20<sup>th</sup> March 1989.**

Written Submissions  
on behalf of the

**THE POLICE SERVICE OF  
NORTHERN IRELAND**

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## **1. Background and Terms of Reference**

1. There were a number of killings along the border prior to the murders of Chief Supt. Breen and Supt. Buchanan. On 25<sup>th</sup> April 1987 Lord Justice Maurice Gibson and his wife, Lady Cecily Gibson, were killed by a 500lb IRA land mine at Killeen just north of the border on the main Dublin to Newry Road. On 23<sup>rd</sup> July 1988 Robert James Hanna, his wife Maureen and seven year old son, David were killed by an IRA landmine again at Killeen on the Dublin to Belfast Road. The 1,000 lb bomb which killed them had been intended for a Northern Ireland High Court Judge, Mr Justice Higgins. Both the Gibsons and Mr Justice Higgins had been provided with a Garda escort to the border.
2. Chief Supt. Breen and Supt. Buchanan were shot dead on Monday 20<sup>th</sup> March 1989 approximately 400 yards from the border on the Edenappa Road, County Armagh. The two most high ranking officers to be murdered during the conflict in Northern Ireland had attended a meeting in Dundalk Garda Station and were returning north. The killings were later admitted in a statement issued by the Provisional IRA.
3. The British and Irish Governments met at Weston Park and agreed the following:

“18. Both Governments want the new policing arrangements now being established to focus on the future. But they also accept that certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces in each of our jurisdictions. Both Governments will therefore appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the cases, of the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright.”
4. Judge Cory was subsequently appointed and provided his report in October 2003 with a redacted version published in December 2003.
5. The Smithwick Tribunal was established by Order of the Minister for Justice, Equality and Law Reform, Michael McDowell TD, made on the 31<sup>st</sup> May, 2005. Made consequent on the adoption of resolutions by Dáil Éireann and Seanad Éireann, on 23<sup>rd</sup> March 2005 and 24<sup>th</sup> March 2005 respectively, that it was expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Acts 1922 - 2002.

6. The Terms of Reference of the tribunal are that it investigates suggestions that members of An Garda Síochána, or other employees of the State, colluded in the fatal shooting of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan, on 20th March, 1989.

## **2. Definition of Collusion.**

1. Smithwick J stated in his opening address on 6th March 2006:

“However, I can say at this stage that the issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody **deliberately ignored a matter, or turned a blind eye to it,** or to have **pretended ignorance or unawareness of something one ought morally, legally or officially to oppose.**” (Emphasis added).

2. Judge Cory defined collusion as to include conspire, connive, collaborate, to plot and to scheme.

“Paragraph 2.56: The verb connive is defined as to deliberately ignore, to overlook, to disregard, to pass over, to take no notice of, to turn a blind eye, to wink, to excuse, to condone, to look the other way, to let something ride, see for example Oxford compact Thesaurus Second Edition 2001.

3. Paragraphs 2.57 – 2.58 of the Cory Report stated that the Webster Dictionary defines the verb collude *to connive with another, conspire, plot.* The definition of the verb connive:

- a. To pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose, to fail to take action against a known wrongdoing or misbehavior – usually used with connive at the violation of a law;
- b. To be indulgent, tolerant or secretly in favour or sympathy;
- c. Wink at youthful follies;
- d. To cooperate secretly, to have a secret understanding.

4. The tribunal’s definition is a comprehensive definition, properly framed and considered.

### 3. Legal Framework Comment & Context of Policing in Northern Ireland

#### Legal Framework Comment:

1. Denham J, in paragraph 13 of the judgment of the Supreme Court in the case of O'Callaghan & Ors -v- Judge Alan Mahon & ors [2007] IESC 17, referred to the Royal Commission on Tribunals of Inquiry, 1966, in the United Kingdom under the Chairmanship of Salmon L.J., hereinafter referred to as "the **Salmon Report**", paragraph 28.
2. Salmon L.J., in the context of examining the powers of the tribunal under the 1921 legislation, stated:

"28. Normally persons cannot be brought before a tribunal and questioned save in civil or criminal proceedings. Such proceedings are hedged around by long standing and effective safeguards to protect the individual. The inquisitorial procedure is alien to the concept of justice generally accepted in the United Kingdom. **There are, however, exceptional cases in which such procedures must be used to preserve the purity and integrity of our public life without which a successful democracy is impossible. It is essential that on the very rare occasions when crises of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they have been disturbed.** We are satisfied that this would be difficult if not impossible without public investigation by an inquisitorial Tribunal possessing the powers conferred by the Act of 1921. **Such a Tribunal is appointed by Parliament to inquire and report. The task of inquiring cannot be delegated by the Tribunal for it is the Tribunal which is appointed to inquire as well as to report. The public reposes its confidence not in some other body or person but in the Tribunal to make and direct all the necessary searching investigations and to produce the witnesses in order to arrive at the truth. It is only thus that public confidence can be fully restored.**" (Emphasis added)

3. Allegations, rumours and suggestions of collusion undermine the purity and integrity of our public life without which a successful democracy is impossible. If the police force, the very enforcers of the law, have colluded, it jeopardizes the public confidence in the rule of law. The Tribunal's function is to establish the truth and expose any evil, if it exists.
4. Hamilton C.J. described the nature of an inquiry as involving the following stages in Haughey v. Moriarty [1999] 3 I.R. 1 at p. 54 where, having referred to the **Salmon Report**, and the specific paragraphs quoted above, he stated:

"A tribunal of inquiry of this nature involves the following stages:

1. a preliminary investigation of the evidence available;
  2. the determination by the tribunal of what it considers to be evidence relevant to the matters into which it is obliged to inquire;
  3. the service of such evidence on persons likely to be affected thereby;
  4. the public hearing of witnesses in regard to such evidence, and the cross-examination of such witnesses by or on behalf of persons affected thereby;
  5. the preparation of a report and the making of recommendations based on the facts established at such public hearing."
5. The tribunal is now at the conclusion of stage 4 and has, no doubt, made significant progress through stage 5.
6. Confidence in the actions of governmental agencies is robbed should those agencies be guilty of collusion or connivance. The demand of public confidence requires the definition of collusion to be reasonably broad. It must be wide to avoid any lesser definition which would have the affect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies.<sup>1</sup>
7. Direct evidence of collusion is extremely rare. Those conducting themselves in such a manner strive to ensure there is no evidence of their action. In the context of policing, unexplained absences, a drop in output of work, disaffection with superiors etc are all relevant considerations.
8. You have heard on many occasions the question asked, "Do you have any evidence of collusion?" As if, perhaps, that is the end of the matter. In order to ensure justice, the law has developed so that inferences may be drawn from the findings of fact. All questions of the admissibility of evidence rest with the Tribunal along with weight, credibility and sufficiency. Unlike admissibility, the weight of evidence cannot be determined by fixed rules, since it depends mainly on common sense, logic and experience.<sup>2</sup>

"For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited."<sup>3</sup>

"The weight of evidence depends on rules of common sense."<sup>4</sup>

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<sup>1</sup> Cory Report paragraph 2.59

<sup>2</sup> Para 7.17 Phipson on Evidence, 17<sup>th</sup> Edn.

<sup>3</sup> R. v Madhub Chunder (1874) 21 W.R. Cr. 13 at 19 (Ind), *per* Birch J.

<sup>4</sup> Lord Advocate v Blantyre (1879) 4 App. Cas. 770 at 792, *per* Lord Blackburn; Sofaer v Sofaer [1960] 1 W.L.R. 1173.

In determining such questions, however, valuable aid is provided by ... what risks there are in putting weight on certain types of evidence and when supporting evidence should be sought; for what purposes particular evidence is admissible and against which parties; and to what extent the evidence has been unable to be tested in ordinary ways, for instance because it is hearsay.<sup>5</sup>

### Context

9. Observing the challenges to policing in Northern Ireland, from outside the jurisdiction, is overwhelming. No other Western European Police force has been subjected to the scale and intensity of the campaigns of subversive organizations. The statistics are astounding; 3,296 deaths in Northern Ireland between 1969 and 1999 were attributable to the security situation. During the same period there were over 35,000 shooting incidents and over 15,000 incidents involving bombs that exploded or were defused. There were 11,000 finds of firearms and over 115,000 kilograms of explosives were recovered.
10. Day 54, Page 29 a newspaper article that stated there had been 26 violent deaths in 1989 prior to the murders of Chief Supt. Breen and Supt. Buchanan. Twelve of them were in the fortnight before the murders.
11. Former Deputy Chief Constable Blair Wallace, also agreed with the evidence of retired Divisional Commander of H Division, Brian Lally on Day 35, (Chief. Supt. Breen's predecessor) when he was asked whether or not there was a threat to his person when he traveled by himself and he said, "I suppose it may be sometimes like looking back, the thing about your job, you had to do - - you had a job to do." He then stated, "By and large, you accepted, at the back of your mind, that the next corner may be your last, but you just, for some reason, carried on." He agreed that this illustrated the level of risk and the level of danger that these officers responded to and engaged in and understood in carrying out their functions.<sup>6</sup>
12. Chief Supt. Breen and Supt. Buchanan were in serving in the most dangerous part of the jurisdiction.

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<sup>5</sup> Para 7.17 Phipson on Evidence, 17<sup>th</sup> Edn.

<sup>6</sup> Day 60, Page 87, Line 12 onwards.

#### 4. The Officers

##### Chief Superintendent Breen:

1. Joined the force on 5<sup>th</sup> November 1956 and took the Promissory Oath on 9<sup>th</sup> November 1956.
2. On 13<sup>th</sup> November 1956 Constable Breen was issued with his Warrant Card, No. 7702. PIRA took the warrant card on 20.3.89.
3. In 1957 he saw beat/patrol duties in Bessbrook, Crossmaglen and 1958 he was Constable in Armagh, Victoria, in 1962, Lurgan from 1965 to 1970 when he moved to Banbridge as a Sergeant.
4. He was then an instructor at Divisional Training in 1971 became an Inspector in Newry on 1/9/1974.
5. He remained there for 3 years before moving to Bessbrook in 1977 as a Chief Inspector.
6. In 1979 he was Chief Inspector in B Department in Garnerville and became a Superintendent on 1<sup>st</sup> October 1980 and he was stationed in Carrickfergus.
7. During 1982, 1983 and 1984 he was a Superintendent in Complaints and Discipline and on 3/9/84 he joined S2, Inspectorate located at Knock.
8. He remained there until 1<sup>st</sup> April 1986 when he was made Deputy Divisional Commander located in Armagh and on 8/2/88 as Chief Superintendent he was Divisional Commander in Armagh.
9. Divisional Commander (M McAtamney) stated in his recommendation for Harry Breen's promotion on 30<sup>th</sup> September 1976:

"A very experienced and most dependable man. He has an excellent knowledge of all aspects of police work and is an inspiration to those under his command. Takes a keen interest in welfare especially of younger members and conducts promotion classes for Sergeants and Constables.

Completely on top of his present rank and from the start he would make a first class Chief Inspector and should go much further. Prepared to serve anywhere in Northern Ireland."

10. On 27/5/80 the reporting officer regarding suitability for promotion wrote:

“Chief Inspector Breen... is a person who gives his “all” to the police service and is thorough and meticulous in his approach to every aspect of his work. He is clearly enthusiastic in everything he does, thoroughly reliable and has the ability to equally inspire those under his command. A dedicated police officer who is held in the highest respect by members of the public, his superiors and subordinates. This dedication is marked in every task he approaches and time means little to him when there is work to be done.

His care for the welfare of members is a marked feature of his character which has been exemplified in his actions in South Armagh and H Division in relation to injured members and the relatives of those killed. He was the operative member in H Division Welfare Committee caring for the needs of pensioners etc.

While he was a most active and efficient member throughout his service his greatest test came in attempting to restore normal policing in South Armagh. In this task he earned the respect and praise of Senior Army Officers, the Gardaí Síochána and the public (most of whom were opposed to the RUC). He led the RUC in South Armagh fearlessly and often with courage and determination. He believes in leading by example and always from the front and by doing so gets the best out of men under his command.

He more than adequately coped with the dangers and difficult situations encountered and his temperament, reliability and consistency enabled him to do so when lesser men would have failed. His actions were instrumental in restoring a semblance of normal policing in the area and his tact and diplomacy in dealing with outside agencies was a feature of his work. He is at his best in active operations but equally well can run an office and can cope with volumes of paper work efficiently. His good education is of vital assistance in this field. The Chief Inspector is unreservedly recommended for promotion for Superintendent, a rank which he would carry with distinction in any post to which appointed.

The Chief Inspector's period with Training Branch has given him the ability to lecture ably and efficiently and his knowledge of police procedures and the criminal law is excellent. In H Division he ran promotion classes frequently in his spare time and many members who qualified owe their success to the Chief Inspector's endeavours in this field.

He has frequently taken charge of a sub division, i.e., Bessbrook where he showed by his example decision making ability the qualities necessary to take charge in any situation. He was faced with many difficult and arduous tasks which he coped with more than adequately.

His service to date has provided his undoubted merits which qualify him for higher rank and if successful at the Board, will make a first class Superintendent. He may, however, appear somewhat reserved and to those who don't know him could be misleading. To those who do, the real potential that this man has will be evident.

11. There were numerous letters of commendation on his personnel file from various agencies, departments and public.

12. As a probationer Constable – progress report dated September 1958 it records:

“Conduct excellent. Sense of discipline good. ... Studies criminal law in spare time to improve knowledge of police duties. Is attentive in school. ...Continues to be security minded.”

13. In a letter to a firm of Solicitors on 4<sup>th</sup> May 1989 a Superintendent on behalf of the Chief Constable wrote:

“He served in various stations throughout his career in the force, however, the majority of his service was spent in or around County Armagh, which gave him a wide and varied knowledge of the area.

Mr Breen was a Divisional Commander in charge of a notoriously difficult Division; he was an extremely efficient and competent officer whose ability to command was beyond question. It is the opinion of this Department that he would have been capable of holding the rank of Assistant Chief Constable had it not been for his untimely death.”

14. Letter dated the 23<sup>rd</sup> of March 1989 letter from the Deputy Chief Constable M McAtamney to June Breen. Noted to be delivered at the funeral. That letter states:

“It is with great sadness that I write on behalf of the whole force to convey to you our sincere condolences on the death of your husband on Monday.

I know that Harry’s death in such callous circumstances has been a dreadful shock and I would like you to know that his many friends and colleagues in the Royal Ulster Constabulary and Royal Ulster Constabulary Reserve share in your grief and sorrow at this time.

The death of a colleague is always an occasion of great sadness and it is even harder to bear when that officer is someone with whom there was a special relationship.

I first met Harry when we walked the beat in Victoria in Londonderry in the sixties. We again served together in Newry and Bessbrook when he was often the first officer to arrive on the scene of some of the worst atrocities in that area. He was always the essence of calmness and competence, not once did he complain and we never had a cross word.

The Police Service as a whole and the community have lost an outstanding and compassionate officer who was always willing to help and was a friend to all.”

15. There is a replying letter on file dated 20<sup>th</sup> April 1989 from Chief Superintendent Breen’s widow, June and an important extract is as follows:

“Harry devoted his life to upholding the rights of ordinary decent people living their lives in peace and safety. It is the responsibility of the government to ensure that Harry’s death and all the fine men before him shall not be in vain.”

### **Superintendent Buchanan No. 7647**

1. He had served in the Territorial Army from January 1952 to January 1954. He received numerous commendations throughout his service. He joined the RUC on 13<sup>th</sup> August 1956. On 1<sup>st</sup> September 1956 he was issued with his Warrant Card 7647.
2. In 1959 Superintendent Buchanan was a Sergeant in Derrygally, 1960 Acting Sergeant in Toomebridge, 1961 Sergeant in Toomebridge on beat/patrol, five years later he was a Sergeant in Antrim until promotion to Inspector in June 1970. He remained in Antrim until moving to Lisburn Operations as a Chief Inspector in 1975. He was Chief Inspector until 1978 and in 1979 became Superintendent, Complaints and Discipline. In 1981 he moved to Knock, Omagh in 1982 – 1983 and from **6/1/86 until his death he was the Border Liaison Officer located in Armagh.**
3. A Chief Superintendent (Divisional Commander) wrote on 7<sup>th</sup> June 1974 that Inspector Buchanan had been known to him since serving in County Fermanagh during the IRA Terrorist campaign from 1956 – 1962. The Chief Superintendent knew Superintendent Buchanan in his very early days while serving at Rosslea and

“he created a very favourable impression and revealed himself as a young man of potential and an asset to any difficult station. Since 1969 he has held his present rank and has been attached to Antrim Station. Consequently it must be seen that I have a very thorough knowledge of this particular officer, and I can say without the slightest hesitation that he is capable, efficient and conscientious in every respect. Inspector Buchanan has a wide knowledge of criminal law and his judgment can be relied upon with confidence.”

4. On 8<sup>th</sup> April 1977 a Chief Superintendent (Divisional Commander) commended Superintendent Buchanan in the following terms:

“I have known Chief Inspector R J Buchanan for a considerable number of years, and indeed I was impressed with his ability and zeal from our first meeting. His contribution to peace in the Toomebridge area during the 1960/66 Commemoration parades was outstanding and it was clear then that he had and thoroughly deserved the admiration and respect of both Catholic and Protestant. He has continued throughout the years to be tactful, discreet, yet determined in all his dealings with the public and he has the happy knack of handling difficult situations in a smooth, calm and efficient manner. He has plenty of common sense and enjoys the confidence of all who serve with him should that be over or under his rank.

The Chief Inspector was promoted to his present rank on 1<sup>st</sup> July 1975 and although he has less than 2 years in that rank, it is clear that the experience he has gained in the very busy Sub-Division of Lisburn would make him capable of dealing with any police problem in any Division. I am fully satisfied that this man has the qualities necessary to make an excellent Superintendent and I would be pleased to retain him in this Division in that rank as I am confident he would be an asset to any Division.

I am please to give him a full and unmitigated recommendation.”

5. 11<sup>th</sup> April 1978 Chief Superintendent Divisional commander wrote:

“I have known him for very many years and am aware of his complete dedication to police work and his sincerity, integrity and commonsense which has made him a most efficient and popular officer. He has continued at all times to be tactful, discreet and determined (and thoroughly deserves) the confidence of the public and all men serving with him. I am aware of his diligent and painstaking approach to difficult problems arising out of the troubles and I am certain he would be an asset to any Division in the rank of Superintendent. I am pleased to give Chief Inspector Buchanan a full and unmitigated recommendation.

6. On 18<sup>th</sup> April 1978 it records “favourable records and commendations”

a. First Class for GPD in defence of Rosslea Police Station

b. First Class for GPD in dismantling a home made bomb...”

7. To quote from the Police Staff College end of course report for the 54<sup>th</sup> Intermediate Command Course, 20<sup>th</sup> March - 10<sup>th</sup> June 1983 the assessors stated that:

“Superintendent Buchanan is a warm hearted, loyal and enthusiastic officer of considerable determination and dedication whose outward glowing personality and generosity of spirit endeared him to all his colleagues and to the staff.”

8. On 16<sup>th</sup> April 1985 the Chief Constable, Sir John Hermon wrote to Superintendent Buchanan following a recent inspection of his Sub-Division. The Chief Constable wrote to express his appreciation for the efforts that Superintendent Buchanan and those under his command put into the policing of what was

“a difficult and dangerous Sub-Division, where sensitivity and understanding coupled with firm policing is necessary if progress is to be made.

The Chief Constable was particularly impressed by the standards being maintained at Fintona and Berragh in all aspects in policing and where clearly there is a sound and positive rapport between police and law abiding members of their local communities.

Carrickmore in particular impressed where the party under sound leadership continues to develop policing in the most difficult and dangerous conditions

imaginable. Their overall contribution to stability in the Sub-Division as a whole is immense.

The standards of turn out and demeanour of all on parade was a credit to the personnel concerned, and to you and to your supervisory ranks morale and standards are evidently very high. Bearing in mind the complexities of the Sub-Division and the continuing threat under which the police operate there, the Crime Detection rate is a major achievement. Please pass on my congratulations to the CID and SB personnel concerned and to the uniform members who have contributed to this.

It is clear that you have given considerable thought to the subject matter of your presentation and concentrated on the practical steps being taken towards the implementing of Force Policies, especially in the field of community reconciliation. Continuing encouragement should be given to the setting of local and individual objectives within Force Policy and sound policing generally."

9. In a letter dated 5<sup>th</sup> May 1989 from the RUC (to a firm of Solicitors) it stated

"...he served in a variety of stations and worked his way up through the ranks, becoming a Superintendent on 12<sup>th</sup> April 1979. Prior to his death Mr Buchanan was due to transfer to "G" Division as Deputy Divisional Commander. This post would have been seen in police circles as promotion in status and a possible stepping stone for further advancement to Chief Superintendent Rank.

It is therefore the opinion of this Department that the officer would have attained the rank of Chief Superintendent in due course, had it not been for his untimely death."

10. The Chief Constable wrote to Superintendent Buchanan's widow on 22<sup>nd</sup> March 1989 to be delivered at the funeral.

"Bob's enthusiasm and devotion to duty exemplified his character. Throughout his police service he won the respect and trust of all his colleagues by his caring attitude. Bob was serving the community and making his own contribution towards the restoration of peace and normality in Northern Ireland. The outrage has been totally condemned by all right thinking people everywhere but words are inadequate just now."

11. An extract from a press report at the time, applies to both officers.
12. Banbridge Chronicle Thursday, 30<sup>th</sup> March 1989. It is reported that Arch Bishop Robin Eames, Church of Ireland Primate, addressed the congregation in the following terms:

"Harry Breen worked and longed for the day when fear and terror were no longer stalking the towns and lanes of Armagh and Northern Ireland as a whole... He had a simple and personal vision of a community coming to terms with its differences, of a community at peace with itself."

## **5. PSNI Cooperation/Contribution to the Tribunal**

1. The challenges for the PSNI have been huge. It has been a unique situation engaging with a tribunal outside the jurisdiction investigating events that lead to an incident within Northern Ireland. This is without legislative or common law guidance.

### **Disclosure of Material**

2. In the tribunal's opening statement it was said that much of the relevant evidence lay outside the State and could not be compelled, it could only be secured through voluntary co-operation.

3. At page 15, Day 5, 7<sup>th</sup> June 2011, line 17;

“ in this respect, on behalf of the Tribunal's legal team, I would like to thank both the PSNI and the An Garda Síochána for their co-operation and for the many hours they spent with us to ensure that our requests for information and the documentation were met.”

4. Information was provided in an unredacted form. Redactions were only made once the Tribunal reached the stage of identifying those documents it wished to use in Public hearings. The process has been a flexible and pragmatic one.
5. The Tribunal is also aware that the PSNI facilitated correspondence with former RUC officers. Numerous letters from the tribunal were hand delivered. The PSNI sought to encourage, for the benefit of the tribunal, their attendance. The PSNI has strived to provide all material within its gift, sought by the tribunal.
6. The PSNI staff have answered all requests for information and documentation and continues to do so.
7. The PSNI would also wish to assure the Tribunal that should any further requests be made prior to the publishing of the report, it will not hesitate to assist.
8. An important point is that PSNI did not consult with witnesses before their statements were provided or indeed after. The PSNI had no issue with any evidence going into the public domain subject to NI Public Interest security concerns and Article 2/source protection obligations. PSNI has sought to assist the tribunal so that the evidence that enters the public domain is safe.
9. To demonstrate the desire of the PSNI to assist, ACC Harris (Head of Crime Operations) attended voluntarily on two occasions. The PSNI wished to place before the tribunal relevant recent intelligence the significance of which, was that it was “live and of the moment”.
10. Due to serious concerns regarding Art 2 and source protection, the safest way in which this could be achieved was by way of précis.
11. ACC Harris, in full knowledge that he would be subjected to strenuous cross-examination, attended nonetheless. This is despite the points to be made regarding (a) intelligence and (b) intelligence in précis form.
12. The PSNI is under no illusion that the tribunal may attach no weight to that intelligence. When considering what weight to attach to this

intelligence, I would invite the tribunal to bear in mind that this was the PSNI Head of Crime Operations, with knowledge and sight of the raw material, an officer of the utmost integrity, giving sworn evidence from before the tribunal. He provided evidence that the information had been properly assessed and was considered accurate and reliable.

13. It was provided in the safest way possible given its status as “live and of the moment”. It involved a unique and very difficult process to reach that point of safety. I cannot overstate the difficulty of the issues that arose during that process.
14. It is stressed that there concerns are Art. 2 concerns and source protection.

**“Article 2 - Right to life**

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

15. To provide more information would place sources in significant danger. It is not a position PSNI wish to be in; however, it is necessary to ensure current live operations, the saving of life today is not jeopardized.
16. Unconventional crime necessitates unconventional policing, in order to protect life.
17. The PSNI further assisted by deciding to place the grading C6 in the public domain, due to its significance to the tribunal. A clear departure from normal policy.
18. This is a true reflection of the efforts of the PSNI to fully engage with the tribunal to assist you determining what the truth is in this matter.

**Evidence from the Hearings**

1. The tribunal’s task has been made more difficult in relation to a number of evidential limitations due to the passage of time. For example:
  - a. memories that have gathered imperfection over time;
  - b. the death or illness of many potentially significant witnesses;
  - c. non-cooperation of witnesses;
  - d. inability to locate witnesses;
  - e. documentation retention.

**Prior to the 20<sup>th</sup> March 1989**

1. The evidence commenced on 9<sup>th</sup> June 2011 with Witness 18 who was a retired RUC Assistant Chief Constable (Rural East) . He gave evidence that was never previously recorded or passed to the RUC, that Breen

and Buchanan were ordered not to cross the border. There are a number of issues arising from witness 18's evidence.

2. There is no record of what was an unprecedented order, either in Buchanan or Breen's journal and witness 18's journal.
3. Witness 18 did not provide any information to the investigation into their murders regarding this alleged direct order.
4. Importantly, it was Superintendent Buchanan's role and function to liaise with AGS across the border.
5. If such an order was given, it was an unprecedented order which would have caused repercussions for the border Superintendent function.
6. This evidence was directly contradicted by Witness 36 who stated that W18;

"told Mr Buchanan to arrange a meeting with his counterparts on Monday and to take Mr Breen with him and to ring and let Mr Breen know."

Witness 36 denied that the two officers would have disobeyed a direct order.

7. Sgt. Alan Mains gave evidence that witness 18 had directed them to resolve an issue about the person around whom the operation was going to centre.
8. David Cushley, Senior Assistant Chief Constable, gave evidence that the task required eyeball communication; a rapport was essential with the AGS. It would have been deficient plan if organised over a telephone. He contradicted Witness 18 who described the matter as a low level operation that did not require crossing the border.
9. He further stated that officers were senior, experienced and truthful. He stated that he would be amazed that they would disregard a verbal order from the Regional Commander, indeed astounded. They would neither have been reckless nor would Mr Buchanan, in his view, have disobeyed a direct order.
10. W 18 did not explain why the Chief Constable did not come to W18 straight away and say "Why were my instructions not obeyed?" Witness 18 was adamant that the Chief Constable gave the clear direction yet there is no record of it and it was highly unusual.
11. There was also conflicting evidence in relation to who attended meetings in Armagh on 16<sup>th</sup> March 1989.

12. June Breen also provided a letter to the tribunal setting out that she had spent the day in Sprucefield with Chief. Supt. Breen on a leave day.
13. **It is for the Tribunal to decide whether or not this order was in fact given and whether or not Chief Supt. Breen was actually at the meeting on 16<sup>th</sup> March 1989.**

**Supt. B. Buchanan's Role:**

1. Bob Buchanan's task was set out in the Operational Planning in Border areas document referred to on Day 60, Page 16, Line 13: "the existing principles governing the responsibility of Border Supt are as follows:-
  - a. To exchange information;
  - b. Plan joint operations aimed at:
  - c. Prevention of criminal/terrorist activity;
  - d. Identify terrorist action in the early stages;
  - e. Apprehension of terrorists after incidents;
  - f. Investigation of terrorists incidents and reporting thereon;
  - g. Ensuring that technical examination of exhibits is carried out and exhibits etc passed without delay to the appropriate persons.
  - h. The close surveillance of selected criminals, and in particular, terrorist suspects with the view to obtaining information/intelligence on their movements, associates, etc.
  - i. Ensuring adequate communication exists between the two forces in joint operations and to avoid confusion, misunderstanding and accident between security forces.
2. Border Superintendents were required to:-
  - a. Acquire a detailed and in depth knowledge of the area of the border for which he has responsibility and to liaise with Divisional, District and Sub District officers and members of the Detective and Special Branch with a view to keeping himself up to date and conversant with current intelligence on the movements and general activities of terrorists and suspects.

3. Blair Wallace rejected the suggestion that Chief Supt. Breen and Supt. Buchanan were lax about the security. Chief Superintendent Breen was not going to take risks that were going to either endanger his life or the life of any other person. He knew Bob Buchanan almost his entire service and he was considered not to be a person prepared to take unnecessary risks.<sup>7</sup>
4. When one compares the journal entries with the vengeful times in and out and where the crossings took place, it is not easy to determine any particular pattern to warrant lengthy surveillance of the vehicle.
5. Any criticism for using the Edenappa Road is arguably unwarranted because PIRA appeared to have four roads covered. The tribunal may find that the choice of route was irrelevant, the PIRA unit were intent on stopping the two officers from returning home.
6. Witness 27 stated on Day 30, Page 140, Line 18.

“It is difficult to rehearse in this Tribunal, the miasmatic conditions under which we all had to work and it was not a simple matter of hopping in the car and driving to Dundalk and hoping for the best. There was a dedicated effort by a number of groups to kill us. So it must be put in the context of the conditions we worked under at that time.”

7. Harmon Nesbitt gave evidence on Day 40 (Page 48). He stated that it would be wrong to say Bob Buchanan was not alert to security. Bob was every bit as concerned as I was going down.<sup>8</sup> It would be wrong to say - - I don't think he took his job or was blasé to the risk. Familiarity with your own vehicle was an advantage. An armoured vehicle was unwieldy.
8. RE: SB57. This was introduced by the PSNI on Day 104, Page 11. This was marked “Form SB57 - Message form”. It was a formalised way of recording information that would have come into an officer then would have been sent to central office for assessment and action and would have been used by the Detective Branches to record information received. The message stated
9. “PIRA, from SB Newry to E3A which was the Headquarters Desk in Belfast. It was dated 27<sup>th</sup> July 1988. The message stated;
10. “PIRA are monitoring the movements of plain clothes RUC Officers who, since the triple fatal explosion at Killeen Border crossing on

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<sup>7</sup> Day 60, Page 90, Line 1 - 13

<sup>8</sup> (Day 40, Page 84)

24/7/88 are traveling on a regular basis to Dundalk Garda Station." In relation to action taken, it stated "all involved have been informed for info." It is unknown whether or not this was conveyed to Chief. Supt. Breen and Buchanan.

### Tom Curran

1. This witness was a former AGS Inspector in Monaghan. He gave evidence that Bob Buchanan had a concern from RUC Special Branch to be passed on to AGS Crime and Security about Owen Corrigan. He gave evidence that he traveled to AGS HQ and told Eugene Crowley, then Asst. Commissioner of Crime and Security. He told Mr. Crowley of Bob Buchanan's message and of the stories he had heard of Mr. Corrigan. Mr. Crowley did not look up from his work and asked how things were in Monaghan.
2. The witness also was informed of a threat to Bob Buchanan's life from PIRA and passed this on to HQ.
3. It is a matter for the tribunal to assess the credibility of this witness and the significance of the evidence if held to be true.

### Meeting Arrangements:

1. Garda George Flynn, Vincent Rowan (Sergeant), Mary Clarke and Kathleen McCooey and possibly Josephine Fitzsimmons, Kathy McCooey and Nora Burns worked in various offices within the station.
2. Given that Supt. Buchanan was such a regular visitor to the station for such meetings, it is open to the Tribunal to consider that Supt. Buchanan did indeed mention the fact that he wished to have a meeting that day due to the time pressure, the report had to be compiled by 24<sup>th</sup> March 1989. It is possible that the telephone call was made early on the Monday morning in order to secure the availability of the relevant officers in Dundalk.
3. It is arguably logical that Supt. Buchanan informed Dundalk Station that he was seeking a meeting with Superintendent Tierney and Chief Superintendent Nolan so that when they did return his call it would be a call confirming such a meeting as opposed to simply discussing whether or not it could take place.
4. An additional consideration is that there had been no attack on officers previously traveling to or from Dundalk station and the practice had grown from the 1970s. The tribunal may consider that because of the circumstances, there was every possibility that the meeting was freely discussed so that more AGS members could have become of the meeting. If the topic was made known during the telephone

conversations, an update may have been required from the detectives and even a request for a file could indicate a meeting was planned.

5. The tribunal may find that given the passage of time and the lack of records, it may not be possible to make a finding as to the who was actually in the station for the morning shift and subsequently.

### The Operation

1. Factors to consider from the evidence:
  - a. Witness 62 stated there was a large element of pre-planning.
  - b. They would have needed considerably more time than half an hour.
  - c. The PIRA unit were very, very cautious of people. The unit had matured and developed into top quality, formidable terrorists.
  - d. They were ultra cautious.
  - e. If they had seen one vehicle which they thought was out of place they would have simply called the operation off because they would have feared it was the security forces.
  - f. Their philosophy simply was we live to fight another day.
  - g. They would not just rush out on the word of somebody, because they would fear they were going into some sort of trap.
  - h. Their weapons would be in separate hides rather than lose a large number of weapons in one find.
  - i. Most of the individuals had to work.
  - j. They had to move their own cars to safe locations.
  - k. They had to reduce the risk of a large number of people assembling at a farm house.
  - l. Witness 62 stated that upon reflection it would take maybe even up to 2 hours to get everything exactly into position they

wanted them with the weapons they wanted and with the vehicles they wanted.

- m. Time estimates varied between witnesses and the tribunal will have to decide what time frame was involved from the evidence.
- n. The tribunal will also have to decide whether or not the PIRA unit was targeting Chief Supt. Breen. Witness 62 was of the view that PIRA knew who was in the car. W62 stated on Day 51, Page 53, Line 22 "They would go for the highest profile kill that they could get".
- o. Logistics; weapons; communications; transport of personnel/ weapons; safe houses; forensic issues; escape routes; ensuring no security force presence; dispersal.
- p. Scale 20-70 operatives from dickers to gunmen.
- q. Those involved required local knowledge to identify the local plain clothed AGS officers in case they interrupted the surveillance and or the following of the vehicle.
- r. There was also evidence that there were AGS officers out on patrol along the crossing points.
- s. Tribunal has also heard evidence of radio activity from 11.30am radio signals;
- t. It was unusual for such a large operation in daylight.
- u. Superintendent Tierney recalled going with Inspector Murray for a security check along the border. This commenced at approximately half past eleven after he performed office duties. They drove in the area of border crossing points 19, 17, 16, 14, 13, 12 and 11. From 19 to 11 was from the Forkhill Road over to the proximity of the Edenappa Road. Nothing on the various checks attracted his attention.
- v. The Tribunal has heard evidence from numerous witnesses on how risk adverse the PIRA were. Furthermore, these operations were meticulously planned and with the exit strategy one of the most paramount features.
- w. HMG 140 records that there was a military operation for the protection of a railway line.

"The Special Branch had minimal involvement and so military should be contacted for further details. 3<sup>rd</sup> Brigade, performed protection of lying to

5/3/89 and 13/3/89 – no useful information was obtained. Local Battalion are RRF from same on 13/3/89 to 20/3/89. No useful intelligence.”

- x. Therefore there was a military presence in the area of the railway line from 5<sup>th</sup> March up until 20<sup>th</sup> March 1989. This post certainly would have discouraged any active PIRA Unit from simply deploying without good reason.
  - y. HMG8 is an MOD report regarding the incident. Comments at paragraph 11 state “this was a professional ambush sprung from a well chosen site. Contact point was amongst buildings, and at the end of an avenue of trees. This would have afforded the terrorists some cover from view from the surrounding countryside.”
2. The tribunal may consider this a well planned, significant operation conducted by a risk averse unit. Given the level of preparation and detail, the tribunal may wish to consider what level of detail and planning, to ensure certainty, was put into the confirmation of the arrival and departure of the officers at Dundalk.

## 8. Events following the Ambush

### Sgt. Alan Mains

1. Issues arising from the evidence of Sgt. Mains.<sup>9</sup>
  - a. Sgt. Mains stated that in 1989 the particular area was probably the most dangerous area an officer could serve in. Information flowed in face to face meetings and Supt. Buchanan was the vehicle for that information. Officers depended on Supt. Buchanan making his appointments, making those meetings, whether it be official or ad hoc. He had to build a rapport trust and that did not happen on the end of a phone.
  - b. Sergeant Mains and Chief Supt. Breen discussed the report that came down from Senior Officers in relation to Thomas Slab Murphy.
  - c. Mr Mains discounted the possibility of C. Supt. Breen having attended a meeting on 16<sup>th</sup> March 1989 in light of the conversation he had with him and also that anything to be discussed was discussed at his home. Mr Mains would also have definitely known about Chief. Supt. Breen being called into a meeting whilst on leave.
  - d. Mr Mains stated that Chief Supt. Breen felt he had to go to Dundalk rather than have the Guards attend because he was requesting the meeting. Mr Mains stated that this conversation took place just after 9.00 am and lasted probably just over an hour. Mr Mains stated that he left the meeting and contacted Dundalk to see if the Chief Superintendent was there or to speak to one of his staff.
  - e. Mr Mains gave evidence that he traveled with Chief Supt. Breen. Mr Mains sought to be excused from the meeting as he had to play rugby that evening. Mr Mains gave evidence that Mr Breen suggested that Supt. Buchanan might wish to say goodbye to the Guards as he was being transferred. Mr Mains

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<sup>9</sup> Day 9, Page 102, Line1

stated he phoned Supt. Buchanan to see if he was available and he was happy enough to attend.

2. Mr Mains recalls contacting Dundalk but not actually having contact with Chief Supt. Breen's opposite number. He recalls speaking to a female and asking if his availability could be checked to see what was in his diary. He believes it was before 10.00 am.
3. Chief Supt. Breen mentioned to Alan Mains that he was concerned that members of the AGS were on Slab Murphy's pay roll. He mentioned Owen Corrigan as the Detective Sergeant that he did not trust. Chief. Supt. Breen told Mr Mains that he had been investigated for his connection and involvement with the PIRA previously.
4. Mr Mains stated that there had been previous talk about trusting certain Guards in Dundalk.
5. There was also the evidence from Mr Mains in relation to after the attack, the discussions with the Chief Constable and Mr. Cushley. He also gave evidence that W18 sent them to Dundalk.
6. Mr Mains stated he was advised not to put the name in by the Senior Investigating Officer McBurney. He also provided a Deposition to the Inquest. On 15<sup>th</sup> September 2000 Mr Mains made another statement taken by Chief Superintendent Maynard McBurney. Mr Mains was not questioned regarding his statement and he was unaware whether or not it had been passed to anyone else.
7. It is clear that the RUC and AGS did not speak with Mr Mains following the submission of his statement either in March 1989 or in September 2000. No evidence has been located or obtained to explain why such a course was taken by the RUC or indeed AGS during their enquiries.
8. There are a number of significant issues for the tribunal arising from this evidence, primarily whether or not C. Supt. Breen expressed such concerns and the importance of the contemporaneous nature of the comments.

## Reaction of AGS Commissioner Mr Crowley and Chief Constable Sir John Hermon

1. Sir John Hermon gave a press conference on the afternoon of 21<sup>st</sup> March 1989 during which he stated:

“I have spoken twice today to the Commissioner and have been very concerned at these statements as to the possibility of a mole. We have each, without our own area of command, examined very carefully and can see now, categorically the evidence which we have formally confirms to us that there was no mole and we would ask that this be discounted very firmly and clearly.” (Also: Day 131 Video)
2. The President of the RUC Superintendent’s Association, Superintendent Patrick McCullough also dismissed the speculation about a mole as “uninformed and at best mischievous”.
3. On the evening of the shootings Commissioner Eugene Crowley rejected the allegation that an IRA mole in the Gárda had provided the information which led to Chief Supt. Breen and Supt. Buchanan’s deaths.
4. George Maybury, General Secretary of the AGSI ,was quoted in the Irish News on 22<sup>nd</sup> March 1989 as rejecting the theory that there was a mole in Dundalk station.
5. In relation to context, many Gárda Officers have commented that talk of a mole was not raised in the aftermath of the murders; however, it is clear that significant figures within the AGS and the RUC were concerned about the issue and made public statements on the issue. The tribunal has also referred to numerous newspaper articles on the issue at the time. It is respectfully submitted that the tribunal may find that the issue must have been discussed between rank and file officers, especially in Dundalk.
6. The context of this statement is that no investigation had been completed into whether or not there was indeed a mole. Tensions were high in that area and co-operation between the two police forces was paramount. It is for the Tribunal to decide whether or not this was in fact an attempt to stifle such rumours to ensure cross-border co-operation in the fight against subversion. It is also a matter for the tribunal to consider whether or not it was necessary to quash any suggestion of a mole so that it quelled any potential retaliation.

## 9. The O’Dea report

1. The killings were considered by the Government on 21<sup>st</sup> March 1989 and the then Minister for Justice, Gerry Collins, was directed to ask the Commissioner of AGS to conduct an investigation into what was termed “the circumstances and arrangements of the meeting”.
2. The investigation was conducted by the then Assistant Commissioner Edward O’Dea and the recording of statements took two days to complete. It consisted of interviewing in the main, the individual Gárda who were on duty in Dundalk station on the afternoon of 20<sup>th</sup> March 1989. It ascertained their whereabouts and clarified whether or not they had seen the RUC officers in the station. It also involved those officers who were involved with the meeting and the personnel who made/received calls arranging the meeting. No further investigation was carried out.
3. The tribunal may consider that there is a stark difference between the terms of reference given to Assistant Commissioner O’Dea, the interviews undertaken, the investigation undertaken and the conclusion reached by Assistant Commissioner O’Dea;

*“I am satisfied from the investigation I have carried out that no member of An Gárda Síochána leaked or passed any information concerning the visit of the RUC officers to Dundalk station to any person outside the force.”*

4. Kevin Carty, who was sent to Dundalk to assist Asst. Cmr O’Dea was not aware that the investigation was addressing the issue of a mole and it did not feature in his involvement.
5. There are a number of issues arising from the report compiled by Asst. Cmr. O’Dea, inter alia:
  - a. Failure to ask any witness about a leak or a suspicion of a leak;
  - b. Failure to actually investigate the background of any officer;
  - c. With knowledge or the means of knowledge that this operation could not have been triggered by sight of the officers in the station, failing to interview all officers present during the morning shift or calling into the station off-duty.
  - d. Failing to determine whether or not there were off duty officers in the station throughout the day;
  - e. Failing to establish what civilians where in the station that day;
  - f. Working from a list given to him by Chief Superintendent Nolan as opposed to determining himself who was actually present on the premises;

- g. Failing to investigate any contacts that each and every Garda member had throughout the day.
- h. Simply recording brief statements from the witnesses as to their whereabouts without asking any investigatory questions regarding a potential leak.
- i. Whether or not sufficient time was dedicated to the task given the findings. The two day period spent taking statements also included attending both funerals in Northern Ireland.
- j. Failed to check previous statements or indeed ask if previous statements had been recorded (Garda Nolan).
- k. There does not appear to have been any consideration of the fact that the ambush operation could not have commenced in the time between the arrival of the RUC officers at the Station and the murders. There must have been prior planning and organisation. The Asst Cmr O'Dea may not have addressed his mind to the earlier part of the day when news of the RUC Visit may have become common knowledge among the Gardaí in Dundalk.
- l. He did not liaise with Tom Connolly who was conducting the AGS investigation on the South side of the border. It does not appear that he spoke to the RUC regarding their investigation.
- m. Recording that two officers had paraded the unit, Sgt. Brady and Colton. However, Sergeant Colton was on the steps of the station.
- n. Asst. Cmr. O'Dea traveled with C. Supt. Nolan to the two funerals on 22<sup>nd</sup> March 1989. After the second funeral both officers traveled to RUC Headquarters and briefly met with the Chief Constable. It does not appear that they discussed the possibility of a leak despite the context of their senior officer making public statements on the issue.
- o. Mr O'Dea crossed out a line in CS Nolan's statement "Garda Seamus Nolan, Dundalk, came to my office and said that there were two gentlemen to see me and he showed them in". It is a matter for the tribunal as to whether or not this action could have been an attempt to minimise the number of people that were aware of the RUC officers' visit that day.

- p. Garda Val Smith gave evidence on day 10, page 94, 22<sup>nd</sup> June 2011. The witness had a meeting with Chief Superintendent Nolan shortly after 2.00 pm. He saw two gentlemen at the door when he was walking out of the door. In his statement to O’Dea, it was recorded stated that Chief Superintendent Nolan asked to leave the door open as he was expecting two men from the North. Chief Superintendent Nolan did not mention any names and the witness was not aware of any meeting with RUC members in Dundalk on that date. This witness stated that he would have told O’Dea that he saw them as he left the room. It is for the tribunal to decide whether or not this was an example of the O’Dea report minimising who knew about the meeting and who saw the officers in the station that day.
- q. Chief Supt. Nolan’s statement did not address the issue of discussion about a leak.
- r. Chief. Supt. Nolan and Asst. Cmr. O’Dea did not have “much discussion” about a leak because,

“quite frankly, we did not know there was a leak, or did we suspect there was a leak? I think, even at that stage, my belief, and I am sure it was shared by Assistant Commissioner O’Dea, was that the officers were followed in their car from Dundalk to the Border and ambushed and killed there. It wasn’t a priority at that stage, or indeed, as far as I am aware, soon afterwards either, that any form of a leak or collusion, nevertheless, Assistant Commissioner O’Dea had been given the brief to investigate the entire matter, which he started with me.”

6. He confirmed that the entire matter included the possibility of there having been a leak. Chief. Supt. Nolan stated that:

*“It would of course be something that he would have had to look at.”*

7. When pressed about discussions concerning a leak, Chief. Supt. Nolan stated,

“I could say that we didn’t have any really, other than I couldn’t say that there was a leak, nor could he say that there was a leak. So if there was a question of a discussion on a leak, it would merely be: do you think there was a leak? It is not something that either of us, I am quiet sure at the time gave much consideration to. Quite frankly we didn’t think there was a leak, or I didn’t anyhow.”

8. Chief. Supt. Nolan stated that the first he heard of a leak was after he had left the force.

9. Chief. Supt. Nolan also dismissed the newspaper reports at the time saying that he would not pay much attention to newspaper headline. This

is despite the fact that it was one of the issues addressed by Assistant Commissioner O’Dea in his report following his visit to Dundalk. C. Supt. Nolan also conceded that O’Dea’s report was primarily to find out whether or not there was a leak. He Nolan further stated on Day 9, Page 60, Line 17-19 stated “but it wasn’t a priority that the first thing we must go about is finding the mole, because we didn’t believe there was a mole initially.”

10. C. Supt. Nolan conceded that the Detective Branch within Dundalk could not have investigated this issue because they were “part of the system that was being investigated”. (Day 9, Page 63, Line 28).
11. From the above, the tribunal may decide that it is clear C. Supt. Nolan believed that this investigation by Assistant Commissioner O’Dea was to investigate a leak. This appears to be indicative of the attitude of AGS to the suggestion that one of their own officers may have colluded with PIRA. The tribunal may consider this a significant piece of evidence that was demonstrative of the attitude of the most Senior Officer in Dundalk. C. Supt. Nolan stated that the issue of a mole was not regarded as a priority at that stage.<sup>10</sup>
12. In light of the factors highlighted above, it is for the tribunal to decide whether or not part of the O’Dea task was to investigate a leak and if so, whether it was a sufficient investigation. Additionally, the tribunal may also wish to consider whether or not there ought to have been a more detailed investigation in order to stamp out the speculation and in doing so reaffirm relations North and South.

### **10. Toby Harnden (Bandit Country) & Kevin Myers**

1. Toby Harnden was the author of the Book “Bandit Country” (1999), the allegations are set out in the text from page 156.
2. Mr Alan Mains was asked by the RUC Press Officer to give Mr Harnden assistance in South Armagh in terms of the nature of the book and what he was trying to achieve. He had several interviews with Toby Harnden. Mr Mains denied being the officer quoted on page 159 of Bandit Country. Mr

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<sup>10</sup> Line 21, Page 42, Day 9.

Mains stated he did not believe he gave Mr Harnden information suggesting that there was a mole in Dundalk. Some of the information repeated by Mr Harnden could have been obtained from public information. Mr Mains accepted that he may have mentioned that Sir John Hermon “stamped on the story”.

3. Re: Dan Prenty’s evidence. “I am afraid the leak came from a guard. Bob Buchanan was a lovely, lovely man and those murders were an absolute tragedy. The fact that one of my colleagues was involved in the whole thing ten times worse”. Dan Prenty denied saying this to Toby Harnden. Toby Harnden misrepresented what Dan Prenty said to him.
4. The tribunal has heard the evidence concerning these allegations and whether or not there was any evidence to support the allegations. It is for the tribunal to decide the weight to be attached to the allegations and whether or not the evidence before the tribunal substantiates the allegations or not.

**Kevin Myers “an Irish man’s Diary”.**

5. On 10<sup>th</sup> May 2000, Mr Kevin Myers published an article in Irish Times in which he raised the issue of collusion in a number of atrocities along the border. He referred to a number of other murders which had occurred.
6. There are a number of potential criticisms to level at Mr Myers’ article, not least, the lack of investigative steps to establish matters that were asserted as facts. It was not made clear in the article that this was a commentary as opposed to a piece of investigative journalism.
7. While the cross examination of Mr. Myers sought to undermine the article itself, he gave evidence that he had contact with AGS members and a former member of a subversive organization who confirmed aspects of the allegations. The Republican source was very emphatic that the murders of Breen and Buchanan were assisted by a mole inside Dundalk Gardaí Station. He told the tribunal that he trusted these sources. Kevin Myers told AGS investigators that he was told by informants that all handovers to the RUC had been compromised.<sup>11</sup> He relied upon Toby Harnden’s book as hard evidence.<sup>12</sup>
8. Another consideration for the tribunal is whether or not an earlier in-depth investigation into the suggestions of collusions have stamped out any such concerns.

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<sup>11</sup> Day 50, Page 40, Line 12.

<sup>12</sup> Day 50, Page 44, Line 1.

## **Political Involvement:**

9. Lord David Trimble, wrote to An Taoiseach, Mr Bertie Ahern on 25<sup>th</sup> March 2000 calling for an Inquiry to be held into the general allegation of collusion. 13<sup>th</sup> April 2000 Jeffrey Donaldson, MP for Lagan Valley, alleged that a retired member of the force, Owen Corrigan, was responsible for passing information to the Provisional IRA. Mr Donaldson referred in his statement to evidence “that the retired member of the force had passed information to the IRA.” He too called for the establishment of a Tribunal of Inquiry into the allegation.

## **Camon/Kirwan Report**

1. **Issues arising from the Camon/Kirwan Report:** Whether or not there was more focus upon the phrase “circumstances and arrangements of the meeting” rather than the investigation of a mole/leak.
  - a. The Tribunal may wish also to consider the level reliance by the Camon/Kirwan investigation on the O’Dea report.
  - b. A further issue the Tribunal may wish to consider is whether or not the Camon/Kirwan investigation was limited in its scope.
  - c. Whether or not there was sufficient attention paid to other published allegations by Lord Trimble, Mr Donaldson, Mr Bruton, Mr O’Higgins and Mr Flannigan. The response by the Camon/Kirwan report was “these do not seem to be stand alone allegations but are based on Toby Harnden’s book and Kevin Myers article.” The Tribunal may wish to consider whether or not the other published allegations were in fact based on Toby Harnden’s book and Kevin Myers’ article.
  - d. The Tribunal may consider whether or not the Camon/Kirwan investigation ought to have investigated the whole of Dundalk Station to determine whether or not there were any officers likely to sympathise or potentially liable to compromise.
  - e. The Tribunal may wish to consider whether or not the Alan Mains’ Statement was another avenue that was reasonable to follow. Whether or not the Camon/Kirwan investigation ought to have interviewed Alan Mains.
  - f. The Tribunal may wish to consider whether or not the Camon/Kirwan investigation was thorough in that Mr Corrigan was not interviewed with any great pressure and there were no issues

put to him regarding the assessment of Michael Finnegan nor indeed was the evidence from Jim McHugh explored regarding the failed prosecution against Owen Corrigan.

- g. Mr Kirwan was not aware that Asst Cmr O'Dea attended Dundalk and was given a list from Supt Nolan. He made presumptions that the list was drawn up from people that were on duty at the particular time.
- h. There was no reference in the Camon/Kirwan report about the absence of statements from Guards on duty from 6.00 am to 2.00 pm. There was no record of attendances of Officers in the Station who were off duty.
- i. The Tribunal may wish to consider whether or not the Camon/Kirwan investigation failed to examine the O'Dea report sufficiently to establish whether or not there were areas that required clarification or indeed re-investigation.
- j. Mr. Kirwan did not concede that there were any issues with the O'Dea report or the Camon/Kirwan report.<sup>13</sup>
- k. Chief Superintendent Camon confirmed the co-operation of the RUC. Sir Ronnie Flanagan, Chief Constable of the RUC appointed the late Chief Superintendent William McBurney to review RUC papers in relation to the matter. On foot of this investigation, the RUC informed Chief Superintendent Camon  
  
"that no evidence exists nor can any documentation be located which evidences Gárda collusion with subversives".
- l. The context of this statement is that there was in fact the 1985 SB50. This presents the tribunal with the evidential difficulties referred to above. The documentation surrounding the SB50 has not been located. There are no witnesses to provide evidence as to what path the SB50 took and who dealt with it in PSNI Headquarters. There is no evidence or documentation from which inferences can be drawn as to what steps were taken on foot of the intelligence. A number of issues arise:
  - i. Was it passed over to AGS? If so, when and how?
  - ii. Why are there no records of it? Was it passed by word of mouth?

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<sup>13</sup> Day 62, 163 Page 14.

- iii. The “6” denoted intelligence that was impossible to assess accurately. Was there a consideration that, due to the grading, it was not worth raising with AGS until more corroboration was received?

## **12. Ian Hurst**

1. This witness gave evidence that he was a member of a military intelligence unit. He alleges that he came across Mr Corrigan’s name in FRU documents that were not in any particular folders from 1987 onwards. He gave evidence that Mr Corrigan would be associating with members of the PIRA and would be passing information on. He could not recall specifics and he alleged that there were other Gardaí Officers also. He alleges that he saw SB50s but could not recall the grading. He saw less than 10 between 1987 to late 1990. He stated he saw SB50s referring to Colton and Corrigan associating with IRA members. There was no participation by them in events. An example was obtaining patrol information.
2. He alleged that he saw one maybe two in relation to Mr Colton.
3. This evidence will not doubt be considered in the context of the evidence from W82.
4. . The credibility issues arising from the evidence include, inter alia, the contradictory evidence of Mr Maguire and Mr Walsh who state that Owen Corrigan was not discuss with them at any stage. The note recorded by Jane Winters provided to the Tribunal allegedly recording conversation she had with Ian Hurst after his meeting with AGS.

## **13. Kevin Fulton**

1. Kevin Fulton gave evidence on day 66-68 in relation to Owen Corrigan. The tribunal will have to weigh, inter alia, the differing evidence from special branch and CID sections of the RUC. It is a matter for the tribunal to assess his credibility arising from all of the evidence before the tribunal. It is the policy of the PSNI to neither confirm nor deny a source or agent.

## **14. Finbarr Hickey**

1. **Finbarr Hickey** (Day 96). Dundalk from 1981 - 1992, then to Castleblaney - 1994 then to Hackballscross.

2. Issues arising from the evidence concerning Finbarr Hickey.
3. An issue for determination by the Tribunal is the presence of Mr Hickey in the Station on the day in question. He believed he was working from the two to ten shift when he met with the Tribunal on 31/10/06 and 14/5/09. His Application for representation before the Chairman on 30<sup>th</sup> September 2009 stated he was on duty at Dundalk Gardaí Station on the date.
4. His formal statement on 26<sup>th</sup> July 2010 also confirmed the 2.00 – 10.00 pm shift. A note of intended evidence signed on 30<sup>th</sup> May 2011 also confirmed this.
5. This changed by way of a statement dated 6<sup>th</sup> March 2012 in that his position changed from working the 2 – 10 pm shift to being called in on overtime in light of the murders. This is on the basis that he was attached to C Unit, not A unit, A unit appeared to be working 2 – 10 pm on 20<sup>th</sup> March 1989. He understood that the 6.00 am – 2.00 pm Unit shift was undertaken by the D Unit. His only memory of the day was that Supt Nolan could not be located and it was thought he was with the two RUC Officers.
6. Further issues:
  - a. (Day 36, Page 42, Line 3). The question was put to Finbar Hickey do you know what the passports were for? Answer: No, I didn't. I knew the names on the passport forms were not the people that they were for. I never checked the names."
  - b. Finbarr Hickey stated that he thought it had something to do with a woman, Colton was messing with a woman. I thought that Colton was fixing up false identities for fellas' that were messing with women, nothing else. (Day 37, Page 7, Line 11).
  - c. He worked with Leo Colton between 1983 and 1992. When Mr Colton retired, he drank in the same local pub as Mr Hickey.
  - d. Mr Hickey had a number of personal issues for example: the break down of his marriage in 1993-1995, increased alcohol consumption and a fatal road traffic accident in which a child was killed. He was also hospitalised due to a serious lung complaint. The tribunal may consider that these factors rendered him vulnerable to pressure from a third party to sign passport forms.

- e. Mr Hickey gave evidence that Mr Colton asked him to sign 6 – 8 passport forms. One of the passports was for Mr Jimmy Fox, who was wanted for murder. His picture would have been in the Station and featured in the Fogra Tora.
- f. A further passport ended up in the hands of Paul Hughes (3/3/95). The Tribunal will also have to decide whether or not Mr Hickey knew Mr Paul Hughes as being a member of an IRA Unit in South Armagh. This is despite the high profile nature of this PIRA member. He claimed he never heard of Damien Stanley a further member of PIRA. Some passports were obtained using the birth certificates of deceased infants.
- g. The Tribunal will have to decide whether or not to accept the evidence from this witness that he did not recognise the clear photograph he was countersigning.
- h. This passport matter arose in the context that circulars had been disseminated drawing the attention of the members of the force to the fact that a passport applicant had to be identified in the Station. Mr Hickey was aware of all of these procedures.
- i. When he was first interviewed about a question arising regarding the passports he did not mention Leo Colton. The Tribunal may consider whether he knew exactly what Leo Colton was engaged in and acquiesced.
  - a. He told an interviewer that he knew they were funny but did not challenge Leo Colton about them.
  - b. Another factor is the evidence from Regina McArdle (Sgt).<sup>14</sup> She described Finbarr Hickey as a good policeman, good at spotting criminals. In her estimation he seemed to have a “sixth sense almost in terms of spotting if someone was a little bit just not right... he had a great eye, he could remember faces and from that point of view she thought he was quite a good policeman.
  - c. He told Mr Callinan (former Commissioner of AGS investigating the passport matter) that he knew the names on the passport forms were not the people that they were for.<sup>15</sup>
  - d. In an interview referred to on Day 96, Page 49, Line 6, Mr Hickey was recorded as saying “I knew it was dodgy. I thought

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<sup>14</sup> Day 17, Page 27 Questions 263 and 265.

<sup>15</sup> Day 96, Page 43, Line 11

it had something to do with women. Colton was messing with women. I knew that they were dodgy. I thought that Colton was fixing up false identities for fellas who were messing with women. Nothing else.”

- e. In his formal statement on 30<sup>th</sup> September, he confirmed “I carried out no checks because I knew they were false identities.” Pleaded guilty in May 2001 to four charges. He signed passports for over 10 months and therefore I impose custody.
- f. The Tribunal may wish to consider the context at PIRA maybe the only organisation seeking false passports at that material time in that area.
- g. He declined providing a statement of evidence against Leo Colton and James Fox in 2001. However, it was recorded that he would not do so out of fear of Colton. Colton had political connections.<sup>16</sup> He changed his evidence to say that he would have given evidence ad he been subpoenaed. He further denied that he was afraid of Colton.<sup>17</sup> Inspector O’Mahoney gave evidence that there were no indications that Mr Hickey had any connections with PIRA.
- h. Mr Hickey’s evidence must also be viewed in the context that he spent 11 years in Dundalk, engaged in normal police duties including road checkpoints. Part of those duties would involve knowing who AGS were looking for. It was also the function of AGS Officers to familiarise themselves with photographs of subversives.
- i. Hickey also had a number of opportunities to inform his superior officers yet failed to do so.
- j. The Tribunal may wish to consider the credibility of the reason proffered by Mr Hickey as to why Mr Colton required the passports. Mr Colton did not make any reference to any of his “friends”, traveling north of the border to meet with women.
- k. Question arises as to whether or not Mr Hickey failed to realise the significance of what he was being asked and for whom, or, recognise the seriousness yet acquiesced.

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<sup>16</sup> Day 96, Page 60, Line 16.

<sup>17</sup> Day 96, Page 62, Line 30.

## 15. Leo Colton

1. Issues arising from the evidence concerning Leo Colton:
  - a. Trade Plate: The tribunal may consider the relationship between Mr. Colton and Mr. Ruddy which resulted in Mr. Colton writing a letter recommending that he obtain a Trade Plate. Mr Ruddy was well known to the AGS. Someone with serious links to the IRA and he was convicted for importing Angel Dust through South America and was suspected of other matters by the Gardaí.
  - b. Mr Colton denied the knowledge of Sean Hughes, PIRA South Armagh. He further did not know Michael McDonald.
  - c. He did not know Francis Tiernan.
  - d. He further alleged Supt Murray who was investigating the disciplinary matter against him had a vindictive attitude towards Mr Ruddy. This had never been mentioned prior to the evidence in the witness box.
  - e. Mr Colton denied having any connections with Finbarr Hickey.
  - f. Mr. Colton retired and worked for a Mr. McCann in Dundalk. Mr Colton accepted that Mr McCann was known for various strong Republican views. He knew this at the time he was a guard and during the time he worked there. He denied knowledge that Mr McCann posted bail for individuals.
  - g. The witness also stated that he had passport application forms for himself and for a neighbour.
  - h. The witness also refused to sign interview notes when investigated.
  - l. Finbarr Hickey identified him as the person who asked him to sign false passports. **Detective Garda Joe Flannigan** (Day 12, 24.6.11). This witness believed that Finbar Hickey was telling the truth when he said he signed the passports at the instigation of Mr Colton.
  - m. The issue as to who paraded the unit on 20<sup>th</sup> March 1989, Sgt. Brady or Colton.
  - n. He was in the Station on the day in question.

- o. He was on the steps of the Station at the time (approximately) of the arrival of the two RUC officers.
- p. Following Garda Nolan showing the officers to CS Nolan's office, Sergeant Colton arrived and Garda Nolan asked him to assist as he dealt with the caller. While the Sergeant was attending to the caller, Garda Nolan saw Inspector Murray enter the station. This was approximately 2.30 pm. Garda Nolan provided a statement to Commissioner O'Dea.
- q. Garda Nolan suggests that he was tasked to assist with a query inside the station whereas Sergeant Colton alleges he was approached on the steps of the station and brought the member of the public into the station to deal with the issue.
- r. On the basis of his statement, he was on the steps for minutes before being approached by a farmer. The tribunal may consider that he was standing on the steps of the Station for a period of time.
- s. He observed a vehicle driving slowly through the forecourt with the driver acting suspiciously checking vehicles yet he did not report it until 6pm that evening.
- t. Despite his years of experience he failed to record the last two digits of the licence plate;
- u. Furthermore, in his statement he stated he was called by the Station Orderly to deal with the matter however, this changed this to being approached on the steps by a farmer.
- v. He failed to note the full registration plate of a suspicious vehicle, with his length of service, skill and experience acting suspiciously and failed to check it out or make a proper note of it. EIB was a common registration number in Dundalk at the time. The vehicle was never traced. The Tribunal may also wish to consider the context provided by Mr Colton's statement in that it was "a live concern that the registration numbers of branch cars might wind up with the IRA."<sup>18</sup>
- w. Garda Byrne gave evidence on Day 45 that he had great difficulty with Leo Colton. The tribunal will recall the:
  - i. Blackboard episode; misappropriation of a file on gaming from the unit locker; who informed the owner of the

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<sup>18</sup> Day 97, Page 106, Line 28.

Arcade (Mr. McCann) of the content of the file; who was taking advantage of women when they were reporting problems?; who was doing what in the Tax Office?. It was alleged that Sgt Colton spent a lot of time after hours in the Tax Office. The file that was misappropriated from the unit locker related to Mr Jim McCann, the Arcade owner.

- ii. Sgt. Byrne had heard an allegation from another garda Sergeant Colton while on patrol used the vehicle for the purposes of importing contraband.
- x. Garda Inspector Michael Finnegan stated that Mr McCann was a native of Belfast and was known to be involved with the Provisional IRA. <sup>19</sup>
- y. Prior to the Disciplinary proceedings re the trade plate matter being heard, the witness retired with some 9/10 months before the end of his service. He retired one week before the Inquiry.
- z. Mr Colton's reaction to receiving the Disciplinary notification was to laugh.
- aa. Mr. Colton also conceded that part of his function was to operate checkpoints and that he would need to know the subversives in the area in order to perform those duties. He further was in Dundalk from 1972 and still presented the picture that he did not know Jim Fox, Paul Hughes, Stanley Hughes, Mr Stanley, etc. He never heard of Mr Ruddy until the first day he had met him. He had no knowledge of Mr Francis Tiernan. He heard nothing about Mr Ruddy's Angel Dust conviction, he performed no checks on who this person was and had never written such a recommendation before for anyone else.
- bb. Another issue for the Tribunal is the evidence of Mr Colton that Frank Murray was trying to get at Brian Ruddy and stated "and to get at Ruddy, Doubly, they had to try to get at me. It begs the question how could Mr Murray try and get to Brian Ruddy through Leo Colton?"
- cc. The Tribunal's attention is also drawn to Mr Colton's evidence that was not in his statement that Frank Murray had an agenda to "shoot" Leo Colton down if he possibly could do so. This was not in his statement. Furthermore, Mr Colton alleged that

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<sup>19</sup> Day 46, Page 69, Line 27.

Frank Murray was trying to target him because Leo Colton allegedly refused to “square the Summonses”.<sup>20</sup>

dd. This was not alleged in the statement or in his previous evidence. Additionally Mr Colton, despite his years of service, could not express a view on whether or not PIRA would ensure the people involved in the plan to obtain passports were trustworthy.

ee. He also refused to express an opinion regarding the importance of the passports to the PIRA.

ff. Leo Colton also saw no reason why someone would be in fear of PIRA.<sup>21</sup>

gg. Mr Colton also stated that it was pure coincidence that he resigned shortly after receiving the notice of the disciplinary matter.

hh. Leo Colton then accepted that he had had a conversation with Mr Hickey about a passport problem.<sup>22</sup>

ii. Furthermore, he accepted that he may have called into Hackballscross Gardaí Station.

## **16. Owen Corrigan**

1. Issues arising from the evidence concerning Owen Corrigan:
2. He asks the tribunal to discard anything said without evidence, yet invites the tribunal to accept his assertion that the British authorities, the MOD, Security Service all conspired against him.
  - a. Disengagement from his work when the new regime came into Dundalk.
  - b. Comparison between his C77 output between 1985 and 1989.
  - c. His own evidence of opting out; doing as little as possible;
  - d. His evidence, *unchallenged by AGS in any respect*, that the new regime post the Anglo Irish agreement was a “vampires nest”.

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<sup>20</sup> Day 97, Page 116, Line 23.

<sup>21</sup> Day 97, Page 125, Line 1 - 10.

<sup>22</sup> Day 97, Page 135 - 6.

- e. Size of the operation, the duration of the operation, the need for local knowledge in the operation, contrasted with the complete absence of intelligence from the man with the best sources gleaned over 13 years.
3. Tribunal will no doubt also consider:
- a. Coincidence that the main prosecution witness in a trial against him is told not to go to the trial by Francis Tiernan. AGS also held intelligence that he had been told not to attend by the PIRA.
  - b. Gained from that connection with Francis Tiernan, apparently lost when in 1995 Tiernan asks to meet him and he ends up abducted and badly beaten. No statement provided by either Tiernan or Corrigan. 6 years after being on sick leave.
  - c. His evidence that he had intelligence relating to the ambush, gleaned from his sources yet not provided to the investigation team. No one asked him.
  - d. His evidence that he was aware of threats against John McAnulty and other individuals from PIRA, yet none made it into the intelligence system.
  - e. His counsel put it to Mr. Fulton that he could not have met Mooch Blair at Fintan Callan's Ceili house as he had nothing to do with AGS after sick leave and retirement. Yet, he conceded in cross examination to having met colleagues to dot i's and cross t's.
  - f. Furthermore, when the news of the murders came in, the man that knew everything with the best sources, walked home.
4. Evidence of Tom Connolly re: Owen Corrigan: statement stated the following:-
- a. He did not call on Owen Corrigan to be part of the investigation as he could not depend on him.
  - b. He was being cautious and he made the decision that maybe it was best not to have Owen Corrigan in the enquiry.
  - c. I heard and was told by some members that they would not trust Owen Corrigan with regards to the IRA. These concerns were specific to Owen Corrigan. The first I heard in relation to this was from Dan Prenty who was his Inspector.
  - d. However, I did hear it from the RUC. I attended joint meetings with the RUC and heard it on the side at a meeting. It was not discussed during any meeting.
  - e. I was told it at least once before 20<sup>th</sup> March 1989. He heard it from an RUC officer that they did not trust Corrigan because of

his potential links with the IRA. It may have been Bob Buchanan who told him.

- f. DSI Connolly further stated he did not do anything about this information because it was well known in the Senior Ranks in the station. It was mostly relying on Dan Prenty for his information but there were higher men than him from whom he had heard this, for instance, Pat Culhane and John Nolan. DSI Connolly could not say if Headquarters were aware of it. Headquarters were wary of Corrigan - they considered him more useful than dangerous. In his statement he then detailed a number of incidents to support his concern regarding Owen Corrigan.
  - g. The witness stated that when he heard the matter being discussed in a group in Headquarters it was not fresh to him and he may have heard it a number of times. Witness could not provide any details but named Owen Corrigan.
  - h. He stated that it was fairly well known that Mr Corrigan was being talked about as possibly or maybe or suspected of being at some type of smuggling or in cahoots with the IRA in some way. (Day 17, Page 69, Line 9 - 11).
5. RE W 27 In relation to the incident on 4<sup>th</sup> April 1981 when witness 27 gave evidence that Owen Corrigan saved his life,
- a. It does not appear that any further action was taken by Owen Corrigan regarding the subversive vehicles.
  - b. There was no evidence that an attempt to meet this source again was made.
  - c. It is certainly a matter of concern that further steps were taken to contact this source.
  - d. No doubt Owen Corrigan's team would have requested a copy of any report filed by Owen Corrigan arising out of the incident.
  - e. The fact that there is no follow up whatsoever of this incident affects the voracity of the situation as portrayed by Mr Corrigan.
6. **Chief Superintendent Nolan:** Owen Corrigan was having an adverse affect on moral and discipline generally given his spare time activities.
- f. It is of note that (Day 30, Page 27, Line 30) Sgt Corrigan was noted to have "literally opted out of all involvement in ordinary

police duties. He is not on speaking terms with most of his superiors and he communicates only with a few close colleagues while ignoring all others. “. (Day 30, Page 43, Line 8) Supt Nolan gave evidence that Mr Corrigan’s productivity had tailed off.

- g. There were further strong rumours that he was involved in importing and selling cars from his home. This was whilst on sick leave.
7. Patrick Gallagher; prosecution witness for false pretences, told not to attend by Francis Tiernan. The tribunal may consider why Mr. Corrigan told the Informing the investigators that Mr. Gallagher was a member of the IRA.
8. Dan Prenty said of Owen Corrigan:
- a. He was never on time for work.
  - b. Never had a pen or a pencil to write himself on or off duty.
  - c. Never had a notebook.
  - d. Never had a torch. This was constant.
  - e. When on duty he was very reluctant to answer his radio. There was an armed robbery in Dunnes Stores and the robbers fired upon the guards. Corrigan was the only armed member on duty at the time and there is no response from his radio. The culprits made their way towards the border and eventually crossed the border.
  - f. Re: Information gathering, He was likely to exaggerate and pirate information. Dan Prenty was not aware of any flow of information from Owen Corrigan.
  - g. He referred to people calling to the Station to see Owen Corrigan as he had not paid for things.
  - h. He stated that he was informed by an Inspector from Bessbrook that there was a file on Owen Corrigan in RUC Headquarters tied with a red ribbon and he did not have sufficient clearance to access it.

- i. Mr. Prenty stated, "I must say that I never had any problems in relation to Social activities outside the Station. I was never personally abused and no threats where ever issued against me in any way. The same applied to my family, all my family. I reared five sons and they socialized in the town, played football. They never had any problems either." <sup>23</sup>
  - j. When asked about the headline "Mole fear in double killing" he acknowledged there would have been previous rumours about information having filtered out. <sup>24</sup>
  - k. The circumstances in which the murders were committed looked as if the IRA had very good knowledge of the movements of the two men. You would have to say to yourself, a thinking police man would have to say how would this come about or did somebody blow a whistle. Furthermore he stated the mole could be on the other side of the border as well as our side. That has to be taken into account. <sup>25</sup>
  - l. Association with Francis Tiernan: Garda Inspector Michael Finnegan gave evidence concerning Francis Tiernan: that he had been, associating with members of the Provisional IRA, but he was also involved in smuggling quite extensively. He knew there was a relationship between Tiernan and Owen Corrigan. The intelligence received was that they owed PIRA money, £35,000. The witness conceded that the intelligence was "soft intelligence" and may be rumours as to why it happened.
9. Retired Commissioner Wren was Commissioner from 1983 - 1987. He conceded that he heard rumours about the amount of property he had acquired three or four houses and you would begin to wonder how he was so lucky to be able to acquire all this property. Certain he would not do it on a Sergeant's pay, or indeed a member's pay in the force. He again repeated that for a member of any rank in the AGS you could not acquire as much property as he was supposed to have had. He certainly had some other source of money rather than his pension or pay.
  10. In his statement he stated that "the only thing I heard of him was that his purchases must have been fiddled from the other side of the border

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<sup>23</sup> (Day 42, Page 8, Line 1)

<sup>24</sup> (Day 42, Page 9, Line 29)

<sup>25</sup> (Day 42, Page 10 Line 24)

whenever possible.” He heard these rumours whilst he was Commissioner between 1983 and 1987. His response to chasing down rumours was that he took no action because it was only a rumour. It was a matter mainly for Customs.

11. Day 5, Page 80 Line 2. The Commissioner accepted that it was a serious matter to hear rumours that a Garda officer was bringing materials across the border without paying duty upon them. He also accepted that this had been going on while Owen Corrigan was a Sergeant in a very important position. He also stated that it was important that no member should have any question marks over his finances. Furthermore, he accepted that being involved in any criminal activity or criminal offences would leave a guard vulnerable to being compromised. He did nothing about this matter and did not know if any one else did any thing about the matter.
12. It is also a question for the Tribunal as to how the Commissioner could not have been more familiar with Owen Corrigan given his sensitive position along the border accompanied by the impact of the Anglo Irish Agreement.
13. **Former Deputy Chief Constable Blair Wallace issues:** On day 60 he gave evidence about factors to consider investigating a suggestion that a police officer in any force was compromised. The tribunal may consider whether or not any of the criteria were met and if so, what steps if any were taken to allay any concerns.
  - a. Whether or not he is living beyond his means insofar as the type of property he had;
  - b. The type of vehicle he was driving;
  - c. The amount of spending money that he had available;
  - d. Your living ability was dictated by your salary;
  - e. You would also consider places that he was frequenting;
  - f. People that he was meeting;
  - g. Whether or not those meetings were of a social nature or otherwise;
  - h. Whether or not he always worked on his own, for example, solo runs where no one else is present and that he was there either meeting people or going to do particular things.

- i. Unexplained absences without being prepared to account for their time.
- j. Was he being effective in his job?
- k. Was he producing intelligence which was leading to success against terrorism?
- l. If there was intelligence was there a product at the end of that intelligence?
- m. Where people were offering good intelligence and it was being acted upon, were those people being compromised?
- n. To be dealt with by the internal security of the organization such as the PIRA.
- o. Property profile or portfolio, how did he acquire that property, his bank accounts would have to be looked at to see what money was passing through, his salary was obviously something that could be paid in directly to the bank but were there other monies suddenly appearing and if so, where were they coming from and how where they ending up in his possession?
- p. Suspicion would be aroused if a member refused to make a statement Suspicion is further aroused if the officer cannot communicate straight forward and up front reasons and answers to questions reasonably put.

14. Re: Kidnapping: The tribunal may wish to consider the following issues arising from the evidence of Owen Corrigan:

- a. Why did PIRA kidnap him so long after he had retired, if their intelligence was so good?
- b. Why kidnap Francis Tiernan if the concern was about the sources providing information to Garda at Dundalk Station?
- c. Why not kidnap him whilst he was still a Detective Sergeant to find out the sources?
- d. Why not kidnap a current Detective Sergeant who would know who the sources were and have a better picture of intelligence matters.

- e. He believed he could have contributed a lot to the investigation given the nature of his experience but Dundalk Station was not a place where you volunteered for assignments.
- f. Mr Corrigan had no difficulty helping out with the Beit paintings investigation when asked by Noel Conroy, despite being on sick leave.
- g. Mr Corrigan stated his “power base had gone”.
- h. He felt his expertise was not being appreciated and was not consulted on anything. He wanted Mr Nolan, Connelly and Tierney to come and speak to him.
- i. In relation to serving his country loyally, Chief Supt Nolan’s memorandum to Asst Cmr O’Dea dated 30.08.89 stated that Sgt Corrigan had literally opted out of all involvement of ordinary police duties.<sup>26</sup> He was not on speaking terms with most of his superiors and communicates only with a few close colleagues while ignoring all others.
- j. Mr Corrigan’s response to the disciplinary findings against him were that they were totally false and called them alleged breaches.<sup>27</sup>
- k. Mr Corrigan would give evidence that the Detective Branch had no expertise and it culminated in the death of Breen and Buchanan. This was not challenged by AGS.
- l. Chief Supt Nolan made an allegation that Mr Corrigan was AWOL on 17<sup>th</sup> July 1989 when John McAnulty was abducted from the Rosewood Club, Dromad and murdered across the border. He was the only Detective on duty from 10.00 pm to 6.00 am that night. Mr Corrigan stated that he was engaged on a very dangerous mission meeting very dangerous people however, he was unable to provide any further details regarding this meeting.
- m. There was a further allegation on 22<sup>nd</sup> August 1988 he was also AWOL without a detailed explanation at the time or in the witness box.

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<sup>26</sup> Day 101, Page 68, Line 3.

<sup>27</sup> IBID.Line 21-22, 25.

- n. He alleged he had drink poured over him but did not make a complaint. Owen Corrigan stated that the Tribunal Counsel did not fully appreciate the atmosphere that was prevalent at the time. Mr Corrigan made an important reply to question 230 on Day 101 stating that if he had made a complaint “there’d be three drinks the following night”. “It was regarded as El Paso. This may be viewed by the Tribunal as a significant point in that if he could not prosecute for assault from having drink poured over him by an individual, how was he expected to counter act more serious subversive activities with so many subversives in Dundalk.
- o. The Tribunal may wish to consider whether or not Mr Corrigan provided any adequate explanation as to what he was doing on 20<sup>th</sup> March 1989.
- p. When approached by Canon/Kirwan, he refused to make a statement.
- q. The Tribunal may wish to consider Mr Corrigan’s assertion that he was the victim of a conspiracy initiated by the British Government, utilising Mr Fulton in response to the Irish Government’s calls for an enquiry over the Pat Finucane shooting. This was absent from his statement. The conspiracy was described by him as a purely co-ordinated attack on Ireland ... the Gardaí Síochána and me. <sup>28</sup> He further stated “I was the figurehead because I was the best known member of the force.” The conspiracy was to deflect attention from the pressure asserted by the Irish Government regarding allegations of collusion.
- r. He claimed that his name was the top of a list of people who were expected of setting up the murders of Breen and Buchanan. He alleged his name was at the top of the list because it was “leaked by the touts”. The Tribunal may wish to consider whether or not this could possibly refer to the 1985 SB50 and the alleged source.
- s. Mr Corrigan labeled himself as the arch enemy of the IRA and that he was the “number one”.
- t. The Tribunal heard evidence from Jim McHugh Day 59, Question 387 onwards regarding Mr Corrigan’s description of

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<sup>28</sup> Day 101, Page 18, Line 1-3.

Mr Gallagher as being in the IRA. This was despite Mr Gallagher having absolutely no links whatsoever to subversives.

- u. Mr Corrigan stated that it was his information that he was a member and that one of his brothers was blown up at the scene of a bomb. He asserted he was in a good position as a Gardaí Officer to give his opinion. He knew a lot more about the background.
- v. In relation to the RTA on 14<sup>th</sup> May 1988 Mr Corrigan described the damages as being trivial material damage yet describing the impact he described it as an explosion, he was traumatised, he did not know what hit him and his immediate reaction was to put his hand down to his ankles to see if it was an incendiary device. The Tribunal may wish to consider that this was an exaggeration of the evidence.
- w. He described the Tribunal as “the greatest injustice that was ever perpetrated against any man...”<sup>29</sup>
- x. In response to the new regime in Dundalk, he stated “I just did what a lot of others were doing; I did as little as possible.”
- y. He alleged that he was the ideal man for Mr Nolan to recruit and incorporate into the collective unit. After all, “I was the man that had the collective expertise of the whole border area.”<sup>30</sup>
- z. Mr Corrigan also made, what may be viewed as outlandish comments, for example, “I was the jewel in the crown. If I was in his position I’d be - - the first man that I would go to would be me. Here’s the guy with all the answers, well known through out, undisputed, and it is up to me to motivate him to motivate his subordinates correspondingly. This is new regime. We can’t win without having him. He is indispensable. That is my way of working if I were John Nolan. ... It was in his interest to come to me and to avail of my numerous qualities.”<sup>31</sup>
- aa. He referred to the new regime on Day 102, Page 43, Line 26 when he described it as a vampire nest.

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<sup>29</sup> Day 102, Page 30, Line 13 - 15.

<sup>30</sup> Day 102, Page 40, Line 12 - 15.

<sup>31</sup> Day 102, Page 42, Line 3.

- bb. The Tribunal may also wish to consider Mr Corrigan's statement at paragraph 3.3 stating that after the operation he heard "rumours and gossip";
- i. That the PIRA wanted to interrogate Chief Supt Breen to discover whether the Loughgall operation had been as a result of an informer and if so, to discover his or her identity.
  - ii. Mr Breen was the target;
  - iii. Subversives were following Mr Breen and Mr Buchanan for around 6, 7 weeks.
  - iv. There were three PIRA checkpoints that day, one in Kilkeel and one in the Carrickmacross Road when pressed upon these rumours Mr Corrigan stated that he heard them from different people, members of the public with associations with the IRA. He described the IRA as a leaky sieve. This may be contrasted with what Mr Corrigan stated on Day 130 in that rumours could not be ignored however, small.
- cc. The Tribunal may also wish to consider the additional information regarding the attack provided by Mr Corrigan on Day 102, Page 48, Line 21. He described how long the operation had been planned, the sizing up of different aspects of equipment, strategic points and planning the most strategic road to avoid detection. He also made comment that there were smaller units on the main road.
- dd. He further added that PIRA came along and their intention was to take them out, block them, take them. A van was stolen and parked near to take the two men to interrogation. The sole purpose was to find out who gave the information in relation to Loughgall and then to execute them.
- ee. The Tribunal will have to decide whether or not Mr Corrigan treats rumours differently at different stages. When the rumours are made against him he derides them however, if rumours support him for example in his statement and evidence he relies upon them.
- ff. A significant comment was made by Mr Corrigan in response to question 202 on Page 58 of Day 102. Was that he had relinquished all roles of responsibility he could see. He did not

think to speak to the RUC Officers despite his friction with management as there was a "new regime in place". "It was up to them to assess the situation on the ground".

gg. In relation to his statement at paragraph 3.3 "I also heard rumours that subversives were following Mr Breen and Mr Buchanan around for 6 - 7 weeks." <sup>32</sup> Mr Corrigan explained source of these rumours as being from general talk amongst the border territories. Not really Republican but sympathetic. He did not report any of this information as he only considered it gossip. Again, this was another occasion upon which Mr Corrigan will rely upon gossip.

a. Further example; "I also heard that there were 3 Provisional IRA checkpoints that day, one at Kilkeel and one on the Carrickmacross Road. I also - - ". Mr Corrigan told the Tribunal that he heard this information from the same individuals who would be on the periphery of the IRA. He stated that he heard it from IRA sympathisers, people who would be "picking up over the years, receiving, gleaning whatever pieces of information that I could gather, which was - - I spent my whole time engaged in." <sup>33</sup> The Tribunal may draw an inference from this paragraph is that the information came from people he had spoken to over a long period of time. If they were not valuable to him he would not, arguably, have retained their company. Furthermore, this does not sit with the evidence he gave that every rumour and detail should be looked into as they could lead to a fuller picture of the circumstances.

b. In answer question 222 as to why he did not report this information, he replied he did not report it "because my general demeanour - - I had my - - during my time in Dundalk its fair to say I had an ear to the ground on what was happening and would have sources of interest in which I could go and find out; eliciting intelligence was never any problem to me." It is for the tribunal to decide whether an inference may be drawn that he could have sourced intelligence.

c. He also stated on Day 102, Page 66, Line 9 - 12: "I ... took a great personal interest in building up in my own mind, like it was perceived now that I had the most extensive mental totality of

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<sup>32</sup> Day 102, Page 62, Line 12.

<sup>33</sup> Day 102, Page 63, Line 14 - 17.

the IRA personnel that's accepted by all and sundry." The tribunal may consider that he told the tribunal he did not know Mooch Blair or Patsy O'Callaghan.

- d. Mr Corrigan provided two C77s after the murders numbered 121 and 122. 121 recorded information suggesting that PIRA were in possession of the late Supt Buchanan's notebook taken from the scene of the shootings and PIRA were anxious to identify a named person in it. They did not provide any details regarding the planning of the operation and the press reports relayed similar information.
- e. Mr Corrigan also emphasised his alleged degree of victimhood: "Nobody suffered, more than I did, for somebody who contributed so much to the peace in our country; I paid a very heavy price for it and was scantily rewarded at the end of my day".<sup>34</sup>
- f. Mr Corrigan has repeatedly asserted that the book *Bandit Country* was the commencement of the "Garda Mole" issue. However, evidence from retired RUC Officers and Garda Officers indicated that there were concerns about Mr Corrigan prior to Toby Harnden's book.
- g. Furthermore, the Tribunal has had placed before it in evidence numerous newspaper articles and videos demonstrating clearing that the issue of a mole was alive at the time of the incident and in fact there were publications and questions in the Dáil concerning collusion in relation to the Gibson and Hanna murders.
- h. At the point on whether or not Owen Corrigan telephoned Leo Colton, Leo Colton was adamant however, Mr Corrigan stated he had no connection with Mr Colton at any stage in his service and also could not recall phoning him.
- i. Mr Corrigan labeled the RUC as "non effective". During the seventies and eighties they could not step outside an RUC Station except they had a British Army Officer or patrol at their back. They could not carry out anything on the border except when they had the British Army at their back in the North and the Gardaí and the Army on the Southern side. So in actual fact,

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<sup>34</sup> Day 102, Page 88, Lines 27 - 30.

if you boil it down, they were totally non effective from a policing sense.

- hh. RE: Mr Gallagher: Mr Corrigan stated that he would not accept anything that Mr Gallagher said. When questioned by Tribunal Counsel as to why he stated Mr Gallagher was a member of the IRA, Mr Corrigan's reply was that he did not know why he did it. Mr Corrigan stated that it was his belief at the time and that was all he was prepared to say. This is despite the fact it placed an individual potentially as a Defendant to numerous prosecutions. He described Mr Gallagher's statement as a tissue of lies.
- j. Mr. Corrigan neither owned the vehicle or motorcycle allegedly damaged in the RTA.
- k. Mr Corrigan emphasized the importance of the smallest piece of intelligence. Question 439, Day 104, Page 97. When discussing the substance of an intelligence report about two individuals observed together in a vehicle, Mr Corrigan provided the following response as to why such a matter was reported:
- l. "There can come an enquiry from any part of the island, UK or the continent, and the computerised system at Gardaí Headquarters, the man operating that can go and he can say on such and such a date they were observed together, and intelligence gathering is exactly what it is; it is a build up, there is nothing too insignificant to report. Everything should be collated. That is how you build up a picture of the whole entire system.<sup>35</sup>
- m. Every item of any significance whatever is included in the computer. Everything is computerised in relation to that, that there is a portfolio built up on every individual member of the subversive organisations.
- n. In relation to the submission of C77s, he submitted 418 throughout his career and 11 in the year of the murders. This was some 2.6 percent of his total productivity.
- o. He denied the allegations made by Chris Ryder that he approached him suggesting that he provide stories for remuneration.

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<sup>35</sup> Day 104, Page 97, Line 16. - 26.

p. He stated "I had reason to believe, my information tells me, that they were - - that they had operations in contact four weeks previously, and that the two same men traveled down the same road at 3.00 pm in the afternoon. He had no reason to doubt the accuracy of the information. <sup>36</sup>Furthermore, on occasions, that they had traveled and visited Dundalk. Mr Corrigan stated he had reason to believe that some of the main suspects for this atrocity called to Dundalk Station on business and actually passed through, walked in behind them, passed through their section area at the same time that they were pressing a bell to see the officers in Dundalk at that time. This is only my information, now, I can't confirm it but I have no reason to doubt mine because I had extremely valuable contacts at the time that I was told that it was either a four or five weeks, and that it was also on a Monday, and it was around three o'clock. So those are facts that can easily be confirmed by the RUC. This evidence:

- a. was never provided by way of a C77.
- b. has never been raised with the investigation team in the AGS.
- c. He clearly obtained this evidence from extremely valuable contacts.
- d. He had no reason to doubt it and in fact used the phrase he had reason to believe. He has raised his confidence in this information to that of a belief.

q. The kidnapping evidence: He said that Mr Francis Tiernan had been involved in a number of scams over the years. Mr Corrigan denied that he was part of the IRA, not even a supporter. He described Mr Tiernan as being like so many other people on the border he is one of those people I would classify him in the same category as Mr McAnulty, survival is their middle name and they will use everyone and anyone to escape or to preserve their day to day living. <sup>37</sup>

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<sup>36</sup> Day 105, Page 15, Lines 16 - 19.

<sup>37</sup> Day 107, Page 19, Line 16 - 19.

- r. The Tribunal will have to consider whether or not Mr Corrigan answered the questions regarding the motivation for his kidnapping. Especially in light of the fact that Mr Tiernan was also kidnapped when he would not have known about the AGS sources etc. It is also a matter for the Tribunal to consider the nature and extent of contact with Mr Tiernan after the event. It appears, on the evidence of Mr Corrigan that he was kidnapped and was set up by Francis Tiernan. However, they did not discuss the matter following the abduction and when they met later, they exchanged pleasantries.<sup>38</sup>
- s. The Tribunal will also need to consider whether or not there was any truth in the assertion that there was a general perception amongst the IRA that Mr Corrigan was still a member of the force and working for the people in Dublin.<sup>39</sup>
- t. In relation to the assertion that this was to obtain AGS information, the Tribunal may wish to consider why a Detective Sgt or a Detective Gardaí from Dundalk was working on current matters was not targeted.
- u. RE: John McAnulty: Mr Corrigan gave evidence that the threat against him was ongoing for some time, the threat to kidnap him. There was always a possibility of, depending on the people involved, "a question of execution was always foremost on your mind."<sup>40</sup> Mr Corrigan accepted that despite knowing about the threat he did not warn Mr McAnulty.
- v. Mr Corrigan also stated that Mr McAnulty was not the only person the IRA had issued a threat to. They had issued threats to numerous people whom they thought were under suspicion.
- w. He stated that he would have reported threats to the Commissioner however; Tribunal Counsel put it to him that the guards had trawled through their files and did not find such a report.
- x. If indeed PIRA had been making threats towards numerous individuals, and Mr Corrigan was aware of this fact, the C77s provided from 1989 did not reflect this fact at all.

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<sup>38</sup> Day 107, Page 21, Line 7 - 8.

<sup>39</sup> Day 107, Page 22, Line 1 - 2.

<sup>40</sup> Day 107, Page 54, Line 24.

- y. The Tribunal put the proposition to Mr Corrigan that the reason he did not warn Mr McAnulty was because he had reported Mr Corrigan as being somebody who was informing for the IRA. This was denied by Mr Corrigan and it is a matter for the Tribunal to determine whether or not there was any link whatsoever.
- z. In relation to the Brendan Duffy firebomb incident, (22-23<sup>rd</sup> August 1989) Mr Corrigan stated that he was out meeting contacts. He alleged his focus was on gathering intelligence in relation to the "holocaust" that was occurring around Dundalk. He did not provide an explanation to his superiors as to where he was despite the disciplinary proceedings. He alleged that no person was engaged in more activities of a dangerous nature than him. When pressed for the reason why he did not inform his superiors even days after the incident, he stated he could not recall the incident and the Chairman asked even within days you couldn't? And the answer was yes. His evidence then changed that he could not answer the question and would not put it any further. He was pressed upon this however, did not move from his evidence.<sup>41</sup>
- aa. Mr Corrigan gave evidence of a conspiracy against him. This arose from the Weston Park discussions. In the aftermath of the Anglo Irish Agreement, the British Army took note of the situation and as they were professionals at it, decided to take action by way of entering the art of the dirty tricks department for which they are noted. He alleged that the British Army saw themselves "in a hole" and the decided they would take action to divert allegations of collusion. They allegedly employed Mr Fulton employed Mr Fulton to apply to Judge Corry informing the Judge of a long list of complaints alleging allegations about Mr Corrigan. Mr Corrigan identified Mr Fulton, Mr Donaldson and Mr Fraser as being involved. Alleged the naming of Mr Corrigan was incitement to murder.
- bb. He confirmed on Day 109, Page 8, Line 27 that his evidence was that the British Authorities orchestrated Mr Fulton's appearance before Judge Corry. He confirmed he had no evidence to support this assertion. The tribunal may consider how Mr. Corrigan refutes allegations against him questioning whether or

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<sup>41</sup> Day 108, Page 66 Line 1-2.

not there is evidence, yet makes a surprising assertion without evidence and expects it to be accepted.

- cc. Mr Corrigan also stated that the contents of the SB50 were no different than what other members of the IRA said about Mr Corrigan. He then alleged that there were other rumours going around that he was linked to the IRA.
- dd. Dan Prenty gave evidence on Day 112 stating that he never received any information that Mr McAnulty's either life or liberty were under threat for some time prior to his death from the PIRA.
- ee. He also dismissed the contents of the C77 dated 27<sup>th</sup> July as containing any new information. In relation to the C77s from 1989 and their sequencing, Mr Prenty had never come across a situation where C77s were back dated.
- ff. He also gave evidence that he would be greatly surprised that Detective Sgt Corrigan gave evidence that he did not know who Patsy O'Callaghan was. Mr Prenty agreed that Mr O'Callaghan was a main player in PIRA during this period of time. He stated that Patsy O'Callaghan, to the best of his knowledge belief and memory would have been fingerprinted and photographed in Dundalk and there would be a special file on him in Dundalk. He also agreed that it was without doubt that a Detective Sgt in Dundalk would know who Patsy O'Callaghan was.
- gg. Mr Corrigan stated that the most insignificant part of the report can be, in time, an equally important part in view of what comes in from another country, from another source or whatever.<sup>42</sup>
- hh. He also agreed that one way to clean intelligence would be in the immediate aftermath of an atrocity.
- ii. When he was asked if he assisted the new regime in relation to identifying where subversives lived etc, he replied he answers the questions that the was asked and he then said he was asked no questions. He also did not volunteer.<sup>43</sup>
- jj. He further did not assist the new regime by transferring contacts or sources over to the new Detectives. These were the best sources gleaned over 13 years.

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<sup>42</sup> Day 113, Page, 3, Line 1.

<sup>43</sup> Day 113, Page 18, Line 1.

- kk. One Day 113, Page 43, Line 9 onwards, Mr Corrigan stated that he passed bits and pieces of intelligence to colleagues in the AGS. He stated he met up with him and discussed various things. This continued up to the time of retirement. He also agreed it would have been very difficult to walk away from the system with the people he knew. He also agreed that he would have been able to say that anything he has learned information from his sources. He then stated that there would be exchanges of information that you could go back possibly to your source, and glean more information. His colleagues for example would ask for clarification of a point or whether or not there was a connection between different people.
- ll. He stated that he would be filling in the dots of the eyes if they asked him in particular circumstances. <sup>44</sup>
- mm. Agreed that in order to dot an "i" or cross a "t" he needed to know that background. He stated that this did not continue after he retired in 1992. This is contrary to the assertions by his counsel that he had no contact with AGS from the time he was on sick leave and subsequently retired.
- nn. Furthermore, in relation to witness 27's evidence when Mr Corrigan allegedly saved his life, the Tribunal will no doubt take into consideration account Mr Corrigan did not take any action to track the vehicles that he had recognised or track down the owners. He did not even file a report. Even though no notes regarding the registration of the vehicles. The only evidence that there was any risk to this officer came from Mr Corrigan.
- oo. Following the threats against Mr McAnulty coming to fruition, he did not put the information into the system that there were threats against other individuals in case they were kidnapped and murdered. Question 362, Day 113, Page 61 After his body was found in a ditch, Mr Corrigan, did you input into the system the threats against any other individuals? Answer, I didn't, no. When it was put that (Question 364) people were at risk, and he ignored that risk, he replied, " Sure that's what happened, it happened, Mr Robinson."
- pp. The Tribunal may also wish to consider the fact that when news came in of the murders around 4.00 pm on 20<sup>th</sup> March 1989,

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<sup>44</sup> Day 113, Page 45, Line 6.

despite Mr Corrigan's evidence of his skill, he just walked home.<sup>45</sup>

- qq. Mr Corrigan also gave evidence that there were rumours similar to the contents of the SB50 in and around early to mid 1980's whilst he was acting against PIRA. He stated that the rumours were designed to damage his reputation. It is a matter for the Tribunal as to whether or not his superior officers were aware of these rumours or ought to have been aware of these rumours in the context of chasing the rumours down or indeed securing the assurances of Mr Corrigan that the rumours were without substance.
- rr. Mr Corrigan accepted that the operation required a need for local knowledge around Dundalk, the roads to take, knowledge of the Gardaí, Detective Gardaí, knowledge of the uniformed Gardaí. In case they were out and about and spotted the operation. The operation could not have survived but for that on the ground knowledge about how Dundalk operated. Local knowledge was required of the local Gardaí, their vehicles, what roads they would patrol, their private cars, unmarked cars etc. He agreed that the operation would have involved rehearsals. Monitoring the movements of the An Garda Síochána; knowledge of the vehicles. He agreed that the estimates were between 20 and 70 people involved in the operation but he did state it would be no less than 20 - 30.
- ss. Mr Corrigan also gave evidence that the PIRA operation was ready to go in January and accepted that meant timings, patterns had all been worked out and people absenting themselves from work had been worked out.<sup>46</sup>
- tt. Mr Corrigan gave evidence that the Loughgall incident initiated an investigation into possible leaks and this is why Chief Supt. Breen was targeted. They wished to obtain their notebooks and interrogate them.
- uu. The Tribunal may wish to consider Mr Corrigan's evidence in relation to the organisation and planning of the ambush. Mr Corrigan denied that the operation had anything to do with Dundalk; however, he stated that PIRA knew every Detective in the Station. It is for the Tribunal to decide whether or not the

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<sup>45</sup> Day 113, Page 65, Line 13.

<sup>46</sup> Day 114, Page 38, Line 26 - 29.

nature and extent of the operation required local Dundalk knowledge so that AGS uniformed and Detective branches did not interfere with the operation.

- vv. Mr Corrigan stated that he made contact with his “usual men” afterwards but not before the incident. He claimed he was entitled to walk home despite the fact that one of the ways to obtain intelligence was in the aftermath of an attack when the shock and outrage is utilised and people talk.<sup>47</sup>
- ww. Mr Corrigan, in the full knowledge that immediately after this operation PIRA had to disperse, return to the places of work, move weapons and all of the logistics of dismantling the operation walked home and did not assist or volunteer. This also frustrated the potential intelligence that could have been gleaned from the movement of persons, the absence of persons from their work place, from their homes, all the small pieces of information that could have built up a picture of how this operation took place.
- xx. He also gave evidence that he did not offer any assistance given his skill level and his evidence that the remaining four Detective Units were inexperienced and described as “a farce” by Mr Corrigan.
- yy. The Tribunal may wish to consider that the C77s produced prior to the ambush did not disclose any details regarding the planning of the ambush. Despite the evidence that this was a massive operation. Mr Corrigan’s C77s produced post incident, did not relate in any way to the planning of the operation. In fact they simply repeated what was common knowledge, for example the removal of notebook and also the particular unit of the IRA suspected of the murders.
- zz. Mr Corrigan also gave evidence that the Tribunal may view as detailed<sup>48</sup>; however, Mr Corrigan labeled it as gossip. He accepted that this had not been fed into the C77 system even with a qualification that it had been gossip. He rebutted?? This failure as a combination of absentmindedness and decision. He

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<sup>47</sup> Day 114, Page 45, Line 21.

<sup>48</sup> Day 114, Page 54, Line 4 - 13.

accepted that the information ought to have been included in a C77.<sup>49</sup>

aaa.Mr Corrigan gave evidence on Day 105, Page 15, Line 13 stating “they have been monitoring them for a period of two months, and in actual fact the information tells me on the day that they were murdered they had operation contact four weeks previously the two same men traveled down the same road at 3.00 pm in the afternoon.

bbb.Mr Corrigan considered this as “good intelligence”, furthermore, the operation had been set up and they missed it by four or five minutes and that on one of the occasions going into Dundalk Station, walking behind the two men was the leader of the IRA in South Armagh going in to produce documents. When challenged about his failure to produce this information and waiting from 1989 to 2012. His response was he could not provide any particular reason why he failed to provide the information. He stated that it did not come to mind to do anything about it.<sup>50</sup> The witness could not provide any particular reason why he failed to present this information. To the investigation team. He accepted that the information could have been cross referenced against other information. i.e., it was a potential lead.

ccc.The Tribunal may also wish to consider the evidence given by Mr Corrigan under cross examination by Counsel for Mr Fulton:

ddd. The evidence that he had never actually met Mooch Blair. This is despite Mr Blair being an officer commanding South Down IRA; was a key bomb maker for the IRA and lived in Dundalk.

eee.In relation to Mickey Collins, he had never met this individual but does know what he looks like.

fff. Mr Corrigan stated he did not know Patsy O’Callaghan at all.

ggg.He also stated that he only knew Slab Murphy to see. But has never met him.

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<sup>49</sup> Day 114, Page 56, Line 7.

<sup>50</sup> Day 114, Page 60, Line 6.

hhh.Mr Corrigan agreed that there must have been a leak that these two Officers were coming to Dundalk <sup>51</sup> but denied it was from AGS. Mr Corrigan gave evidence that the term “leak” was “passing information”. Mr Corrigan did not accept the Tribunal’s suggested interpretation of the term leak being “a leak assumes information going from one person who is not entitled to pass it to a person who is not entitled to receive it. Mr Corrigan rejected this.<sup>52</sup> His interpretation was passing from one unit to the other.

### **17. Re: Narrow Water**

1. The tribunal heard from a number of retired RUC officers and Dr. Hall, the forensics expert. W69, a Detective Sgt in the Crime Squad. His Detective Inspector was Witness 68, W68. On the 27<sup>th</sup> August 1979 he attended the scene at the Narrow Water bombing. He described the horrific scene as requiring an Army helicopter to blow the body parts out of the trees for collection.
2. W 69 was the Exhibits Officer. Witness 8 was liaising with the Chief Supt. He believed through witness 8 that there was a possibility of a reasonable forensic case against two individual suspects that were arrested on a motorcycle not far from the detonation point.
3. Dr. Hall, is recorded on the log as complaining that the AGS were obstructive. He was told that the site would be preserved and that no AGS forensic examination was going to take place. Upon his return, he found that the area had been “obliterated”. Owen Corrigan denied being at the scene, but was later placed there by Sgt. Mullany.
4. Should the tribunal consider the Narrow water evidence relevant, it is a matter for the tribunal as to whether there was obstruction or indeed misinformation provided to Dr. Hall at the scene. It is further a matter for the tribunal to decide, whether or not Owen Corrigan was at the scene, in charge of the scene and whether or not this assists in addressing the terms of reference.

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<sup>51</sup> Day 131, Page 14, Line 27.

<sup>52</sup> Day 131, Page 18, Line 20.

## **18. Intelligence**

1. The tribunal has had placed before it intelligence documents and précis from both AGS and RUC relating to the incident and other murders in that area. It is not intended to repeat that intelligence in the submissions. The tribunal is best placed to consider it set against the evidence it has already heard.
2. Re: SB50 1985, HMG27 is a document dated 15<sup>th</sup> September 2000. It is entitled "Subject: Allegations of Gardaí/PIRA Collusion". With regard to the queries, no evidence exists nor can any documentation be located which evidences Garda collusion with subversives. The Officer that compiled this report has died and the Tribunal is left in the position whereby the communication from the RUC to AGS did not refer to the 1985 SB50.
3. A number of witnesses have given evidence to the Tribunal that matters of such sensitivity may have been passed verbally rather than in writing. This would then explain why indeed there is no documentary paper trail illustrating that the separate pieces of intelligence were conveyed across the border in either direction.
4. The Tribunal, as indicated earlier, is without the evidence of significant witnesses who have since passed away or who have decided not to give evidence.
5. It is respectfully submitted that the Tribunal has a number of options in this regard;
  - a. The Tribunal may consider that the information was exchanged verbally. However there do not appear to have been any investigations in reaction to the exchange of such information.
  - b. The Tribunal may find that the intelligence was not passed over the border from either police force. This may have been for a number of reasons, e.g. it was highly sensitive nature of the information or it was not considered strong enough to convey across the border;
  - c. Inadvertence. However, the Tribunal may consider that this is unlikely given the significance of the information contained therein.
  - d. The tribunal may find that there is insufficient evidence to make a finding in this regard.

15. Caution must always be exercised when considering intelligence documentation. Its provenance and how it has been assessed is key to attaching weight, if any to it.
16. **1985 SB50:** In relation to the SB50 from 1985, the tribunal heard from Witness Z, Q and X. The tribunal may wish to consider the contrasting evidence between the officers. The PSNI neither confirm nor deny that the individual named was the source of the information for the SB50.

### **19. Recent Intelligence**

1. ACC Harris of the PSNI, Head of Crime and Operations, gave evidence on Day 120 and Day 121 and was read into the record on 124.
2. He gave evidence that he was responsible to the Chief Constable for all matters of intelligence and all matters in respect of homicide investigation. He has major responsibilities in respect of what are known as Legacy matters and he works closely with the Historical Enquiry Team investigating 3,260 deaths. He is also responsible for the non terrorist murders since the troubles totaling 747 murders. He is responsible for all covert operations relating to national security and crime. He gave evidence that it was the responsibility of the PSNI to protect the public from serious harm and to do that intelligence was required. Conventional methods of policing are insufficient because of lack of information.
3. The striking feature of this evidence was that it was live intelligence, intelligence of the moment.<sup>53</sup>
4. The PSNI worked through the intelligence bearing in mind the responsibilities in terms of protecting sources and methodology. It also protected police officers who are acting in covert operations.
5. The intelligence was subject to further analysis in terms of what the source might have been, what are the secondary sources behind the intelligence; what they are; how valid their opinion is or comment; and what was the actual overall reliability of the intelligence; is this just idle gossip, circular reporting, something we feel we would have doubts about? The PSNI ACC gave evidence that the intelligence had been

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<sup>53</sup> Day 124, Page 12, Line 25.

through a process in respect of these issues and could stand over the intelligence as being accurate and reliable.<sup>54</sup>

- a. The intelligence was subject to further work to determine its accuracy and reliability. Furthermore, if there was an element of judgment based on experience and hindsight in terms of previous reporting.
  - b. ACC Harris stated that the intelligence stood alone.
  - c. The PSNI has gone to considerable pains to get to a position of being able to share it whilst meeting all of its very heavy responsibilities in respect of the management of it.<sup>55</sup>
  - d. The PSNI were careful to avoid circular reporting in terms of how matters are expressed and going back into the raw material to make sure that we are not getting an echo from, be it media reporting or other conversation in respect of the Tribunal so that test has been applied.
  - e. PSNI witness gave evidence that he was very conscious that the PSNI did not wish to bring material which was, in effect, will-o'-the-wisp or is misleading or that was accompanied by significant doubts.
6. Day 127 Detective Chief Supt Peter Kirwan gave evidence challenging the precise of intelligence from the PSNI.
  7. ACC Harris was cross examined on the précis of intelligence and how they contradicted other pieces of intelligence. ACC Harris maintained his view that the documents provided were accurate and reliable despite the evidence that had previously been given and the previous intelligence. This demonstrates the level of competence in the intelligence placed by ACC Harris.
  8. Detective Chief Supt Peter Kirwan gave evidence on Day 127 and 128 criticising the intelligence precise submitted by PSNI. Arising from this evidence on the following points:
    - a. It was accepted by the witness that ACC Harris was a professional officer of the highest standard with whom he has

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<sup>54</sup> Day 124, Page 20, Line 10.

<sup>55</sup> Day 124, Page 24, Line 1.

interacted with on a number of operations. He was a man of complete integrity with a demanding port folio.

- b. Evidence was given of the expertise and intelligence field exhibited by ACC Harris. There is no dispute that ACC Harris was striving to assist the Tribunal.
- c. The tribunal may wish to consider the assessment performed by AGS.
- d. The Tribunal, when considering this evidence is invited to weigh up on one side the evidence from Mr Kirwan who is only assessing précis and that of ACC Harris who had access to the wrong material, reviewed it, and has given sworn evidence that it was assessed through the proper procedures as accurate and reliable.

**PIRA Note:**

- 6. On Day 125 a final approved note from PIRA was read into the record.
  - e. The note attributed the operation to lengthy and detailed surveillance and was without any input from the Gardaí or any other outside source or agency.
  - f. It was vague in relation to the dates and intensity of the surveillance operation.
  - g. The details regarding number 12 The Crescent, Dundalk were extensive.
  - h. The assertion that number 12, The Crescent was used during the summer and winter of 88 to 89 may appear excessive given the pattern and duration of visits. Whilst the description of the property is detailed this could have been a matter of knowledge that the IRA volunteer but not necessarily that it was used as a surveillance place. Additionally, one would expect that on the day of the operation, PIRA used such a vantage point. A further point the Tribunal may wish to consider is given the pattern and frequency of visits and the risk averse nature of PIRA, is it more likely than not that they would have someone attend this derelict property for an extended period of time running the risk of being observed and detected.

- i. There are references to the intensification of surveillance and elaborate communications systems however, no detail has been provided.
- j. The tribunal may view the routes set out by the PIRA note are obvious routes.
- k. No further dates are provided regarding previous rehearsals of the ambush.
- l. The plan to have the ambush in place for 7 days with the review after 3 does not sit with the evidence regarding the risk averse nature of PIRA and the number of personnel required to be on the ground for such a period of time.
- m. In April 2011 note the former volunteers stated that they were not going to compromise former comrades and locations. This is akin to Mooch Blair's evidence where he also indicated that he would not compromise another volunteer.
- n. The former volunteer produced a picture of Harry Breen re: Loughgall and stated that his face was etched on every Republican's mind. However, at question 16 on the April 2011 note the volunteers stated that the car was the target and Harry Breen was a bonus. However, the Tribunal may wish to consider whether or not this was an attempt to distance the idea of a Gardaí mole. If the volunteers had accepted that Mr Breen was the target, the infrequency with which he traveled across the border would have directly contradicted the idea that surveillance was used to target Mr Breen. In relation to the previous references to times of years and with whom Mr Buchanan was traveling, it must also be kept in mind that diaries were taken from the vehicle and it could simply have been checked and details repeated for the benefit of the Tribunal.
- o. The former volunteer(s) stated that Chief Supt Breen was shot in the vehicle. However, this was not supported by the evidence of the locus of the body.
- p. The volunteer(s) at answer 69, A69 also stated that they had a duty of care to former comrades. They would not endanger any former comrade.
- q. The volunteers also stated that Owen Corrigan was hostile to the IRA which is a matter for the Tribunal. Additionally, of note

is that PIRA, despite being in significant numbers in Dundalk and having a very active intelligence unit, had never heard of Garda Colton.

- r. In answers in response to the document dated 8<sup>th</sup> November 2012 the volunteers indicated that the radio activity was after Harry Breen and Bob Buchanan arrived at Dundalk Station. However, it is for the Tribunal to decide, on the evidence, whether or not this is correct. The assertion that radio activity could not occur prior to an operation actually going live, is somewhat contradicted in that the first radio activity was after Breen and Buchanan arrived at Dundalk Gardaí Station.
- s. It is for the Tribunal to decide whether or not the PIRA note firstly can be accepted as "evidence". It must be kept in mind that no former volunteer provided any sworn evidence to the Tribunal despite for example the facility of video link being provided. The evidence was further not subjected to any testing or cross examination. One may wish to be wary of motivation for such level of engagement and the nature and extent of the statement. As referred to earlier, if there had been any concession that there was a Gardaí mole, this would undoubtedly triggered a fresh investigation which could potentially lead to prosecutions.

### Conclusion

1. Breen and Buchanan put their lives on the line to keep the channels of cross border policing and cooperation alive. The meetings were necessary in working conditions unrecognizable today for the vast majority of citizens.
2. The stages of the work of a tribunal was analysed by Hamilton C.J. in **Haughey v. Moriarty** [1999] 3 I.R. 1 ; A tribunal of inquiry of this nature involves the following stages:
  1. a preliminary investigation of the evidence available;
  2. the determination by the tribunal of what is considers to be evidence relevant to the matters into which it is obliged to inquire;
  3. the service of such evidence on persons likely to be affected thereby;
  4. the public hearing of witnesses in regard to such evidence, and the cross-examination of such witnesses by or on behalf of persons affected thereby;
  5. the preparation of a report and the making of recommendations based on the facts established at such public hearing."
3. We are now at the end of stage 4 and no doubt great progress has been made in relation to stage 5.

4. The tribunal has had:
  - a. the benefit of the years of private investigation.
  - b. the benefit of examining all of the unredacted documentation.
  - c. The tribunal is the only body that has a fully informed perspective to decide finally, to determine publicly whether the suggestions of collusion are in fact sustainable or disappear into the wind.
  
5. If the PSNI can assist the Tribunal further, it will assist forthwith.

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