

A P P E A R A N C E S

The Sole Member:

His Honour Judge Peter Smithwick

For the Tribunal:

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Mr. Justin Dillon, SC
Mr. Dara Hayes, BL
Mr. Fintan Valentine, BL

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NOTICE:

A WORD INDEX IS PROVIDED AT THE BACK OF THIS TRANSCRIPT.
THIS IS A USEFUL INDEXING SYSTEM, WHICH ALLOWS YOU TO QUICKLY SEE
THE WORDS USED IN THE TRANSCRIPT, WHERE THEY OCCUR AND HOW OFTEN.

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THE WORD "DOYLE" OCCURS TWICE
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1 THE TRIBUNAL RESUMED ON THE 27TH OF SEPTEMBER, 2011,
2 AT 11 A.M. AS FOLLOWS:

3
4 CHAIRMAN: Good morning.

5
6 MR. DILLON: Morning, Chairman. We have a number of
7 witnesses to hear today, but in advance of that, there is
8 an issue which I understand may be raised by two parties
9 here, and time has been set aside, an hour has been set
10 aside to deal with that matter. It might be as well if the
11 parties concerned, who are the representatives of
12 Mr. Hickey and of Mr. Colton, might explain their position
13 to you.

14
15 CHAIRMAN: Yes. Mr. MacGuill, do you wish to?

16
17 MR. MacGUILL: Certainly, Chairman. The first point was
18 indicated in the correspondence to the Tribunal, is that
19 there is a sequencing issue now to be addressed. When you
20 opened -- made your opening statement and identified the
21 terms of reference, you indicated that you weren't going to
22 elaborate greatly on the terms, other than to say that you
23 would examine collusion in its broadest possible sense.
24 And in that regard, it may be necessary, I think, for
25 today's exercise, that you would, at this stage, be more
26 specific in relation to the terms of reference, because we
27 are not, in fact, in a position to know what evidence is
28 intended to be led concerning our client for the remainder
29 of the work of the Tribunal. We have not been given a
30 complete witness list, much less the statements of proposed

1 evidence in respect of all the witnesses that are due to be
2 heard. We are still in a position where we are receiving
3 statements literally on the eve of each witness's evidence,
4 and however that might be, that might be adequate to deal
5 with that witness, but it doesn't put that witness in an
6 overall context in relation to the work of the Tribunal.
7 That is an unsatisfactory position and it is unsatisfactory
8 that we are asked to make arguments *in vacuo* in relation to
9 the issue of relevance, when the Tribunal itself has not
10 indicated how it contends, for instance, this passport
11 issue to become relevant. I'll put that in more specific
12 context as follows: The terms of reference, on our reading
13 of them, deal with the events of the 20th of March, 1989.
14 And you've indicated in your brief analysis of your view of
15 the terms of reference that it deals with acts of
16 commission and omission but on that date.

17
18 CHAIRMAN: Yes.

19
20 MR. MacGUILL: Now, centrally relevant to the work of the
21 Tribunal is that Finbarr Hickey was not on duty in Dundalk
22 Garda Station.

23
24 CHAIRMAN: Well, now, may I interrupt you there.

25
26 MR. MacGUILL: I would prefer if you let me finish.

27
28 CHAIRMAN: Well, you say he was not. What evidence is
29 there that he was not?

1 MR. MacGUILL: Well, again, this is the difficulty that you
2 are luring yourself into, Chairman. There is no evidence
3 that he was.

4

5 CHAIRMAN: Yes, but --

6

7 MR. MacGUILL: Sorry, Chairman.

8

9 CHAIRMAN: If you won't let me say what the -- you
10 submitted a statement to the Tribunal yourself, submitting
11 that you must be given representation because your client
12 was there on the day. Your client submitted a signed
13 statement saying he was there on the day. He has not
14 submitted a statement contradicting that and saying the
15 opposite, that he was not there. He has never made a
16 statement to that effect.

17

18 MR. MacGUILL: Chairman, Chairman, you must be fair to
19 Mr. Hickey. The first thing is, Mr. Hickey has always
20 cooperated with the Tribunal. The second thing, when
21 Mr. Hickey was interviewed 17 years after the event by
22 representatives of your Tribunal, you had in your
23 possession a contemporaneous report prepared by Mr. O'Dea,
24 detailing those who were on duty. You were aware, when you
25 interviewed Mr. Hickey, that he was attached to Unit C.
26 Mr. Hickey made a statement that he was on duty between
27 2 p.m. and 10 p.m. on the 20th of March. Unit C was not on
28 duty that day. Unit C were called in after the murders.
29 After the murders, Chairman, Sergeant Hickey came on duty.
30 He was not on duty any time prior to the murders. He did

1 not and could not have had the means of knowledge, he could
2 not and did not commit any act of omission or commission
3 relative to collusion, and your interviewers had all that
4 information at their disposal and didn't take the essential
5 step, in fairness, in saying to Sergeant Hickey, "Just, by
6 the way, we should tell you that the records show Unit C
7 was not on duty. Just, by the way, Commissioner O'Dea made
8 a list of those he needed to interview who were on duty on
9 that day and you were not on it." Other people made
10 mistakes. The Garda that was on maternity leave, believed
11 she was on duty on that day; that is Kathleen Freeman,
12 Chairman. So mistakes were made, but this is the time to
13 correct those mistakes.

14
15 And the first thing is, I am putting it to you fair and
16 square, are Tribunal counsel contending that they are going
17 to illustrate that Finbarr Hickey was on duty on the 20th
18 of March, 1989, at any time prior to these murders? And if
19 you are suggesting that we haven't made a statement to the
20 contrary, we brought this to your attention in July, and
21 the Tribunal undertook at that stage to look for wage
22 records from the Department, which are not forthcoming, the
23 station diary is not forthcoming. But this is an extremely
24 serious matter insofar as Mr. Hickey is concerned because
25 it has been suggested that he is a possible source of
26 information to the Irish Republican Army that led to the
27 assassination of two RUC men, in circumstances where you
28 now know, and must know, that he could not have been the
29 source of that leak, and he should be, since July, excused
30 from further participation in the Tribunal. But if you

1 were not prepared to release him then and you are not
2 prepared to release him now, you must, in fairness to him,
3 ask Tribunal counsel to give us a clear statement of what
4 the evidence is that you are to be given that is believed
5 to be relevant to a suggestion that Sergeant Hickey was in
6 some way in collusion in relation to these murders. We
7 need to be told that. He needs to know the case being made
8 against him, he needs to know the evidence in support of
9 that case and he needs to be given the entitlement to
10 challenge it. They are all fundamental precepts of natural
11 justice that have, thus far, been withheld from him. It is
12 an entirely unfair process that you would say to us now
13 challenge relevance when we don't even know what we are
14 going to be asked to consider and we don't even know how
15 Tribunal counsel contend it to be relevant.

16
17 So I am not saying to you that it is impossible that a link
18 in relevance can be made, even though Judge Cory, in his
19 report, found that there was no such link between the
20 passport issue and the events of 1989, but it is not for us
21 to second-guess the case the Tribunal are seeking to make
22 here. If we don't even know what evidence is to be offered
23 to you, how can we comment on its relevance? But what we
24 can say is, centrally, a development since the beginning of
25 this Tribunal to today is, it is now crystal clear, despite
26 the fact that he didn't recall it 17 years after the
27 event - and why should he? - and he, like others, relied on
28 the Tribunal, who had possession of the documents but
29 didn't make them available to him, it is crystal clear he
30 was not on duty. Not a single person puts him on duty, and

1 others have given evidence to the effect that he wasn't on
2 duty.

3

4 CHAIRMAN: Have you seen copies of the statements involving
5 your client's involvement in the passport matter which led
6 to his conviction and sentence by the Special Criminal
7 Court?

8

9 MR. MacGUILL: Yes.

10

11 CHAIRMAN: Well, surely I should hear that evidence?

12

13 MR. MacGUILL: Only if it is relevant.

14

15 CHAIRMAN: You seem to be confusing relevance and the
16 weight to be attached to evidence that is given.

17

18 MR. MacGUILL: The first thing, Chairman, is, it appears
19 that, whatever else, Finbarr Hickey could not have had any
20 information to the effect that Messrs. Buchanan and Breen
21 were coming to, had arrived in or were leaving Dundalk
22 Garda Station. He simply could not have had that
23 information. And they are your terms of reference. Your
24 terms of reference do not extend to an inquiry in relation
25 to other accepted wrongdoings and in an entirely different
26 case many years after the event, and he pleaded guilty and
27 served a sentence. They have nothing to do with your terms
28 of reference, and you should call on your own counsel to
29 demonstrate how they believe events *ex post facto* can be
30 relevant when the primary thing was that Mr. Hickey was not

1 on duty. He could not have been the source of any leak.

2

3 CHAIRMAN: Well, why did you, in your submission that he
4 should be represented, say that he was?

5

6 MR. MacGUILL: Because Sergeant Hickey made a statement to
7 you placing himself on duty when interviewed by members of
8 your team, who had access since 1996 -- or, rather, 2006,
9 to the O'Dea report. We didn't know about that, we were
10 not provided with it prior to making the statement. As
11 soon as we were provided with it, we took instructions and
12 we brought to your attention that a serious injustice had
13 now arisen because this man had placed himself somewhere he
14 simply wasn't at a time when your Tribunal had all the
15 information demonstrating he was not there. I mean, it is
16 entirely unfair that he was not given material to refresh
17 his memory when that was in possession of the interviewers.
18 It was unfortunate, but it must now be corrected, that your
19 interviewers took at face value something that they ought
20 to have realised was not so; namely, Unit C were not on
21 duty and Finbarr Hickey was not on duty with his unit. Had
22 that been made clear at the beginning, as it could have
23 been as soon as the O'Dea report was analysed, he wouldn't
24 have been part of this Tribunal, he wouldn't be named in
25 every news report as a person who is under investigation in
26 respect of these murders. The fact that he was convicted
27 of a different offence many years later, does not mean that
28 he was a person who was capable of colluding on this
29 occasion. He did not have the means of knowledge. You
30 haven't indicated that there is any evidence that he had.

1

2

CHAIRMAN: What was he convicted of?

3

4

MR. MacGUILL: Offences under the Forgery Act and the
Larceny Acts.

6

7

CHAIRMAN: Yes. Why was he sentenced to a year's
imprisonment?

9

10

MR. MacGUILL: Because he committed criminal offences,

11

which were a serious breach of trust of a member of An

12

Garda Síochána. He served his sentence and did not appeal

13

it on severity grounds. It was an entirely appropriate

14

sentence. It was a grave breach of trust and a grave

15

breach of discipline, that was always accepted, but it has

16

nothing to do with your terms of reference. I mean, it is

17

a serious step to attempt to say that a conviction for an

18

unrelated offence, years later, justifies you in inquiring

19

as to whether a man who is plainly not capable of being the

20

source of any leak, if there was a leak, and the evidence

21

is all pointing to suggest that that is the least likely

22

cause of this assassination, but it is entirely unfair,

23

without even calling on your counsel to say why it is

24

relevant, without even calling on your counsel to accept or

25

deny that there is no evidence to place Mr. Hickey on duty

26

that day; that you would simply turn it over to us to say

27

we want you now to prove the negative and to argue *in*

28

vacuo. I mean, where is the evidence that Sergeant Hickey

29

could have been, no matter what else might exist against

30

him, could have been in any way responsible for this leak?

1 There is none.

2

3 CHAIRMAN: You are saying that I shouldn't even hear it?

4

5 MR. MacGUILL: Absolutely not.

6

7 CHAIRMAN: Very well. Thank you very much, Mr. MacGuill.

8 I will hear now from Mr. Callan. Thank you, Mr. Callan.

9

10 MR. CALLAN: Mr. Chairman, I mean, I will, of course,
11 support Mr. MacGuill in, though it is not my case, but in
12 general regard to the propositions which he is making. I
13 would suggest and submit, Mr. Chairman, that one has to get
14 back to basics here, and the first basic here in this case
15 is that the Tribunal was set up to deal with suggestions
16 that members of the Gardaí, or other employees of State,
17 colluded in the fatal shooting of Chief Superintendent
18 Breen and Superintendent Buchanan on the 20th of March,
19 1989. Now, that, of course, is a very critical date, and
20 in regard to what I am going to deal with primarily is the
21 passport issues. The passport issues are much subsequent
22 to that. There are three passports here out of eight,
23 which it is suggested -- alleged that we took part in the
24 processing and the obtaining of them. There are three out
25 of eight which, apparently, are alleged to be linked to
26 alleged IRA personnel. One is Fox - I think he already has
27 a conviction - issued on the 10th of February, 1995; the
28 second one is Damien Michael Stanley, issued on the 6th of
29 April, 1995; and the third one is Paul Hughes. I must
30 correct myself there, that Mr. Fox has, in fact, has been

1 acquitted. He was charged but acquitted. So I correct
2 myself there. And the third one, Paul Anthony Hughes, on
3 the 15th of March, 1995.

4
5 Now, those events on the date of the issue of the
6 passports, are six years after the event, and even if one
7 looks, even if one looks at the situation that Mr. Hickey
8 processed passports a year earlier in regard to, other than
9 the eight people, apparently he processed up to 42 or 43
10 passports, the earliest of those, and there is no
11 allegation that they got -- they reached any Provisional
12 IRA personnel -- the earliest of those would be -- was the
13 end of 1993. So these matters are -- very significantly
14 dated, post-date the murders. So the question now arises:
15 Is there any basis at this point in the Tribunal, or
16 evidence, that would justify the Tribunal opening up
17 allegations of events that took place, these eight
18 applications that took place between January 1995 and April
19 1996, is there any basis for that?

20
21 Now, what I would urge in regard to this matter is that
22 this should be -- this should be approached with these
23 facts in mind, that, as I have said, this postdated the
24 matter by five or six years, six years. It occurred at a
25 time when Leo Colton was already retired from May 1991.
26 Number three: It is strenuously retired by retired
27 Sergeant Colton. Four: It has thoroughly been
28 investigated by the Gardaí at the highest level, and by the
29 DPP, and there has been no charge. The next one is that
30 there is evidence of an alleged -- alleged Finbarr Hickey

1 here has, as Mr. MacGuill has said, has been convicted of
2 some matters in relation to it, but that's nothing got to
3 do with -- that's nothing got to do with my client. And
4 Mr. Hickey himself, there is material to suggest that he
5 had, if I might euphemistically describe it as a health
6 problem, also, at that point in time.

7
8 And finally, in regard to that, Sergeant Colton has been
9 discharged with an excellent record from the Gardai when he
10 retired in May 1991. Now, we are talking about a period
11 for four years after that and six years after the events.
12 Now, there is -- further, I can say there is no evidence,
13 there is no evidence or allegation of any prior -- of prior
14 events prior to March 1989 that would -- that would add any
15 weight to this matter, and I would go so far as to say that
16 there is not, even, in anything that has come to date or
17 that we have heard, there is not even a speculative
18 possibility, alleged or established, that would lead any
19 credence to the suggestion that there was collusion. And
20 on that, also, it is true to say that the Tribunal has, as
21 they have said themselves, been quite properly searching
22 for anything during all of that time, and nothing further,
23 nothing further has come forward.

24
25 So, in those circumstances, I suggest that nothing at all
26 has moved on from the first day of the Tribunal. And in a
27 sense, the considerations that you, Mr. Chairman, should
28 apply to this, are the ones that you quite properly applied
29 to the matter of the tennis club offences; that there is no
30 evidence on there, that it is unlikely that the -- the

1 principles of this -- it is unlikely that any evidence is
2 going to be produced. So, therefore, this is a situation
3 when this matter should not be embarked on or pursued on
4 the state of the evidence.

5
6 Now, if I could refer you as an additional basis to what
7 Mr. Cory said in his report at paragraphs 260, 261, and 263
8 of his report. At paragraph 260, he sets out the double
9 test as to whether there are indications of State collusion
10 in the murder of Chief Superintendent Breen and
11 Superintendent Buchanan, *"It is important to look at the*
12 *issue from two perspectives. First, it must be seen*
13 *whether the documents indicate that the action or inaction*
14 *of Government agencies might have directly contributed to*
15 *the murders. Secondly, it is necessary to examine*
16 *collusive acts which may have indirectly contributed to the*
17 *killing by generally facilitating the terrorist*
18 *activities."*

19
20 Well, there is no evidence of any contemporaneous
21 documentation or of any documentation subsequent to that.
22 And we do know that Mr. Cory would have had the benefit of
23 Superintendent Camon's investigation, which led -- which
24 concerned the passport, the passport issues. And he didn't
25 place any emphasis on that.

26
27 *"In this case, at paragraph 261, the primary issue to be*
28 *resolved is this: Has there been any evidence disclosed of*
29 *acts of collusion, as I have defined it, by Garda officers*
30 *or employees?"*

1
2 And he then goes on to review and consider the evidence
3 available to either support or negate the allegations, and
4 he didn't find any evidence. But if I might refer you then
5 to paragraph 285 and 286, that is page 25 of the same
6 report. He says: *"The name Colton has recently been*
7 *mentioned in the context of passports being given to the*
8 *IRA. Looking at it in hindsight, he must also now be a*
9 *suspect. When Harnden was asked if he discovered any new*
10 *information since he wrote the book, he answered 'Not*
11 *really in terms of specific detail. The two names have*
12 *been generally thrown around, Corrigan and Colton, but*
13 *nothing specific'."*

14
15 Then, at 285: *"The Garda report indicates that the*
16 *additional allegations in the second edition seem to be*
17 *based on the discovery of Colton's alleged involvement in*
18 *the passport scandal and more expansive theories expounded*
19 *by Myers in his article, but, as I have indicated,*
20 *Superintendent Camon's report in, I think it was, in April*
21 *2000, 'He was directly involved in the passport issue and*
22 *he found no collusion'."*

23
24 And then Mr. Cory continues: *"At that stage, I should*
25 *observe that the... now refers to events which took place*
26 *in 1993, some time after the murders of Gibson and Breen*
27 *and Buchanan. It is not relevant to those murders except*
28 *in a peripheral manner by indicating that some Garda*
29 *officers appeared to be prepared to assist members of the*
30 *IRA to obtain passports illegally."*

1
2 Now, I also refer to paragraph 2.120 on page 31:

3 *"I find that I cannot base any evidence of collusion or*
4 *possible collusion on the contents of either*
5 *Harnden's book, 'Bandit Country', or Myers' article in An*
6 *Irishman's Diary."*

7
8 So, here we are faced with the situation as to whether one
9 could say otherwise than in a matter different than
10 speculation, entire speculation, whether one could say that
11 a matter of passports, which is subject to all the
12 infirmities which I have outlined, in 1995 could have any
13 relationship back to events in 1989. I suggest that there
14 is nothing, there is nothing there but pure speculation.
15 There is nothing there, nothing has been produced, and that
16 you are in a situation, Mr. Chairman, that I would strongly
17 submit, emphatically submit, that you should not embark on
18 this on the present state -- on the state of the evidence
19 here, you shouldn't embark on the passport issue, because
20 there is nothing there. There is no linkage, there is no
21 possible linkage between the passports going back to 1989.
22 There is no suggestion, for example, that the three IRA men
23 that are alleged to have got the three passports, that any
24 of them were there in 1989, or previously, or took any part
25 in the Buchanan and Breen murder.

26
27 So that I submit that there is -- really, you just don't go
28 forward on that in relation to my client. And my client,
29 of course, is somewhat in a different position, a separate
30 position than Mr. Hickey. I have given the reasons for

1 that. And I would strongly urge you, Mr. Chairman, to
2 leave the matter as it is, let it stand and not proceed in
3 any way with this matter now.

4
5 CHAIRMAN: Thank you, Mr. Callan. Mr. Dillon?

6
7 MR. DILLON: Chairman, let me begin, first of all, by
8 opening to you a passage, a very short passage from the
9 matter of *O'Brien v. Moriarty*, which is in [2005] Volume 2
10 of the Irish Law Reports Monthly. It is a statement of the
11 law which governs your situation today, and it is to be
12 found in umpteen decisions in relation to tribunals, but I
13 choose this one as it has come to hand.

14
15 *"The interpretation of the terms of reference is a function*
16 *of a tribunal and not for the courts, and, furthermore, it*
17 *is entirely a matter for the tribunal to decide when and*
18 *whether to conduct private investigations or to proceed to*
19 *public hearings."*

20
21 So it is a matter for you, Chairman, whether you wish to
22 hear this evidence or not. You have directed this evidence
23 should be heard.

24
25 Now, submissions have been made on behalf of Mr. Hickey and
26 Mr. Colton that you should not embark upon this portion of
27 the evidence on the grounds that it is not relevant. Now,
28 with all due respect to the submissions that have been
29 made, no conclusive argument -- firstly, I should say, no
30 conclusive argument has been put forward that there is

1 absolutely no relevance attaching to this evidence tying it
2 back to the murders which occurred in 1989.

3

4 Now, I think that the first point of departure is this:
5 Who was in the station in 1989? We know that Mr. Colton
6 was in the station in 1989, we know he was on the steps
7 around about the time the two officers arrived. Now, we
8 were told by Mr. Hickey, and we have been told by him
9 several times, that he was in the station on the 20th of
10 March, 1989. He told us he was there between 2 p.m. and
11 10 p.m. Now, it is urged upon you that this simply cannot
12 be right. That is what he said to us. He is a responsible
13 adult, he knew perfectly well what he was saying. It is
14 not appropriate, in my submission, for you to set aside
15 Mr. Hickey's statement to the Tribunal on a simple
16 submission without evidence to the contrary. You need
17 evidence to the contrary before you set that aside. That
18 evidence, no doubt, will be provided, if that be the case,
19 by Mr. Hickey.

20

21 Now, you have pointed out that, throughout, Mr. Hickey has
22 emphasised his attendance in the station on the 20th of
23 March, 1989. You pointed to his application for
24 representation. Indeed, you correctly quoted from that.
25 There is also -- just bear with me a second. He went
26 further in his statement, I would like to point out to you.
27 Not only did he say that he was in the station, he went on
28 to say, and we expect this will be his evidence,
29 *"I recall the fact of the murders occurring. I remember we*
30 *had a concern because our Chief Superintendent wasn't in*

1 *his office. He could not be found and everybody thought he*
2 *might have been with them."*

3

4 Now, this is evidence that has been given by others, it is
5 corroborated by others. It tends to show that, in my
6 submission, that he was correct when he said he was in the
7 station on the 20th of March.

8

9 The matter of his conviction in the Special Criminal Court,
10 he was convicted on four counts relating to forgery. An
11 important point needs to be made here, Chairman, which is
12 this: The Special Criminal Court, being a criminal court,
13 operates on the burden of proof of beyond reasonable doubt.
14 No Tribunal operates on that burden of proof. And while it
15 may well have been said in the Special Criminal Court that
16 Mr. Hickey was not aware of the ultimate designation of
17 these passports, given that you are not bound by the same
18 burden of proof, you are not necessarily bound by that
19 finding. And I want to make this quite clear, that it will
20 only be in the context of cogent evidence that you might
21 see fit to depart from any such conclusion that was reached
22 in the Special Criminal Court. My understanding is that
23 the Special Criminal Court also took into account that the
24 offences occurred over a ten-month period; this wasn't just
25 a once-off. And you also have, and this is important, you
26 have the evidence of a witness who told you, "*I thought in*
27 *my estimation anyway of Finbarr, he seemed to have a sixth*
28 *sense almost in terms of spotting if somebody was just a*
29 *little bit, just not right, we'll say, in stopping a car,*
30 *and he had a great eye, he could remember faces."*

1
2 "He could remember faces" is important evidence which you
3 can take on board in your consideration of Mr. Hickey's
4 involvement. And on reading the transcript, I note that
5 that evidence was not challenged on behalf of Mr. Hickey.
6 You may consider that you are entitled to take the view
7 that Mr. Hickey accepts that that is a correct assessment
8 of him.

9
10 Now, the O'Dea report didn't mention Mr. Hickey, and that
11 is correct. But you also have the evidence of Mr. John
12 Nolan, who was the Chief Superintendent. A list of those
13 who were on duty between 2:00 and 6:00 was given to him,
14 but he also accepted that it might have been preferable if
15 he had also had the list of those who were on duty prior to
16 2 p.m. Mr. Hickey may be confused as to whether he was on
17 one unit or another, he may even be confused as to whether
18 he was on duty at 2 o'clock or 6 o'clock, or between 2:00
19 and 10:00, but what he is quite clear on is that he was in
20 the station on the 20th of March, and he seems to be in a
21 position to provide detailed evidence which supports his
22 being in the station and his being aware that he was in the
23 station on the 20th of March, whatever about the time or
24 the unit. So, it is not -- simply not crystal clear, as
25 has been urged upon you, that he was not on duty. Quite
26 the contrary. It is very much a live issue. It is an
27 issue, undoubtedly, that you have to resolve, but it is
28 very much a live issue. I am not saying it is resolved one
29 way or the other. It will be for you to resolve it,
30 because, clearly, there is an issue for you to resolve in

1 that regard.

2

3 Reference has been made to Judge Cory's report. Judge
4 Cory's report was document-based. Your Tribunal is
5 evidence-based, oral evidence - some documents as well, but
6 primarily oral evidence. It is, in many respects, quite a
7 different type of inquiry to that conducted by Judge Cory.
8 Of course, you are not bound in any way by the findings of
9 Judge Cory. You start from scratch, as indeed you have
10 started from *de novo*. Reference was made to what was
11 written in Mr. Harnden's book. That is not evidence. It
12 is not evidence unless Mr. Harnden comes along and gives
13 you that evidence. Even then, it is a matter for yourself
14 to decide whether you will accept or reject it.

15

16 No evidence that passport holders were involved in the
17 murders in 1989. That is not the point. The point is
18 this, and this is the key question: On the one hand, you
19 have Mr. Hickey, who was convicted of signing false
20 passport application forms. Those passports ended up in
21 the hands of -- some of them ended up in the hands of the
22 IRA. Given what you know about his powers of perception
23 now, it may be your conclusion that he knew perfectly well
24 what he was doing, a conclusion that you are entitled to
25 reach on the balance of probabilities, I stress. If that
26 is your conclusion, then you must ask the question, in my
27 submission, going back to 1989, Mr. Hickey being in the
28 station, what was he doing in the station?

29

30 Now, this question has never been asked before. The fact

1 that it has not been asked before is by no means a reason
2 why it should not be asked now. On the contrary, it is a
3 question that must be answered now.

4
5 The same goes for Mr. Colton. I stress Mr. Colton was not
6 charged with any offence. I accept that. There is the
7 presumption of innocence. That said, matters will be
8 alleged against Mr. Colton, alleging his involvement in
9 this process for the obtention of false passports by
10 members of the IRA. Again, he puts himself in the station.
11 There is no argument on this point, there is no issue on
12 this point. Again, the question must be asked: If the
13 allegation is correct - and you are entitled to proceed on
14 the balance of probabilities in relation to that, all the
15 while respecting his presumption of innocence, I appreciate
16 it would be a difficult balancing act, but it is one that
17 can be achieved - what was Mr. Colton doing in 1989? He
18 now has this involvement, alleged, I emphasise, in getting
19 passports for the IRA. There are other matters that would
20 be alleged against Mr. Colton, in relation to a trade
21 plate, for example, in relation to going to work for a
22 particular businessman. They don't arise in the context of
23 this application, but I just point out that there is a
24 wider background to the situation obtaining in regard to
25 Mr. Colton.

26
27 To put these matters to one side, would effectively be
28 turning your face against what is the most tangible
29 relationship that can be found between one or other or both
30 members of the Force and the Provisional IRA. In my

1 submission, you are correct to proceed with this sector
2 of -- or segment of the evidence. You cannot ignore it.
3 And you are entitled, as a matter of law, to embark upon
4 this particular inquiry.

5
6 Reference was made to guards being mistaken about what they
7 were doing on the day, and that is so. Reference was made
8 to a guard that realised subsequently, having spoken to us,
9 that she was on maternity leave. She came here and she
10 gave that evidence to you. She didn't ask a solicitor to
11 stand up and say -- with all due respect to Mr. MacGuill,
12 but I think you will understand the point I am driving
13 at -- she didn't send in a legal representative to say,
14 "Sorry, I wasn't on duty that day. Please let me go."
15 No, she came in and she gave her evidence.

16
17 It's possibly the -- where I come closest or where the
18 Tribunal comes closest to these submissions, is to suggest
19 that maybe they are premature at this stage. They are
20 submissions that should be properly made at the conclusion,
21 once all the evidence has been heard. And, indeed, in the
22 opening statement, that point was made, and you emphasised
23 that point yourself, that nobody should draw any
24 conclusions until all the evidence has been heard, the
25 point made by you at the opening.

26
27 So, in these circumstances, my submission is that you are
28 correct to embark upon this inquiry. It is necessary. You
29 certainly have no evidence of any nature to persuade you
30 that it is wrong to embark upon this inquiry, none

1 whatsoever.

2

3 They are my submissions.

4

5 CHAIRMAN: Thank you very much, Mr. Dillon. I want to
6 consider very carefully the points that Mr. MacGuill and
7 Mr. Callan have made, and I propose, therefore, to rise for
8 approximately - I think it may take up to 15 minutes. I
9 think it would be safer if I sit again at 12:00 and I will
10 give my decision then. Thank you.

11

12 THE TRIBUNAL ADJOURNED AND THEN RESUMED AS FOLLOWS:

13

14 THE CHAIRMAN GAVE HIS RULING AS FOLLOWS:

15

16 CHAIRMAN: Thank you, ladies and gentlemen.

17

18 In 1988, Finbarr Hickey was convicted on account of having
19 -- on accounts of having countersigned passport application
20 forms in false names. The question for this Tribunal is
21 whether Mr. Hickey knew that he was signing application
22 forms for members of the IRA, and the possible implications
23 of such a finding. Whether it was stated in the Special
24 Criminal Court that he was unaware of the true designations
25 of these passports, is a factor to be taken into account,
26 but does not determine the issue in this Tribunal. The
27 reason is, that the Special Criminal Court received
28 evidence on the background of the burden of proof, being
29 that of guilt beyond reasonable doubt, whereas this
30 Tribunal, as is the case for any tribunal, receives

1 evidence on the background of a burden of proof being on
2 the balance of probabilities.

3

4 One factor I am entitled to take into account over a
5 reading of the papers is that Mr. Hickey's conduct was over
6 a period of some ten months and not a once-off incident and
7 that at the time Mr. Hickey was very vulnerable. In regard
8 to this, I have the evidence of a witness who told me, and
9 I quote, "*that he*" - Mr. Hickey - "*seemed to have a sixth*
10 *sense almost in terms of spotting if someone was not quite*
11 *right. And he had a great eye, he could remember faces,*
12 *and, from that point of view, I thought he was quite a good*
13 *policeman.*"

14

15 I refer to book 17 of the transcripts, page 47, lines 25 to
16 30.

17

18 I note that there was no challenge to this evidence on
19 Mr. Hickey's behalf, and I am entitled, in these
20 circumstances, to take it that Mr. Hickey agrees with this
21 assessment.

22

23 The Tribunal also has a signed statement by Mr. Hickey in
24 which he states that, "*On the 20th of March, 1989, I was on*
25 *duty on the 2 p.m. to 10 p.m. shift.*" In addition, he
26 provides details of events in the Garda Station which can
27 be corroborated by others who were in the station at that
28 time.

29

30 In Finbarr Hickey's application for representation, the

1 following is stated:

2

3 *"He was on duty in Dundalk Garda Station on the days that*
4 *the RUC officers attended a meeting there."*

5

6 Further, when the Gardai re-examined the allegation of
7 collusion in the year 2000, they included Finbarr Hickey in
8 that review.

9

10 Finally, I have not heard evidence yet from Mr. Hickey and
11 it would be wholly inappropriate to rush to the conclusion
12 urged upon me without hearing it. The reason I have
13 decided to include this aspect of Finbarr Hickey's conduct
14 in my inquiry is that at no time was there an audit of what
15 damage, if any, Mr. Hickey might have caused to State
16 security, and this includes whether he has given assistance
17 to the Provisional IRA in the murders of Mr. Breen and
18 Mr. Buchanan.

19

20 In the case of Leo Colton; also, he was in the station, on
21 the steps, around the time the RUC officers arrived. From
22 the papers I have seen, it is the case that he sought to
23 facilitate incorrectly a trade plate for an IRA
24 sympathiser, and worked, after retirement, for a
25 businessman with known IRA connections. For the same
26 reason as in the case of Mr. Hickey, I am satisfied that
27 evidence in relation to his -- to this matter, is relevant
28 to any assessment of Mr. Colton's conduct. It would be
29 wrong not to hear such important evidence, and I,
30 therefore, allow it as relevant evidence. It will, of

1 course, be subject to submissions as to the weight to be
2 attached to it in relation to either Mr. Hickey or
3 Mr. Colton.

4
5 So, we now have a witness.

6
7 MR. CALLAN: Chairman, just before you leave that, I didn't
8 make any submission that, if there was evidence, a line of
9 evidence was pursued, that it should be in private,
10 because, naturally, I felt that might weaken my basic case,
11 which was that it shouldn't be heard at all at this stage,
12 bearing in mind the evidence that is before. So I would be
13 making that application or putting it on record now, that I
14 would suggest that you would seriously consider that this
15 should be in private because of the enormous reputational
16 damage it will do to my client, who has, in fact, been
17 cleared of this matter so far as the DPP is concerned. It
18 is quite a long time ago. He has been subject to enormous
19 stress and matters of that kind, and it would seem wholly
20 unnecessary that something that will turn out to be pure
21 speculation, should be dealt with in public.

22
23 Now, you mentioned the trade plates, also. It wasn't in
24 reference to the passports, I didn't mention it. We, of
25 course, have a letter from a solicitor, Mr. Burles, dealing
26 with that at the material time, which explains the matter,
27 and the question of his working for Mr. McCann at some
28 considerable time later, 1996, doesn't seem to amount to
29 very much. But, I mean, I just merely mention that because
30 you brought the matters in and we hadn't dealt with that

1 and we don't think that that is really relevant to the
2 passport issue. But I strongly urge that you would
3 seriously consider that, when the time comes, to have it
4 heard in private. And if I might take the liberty to put
5 before you an article by the former Attorney General, Paul
6 Gallagher, SC, from the '*Bar Council Review on Tribunals*
7 *and the Erosion of the Right of Privacy*.' I don't know if
8 you have seen it? But it is a very, very informative
9 article on the extent of the huge reputational damage that
10 can be done by tribunals to private -- on the grounds of
11 privacy, to reputation, to matters of that kind, that
12 cannot be corrected, unfortunately, once they get into the
13 public domain. If, of course, they are established, or
14 anything like that, of course they will get into the public
15 domain. So if I might take the liberty to receive this.

16
17 (Document handed to the Chairman)

18
19 CHAIRMAN: But how can the opinion of, if it is a private
20 opinion by somebody --

21
22 MR. CALLAN: It is Paul Gallagher, the former Attorney
23 General. If you have an opportunity to read it, in the
24 meantime, before the evidence comes up.

25
26 CHAIRMAN: But, no, the evidence is now ready to roll. You
27 are asking that the Tribunal should retire into a private
28 sitting and not hear this evidence in public?

29
30 MR. CALLAN: Yes, yes. On the grounds, on the grounds of

1 the huge -- on the grounds of the huge amount of
2 reputational damage that it will give, because it really
3 is, it really is speculation. I mean, I don't object to
4 the trade plates, because we have a full answer to that,
5 and the matter of working for Mr. McCann, either, I don't
6 object to that, either; that was a matter of taking work
7 from somebody running slot machines in Dundalk, a
8 considerable number of years later.

9
10 CHAIRMAN: How can you submit that the -- on what ground --
11 this is a public Tribunal.

12
13 MR. CALLAN: Yes.

14
15 CHAIRMAN: The legislation is very clear: I hear the
16 evidence in public unless there is some compelling reason
17 to hear it in private session. The possible damage to
18 somebody's reputation, it can be said of any of the
19 evidence before the Tribunal.

20
21 MR. CALLAN: Well, you would have to balance the issue of
22 hearing -- of repeating these allegations, which have been
23 rejected by the Director of Public Prosecutions, in regard
24 to which another person has pleaded guilty, which don't
25 concern my client at all. They are brought into the open
26 again and you must balance that against the reputational
27 damage that is going to cause if it comes into the public
28 arena.

29
30 CHAIRMAN: Mr. Dillon, yes.

1
2 MR. DILLON: It might be helpful if, at this point, to put
3 on the record, as it were, the passage from the decision of
4 the Supreme Court in *Redmond v. Flood* [1999] volume 3 of
5 the Irish Reports, starting at page 87. It encapsulates
6 precisely the issue that Mr. Callan raises. It's as
7 follows:

8
9 *"There is no doubt but that an inquiry by the tribunal into*
10 *allegations made by Mr. Gogarty as contained in his*
11 *affidavit sworn on the 12th of October, 1998, allied with*
12 *the exceptional inquisitorial powers conferred upon such*
13 *tribunal under the Act of 1921 as amended, necessarily*
14 *exposes the applicant and other citizens to the risks of*
15 *having aspects of their private lives uncovered which would*
16 *otherwise remain private and to the risk of having baseless*
17 *allegations made against them."*

18
19 This is precisely the point that Mr. Callan is making.

20
21 However, the judgment goes on to say:

22
23 *"The right to privacy, however, is not an absolute right.*
24 *The exigencies of the common good may outweigh the*
25 *constitutional right to privacy. The exigencies of the*
26 *common good require that matters considered by both Houses*
27 *of the Oireachtas to be of urgent public importance be*
28 *inquired into, particularly when such inquiries are*
29 *necessary to preserve the purity and integrity of public*
30 *life."*

1 Well, that was in relation to the issue that was before
2 that particular Tribunal.

3

4 CHAIRMAN: Yes.

5

6 MR. DILLON: Now, a further extract is *"The effect of such*
7 *resolutions is undoubtedly to encroach upon the fundamental*
8 *rights of the applicant in the name of the common good but*
9 *is justified by the exigencies of the common good. Such*
10 *encroachment must, however, be only for the proper conduct*
11 *of the inquiry."*

12

13 I just pause there for a moment. You have ruled that the
14 evidence that you wish to hear is relevant to the inquiry
15 that you are conducting.

16

17 I continue now with the judgment:

18

19 *"The Tribunal is obliged to conduct its inquiry, and all*
20 *necessary proceedings in relation thereto, in accordance*
21 *with fair procedures and the principles of constitutional*
22 *justice. Apart altogether from the steps already taken by*
23 *the Tribunal as outlined in the affidavit of the applicant,*
24 *the Sole Member, in the course of clarification of the*
25 *terms of reference, stated 'The starting point of any*
26 *Tribunal in this State in relation to the model procedure*
27 *to be adopted is the Constitution. A tribunal must at all*
28 *times fully respect the constitutional rights of all*
29 *persons whose interests may be affected by the course of*
30 *the inquiry work'."*

1

2

Then, I will skip over a few lines.

3

4

5

6

7

8

9

"Fair procedures and principles of for constitutional justice do not require that the proceedings of the tribunal be conducted in private. It is of the essence of such inquiries that they held be in public for the purpose of allaying the public disquiet that led to their appointment."

10

11

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So the Supreme Court acknowledges that there is an encroachment upon the privacy of an individual, but that is counterbalanced by the application of fair procedures, and that will be done in the context of this Tribunal. So, the mere fact -- this is the point I think that you sought to convey to Mr. Callan -- the mere fact that somebody's reputation might be called into question, to put it in its broadest sense, is not a reason to exclude the public. You are -- as you quite rightly said, you have a statutory obligation to hold your hearings in public unless there is a compelling reason why you should exclude the public. This is not a compelling reason, I have to say. And the authority of *Redmond v. Flood* underlines that point, where exactly the same issue was raised, but the Supreme Court said no, these matters can be held in public. The counterbalance is fair procedures.

That is my submission.

CHAIRMAN: Thank you very much.

1
2 MR. CALLAN: Well, Mr. Chairman, the Supreme Court -- you
3 can quote one Supreme Court decision and one can quote
4 another Supreme Court decision. I can refer to the case of
5 *Goodman v. Hamilton* [1991] Irish Reports, 3 Irish Reports,
6 page 307, where Mr. Justice Geoghegan, in the Supreme
7 Court, said: "*Fair procedures was complied with when it*
8 *did not permit hearsay to impugn good name*".

9
10 Now, what is going to be offered here by Mr. Dillon is
11 nothing but speculation, and speculation based on hearsay.
12 That is going to impugn a good name. And the Supreme Court
13 have said that that shouldn't, that that shouldn't happen.
14 And in this balancing, what has been -- what you are being
15 asked to permit is nothing but speculation which will
16 inevitably impugn good name and which will -- which is
17 baseless, is baseless, is baseless; there is nothing to
18 support it more than there was day one. And that,
19 therefore, that is a good reason for it to be held in
20 private.

21
22 MR. DILLON: It is suggested that I am, somehow, running
23 the evidence; it is the witness that will run the evidence,
24 of course. I want to say this: The witnesses that are
25 going to be called, they are Garda witnesses that dealt
26 with the investigation. As such, it is not hearsay; it is
27 what they know happened during the course of the
28 investigation. And it is common in the case, even in the
29 context of criminal trials - and this is not a trial; this
30 is an inquiry - that the case, if I put it that way, of an

1 accused, can be put to the judge or the jury through the
2 medium of a Garda witness. That, strictly speaking, is
3 hearsay, but it is allowable hearsay. That doesn't arise
4 here because what we will be dealing with are the Garda
5 witnesses who dealt with the matter. They are giving
6 direct primary evidence. I am not aware of any hearsay
7 evidence, as such, that is to be given. We intend calling
8 the authors of memoranda to prove the memoranda and to go
9 through them, the authors of statements that were made, to
10 prove the statements and go through them. It is all direct
11 evidence. So I am afraid Mr. Callinan's point just doesn't
12 carry the day.

13
14 CHAIRMAN: Yes. Thank you very much. No, I am afraid I
15 cannot entertain an application to hear this evidence in
16 private. I think the public are entitled to hear it given
17 in public, and I think, obviously, anyone affected by that
18 evidence will have ample opportunity to contradict it in
19 their own evidence. I am not -- I am refusing the
20 application to go into private session to hear this
21 evidence. So I think we should proceed with the evidence,
22 first of all.

23
24 MR. DILLON: It is Commissioner Callinan, Mr. Chairman.

25
26 REGISTRAR: Commissioner Callinan.

COMMISSIONER MARTIN CALLINAN, HAVING BEEN SWORN, WAS
EXAMINED BY MR. DILLON AS FOLLOWS:

CHAIRMAN: May I say, before you begin - please sit down, Commissioner - that I am very grateful to you for coming. You are a very busy man, but your evidence was very important to this Tribunal and I am grateful to you for facilitating giving evidence. Thank you.

A. I am obliged, Chairman. Thank you.

1 Q. MR. DILLON: Commissioner, I would be obliged if you would outline to the Chairman your career in the Garda Síochána?

A. Yes, Chairman. I joined An Garda Síochána in 1973, and in 1986 I was promoted to the rank of Sergeant. In 1994 I was promoted to the rank of Inspector. In 1997 I was promoted to the rank of Superintendent. In 2001 I was promoted to the rank of Chief Superintendent. In 2005 I was promoted to the rank of Assistant Commissioner. In 2007 I was promoted to the rank of Deputy Commissioner, and in December of last year I was appointed Commissioner of An Garda Síochána. I served a great deal of my adult policing life in plain clothes, largely in detective duties, where I dealt with homicides and robberies and the higher end of the crime scale.

2 Q. Yes. Now, in 1986, you were promoted to the rank of Sergeant, so you were a Sergeant in 1989, isn't that right?

A. Correct.

3 Q. Where were you serving in 1989?

A. I was in the Central Detective Unit.

4 Q. Is that in Harcourt Square?

1 A. It is, yes.

2 5 Q. Yes. Was one of your predecessors, Noel Conroy, was he
3 there at the time, do you remember?

4 A. He was, he was my Superintendent at the time.

5 6 Q. 1989, of course, is the year when the murders under inquiry
6 occurred. Do you recall anything about -- anything said
7 about the murders when -- in Harcourt Square, I should say?

8 A. No, Chairman. I should point out, at that time my end of
9 the business was largely in what we call Crime Ordinary as
10 opposed to the Special Detective Unit, who were across the
11 yard in Harcourt Square, and they dealt with matters of
12 subversion and the IRA principally.

13 7 Q. Very good. In the year 2000, where were you based?

14 A. I was back in the Central Detective Unit.

15 8 Q. And I think --

16 A. I beg your pardon. In the year 2000, I'm sorry, I am
17 getting confused myself, in the year 2000 I was back in
18 Harcourt Square. Yes, I was, yes.

19 9 Q. And we know that in the year 2000, the then-Commissioner
20 was Patrick Byrne and that he asked Superintendent -- or,
21 sorry, Detective Chief Superintendent Sean Camon to conduct
22 a further review into the allegation of collusion. Had you
23 any involvement in that particular exercise?

24 A. Not in that particular -- no.

25 10 Q. Now, to come back to the matter in hand. In 1998, I think
26 you were involved in an investigation into an allegation
27 that false passports had been issued, as it turned out, to
28 members of the Provisional IRA?

29 A. I was, yes.

30 11 Q. And I think that investigation was headed at the time by

1 Sean Camon, who we have just mentioned?

2 A. The late Chief Superintendent Sean Camon, yes.

3 12 Q. I think you were second-in-command, you were the Detective
4 Superintendent?

5 A. That's right.

6 13 Q. And I think that for the purpose of the investigation, you
7 assembled a team of officers?

8 A. Yes. Initially, my colleague, the then-Inspector
9 John O'Mahoney, now Assistant Commissioner John O'Mahoney,
10 we started work with the late Chief Superintendent, and, as
11 the matter progressed, more people became involved in that
12 investigation.

13 14 Q. I think these people came from outside the area in some
14 cases, isn't that right?

15 A. Outside the area of Dundalk?

16 15 Q. Of Dundalk or -- I think, ultimately, the investigation
17 centred in Navan Garda Station, is that right?

18 A. That's correct, yes.

19 16 Q. I think many of the members involved weren't attached to
20 Navan Garda Station; they were brought in from outside, is
21 that correct?

22 A. Correct. Well, it was my colleagues in the Central
23 Detective Unit at that particular time. The National
24 Bureau of Criminal Investigation, to give it its correct
25 title from about 1996 onward, it followed from the Central
26 Detective Unit. These were my colleagues who joined me as
27 part of the arrest procedure in relation to that
28 investigation at Navan, yes.

29 17 Q. So I suppose the way it went was that yourself and your
30 Chief Superintendent went up to Navan station to set up the

1 investigation, is that right?

2 A. Well, not particularly, no.

3 18 Q. Oh, sorry.

4 A. We had been operating from Harcourt Square and various
5 other locations as the need arose. When it came to the
6 point that we made an arrest, it so happened that Navan
7 Garda Station was the station used for that purpose.

8 19 Q. I follow. I think, in fact, matters began in Dublin by way
9 of a complaint from the Passport Office, is that right?

10 A. Correct, yes.

11 20 Q. They had uncovered a number of forms in the names of
12 persons who were deceased?

13 A. That's correct.

14 21 Q. Chairman, we have been asked not to name the names of the
15 deceased persons out of respect for the privacy of the
16 families of the deceased. But in all events, this is what
17 triggered the inquiry, is that right?

18 A. Correct, yes.

19 22 Q. And I think then photographs attached to the application
20 forms were looked at and it was possible to identify who
21 the true recipients of those passports were?

22 A. In respect of some of them, Chairman, yes.

23 23 Q. Yes. And I think that it was possible to identify certain
24 members, at the time, of the Provisional IRA?

25 A. That's correct, Chairman, yes.

26 24 Q. Now, your involvement, I think, included dealing with
27 Mr. Finbarr Hickey, isn't that right?

28 A. Yes.

29 25 Q. I think at the time he was a serving Sergeant in
30 Hackballscross?

1 A. That is correct, yes.

2 26 Q. I think I am correct in saying this, that you were a member
3 of the party that arrested him?

4 A. Yes, yes.

5 27 Q. I think you arrested him at his home?

6 A. Correct.

7 28 Q. Yes?

8 A. Or my colleague arrested him, but I was present.

9 29 Q. Yes. Was that Michael Finnegan that arrested him?

10 A. No, no.

11 30 Q. Oh, sorry, I got that wrong.

12 A. The then-Inspector John O'Mahoney, now Commissioner.

13 31 Q. Yes, my apologies. And he was taken to Navan Garda
14 Station?

15 A. Correct, yes.

16 32 Q. And on the way to Navan Garda Station, did Mr. Hickey have
17 any conversation with you?

18 A. He did, yes.

19 33 Q. And could you tell us what Mr. Hickey said to you?

20 A. He said at an early stage of that car journey to the
21 station, would it make any difference if -- do I mention
22 people's names?

23 34 Q. Yes, please do. You have to, yes.

24 A. *"Would it make any difference if I told you it was Leo*
25 *Colton who had asked me to sign the forms?"* Or words to
26 that effect. I have it written down in a note somewhere.

27 35 Q. Indeed, yes. But just to clarify one point at the very
28 outset. Mr. Colton was not charged and he has the
29 presumption of innocence, isn't that right?

30 A. Absolutely, yes.

1 36 Q. That allegation was made to you by Finbarr Hickey in the
2 car on the way to the station?

3 A. That is correct, Chairman, yes.

4 37 Q. I think that when you were in the station, you questioned
5 Mr. Hickey?

6 A. I did.

7 38 Q. Am I right in that? Yes. And I think that -- Mr. Mills...
8 Yes, do you have that one in front of you? This is a
9 typed-up version of the notes of interview of Mr. Hickey.
10 It should be in -- do you have that in front of you?

11 "MC: Do you recall the conversation we had on the way in
12 the car?" Do you have that in front of you?

13 A. Yes.

14 39 Q. I appreciate this is a typed version, but if you go to the
15 second page, you will see that your name is typed in. Do
16 you recall conducting this interview?

17 A. I do, yes.

18 40 Q. Very well. Now, I think that you reminded Mr. Hickey of
19 the conversation, and you went on to say:
20 *"Do you want to tell us about Leo Colton?"*
21 And he said to you, *"I met him in O'Carroll's pub a few*
22 *days before I signed the first passport form for him. It*
23 *was sometime in January 1995. He told me he would drop up*
24 *to the station with a passport form to be signed for a*
25 *friend of his. I signed no problem. I think it is the*
26 *Jimmy Fox passport I was asked about."*

27 Now, Mr. Fox, I think, was a member, at the time, of the
28 Provisional IRA, is that right?

29 A. He was, Chairman, yes.

30 41 Q. I think he was ultimately charged with possession of a

1 false passport, is that right?

2 A. He was.

3 42 Q. He appeared before the Special Criminal Court?

4 A. He was.

5 43 Q. He was released on bail, isn't that right?

6 A. Correct.

7 44 Q. Do you know what the outcome of that was? If not, we can
8 inquire further?

9 A. I don't. It is in the papers somewhere, but I just don't
10 have the detail.

11 45 Q. We will work that one out. Not to worry. Now, you went on
12 to ask, *"How many passport forms in all did he bring to the
13 station to be signed by you?"*

14 And he answered, *"You have them all."*

15 *"And were the passport forms completed when he called with
16 them?"*

17 To which he answered, *"Most of them were. The form with
18 Patrick" -- we can't work out the name -- "on it, was not
19 signed. That is the one where I started to write my
20 signature where the Applicant should have signed it. No
21 one else called with forms to the station."*

22

23 I think, there, he was conveying that it was only Leo
24 Colton that brought forms to the station for him, is that
25 right?

26 A. That's correct, yes.

27 46 Q. *"What did he have when he called with the forms?"*

28 The answer was, *"As far as I know, all he had was the
29 passport forms and accompanying photographs with him for
30 signature. He had birth certificates with him as well, as*

1 *far as I can recall.*"

2 You asked him, "*What did Leo Colton tell you the passports*
3 *were for?*"

4 He answered, "*I suspected that there was something wrong*
5 *with them but I never challenged him about it. I knew they*
6 *were funny but I definitely did not challenge him about it.*
7 *I do not know why.*"

8

9 And then it concludes with the usual recitals about the
10 notes being read over, agreement that they are correct. He
11 signed the memo, signed by yourself and by your colleague,
12 John O'Mahoney, who then was a Detective Inspector, isn't
13 that right?

14 A. That's correct, Chairman.

15 47 Q. Now, the next one appears to have been taken by
16 Mr. O'Mahoney, but you witnessed this one. This deals with
17 a confrontation -- I will come back to that for a moment,
18 if I may. I would like to go on to the next interview.
19 Mr. Mills...

20

21 Yes, that is the one. Again, we have had it typed up. And
22 on the second page appears your name, Martin Callinan as
23 you then were, Detective Superintendent. Do you recall
24 this particular interview?

25 A. I do, Chairman, yes.

26 48 Q. Then you go on -- this interview follows a meeting, I would
27 call it a meeting, that took place between Mr. Hickey and
28 Mr. Colton. You weren't present at that meeting, isn't
29 that right?

30 A. Yes.

1 49 Q. I think Assistant Commissioner O'Mahoney was present at
2 that meeting, isn't that right?

3 A. Correct.

4 50 Q. You went on to say, "You have spoken to Leo Colton, who you
5 know is arrested and detained at Navan station?" He
6 answered, "That is correct". You asked, "Are you aware you
7 are still under caution?" He answered, "Yes". You asked
8 him, "Leo Colton has stated that you went with him when you
9 were being investigated in relation to the Kinsella
10 passport application form and that you asked him to say
11 that he asked you to sign this passport; in other words you
12 were trying to get him to take the rap, is this true?"
13 Mr. Hickey said, "No, most definitely not. As I already
14 told you, I met him after the application came back from
15 the Passport Office to state that there was something wrong
16 with the application. I told him there was something wrong
17 with the application. I did not get any answer from him.
18 I spoke to him in O'Carroll's pub. I met a him a couple of
19 times after that and I said it to him. He never answered
20 me. This was around the time there was a mark over the
21 application." You asked him, "What do you say to the
22 proposition that you are using Leo Colton's name to try to
23 limit your losses, so to speak, in this whole affair?" He
24 answered, "That is rubbish, because I am telling you the
25 truth, that Leo Colton asked me to sign the forms and
26 photographs". You then asked him, "When Superintendent
27 Quinn interviewed you, did you tell him that Leo Colton
28 asked you to sign the Kinsella passport application form?"
29 He answered, "No, I did not. I never told anyone else
30 except Ray Roche".

1 Now, the circle is our writing, not your writing.

2

3 "Question: Do you know what the passports were for?

4 Answer: No, I didn't. I knew the names on the passport
5 forms were not the people that they were for. I never
6 checked the names."

7

8 And then the usual recitals, read over and are correct.

9 Signed by Mr. Hickey and witness by yourself and

10 Mr. O'Mahoney.

11

12 Now, if you just bear with me for a second.

13

14 Now, that represents the sum total of copies of Memoranda
15 of Interview that we have in relation to your interviews of
16 Mr. Hickey. Does that conform to your recollection of your
17 dealings with him?

18 A. There is a further memo on the next page over.

19 51 Q. Yes. Which one --

20 A. I beg your pardon. Yes, that's -- yes, I wasn't involved
21 in that. Yes, sorry, you are right.

22

23 MR. DURACK: There is an interview that is stated to be at
24 11:35 a.m. on the 30th of September, which is Item 6.

25

26 MR. DILLON: My Friend has a version which unfortunately we
27 don't have. But I am sure we can correct that very
28 quickly.

29 52 Q. Yes, this was a memo where the notetaker was John O'Mahoney
30 and you were the witness. Just bear with me a second. And

1 given that it was Mr. O'Mahoney who was the notetaker, we
2 will deal with it when we call him.

3

4 Now, there was the bringing together of the two parties, if
5 I can put it that way, Mr. Colton and Mr. Hickey, isn't
6 that right, in a room in the Garda Station?

7 A. Correct, yes.

8 53 Q. And you brought -- was it you that brought Mr. Hickey down
9 to that room?

10 A. Yes, myself and the then Detective Inspector O'Mahoney.

11 54 Q. And can you describe to us Mr. Hickey's demeanor on being
12 brought down to the room?

13 A. What prefaced that was the fact that we had asked him if he
14 was prepared to confront Mr. Colton in relation to what he
15 had just said about him, i.e. that Mr. Colton had produced
16 these forms for him to sign in Hackballscross, and he had
17 indicated a willingness to confront him on that point.

18 55 Q. Very good. And then that presumably took -- that
19 conversation took place in his interview room, if I can put
20 it that way?

21 A. In Mr. Colton's interview room, yes, as opposed to the
22 interview room that we had been with Mr. Hickey with.

23 56 Q. Sorry, you have to help me with this. Where did the
24 meeting between the two gentlemen take place, was it in
25 Mr. Colton's interview room?

26 A. Correct.

27 57 Q. But you were aware of this conversation having taken place?

28 A. Correct. I brought him from the room Detective Inspector
29 O'Mahoney and I had been interviewing him in.

30 58 Q. Yes.

1 A. Walked him across the hall down the corridor to
2 Mr. Colton's room, where he was being interviewed by other
3 members of An Garda Síochána.

4 59 Q. Yes.

5 A. And Mr. O'Mahoney and Finbarr Hickey walked into that room
6 where there were two other members of An Garda Síochána
7 present dealing with Mr. Colton at the time. And I
8 remained outside the door.

9 60 Q. Exactly. So anything that was said in the room -- I mean
10 you are in the corridor at the time, isn't that right?

11 A. Correct.

12 61 Q. Yes. Having dealt with Finbarr Hickey as you have outlined
13 to the Chairman, do you have any further involvement in the
14 investigation as regards Mr. Hickey? For example, did you
15 charge him or did you have any further technical
16 involvement in that sense?

17 A. No, no. Well, I had an indirect involvement with other
18 people who featured in the investigation, but in terms of
19 Mr. Hickey, no, he was brought to court, *et cetera*, on the
20 directions of the DPP. He was brought to the Special
21 Criminal Court where he was charged.

22 62 Q. Just on a general point. In terms of organising the
23 investigation, you have already mentioned that a number of
24 officers came from outside, as it were, to assist in the
25 investigation. Presumably there was some sort of a
26 briefing session or the officers were put into the picture
27 as to what they were supposed to be dealing with, isn't
28 that right?

29 A. Yes, yes.

30 63 Q. I suppose like a round table get-together and officers are

1 briefed?

2 A. Well, I can't remember the precise nature or, indeed, my
3 particular involvement in that aspect, but my colleagues
4 from the Bureau of Criminal Investigation came to Navan
5 station, and it -- quite obviously they were briefed in
6 relation to the investigation and the progress of the
7 investigation thus far. That would be normal standard
8 operating procedure. But the precise nature of the
9 briefing or when it occurred or whether I was involved,
10 indeed, in that aspect I cannot tell you. Certainly I
11 would have spoken with my colleagues, but when precisely I
12 am not sure.

13 64 Q. Just on one technical matter. I think that you authorised
14 the extension of detention of Leo Colton?

15 A. I did, yes.

16

17 MR. DILLON: Thank you.

18

19 CHAIRMAN: Any questions?

20

21 THE WITNESS WAS CROSS-EXAMINED BY MR. DURACK AS FOLLOWS:

22

23 65 Q. MR. DURACK: I think I am right in saying, Commissioner,
24 that when the initial passport issue arose, it was
25 commented on by the Passport Office that there was a
26 question about it?

27 A. That's correct, Chairman, yes.

28 66 Q. And I think as a result of that, it was looked at and it
29 was discovered that it related to Hackballscross station.
30 And investigations then commenced to see if there were any

1 other irregularities there?

2 A. Correct, Chairman, yes.

3 67 Q. And I think that then involved searches and examinations at
4 the premises of the Passport Office where the passports
5 were prepared?

6 A. Correct, Chairman, yes.

7 68 Q. And I think that resulted in you going to -- ultimately
8 some, I think it was nine documents were questioned, and I
9 think that that resulted in you attending at Mr. Hickey's
10 house at 10:20 a.m. on the morning of the 29th of
11 September, 1998?

12 A. I thought there were eight, but perhaps there could have
13 been nine.

14 69 Q. There are eight, in fact. And I think you called there
15 with Mr. O'Mahoney. And there I think you explained to
16 Mr. Hickey the purpose of your visit?

17 A. We did, Chairman, yes.

18 70 Q. And made him aware of why you were there and what you were
19 looking into?

20 A. Correct.

21 71 Q. Now, am I right in thinking that the first you ever became
22 aware of a suspicion that Mr. Colton may have had an
23 involvement was when Mr. Hickey told you this in the car?

24 A. That's correct, yes.

25 72 Q. After he had been arrested?

26 A. Correct, Chairman.

27 73 Q. So that at that stage there had been no investigation into
28 Mr. Colton?

29 A. Not in relation to the passports.

30 74 Q. And I think then an operational decision was made during

1 the course of the investigation to arrest Mr. Colton. And
2 that both men then ended up in custody at the same time?

3 A. Correct, Chairman, yes.

4 75 Q. And I think I am right in saying that during the course of
5 the interviews with Mr. Hickey, that he at all times denied
6 that he knew where the passports were to end up?

7 A. That is correct, Chairman, yes.

8 76 Q. And I think the circumstances then at the end of the
9 investigation was that there was no evidence to support the
10 suggestion that he knew they were destined for the IRA?

11 A. Correct, Chairman, yes.

12 77 Q. If I just might deal then with some, with an unrelated
13 matter, but I think you may be able to help the Tribunal in
14 relation to part of its investigation. In the course of
15 the Opening Statement counsel for the Tribunal identified a
16 series of intelligence reports that were considered by
17 Judge Cory in his report, and also identified a number of
18 other reports that subsequently came to the knowledge of
19 the Tribunal. Can you tell us, in relation to intelligence
20 reports how relevant are they to Garda investigations?

21 A. Well, intelligence reports in general, Chairman, are what
22 they are until such time as they are analysed and a
23 decision is made as to their worth. In other words, you
24 could have a situation where information/intelligence is
25 provided from a third or fourth party and it is not until
26 the content of that information or intelligence is examined
27 to see whether or not its authentic or not is of value, and
28 certainly that would be the case in relation to
29 investigations. So, for instance, if somebody is in a
30 public house or elsewhere and overhears a conversation and

1 he is not quite sure of the provenance of the people who
2 are discussing whatever it is that person hears, that would
3 have to be treated very, very carefully in terms of the
4 importance that would be attached to that information, and
5 certainly before you would act on that type of
6 information/intelligence. Obviously there would be wider
7 considerations in the context of intelligence with regard
8 to source protection. And I have read your judgment,
9 Chairman, recently, so I am perfectly aware that you fully
10 understand the need to protect individuals. And I think
11 the empirical evidence of not doing so we are all aware of,
12 particularly when you are dealing with sensitive
13 information in the border or border counties and areas
14 where the IRA are involved.

15
16 There are other considerations of course, such as
17 methodologies we would employ as we in An Garda Síochána as
18 both a policing service and a security service, obviously
19 we would seek to protect the methodologies employed in
20 terms of how that information came to be in our possession.

21
22 And I suppose the third pillar we would look at would be
23 the issue of documentation emanating from another policing
24 or security agency marked "Confidential", "Secret" or
25 "Sensitive". We have very, very clear obligations as a
26 security service to protect those documents and refer back
27 to the authors, known as the Third Party Rule. And that is
28 very clear to us and the obligations that surround those
29 issues.

1 So, in broad terms they are some of the issues that we as a
2 policing and security agency would concern ourselves with.
3 But I would certainly hope that the Tribunal has had all of
4 the information/intelligence that we have in our power or
5 possession to produce in the context of the matters you are
6 examining, Chairman. I am satisfied that that is the case.

7 78 Q. And I think, of course, sources of information may be
8 ordinary unconnected members of the community or may be
9 persons who in fact were involved in criminal events of one
10 sort or another. And I take it that one of your principal
11 concerns is that sources should be protected at all stages?

12 A. Well, that would be a primary duty of ours, Chairman. And
13 I know from your judgment that you absolutely understand
14 that.

15 79 Q. And I think it is also of a concern to you that in terms of
16 referring to any document or piece of intelligence, that
17 either the identification of the Garda who processes it or
18 the handler, if one wants to call it that way, or the date
19 or place or the content of the information are all things
20 that might expose a source to a risk of danger?

21 A. Very much so, Chairman. The conditions under which we
22 received the information and the context, even dates or
23 times or places where the information is deemed to have
24 come from, could all point individuals to a particular
25 individual or group of individuals who may have perhaps
26 shared that information at one time, and now that we have
27 it, it would be easy for some of those people to work out
28 where it came from. So, that's why we would seek to
29 protect those issues.

30 80 Q. Just another matter, if I might deal with it. The Tribunal

1 has heard evidence from Tom Curran, who was in Monaghan at
2 the time, that he had been approached by Mr. Buchanan and
3 asked to -- who told him that he had been told, he,
4 Mr. Buchanan, had been told or asked by the Special Branch
5 in the North to approach Mr. -- the Superintendent and ask
6 him to convey a message to Headquarters that they were
7 concerned that Mr. Corrigan was a potential danger and that
8 he should be moved from Dundalk. Now, Mr. Curran told us
9 then that he brought that information to Headquarters,
10 where he spoke to Assistant Commissioner Crowley at the
11 time. And he says that Mr. Crowley, having been given the
12 information, appeared to have no interest in it and
13 essentially went on to talk about something else. I think
14 you served with Mr. Crowley?

15 A. Yes, I did, Chairman, yes.

16 81 Q. And how did you view him?

17 A. Well, Mr. Crowley was a very thorough man in all aspects of
18 his work, a man of great integrity, rose to the highest
19 rank in the Garda Siochana, Chairman. And certainly I was
20 very surprised to read about that aspect of this matter
21 that you are investigating. It certainly wouldn't be my
22 experience that Mr. Crowley would ignore something like
23 that. Indeed, I was very surprised in the first instance
24 to hear that the particular aspect wasn't raised through
25 the proper channels, in other words that it would have gone
26 to the RUC Headquarters and be conveyed at the very highest
27 level. A matter of this importance, that it wasn't raised
28 at the very highest level, at very senior level across to
29 Garda Headquarters directly rather than relying on a
30 parallel line of communication. That surprised me, I must

1 say.

2 82 Q. I think you, yourself, as part of your career, a
3 significant part of your career was involved in Crime and
4 Security, where you would expect this sort of information
5 to be shared at Headquarters level?

6 A. There is no question or doubt about that, Chairman. I
7 spent over three years in the Crime and Security section at
8 Garda Headquarters and the Security and Intelligence branch
9 of that section, and certainly matters of that import would
10 almost certainly be shared at the very highest level. I
11 have no doubt in my mind.

12

13 MR. DURACK: Thank you very much, Commissioner.

14

15 MR. LEHANE: Sorry, Mr. Chairman, it is not really a
16 question for the witness, just to correct My Friend in his
17 paraphrasing of Mr. Curran's evidence, just to say that
18 Mr. Curran was a potential danger, he just said -- and it
19 is Day 14, page 7 of Mr. Curran's transcript, Mr. Chairman,
20 that the RUC had information that Detective Sergeant Owen
21 Corrigan from Dundalk was associating, unnecessarily
22 associating with the IRA and that the RUC were concerned
23 about it, not that it was a potential danger.

24

25 MR. DURACK: I stand corrected.

26

27 CHAIRMAN: Yes, I think that is correct from my
28 recollection of it too. Thank you very much, Mr. Lehane.

29

30 A. My view wouldn't change, Chairman. I would still hold the

1 same view as I have outlined.

2

3 CHAIRMAN: Yes, thank you. Mr. Coffey.

4

5 **THE WITNESS WAS CROSS-EXAMINED BY MR. COFFEY AS FOLLOWS:**

6

7 83 Q. MR. COFFEY: Commissioner, I appear on behalf of retired
8 Sergeant Leo Colton. I want to ask you a few questions.
9 First of all, it has been established that a question-mark
10 and a query arose over passports in April 1996. I think
11 you agree with that?

12 A. Yes, in or about that time, yes.

13 84 Q. Again, it seems to be common case that very early into that
14 investigation the source of the passport forms were traced
15 back to the Garda Station in Hackballscross, County Louth?

16 A. Correct, Chairman, yes.

17 85 Q. And again, from the face of the documentation, it appeared
18 that Sergeant Hickey was the person who was most common as
19 having signed all of these passport forms?

20 A. That was the evidence as we found it, Chairman, yes.

21 86 Q. And when can you tell us that you were personally involved
22 in the investigation into the passport issue?

23 A. Some weeks before the arrest.

24 87 Q. And were you given any information as to what was the
25 background, starting from the discovery of the
26 documentation in April 1996?

27 A. Well, I was aware of issues arising in the context of the
28 Passport Office and a previous investigation, some
29 preliminary work that been done by Detective Superintendent
30 Finnegan prior to me getting involved.

1 88 Q. So, can we say, Commissioner, that you were, if you like,
2 brought up to speed as to events between April 1996 and
3 your personal direct involvement sometime possibly July,
4 August, early September of 1998?

5 A. Well, as I said, I was aware of these issues that had
6 preceded my involvement in the case.

7 89 Q. Were you aware then that Sergeant Hickey had been suspended
8 for quite a considerable period prior to his arrest in
9 September 1998?

10 A. I was aware that a preliminary disciplinary investigation
11 had taken place.

12 90 Q. And that in fact he was suspended from duties?

13 A. I am not aware of that aspect, but if you have that on the
14 record I have no reason to disbelieve that that is the
15 case.

16 91 Q. And what type of investigations were carried out, can you
17 tell the Tribunal?

18 A. My recollection, Chairman, was that the then Chief
19 Superintendent in the Louth/Meath Division, Chief
20 Superintendent McHugh, had appointed Superintendent Liam
21 Quinn to inquire into this aspect of a passport application
22 where Finbarr Hickey had been involved, and that matters
23 proceeded to a point. I am not just clear in my mind as to
24 what the outcome of that particular discipline
25 investigation.

26 92 Q. Now, you have given evidence, Commissioner, that on the
27 journey from Mr. Hickey's home in Dundalk over to the Garda
28 Station in Navan he mentioned my client in the context of
29 the passport issue?

30 A. He did indeed.

1 93 Q. And I think that you indicated that that was the first
2 reference that you were aware of of any involvement or
3 alleged involvement of Mr. Colton in this issue?

4 A. That's correct, Chairman, yes.

5 94 Q. At a point in time where there was in excess of two years
6 plus from the commencement of the investigation into the
7 passport issue?

8 A. I can't comment on that because I am not familiar with the
9 precise detail of the previous investigations, other than I
10 do know that there was a disciplinary investigation
11 conducted by Superintendent Quinn, and I do know there were
12 further preliminary inquiries conducted by former Chief
13 Superintendent Michael Finnegan.

14 95 Q. But you, despite being brought into this investigation, had
15 not been made aware or informed of any possible involvement
16 of Mr. Colton in this issue up until the car journey over
17 to Navan on the morning of the 29th of September, 1998?

18 A. That's correct, Chairman, yes.

19 96 Q. And finally, Commissioner, have you any evidence that there
20 was any Garda collusion or State collusion in the murder of
21 the two RUC men in March of '89?

22 A. None whatever, Chairman.

23 97 Q. Then or now?

24 A. None whatsoever, Chairman.

25

26 MR. COFFEY: Thank you.

27

28 CHAIRMAN: Mr. MacGuill.

29

30

THE WITNESS WAS CROSS-EXAMINED BY MR. MacGUILL AS FOLLOWS:

98 Q. MR. MacGUILL: Commissioner, I am appearing on behalf of
Finbarr Hickey, and there are just a few questions for you.

Now, I take it that as a Detective Superintendent you
simply would not countenance any member of An Garda
Síochána colluding with the IRA?

A. Correct, Chairman.

99 Q. And that wouldn't have been countenanced by any of your
superior officers?

A. Absolutely not, Chairman.

100 Q. And that the fact that it was a Detective Superintendent
and a Detective Inspector that came to Finbarr Hickey's
house on the 29th of September indicated the serious nature
of the investigation that was underway?

A. The matter was being treated extremely seriously, Chairman,
yes.

101 Q. So, therefore, any suggestion that might be made that this
was casually investigated or not thoroughly examined in
relation to the IRA dimension would be wrong?

A. Correct, Chairman.

102 Q. And when you arrived I think at Mr. Hickey's house, at that
stage he had previously been interviewed by a Garda Quinn
in relation to one of the passport application forms in
February of that year. Were you aware of that?

A. Superintendent Quinn, yes.

103 Q. Superintendent Quinn, yes. And that then further
information was obtained. And that yourself and then
Superintendent O'Mahoney presented at his home for the

1 purpose of interviewing him?

2 A. That's correct, Chairman, yes.

3 104 Q. I think it is fair to say that you have unparalleled
4 experience in dealing in investigations into subversive
5 crime and the approach of the IRA to those investigations,
6 isn't that right?

7 A. I am familiar with how that works, Chairman, yes.

8 105 Q. Well, there is no need for modesty, Commissioner, here.
9 You have been hands-on controlling very serious
10 investigations in this State for many years into the IRA,
11 isn't that right?

12 A. I have, Chairman. Not specifically in relation to the IRA,
13 my experience there in terms of conducting investigations
14 would be relatively limited, nonetheless I did investigate
15 some very, very important IRA cases. But the majority of
16 my experience would be in the context of criminal
17 investigations.

18 106 Q. And specifically if I can take you to September 1998.
19 There had very recently before that been introduced a
20 change in the law in Section 2 of the Offences Against the
21 State Act of that year, isn't that correct?

22 A. That's correct, Chairman.

23 107 Q. Why was that change in the law brought into existence?

24 A. Well, I mean, that's a matter --

25 108 Q. The failure to answer material questions?

26 A. Correct.

27 109 Q. Because the routine approach of IRA persons or persons
28 co-operating with the IRA was one with no cooperation with
29 an investigation, isn't that right?

30 A. I think that is a fair assessment of the situation,

1 Chairman, yes.

2 110 Q. An absolute insistence on silence?

3 A. In most cases, yes.

4 111 Q. And typically they would assert all rights that they were
5 entitled to, isn't that right?

6 A. Absolutely, Chairman, yes.

7 112 Q. Now, when you approached Mr. Hickey in his home he could
8 have declined to be interviewed, isn't that right?

9 A. He could, Chairman, absolutely.

10 113 Q. He choose not to do that?

11 A. I found Mr. Hickey to be quite forthcoming in the
12 circumstances.

13 114 Q. I think that yourself and Inspector O'Mahoney were
14 something in the order of four hours with him at that
15 initial discussion, isn't that right?

16 A. That's correct, Chairman.

17 115 Q. And that discussion followed on from the internal Garda
18 disciplinary investigation of Superintendent Quinn?

19 A. In conjunction with the investigations that we had
20 conducted as well, it was both.

21 116 Q. And he accepted that he was the author of the passport
22 forms?

23 A. He did, without question, Chairman, yes.

24 117 Q. Which would be - I am asking you to give this as an expert
25 observation - not the type of approach one would expect
26 from an IRA member or a person colluding with the IRA?

27 A. I would think that that distinction could be made,
28 Chairman, yes.

29 118 Q. I think as a result of the admissions made a phone call was
30 made to Commissioner McHugh, as a result of which you were

1 then directed to suspend him from duty?

2 A. Correct, Chairman, yes.

3 119 Q. His identification card was confiscated and he volunteered
4 the keys to his locker at Hackballscross Garda Station?

5 A. He did, Chairman. He fully cooperated.

6 120 Q. It was now quite clear that this had moved from a
7 disciplinary process within An Garda Síochána to a criminal
8 investigation, isn't that clear?

9 A. That is correct, Chairman, yes.

10 121 Q. He waited at his home while yourself and Detective
11 Inspector O'Mahoney went to Hackballscross Garda Station to
12 inspect his locker?

13 A. Well, we hadn't any arrangement to come back and see him,
14 but that is the way it worked out as it turns out, yes.

15 122 Q. Well, joining the dots, wasn't it clear an arrest was about
16 to follow?

17 A. Well, that was something that we made our minds up a little
18 later on after we had visited Hackballscross and weighing
19 up all of the information and the evidence that we had
20 compiled at that particular time, we decided that an arrest
21 was the most appropriate course of action to take in the
22 circumstances.

23 123 Q. But he didn't attempt to go missing, let alone cross the
24 border, for instance?

25 A. No, he certainly did not, Chairman, no.

26 124 Q. So he was there waiting for you when you came back. He was
27 placed under arrest and the criminal phase commenced, isn't
28 that right?

29 A. That's correct, Chairman, yes.

30 125 Q. And he continued his pattern of admissions to you?

1 A. He did, he did, Chairman.

2 126 Q. And at this stage he also implicated Mr. Colton?

3 A. He did on the journey into the station, yes.

4 127 Q. Once an arrest had kicked in, we are now into the criminal
5 phase?

6 A. Correct, Chairman.

7 128 Q. He mentioned Mr. Colton at the outset and he has never
8 deviated from that account, isn't that right?

9 A. That is correct, Chairman, yes.

10 129 Q. I think he was interviewed by yourself and Detective
11 Inspector O'Mahoney and separately interviewed by
12 Detectives Hanley and Hayes?

13 A. Correct, Chairman, yes.

14 130 Q. All very experienced interviewers?

15 A. All experienced members of An Garda Síochána, yes.

16 131 Q. And Mr. Hickey continued with his admissions and never
17 resiled from those admissions?

18 A. Correct, Chairman, yes.

19 132 Q. I think he had a family meeting with his father, who is a
20 former senior member of An Garda Síochána, and again after
21 that meeting continued with his admissions?

22 A. That's correct, Chairman, yes.

23 133 Q. And isn't it the fact of it that from beginning to end
24 Mr. Hickey has acknowledged his wrongdoing in this case,
25 including admitting and pleading guilty before the Special
26 Criminal Court?

27 A. Correct, Chairman, yes.

28 134 Q. Now, again there has been some reference earlier this
29 morning to the standard of proof in criminal as opposed to
30 Tribunal matters. The standard of proof simply didn't

1 arise in relation to Mr. Hickey's case because he pleaded
2 guilty, isn't that right?

3 A. That's correct, Chairman, yes.

4 135 Q. Evidence was given as to the facts of the offending by
5 Detective Inspector O'Mahoney?

6 A. Correct, Chairman, yes.

7 136 Q. Were you present in court for that evidence?

8 A. I don't believe I was.

9 137 Q. Are you familiar with Detective Inspector O'Mahoney's
10 report that led to the bringing of the charges?

11 A. I am, yes.

12 138 Q. You would accept and endorse his observations in the
13 report?

14 A. I would, Chairman, yes.

15 139 Q. Detective Inspector O'Mahoney can help us on this or
16 Assistant Commissioner O'Mahoney. But first of all, an
17 oath of truth is a serious and important matter to a member
18 of An Garda Síochána giving evidence in the Special
19 Criminal Court, isn't that right?

20 A. It is kernel to the process of criminal justice.

21 140 Q. The Court must be in a position to impose absolute trust in
22 the Garda giving evidence, isn't that right?

23 A. Correct, Chairman.

24 141 Q. A Garda would not casually volunteer an opinion that had
25 not been the subject of scrutiny, investigation, and that
26 the Garda was personally satisfied as to its accuracy,
27 isn't that right?

28 A. I would certainly hope not.

29 142 Q. And would you believe of Assistant Commissioner O'Mahoney
30 that he is a man who would likely give an assurance to a

1 Court without having fully investigated it?

2 A. I have worked with Assistant Commissioner O'Mahoney all my
3 wife life in several cases and he is a man of the utmost
4 integrity, and if he provided or offered an opinion for the
5 Court, if that's what was required of him, you can bet your
6 life that that is true and accurate.

7 143 Q. And that any senior Garda would understand that no
8 information should be communicated to a court without it
9 having been properly investigated and stood up, so that if
10 a fact is represented it is a true fact?

11 A. Correct, Chairman.

12 144 Q. Yes. Now, if I can bring you back just to the period of
13 investigation for a second. I mean, all detentions are
14 important and this was a particularly serious and important
15 detention?

16 A. Correct, Chairman, yes.

17 145 Q. And isn't it the position that everything of consequence
18 within a detention should be recorded in writing?

19 A. Yes, Chairman.

20 146 Q. And that if anything is said in the course of an interview
21 that is potentially relevant, that that is recorded?

22 A. That should happen, Chairman, yes.

23 147 Q. And that the presence of a person at an interview should
24 also be recorded?

25 A. Yes, Chairman, I accept that.

26 148 Q. Would you believe that had Mr. Hickey said in the course of
27 an interview that he had been present with Mr. Colton on an
28 earlier occasion at the border in connection with their
29 smuggling televisions, that that would be a significant
30 matter?

1 A. I expect it would. It depends on the context and when it
2 was said, but it would be an important matter because
3 smuggling is an offence, a criminal offence, of course.

4 149 Q. Is there any innocent context to somebody suggesting that
5 he along with another member of An Garda Síochána were
6 involved in smuggling?

7 A. No.

8 150 Q. No. So you would expect that to be written down and noted?

9 A. I would expect, yes.

10 151 Q. You would expect that that would lead to a further
11 investigation of those facts?

12 A. I would expect -- yes, I would, yes.

13 152 Q. Because we have been supplied with a statement from
14 Superintendent Finnegan in which he expresses a
15 recollection as follows: *"I recall that when Hickey was*
16 *being interviewed that he said that when he was on Colton's*
17 *unit there were times that they went to the border in the*
18 *early hours of the morning and met vans and that*
19 *televisions and such like were handed over"*.

20

21 I take it you were not present for any remark like that?

22 A. No, I certainly was not.

23 153 Q. And it doesn't appear that Superintendent Finnegan ever
24 suggested in his evidence before the Special Criminal Court
25 in preparation for that case any remark of that kind being
26 said?

27 A. I am not aware of that.

28 154 Q. It doesn't appear in the interview notes of yourself,
29 Assistant Commissioner O'Mahoney, Messrs. Hanley or Hayes.
30 You are not aware of it, of course?

1 A. I am not aware because it didn't happen certainly when I
2 was interviewing Mr. Hickey.

3 155 Q. Thanks very much. Now, in relation --

4

5 CHAIRMAN: Could I interrupt you there. It is 1 o'clock,
6 it is five past one. I didn't want to interrupt the train
7 of your thought. Will you be very much longer? If it were
8 only a matter of five minutes I think we needn't break for
9 lunch at this point, we could wait until you are finished/
10 are you likely to require --

11

12 MR. MacGUILL: I don't think much more than five or ten
13 minutes. If the Commissioner would prefer a break?

14 A. I would prefer to finish if it is convenient to the
15 Tribunal, but if I need to come back I will certainly come
16 back, Chair.

17

18 CHAIRMAN: We will continue on.

19

20 MR. MacGUILL: I think I will be five or ten minutes.

21 156 Q. I think that in your experience of the Special Criminal
22 Court the persons convicted in that court frequently serve
23 their sentences in Portlaoise Prison?

24 A. Correct, Chairman, yes.

25 157 Q. And that arrangement is one where persons who have
26 acknowledged that they are in association with the IRA and
27 serve on the IRA wing in that prison, effectively?

28 A. There is that arrangement in place, Chairman, yes.

29 158 Q. And I think that a member of An Garda Síochána, this is
30 already been referred to in evidence, Commissioner, that a

1 Garda Lynch was convicted in the Special Criminal Court and
2 served a sentence in that part of Portlaoise Prison?

3 A. Yes, Chairman.

4 159 Q. However, insofar as Mr. Hickey is concerned, he wasn't even
5 introduced to the general population of Portlaoise, he was
6 taken to the Curragh Prison to serve his sentence?

7 A. That's correct, Chairman, yes.

8 160 Q. And would you in your experience accept that that is a
9 strong indicator that Mr. Hickey was not in fact a member
10 of or a supporter of or in collusion with the IRA?

11 A. Well, I have no evidence or no suspicion at all that
12 Finbarr Hickey was a member of the IRA.

13 161 Q. Or a sympathiser to the IRA?

14 A. Or a sympathiser to the IRA.

15 162 Q. Or in collusion with the IRA in relation to the murders of
16 Chief Superintendent Buchanan and Breen?

17 A. Absolutely.

18 163 Q. A part of the essential training of any policeman in this
19 State is to be a observer of facts?

20 A. Of course.

21 164 Q. Would you be believe it an unusual statement to say of a
22 policeman that they could remember faces?

23 A. Well, the expectation is that you do your best,
24 particularly faces of interest, Mr. MacGuill.

25 165 Q. It is routine thing?

26 A. It is.

27 166 Q. Not pass remarkable. If you said of a Garda that they
28 couldn't remember faces, that would be more a cause for
29 concern, wouldn't that be right?

30 A. Yes, it certainly would, yes.

1 MR. MacGUILL: Thank you very much, Commissioner.

2

3 MR. DILLON: Just one or two matters if I may, Chairman.

4

5 **THE WITNESS WAS RE-EXAMINED BY MR. DILLON AS FOLLOWS:**

6

7 167 Q. MR. DILLON: To return, if I may, to a matter of your
8 predecessor Eugene Crowley. Your attention was drawn to
9 evidence that had been given by Tom Curran that he had a
10 meeting with Eugene Crowley. I think you remember the
11 point that was put to you?

12 A. Yes, yes.

13 168 Q. Did you know Tom Curran?

14 A. Not personally, but I knew of him.

15 169 Q. He had a good reputation in the Force?

16 A. Absolutely.

17 170 Q. It's obvious, but I think the point needs to be made. You
18 weren't present when Tom Curran met Eugene Crowley on the
19 occasion in question?

20 A. I certainly was not.

21 171 Q. So whatever view you have on the matter is, and I say this
22 with respect, it's inevitable it is informed speculation on
23 your part?

24 A. Well, it certainly is not informed speculation, it's -- I
25 expressed surprise and I qualified the reason why I was
26 surprised, and that was that I am certainly familiar with
27 the former Commissioner Eugene Crowley and the type of
28 professional policeman he was. And I spoke about his
29 integrity, and I indicated that a matter of that
30 importance, I would be more than surprised if it was

1 treated in that way. So it is not speculation in that
2 context.

3 172 Q. But the reality is, you weren't there so you have to make a
4 judgement, a value judgement as to what may or may not have
5 happened, isn't that right?

6 A. I was asked a question and I did my very best to try and
7 answer and help and assist the Tribunal, and I can put it
8 no further.

9 173 Q. Do you know did it ever occur that Mr. Crowley and
10 Mr. Corrigan worked together?

11 A. I'm sorry?

12 174 Q. Did it ever occur that Mr. Crowley and Mr. Corrigan worked
13 together whether in Dundalk or in Drogheda?

14 A. Did you say Mr. Corrigan?

15 175 Q. Mr. Corrigan, yes, and Mr. Crowley?

16 A. I am not aware that they ever did, no.

17 176 Q. Are you aware of whether it might have been the case that
18 the concerns that were expressed through Bob Buchanan might
19 have been raised orally at a higher level?

20 A. I would be amazed that they wouldn't have been elevated to
21 the very highest level if there were issues around a
22 particular member of An Garda Síochána in those terms. I
23 would be very, very surprised.

24 177 Q. I understand what you say. But do you know whether in fact
25 that it happened or not?

26 A. No, I don't, no.

27 178 Q. Now, you mentioned, I think it was in reply to Mr. Coffey,
28 that there was no evidence of collusion either then or
29 today, isn't that right?

30 A. Correct.

1 179 Q. This has been referred to in the Opening Statement and it
2 refers to Judge Cory's report?

3 A. Yes.

4 180 Q. And at paragraph 2.122 what Judge Cory writes is: "*A
5 second report received by the Gardaí many years after the
6 shooting. This indicates by way of double hearsay that
7 there was a contact within the Gardaí who had passed on
8 information that facilitated the murder of Lord Justice
9 Gibson and the two RUC officers after their visit to
10 Dundalk Garda Station.*"

11 A. Correct.

12 181 Q. "*This intelligence was received in 1990.*"

13 A. Correct. I think there is a clear distinction to be made,
14 Chairman, between intelligence/information and evidence.
15 Quite frequently it is the case that when information is
16 bottomed out or, indeed, intelligence, albeit reported in
17 very strong terms, that it turns out to be something other
18 than what it purports to be on paper. So, you cannot ever
19 draw parallels or -- there is certainly a distinction to be
20 made between intelligence and evidence. I would never ever
21 regard intelligence as evidence until the point where it is
22 assessed properly and then it may very well become
23 evidence. It may very well inform a senior officer's
24 opinion, for instance, in terms of making a judgement on
25 whether or not to form a reasonable suspicion, would be one
26 example. It may also extend to the point where senior
27 officers have a statutory remit to extend peoples' custody,
28 that that type of information/intelligence having been
29 properly assessed would give rise to further inquiries to
30 be made and authenticate their actions in terms of

1 extending the detention of a particular person. I have
2 just provided those by way of example.

3 182 Q. Thank you. Now, one last matter is this: You referred to
4 the evidence given by your colleague, John O'Mahoney, in
5 the Special Criminal Court when Finbarr Hickey was
6 sentenced. By way of a preface, please understand I do not
7 seek at all to impugn what the then Detective Inspector
8 told the Special Criminal Court. I accept your view of his
9 integrity totally. Is it not possible that there might be
10 a different view about Finbarr Hickey?

11 A. I'm not entirely clear.

12 183 Q. What I am driving at is this: I appreciate you may not
13 have been in the room when this was mentioned earlier on
14 this morning. The attention of the Chairman was drawn to
15 evidence that had been given earlier on by a guard that he
16 was -- *"He seemed to have a sixth sense almost in terms of*
17 *spotting if something was just not right. He had a great*
18 *eye, he could remember faces."* That was --

19 A. Yes, I am familiar with that piece.

20 184 Q. So there can be a different point of view. There can be a
21 different view of Finbarr Hickey as well, isn't that right?

22 A. Well, certainly the view I have and I know the view of my
23 colleague, and he will speak for himself because he is
24 giving evidence, but we formed a view of Mr. Hickey at the
25 time.

26 185 Q. Well, did you find him a truthful person?

27 A. Insofar as we could not find any evidence/information to
28 counter what he was telling us just at that point, I found
29 that he was, he was -- he was certainly helpful to the
30 degree. Mr. MacGuill had followed a line of questioning

1 that I agreed with. And so, basically, he was quite fluent
2 in terms of the responses he gave, and in that context I
3 found that he was telling the truth to that point. That's
4 as far as I can put it. That is the evidence, Chairman, as
5 far as we could bring it --

6

7 CHAIRMAN: Yes.

8 A. -- in the context of what we were investigating, and I
9 can't go beyond that.

10 186 Q. MR. DILLON: In terms of what you were investigating, I am
11 sorry to re-visit the point. In terms of the evidence that
12 has now been put before the Tribunal, are you satisfied
13 that Mr. Hickey was telling the truth? You will recall the
14 various Memos of Interview we went through, the ones that
15 you took, the conversation you had with him?

16 A. As I said, insofar as we cannot put it any further, I
17 accept that Mr. Hickey's version of events is true until
18 the point that the contrary is proved. And I make that
19 judgement, Chairman, based on his cooperation and the
20 fluency within which he answered questions. And I do
21 accept that some of those questions and some of those
22 answers progressed in the currency of the interviews, which
23 is not at all uncommon, but he was certainly helpful and he
24 did cooperate and he didn't refuse to answer questions and
25 he didn't have to rely on legal advice to say "No, I'm not
26 going to". So he did provide a version to us, and we had
27 certainly -- certainly I had no reason, and I think my
28 colleague will tell you himself, we had no reason to doubt
29 what he was telling us at the particular time. We couldn't
30 put it any further.

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MR. DILLON: Thank you, Commissioner.

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CHAIRMAN: Thank you very much.

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MR. MacGUILL: Just one thing, actually. It isn't a question for the Commissioner. If it is now contended that the remarks that somebody had a sixth sense and could remember faces is in some way sinister; well we would be anxious that that witness be recalled, because it wasn't presented in that way. It wasn't cross-examined because there is nothing sinister in it. And it shouldn't be presented in a different light now, because it is not a sinister remark. If it is contended to have some other meaning, the witness should be recalled to test it.

MR. DILLON: Chairman, there is absolutely nothing sinister about the evidence, it's the point of view of an individual, that is all it is. The reason I brought it into the mix, as it were, was to put to the Commissioner that one could have a different view. It is as simple as that. There is absolutely nothing sinister about it.

MR. MacGUILL: Is the different view in dispute with the Commissioner's view that Mr. Mr. Hickey was not in collusion with the IRA? Is that what is contended? If that is supposed to mean, bring back the witness.

MR. DILLON: This was evidence which was given by a witness. She gave her assessment of the worth of

1 Mr. Hickey as a policeman, that's what it amounts to. What
2 weight you attach to it, what interpretation you attach to
3 it is a matter for yourself. I don't seek to cast any web
4 of trying to draw Mr. Hickey in. All I was trying to
5 establish, and I am very surprised by the turn of events,
6 was simply that people can have different appreciations of
7 Mr. Hickey, that's all. And it goes no further than that.
8 Anything further is a matter for yourself. I don't seek to
9 go any further than that.

10
11 CHAIRMAN: Well, I think --

12
13 MR. MacGUILL: This is wholly unsatisfactory.

14
15 CHAIRMAN: No, Mr. MacGuill, it isn't. I mean --

16
17 MR. MacGUILL: I mean, the Commissioner has given a view of
18 Mr. Hickey. He is then asked could you have a different
19 view, and the different view is based on a person who has a
20 sixth sense as a professional investigator and can remember
21 faces. And if this is in some way being put up to under --
22 as it was in your ruling earlier, Chairman, one of reasons
23 was advanced today for your ruling that Mr. Hickey should
24 be continued to be subject to this was this sinister -- you
25 have evidence that he had a sixth sense. I would apply
26 that you recall that witness because if emphasis --

27
28 CHAIRMAN: Which witness do you want me to recall?

29
30 MR. MacGUILL: The witness that offered the remark that he

1 could remember faces.

2

3 CHAIRMAN: Yes. Very well, if that has to be done later
4 on, it will. But, anyway, you have cross-examined the
5 Commissioner and he has given evidence very fairly, and I
6 think I would have said favourably towards your client.
7 And I think the Commissioner is no longer required as a
8 witness, I don't propose to recall him on that. Thank you
9 very much. Well, thank you very much, Commissioner. I
10 deeply appreciate the trouble you have taken to come here
11 today to assist the Tribunal. It was very important that
12 you gave your evidence and I am grateful to you for that.
13 Thank you very much.

14

15 A. Thank you very much indeed, Chairman.

16

17 MR. DILLON: In view of the hour might you perhaps say
18 2:15?

19

20 CHAIRMAN: I was about to say that. It is now 1:20. Would
21 it be safer to say 2:20, I think?

22

23 MR. DILLON: Absolutely.

24

25 CHAIRMAN: Thank you very much. 2:20.

26

27 THE TRIBUNAL ADJOURNED FOR LUNCH.

28

29

30

1 **THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:**

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3 MR. DILLON: Thank you, Chairman. Your next witness is
4 Assistant Commissioner O'Mahoney.

5

6 **ASSISTANT COMMISSIONER JOHN O'MAHONEY, HAVING BEEN SWORN,**
7 **WAS EXAMINED BY MR. DILLON AS FOLLOWS:**

8

9 187 Q. MR. DILLON: Now, Assistant Commissioner, could I ask you
10 first of all to outline to the Chairman your career in the
11 Garda Siochana?

12 A. I am a member of An Garda Siochana since 1977, Chairman,
13 and in 1986 I was promoted to the rank of Sergeant. In
14 1996 I was promoted to the rank of Inspector -- sorry,
15 yeah, 1996 to the rank of Inspector. In 2002 to the rank
16 of Superintendent. And 2006 to the rank of Chief
17 Superintendent. And I am just short of two years as an
18 Assistant Commissioner, presently in the position as
19 Assistant Commissioner Crime and Security.

20 188 Q. Yes. Thank you. Now, just touching on a few dates that
21 are of concern to the Chairman. In 1989, where were you
22 serving?

23 A. In 1989, I was serving in the -- the National Bureau of
24 Criminal Investigation, as it was then called.

25 189 Q. And that is in Harcourt Square, is that right?

26 A. Harcourt Square, yes.

27 190 Q. Again, was Noel Conroy working with you there at that time
28 or had he moved on?

29 A. I think he had moved -- sorry, 1989, I was working in -- I
30 was in Tallaght Garda Station. Sorry, my apologies. In

1 1998 (sic) I was in --

2 191 Q. So 1989, therefore, you were in Tallaght Garda Station.

3 Was there any discussion amongst your colleagues in

4 Tallaght about events that are under consideration by the

5 Chairman, namely the murders of the two RUC officers?

6 A. Other than being aware of it from general press and media,
7 that was my only knowledge of it.

8 192 Q. In the year 2000, you had become a Chief Superintendent, is
9 that right?

10 A. No.

11 193 Q. Sorry?

12 A. I was -- Detective Inspector in the year 2000.

13 194 Q. I can't read my own handwriting, my apologies. In the year
14 2000, the issue of collusion was revisited by the Garda
15 Siochana by way of an investigation conducted by Detective
16 Chief Superintendent Sean Camon, who is now deceased as we
17 know. Were you involved in that at all?

18 A. I was on the periphery of that investigation. I would have
19 been present with Chief Superintendent Camon I think maybe
20 at one interview, certainly one interview, maybe two
21 interviews.

22 195 Q. And when you say, who was he interviewing?

23 A. The interview that I recall is, it was a journalist, Kevin
24 Myers.

25 196 Q. I see. And that interview took place here in Ireland,
26 isn't that right?

27 A. It took place in this jurisdiction, yes.

28 197 Q. Because I understand that the Chief Superintendent
29 travelled to America to interview Toby Harnden?

30 A. That's correct, yes.

1 198 Q. You didn't accompany him on that occasion, did you?

2 A. No such luck.

3 199 Q. Yes. Now, turning to events in 1998, you were involved in
4 the investigation of allegations that passports had been
5 falsely issued to members of the then Provisional IRA,
6 isn't that right?

7 A. I was involved in the investigation, yes, into those
8 issuing of passports.

9 200 Q. And I think you received a complaint from -- was it you who
10 received a complaint from the Passport Office in relation
11 to one application?

12 A. No, no, I am aware that there was a complaint from the
13 Passport Office in or around April of 1996, say. I would
14 have just become aware of that complaint obviously as part
15 of my investigations. But my first involvement in the
16 investigation was in August of 1998.

17 201 Q. And how did you become involved in the investigation?

18 A. I was appointed to investigate it as the previous witness
19 here was my Detective Superintendent at the time, Detective
20 Superintendent Callinan, and my Chief Superintendent was
21 the late Chief Superintendent Sean Camon. He was asked by
22 the, I presume it was the Commissioner, maybe one of the
23 Assistant Commissioners of the day, to carry out this
24 investigation, and he appointed Detective Superintendent
25 Callinan and myself to carry out that investigation.

26 202 Q. And as we've heard, the investigation started in Dublin
27 because the Passport Office was in Dublin and referred the
28 papers to the guards in Dublin, isn't that right?

29 A. Well, the investigation was based in the National Bureau of
30 Criminal Investigation in Harcourt Square because that is

1 where we were situated at the time, yes.

2 203 Q. Ultimately, the investigation moved out to Navan at the
3 time that Mr. Hickey was arrested?

4 A. Yes, I was present this morning when Commissioner Callinan
5 gave evidence, and the only reason that the investigation
6 was -- or that any part of that investigation was in Navan,
7 was that when Finbarr Hickey was arrested on the 29th of
8 September, he was brought to Navan Garda Station purely for
9 the purpose of detention and interview, rather than
10 interviewing him in the environs of the Louth/Meath
11 division or Louth where he was based.

12 204 Q. Yes. And I think at the time he was a Sergeant in
13 Hackballscross station?

14 A. That's correct, yes.

15 205 Q. Yes. So it was effectively was just to take him away from
16 that area that you brought him down to Navan?

17 A. That's correct, yes.

18 206 Q. And I think in the context of that investigation, it was
19 organised I think in the following way: Namely, that
20 officers were brought in from either the Bureau of
21 Investigation or possibly even locally they were brought
22 in, and insofar as officers weren't aware of background
23 matters or matters relating to the two, as it happens the
24 two people who were under arrest, they were briefed on the
25 backgrounds to these individuals, isn't that right?

26 A. In August and in September the -- obviously by its very
27 nature, as you can imagine, allegations of this nature
28 would be taken very, very seriously by the Commissioner and
29 by the Garda organisation, and because of its very nature
30 it would have been a very discreet investigation at the

1 early stages, very few people involved in that
2 investigation. But to say people were brought in from
3 outside, people were -- our, the National Bureau of
4 Criminal Investigation under Chief Superintendent Camon,
5 all the people involved in the initial stages of the
6 investigation were from the National Bureau of
7 Investigation.

8 207 Q. Sorry, I didn't make myself clear, that is my fault. What
9 I meant, I understand one member in particular was brought
10 up from Wexford, he was conducting an investigation in
11 Wexford and was brought up?

12 A. Yes, but he was attached to the National Bureau of Criminal
13 Investigation. I suppose when we went to interview Finbarr
14 Hickey on the day of the -- on the 29th, it was an inquiry
15 that just -- that myself and now Commissioner Callinan were
16 involved in. As things developed over the period of that,
17 the 29th and the 30th, and people were arrested, more
18 people were brought into the investigation, yes.

19 208 Q. Now, in terms of the -- with one exception, in terms of the
20 two persons who had been arrested, you dealt pretty well
21 exclusively with Finbarr Hickey, isn't that right?

22 A. That is correct, yes.

23 209 Q. Now, the Chairman has heard about a meeting that was
24 arranged between Mr. Hickey and Mr. Colton in Navan
25 station?

26 A. That is correct, yes.

27 210 Q. I believe you were present at that?

28 A. I was present, yes.

29 211 Q. Now, also present, we understand, was a guard called or
30 detective guard called Bernie Hanley and he did the note of

1 the exchanges, and we will deal with that when he comes to
2 give evidence to the Chairman. I think possibly tomorrow.
3 But you were present at this meeting between the two; you
4 brought Mr. Hickey from his interview room down to
5 Mr. Colton's interview room, is that right?

6 A. That is correct, yes.

7 212 Q. Can you tell us a little bit about Mr. Hickey's demeanour?

8 A. Well, I suppose I remarked on the demeanour. As you can
9 imagine, it was a very short -- it was a confrontation, I
10 suppose, rather than a meeting. He had agreed to confront
11 Leo Colton in relation to what he had been saying, alleging
12 against Leo Colton, and when we entered the room I suppose
13 I noted that Finbarr adopted, I suppose, a very -- he
14 didn't -- I would have expected him to look at Leo Colton
15 when he was accusing him in the eye. He didn't do that.
16 He put his head down and I thought the confrontation was
17 just, I suppose, very meek. That was my memory of it.
18 That was my, I suppose, my abiding memory of it, yes.

19 213 Q. Did he speak in a confident voice? How did he talk to
20 Mr. Colton?

21 A. Again, I am just going again from memory and just my own
22 impression and my memory of it, I would have thought -- I
23 would have hoped, I suppose, that the confrontation would
24 have been stronger.

25 214 Q. I beg your pardon?

26 A. I would have hoped that the confrontation would have been a
27 stronger declaration. I know that he told him he was in, I
28 can't remember the exact words, but he told him he was in
29 deep trouble and he alleged that Leo had been the person
30 who had asked him to sign the passports and he was pleading

1 with Leo to tell us the truth.

2 215 Q. Now, I am going to put -- Mr. Mills is going to put up on
3 the screen a typed version of a note that you prepared,
4 signed by yourself. Just show the signature part. you see
5 your name there. You probably recollect this, but I will
6 take you through it.

7

8 *"Finbarr Hickey confronted Leo Colton. Also present were*
9 *Detective Sergeant McGrath and Detective Garda Hurley"?*

10 A. That should be Hanley.

11 216 Q. *"Notes taken by Detective Garda" -- oh, yes, Hanley, you*
12 *are quite right. "Returned to interview room, 12:40 p.m..*
13 *notes of interview read over to Finbarr Hickey. Agreed*
14 *correct. Asked him if what Colton had said to him about*
15 *his allegation as being false could be correct.*
16 *Finbarr Hickey: 'No, what I have told you is the truth.*
17 *He gave me these forms to sign and has put me in this*
18 *mess'.*
19 *This was read over and was agreed to be correct."*

20 A. Yes.

21 217 Q. So this conversation took place, I take it, when you
22 brought Mr. Hickey back into his interview room?

23 A. That is with the previous witness, Commissioner Callinan.

24 218 Q. Yes. Now, in addition you took a Memorandum of
25 Interview -- this is typed up. I am grateful to
26 Mr. McGuinness for giving this to us. You will see on the
27 last page your name appears, it's the first name to appear,
28 which generally indicates that you were notetaker, is that
29 right?

30 A. That's right.

1 219 Q. So this is a Memo of Interview with Finbarr Hickey on the
2 30th of September, 1998. You cautioned him in the usual
3 terms. You reminded him of why he had been arrested and
4 you wanted to clarify a number of questions arising out of
5 his previous interviews. Now, Martin Callinan -- "MC" I
6 think is Martin Callinan?

7 A. That's correct.

8 220 Q. *"Did anyone else know that you were signing false passport
9 application forms for Leo Colton?"*

10 *No, I don't think so. I am nearly sure I was always on my
11 own in the station when he called.*

12 *Did you tell anyone about this?*

13 *I told Ray Roche, he is a Sergeant in Dundalk Unit D. I
14 told him at the time I was being investigated for
15 Kinsella's passport.*

16 *What did you tell him?*

17 *I can't remember exactly, but I know I mentioned to him
18 that I was having hassle with a passport and that Colton
19 had asked me to sign it for him.*

20 *What did he say?"*

21 *This was you who put the question.*

22

23 *"I can't recall, I think he called me an idiot. I know I
24 am being prissy, but there you are, or something."*

25

26 He then was asked: *"Did anybody ever see you with Colton
27 recently?"* He answered: *"Yeah, I've spoken with him in
28 Carroll's pub in Seatown and Ray Roche and Noel Horgan, a
29 guard in Dundalk, would have seen me talking to Colton.*

30 Question: *Have you ever had telephone contact with him?*

1 *Answer: Not that I can recall, I am not sure even if he*
2 *has a phone at home.*

3 *Does Colton have contact with your ex-wife?"*

4 *He answered: "He used to work in an insurance company when*
5 *he retired first and my ex-wife worked there, I think it*
6 *was Canada Life. I was separated then."*

7

8 *You asked him: "Have you ever given Colton blank passport*
9 *application forms?" To which he answered "no". You asked*
10 *him: "Are you aware blank application forms for passports*
11 *and driving licences were found in Colton's house?" His*
12 *answer was: "No, I never gave him anything". You asked*
13 *him: "Did he ever ask you to sign a driving licence*
14 *application form?*

15 *Answer: No."*

16

17 *Then Mr. Callinan asked him: "Did he bring the application*
18 *forms to you in blank?" He replied, "No, they were always*
19 *filled out. On one occasion the signature was missing.*
20 *Did you say anything to him about it?*
21 *I could have, I probably did.*

22 *In relation to our conversation in the car from Dundalk to*
23 *Navan yesterday, I have made a written record of it. The*
24 *notes were read over and they were agreed to be correct and*
25 *they were signed by Mr. Hickey and witnessed by the*
26 *members."*

27

28 *Mr. Callinan then continued: "Are you willing to confront*
29 *Leo Colton about what you have told us?" To which he*
30 *answered, "Yes". And you then said: "Are you aware he is*

1 *in custody here?" To which he said, "I was told that*
2 *earlier."*

3

4 Then there was a matter of personal matters, we won't deal
5 with. And you asked him about the explanations of dealings
6 with Colton, could he give any explanation. And Mr. Hickey
7 said: *"I haven't -- I just can't think.*

8 *Will you think about it over the next while and see if you*
9 *can come up with anything?*

10 *I will. If I come up with anything I will call you."*

11

12 Then the confrontation which we have just dealt with took
13 place. I don't think we need to go into that any further
14 because that has already been given in evidence.

15

16 So, that was the note of an interview that yourself and
17 Mr. Callinan conducted with Finbarr Hickey, isn't that
18 right?

19 A. That's correct, yes.

20 221 Q. And he clearly set out what his position was in the matter
21 and his involvement in the matter. Now, matters proceeded
22 apace. And Mr. Hickey was ultimately charged with a number
23 of offences and he pleaded to four, if I am correct?

24 A. That's correct, yes. It was the investigation subsequent
25 to the release from custody of both Mr. Hickey and
26 Mr. Colton, the investigation continued for some
27 considerable time and it was complete, I think, sometime
28 around March of 1999, when a file then was sent to the
29 Director of Public Prosecutions. Am I right? March '99,
30 yes.

1 222 Q. And Mr. Hickey pleaded guilty to four counts and he was
2 sentenced?

3 A. He pleaded guilty to four counts in the Special Criminal
4 Court in 2001, I think it was, Chairman.

5 223 Q. And I think that you told the Court on that occasion that
6 Mr. Hickey had signed and stamped passport application
7 forms over a ten-month period?

8 A. That related to the charges before the Court, the plea of
9 guilty, yes. They were over a ten-month period.

10 224 Q. And I think you explained to the Court that Mr. Hickey at
11 the time had severe personal problems and that he had been
12 approached by a former senior colleague who asked him to do
13 a favour?

14 A. That's correct, yes.

15 225 Q. I think you told the Court that Mr. Hickey had no
16 association with illegal or subversive organisations?

17 A. That's correct, yes.

18 226 Q. And then you explained what happened to the passports and
19 what happened to other passports. And you also told the
20 Court that the Gardaí had traced three of the four forged
21 passport holders and one was currently before the courts,
22 that was Mr. Fox?

23 A. That was Mr. Fox, yes.

24 227 Q. And I think the other two were outside the jurisdiction at
25 the time?

26 A. That is correct, yes.

27 228 Q. And you explained to the Court that Mr. Hickey was
28 suspended when he was arrested in September 1998 and that
29 he was now going to lose his job?

30 A. That's correct.

1 229 Q. And indeed, he did lose his job?

2 A. Yes.

3 230 Q. It's fair to say that Mr. Hickey lost everything; he lost
4 his job, he lost his pension, all that went, isn't that
5 right?

6 A. That's correct, yes.

7 231 Q. I think you told the Court that Mr. Hickey had cooperated
8 fully with the Gardaí and had confronted a former Garda
9 colleague at Navan station but with no results. You also
10 told that Court that Mr. Hickey had admitted his part in
11 the offences and he had named a former colleague. You told
12 the court that he had played an integral part in the crime
13 but was not the main instigator?

14 A. That's correct. The crime could not have been committed
15 without Finbarr Hickey, but that my solid belief from --
16 all the circumstances of the investigation, that he was not
17 the main player.

18 232 Q. Yes. And you also told the Court that you were aware that
19 at the time Mr. Hickey was very vulnerable?

20 A. That is correct, yes.

21 233 Q. And he suffered from a particular problem, I think it was
22 drinking, is that right? I hope he doesn't mind my
23 mentioning that.

24 A. Yes.

25 234 Q. I think it was explained by his counsel, Mr. Hartnett, at
26 the time that Mr. Hickey had dealt with a number of
27 different events in his life; he had been hospitalised for
28 a serious lung complaint, he had personal difficulties and
29 he was involved in a road accident as well?

30 A. That is correct, there was a lot of difficulties around

1 that time, yes.

2 235 Q. I think it was a very tragic accident but Mr. Hickey was
3 exonerated from all blame in that regard, but clearly it
4 probably had an effect on him, is that correct?

5 A. I would imagine that there was a number of circumstances
6 there around that time that probably had a detrimental
7 effect on Mr. Hickey, yes.

8 236 Q. Mr. Hartnett went on to say that *"Mr. Hickey realised the*
9 *shame that he had brought on his family, himself and the*
10 *Garda Siochana. He apologised profoundly to them for what*
11 *he had done. He has destroyed his career and humiliated*
12 *himself and he will suffer for the rest of his life."* I
13 think they were the submissions made on Mr. Hickey's behalf
14 in mitigation of sentence?

15 A. That's correct, yes.

16 237 Q. And he was sentenced to 12 months imprisonment?

17 A. That's correct, yes.

18 238 Q. Now, I think it's the case that Mr. Hickey was imprisoned
19 in the Curragh Prison?

20 A. In the Curragh, yes.

21 239 Q. And sometime later, towards the end of his term of
22 sentence, I think you went out to have a meeting with him,
23 with Mr. Hickey?

24 A. That's correct, yes, Chairman. I think, I think it was
25 sometime later in that year and prior to, obviously, his
26 completion of his sentence, that we visited Mr. Hickey in
27 the Curragh with a view to seeing if he would be willing to
28 give evidence against both Mr. Colton and Mr. Fox.

29 240 Q. Now, first of all, how many meetings did you have with
30 Mr. Hickey?

1 A. I certainly had one meeting with him. I believe if I can
2 maybe just go through the sequence of events as I recall
3 them, is that we had the first meeting with him, with
4 Mr. Camon. During the course of that meeting of which I
5 kept a memo of that meeting we asked him about giving
6 evidence. He said he would consider it, I suppose just
7 to -- he would consider the same. And that we gave him a
8 phone number for him to come back to us. We -- from
9 memory, and we definitely went to the Curragh a few weeks
10 later. I am not sure whether we actually met Mr. Hickey at
11 the time face-to-face, I just can't recall at this point,
12 but certainly we got a message, either from him directly or
13 one of the prison officers, to say that he was not willing
14 to give evidence.

15 241 Q. Well, now, we have a copy of a note that you wrote -
16 Mr. Mills will put it up - in typed form - on the monitor.
17 And it seems you went to see him on the 31st of January,
18 2001?

19 A. 31st of October.

20 242 Q. Yourself and Sean Camon?

21 A. 31st of October.

22 243 Q. I am sorry, my eyesight, my apologies. 31st of October,
23 2001. And you spoke about family circumstances, we won't
24 go into that. And then he was asked about the possibility
25 of giving evidence against Leo Colton and James Fox.
26 Mr. Fox's trial was in January, and you asked him to make a
27 further Statement of Evidence outlining what he had already
28 told you. He agreed to think about it. He said he was
29 afraid of Colton. He would have to go back to Dundalk and
30 Colton had political connections. He would speak to his

1 father and sister. His father would be due down Friday or
2 Monday. He would get his partner at the time to contact
3 him and ask him to come down with her on Friday or Monday.
4 You gave him your contact details?

5 A. Yes.

6 244 Q. Now, he told you that he was afraid of Mr. Colton. What do
7 you infer from that?

8 A. Again, he qualified it by saying that Colton had political
9 connections. I cannot say as to what reason he was afraid
10 of Mr. Colton. I took the note of what he said.

11 245 Q. I understand that, I appreciate that. When we look back on
12 it, as you have already given evidence, Mr. Hickey had lost
13 everything?

14 A. Absolutely, yes.

15 246 Q. He lost his good name, he lost his reputation, he lost his
16 income, his pension, his job. What else was there for him
17 to lose?

18 A. I can't answer that question.

19 247 Q. That is a fair answer. But it does, nonetheless, seem to
20 be the case that for whatever reason he was afraid of
21 Mr. Colton?

22 A. Yes.

23 248 Q. Political connections being the purported - that is wrong
24 of me to say that -- political connections being the reason
25 that he advanced?

26 A. That is the reason he proffered, yes.

27 249 Q. After that meeting, did you have any further contact with
28 Mr. Colton or, sorry, Mr. Hickey, I am terribly sorry?

29 A. With Mr. Hickey. As I said, sometime in the next week or
30 two weeks we received a reply from him. We certainly

1 visited the prison, but my recollection of it, and I -- is
2 that he didn't agree to meet us at the prison but passed on
3 a message that he wasn't willing to give evidence. That is
4 my strong recollection or my strongest recollection of it.

5 250 Q. Now, while I appreciate you didn't take any note, any
6 interview with Mr. Colton, did you have any encounter with
7 Mr. Colton during the course of this investigation?

8 A. The only encounter I had was that very brief encounter or
9 direct encounter, yes.

10

11 MR. DILLON: Thank you.

12

13 CHAIRMAN: You spoke about the demeanour of Mr. Hickey on
14 that occasion. You thought he wasn't -- he was rather meek
15 in his demeanour. What was Mr. Colton's demeanour like on
16 that occasion?

17 A. Mr. Colton was quite strong and quite robust in his defence
18 of what he was saying. He denied vehemently Mr. Hickey's
19 allegations.

20

21 CHAIRMAN: Yes. Did Mr. Hickey have an alternative to
22 giving evidence? I mean, the fact that he maybe didn't
23 want to, you were in a position to summon him as a witness
24 if you had thought fit?

25 A. I suppose we would have been in contact with the Office of
26 the DPP at that stage, and again, the evidence in relation
27 to -- evidence that Mr. Hickey would give, he would have to
28 give that evidence willingly, I would manage, for it to be
29 of any -- of a strong benefit to the prosecution.

30

1 CHAIRMAN: Thank you very much. Any questions for the
2 witness?

3

4

5

6

THE WITNESS WAS CROSS-EXAMINED BY MR. McGUINNESS

7

AS FOLLOWS:

8

9 251 Q. MR. McGUINNESS: Commissioner O'Mahoney, just in relation
10 to the investigation itself, I think at the time you became
11 part of it you obviously were familiar with the background
12 to how it had been initiated, i.e. from the Passport
13 Office?

14

A. I was, yes.

15

252 Q. And that related to a stop that had been put in relation to
16 a birth cert which was not connected with -- not ostensibly
17 connected with any IRA activity?

18

A. No, the initial complaint from the Passport Office related
19 to a -- the birth cert that accompanied the application for
20 the passport, that birth cert had also been used relative
21 to an arranged marriage in London, I think about ten years
22 previously, and that is why the alert was in the Passport
23 Office in relation to it. And it related to a person from
24 Dublin. So, at that initial period it certainly wasn't
25 evident or there was nothing to suspect that there was any
26 subversive connection or that, indeed, that there was any
27 connection up around the border, other than that it was
28 Finbarr Hickey had signed it in Hackballscross.

29

253 Q. Yes. And the investigation led then to examining the
30 passport register book in Hackballscross?

1 A. Yes, subsequent inquiries then, which became evident
2 sometime in early 1998, that is my understanding of it, in
3 Dundalk, raised further concerns that the initial -- that
4 the passport, the 1996 passport wasn't the only passport at
5 issue relative to Finbarr Hickey, and that is where we came
6 in then.

7 254 Q. Yes. And that necessitated an examination not merely of
8 the passport register book, if that is the correct title,
9 in Hackballscross, but an examination and identification of
10 all the passports that had been dealt with by Finbarr
11 Hickey?

12 A. By Finbarr Hickey and subsequently also by Leo Colton.

13 255 Q. Yes. And I think the examination focused on 45 passport
14 applications that Finbarr Hickey had signed since, I think,
15 a particular date in September 1993?

16 A. Between September 1993 and up to the passport that was
17 questioned by the Passport Office in April of '96.

18 256 Q. Yes. And I think the investigation necessitated going to
19 the Passport Office, where all of these are processed, and
20 sifting through all of the original documentation relating
21 to each of the passport applications in question?

22 A. In some cases, yes. I know that there was thousands and
23 thousands of passport forms gone through back over the
24 years to identify if there were any other breaches of the
25 law or regulations.

26 257 Q. Yes. And 45 were identified as having been signed by
27 Mr. Hickey, and I think that narrowed itself down to eight
28 that were believed to be completely fraudulent and three of
29 which, if I am correct, were identified as having gone to
30 members of the Provisional IRA, ultimately?

1 A. That's correct, yes.

2 258 Q. And those members of the IRA were identified by their
3 photographs by a variety of police officers on both sides
4 of the jurisdiction of the border?

5 A. Photographs, the photographs of the eight people on the
6 passport application forms were shown to, I suppose, every
7 Garda and, indeed, every police officer north of the
8 border, as well, with a view to identifying same.

9 259 Q. And may the Tribunal take it, there was no stone left
10 unturned in an effort to identify what members of the
11 Provisional IRA might or might not have received these
12 passports?

13 A. Absolutely, yes. There was a very extensive investigation
14 over a period of practically 12 months.

15 260 Q. Yes. And is it also the case, I think you mentioned there
16 in one of your previous answers to me that the
17 investigation also identified a number of passport
18 applications that Sergeant Colton had dealt with in terms
19 of processing them in the station?

20 A. That's correct. As you will be aware, when this
21 investigation occurred, Sergeant Colton was retired a
22 number of years, but we went back and took a period of time
23 where we looked -- we had to do a manual search of
24 passports in -- where the Passport Office have their
25 archives, and that took a considerable number of weeks,
26 considerable amount of Gardaí involved in that. And we
27 identified, I think it was something around 10 to 15
28 passports that had been signed by Mr. Colton in that period
29 that was the subject of the review, and all of those
30 passports were found to be legitimate passports.

1 261 Q. Yes. There were none identified directly with Sergeant
2 Colton as any that he had processed while he had still been
3 a member, then?

4 A. These were -- yes, the figure was somewhere, I think 10 to
5 15 passports, from memory, that were signed by him in that
6 period of time.

7 262 Q. And I think did you interview Ray Roche, who Mr. Hickey had
8 mentioned during the course of one of his interviews with
9 you?

10 A. As part of the investigation and arising out of what
11 Finbarr Hickey had told us in interview, Sergeant Roche was
12 interviewed by both myself and another member, sometime
13 subsequently.

14 263 Q. Yes.

15 A. I think the statement is there.

16

17 MR. MCGUINNESS: Yes. Thank you.

18

19 THE WITNESS WAS CROSS-EXAMINED BY MR. O'CALLAGHAN

20 AS FOLLOWS:

21

22 264 Q. MR. O'CALLAGHAN: Commissioner, I appear for Owen Corrigan.
23 I have no questions for you on the passport issue, but can
24 I ask, did you state in your evidence that you were one of
25 the guards who interviewed Kevin Myers?

26 A. That is correct, yes.

27 265 Q. Yes. Was that interview conducted by you with Detective
28 Chief Superintendent Camon?

29 A. That is correct, yes.

30 266 Q. And was the interview in relation to an article that

1 Mr. Myers had written in *The Irish Times* on the 10th March,
2 2002, suggesting there was a Garda mole?

3 A. That is correct, yes.

4 267 Q. And I think in that article, Mr. Myers had written that a
5 single retired member of An Garda Siochana was responsible
6 for the deaths of Chief Superintendent Breen,
7 Superintendent Buchanan, six other RUC officers, the Hannas
8 and Tom Oliver. That was a very serious charge in a
9 reputable newspaper, would you agree with me?

10 A. Again, the -- obviously the investigation that Chief
11 Superintendent Camon was conducting was a very, very
12 serious investigation or review. I haven't had, actually,
13 sight of the note of that interview since the day that -- I
14 think it was sometime around maybe 2000 or whatever, and I
15 just can't recall, again, the full -- you know, the full
16 issues that surrounded it or -- I know it was in relation
17 to an article that Mr. Myers had written alleging
18 collusion, yes.

19 268 Q. Can I ask you: Did Mr. Myers provide you, from your
20 recollection, with any evidence supporting the serious
21 allegations made in his article?

22 A. No, my understanding, again I am going completely,
23 Chairman, from memory and it's 10, 12 years ago, my memory
24 is that no, there was no evidence there that -- he didn't
25 have any evidence to provide to us.

26 269 Q. And did he give any explanation to you, can you recall, as
27 to what caused him to write this article? What was the
28 source of his --

29 A. At this remove I just cannot answer that question, but I
30 would imagine there is a note of that interview. If there

1 is a note there, and I see it, I will --

2 270 Q. Just to conclude on this issue, I am conscious maybe you
3 are not prepared for it, but Chief Superintendent Camon
4 concluded after his interview with Mr. Myers, which you
5 were at, he says: *"In response to questions he speaks of*
6 *having information but no evidence. On another occasion in*
7 *response to a query he stated, 'I cannot corroborate it and*
8 *I don't have anything that may be used in evidence'."*

9

10 Does that accord with your recollection?

11 A. That could very well be. Again, at this remove, the note,
12 if that is what Chief Superintendent Camon has said, I
13 wouldn't disagree with that because my overall memory is
14 there was no evidence provided by Mr. Myers.

15

16 MR. O'CALLAGHAN: Thank you very much.

17

18 CHAIRMAN: Any questions?

19

20 MR. COFFEY: No questions.

21

22 **THE WITNESS WAS CROSS-EXAMINED BY MR. MacGUILL AS FOLLOWS:**

23

24 271 Q. MR. MacGUILL: Commissioner, I appear on behalf of Finbarr
25 Hickey. And I think you were present for the evidence of
26 Assistant Commissioner Callinan, and I think you will have
27 heard that he endorsed and accepted what you had to say in
28 your report in relation to his investigation, you heard him
29 say that, did you?

30 A. I did, yes.

1 272 Q. I think you would agree, therefore, that the presence of a
2 Detective Superintendent and a Detective Inspector in
3 Mr. Hickey's home on the morning of the 29th September
4 indicated that this was a matter that was taken seriously
5 at the highest levels in An Garda Siochana, isn't that
6 correct?

7 A. This whole investigation, once I think it became evident --

8 273 Q. I think your microphone might have gone off, we can't hear
9 you down here.

10 A. Once it became evident that there was more than -- I think
11 there was more than one passport the subject of this
12 inquiry, that I am aware that that caused very, very
13 serious concern at senior levels in the Garda Siochana, and
14 I suppose the fact that Detective Chief Superintendent
15 Camon, who was the Chief Superintendent at the time, head
16 of the National Bureau of Criminal Investigation, was
17 appointed to carry out the investigation, that in itself
18 would be indicative of how serious that investigation was
19 being taken.

20 274 Q. And I think it's fair to say that collusion by a member of
21 An Garda Siochana with a member of the IRA would simply not
22 be countenanced at any senior level in the Force?

23 A. Absolutely, yes, and indeed at any level of the Force
24 because subsequent to the arrest of Finbarr Hickey we
25 engaged the assistance of members of the Garda Siochana in
26 Dundalk to help us with the inquiries that were conducted
27 subsequent to September of 1998, and there was a lot of
28 anger there and a determination that the -- that this
29 investigation would be thorough. And the cooperation that
30 we got from those Gardaí was second to none.

1 275 Q. And to that extent, in preparation for the ultimate arrest
2 of Finbarr Hickey, there was a complete audit carried out
3 of every passport application that he had endorsed, isn't
4 that correct?

5 A. Absolutely, yes.

6 276 Q. And if it was suggested by anyone that An Garda Siochana
7 did not completely audit the potential damage done to the
8 State by the action of Sergeant Hickey, that would be
9 simply unfounded, in fact?

10 A. We carried out the investigation. It was a very, very
11 thorough investigation. Every possible avenue of
12 investigation was followed through on.

13 277 Q. But nobody could suggest this was treated casually, not
14 fully investigated? All the possible avenues of
15 investigation were, in fact, pursued?

16 A. As a senior member of the investigation I would be very,
17 very happy to stand over that investigation, what we did.

18 278 Q. I think the Commissioner in endorsing your report, was
19 effectively agreeing that you had to put your neck out to
20 express a professional opinion as to your findings and that
21 you did so having thoroughly investigated all facts, isn't
22 that so?

23 A. I think it's the job of any investigator to, bearing in
24 mind all the circumstances of the investigation and putting
25 together all the evidence and the intelligence that was
26 gathered, to have -- to have an opinion, and that opinion
27 was initially provided to guide the DPP in their
28 deliberations as to whether or not there should be charges.

29 279 Q. Now, we know that in February 1998, under the investigation
30 of Superintendent Quinn on a Garda disciplinary matter,

1 Mr. Hickey had been questioned in respect of one passport
2 application?

3 A. That is correct, yes.

4 280 Q. And that led to the greater investigation that you
5 conducted. And that on the 29th of September Commissioner
6 Callinan and yourself confronted Mr. Hickey in his home
7 with details of eight applications?

8 A. That is correct, yes.

9 281 Q. I think that he agreed to be interviewed in his home?

10 A. He did, yes.

11 282 Q. That he answered your questions?

12 A. He did, yes.

13 283 Q. He admitted that the applications were ones that he had
14 authored?

15 A. He did, yes.

16 284 Q. He was then, as a result of his admissions to you,
17 suspended from duty?

18 A. On completion of that interviewing, when we had shown him
19 all the different application forms, now Commissioner
20 Callinan would have spoken to the Chief Superintendent in,
21 I think it was Dundalk at the time, and the Chief
22 Superintendent directed that he be suspended, yes.

23 285 Q. His identification card was impounded?

24 A. That is correct, yes.

25 286 Q. He volunteered the keys to his personal locker so you could
26 effect a search of it?

27 A. He did, yes. We didn't have to go out to get a warrant to
28 search the locker.

29 287 Q. He remained at home, and ultimately you returned and took
30 him under arrest to Navan Garda Station?

1 A. That's correct, yes.

2 288 Q. Immediately prior to his arrest he had mentioned the
3 involvement of Mr. Colton?

4 A. At the completion of the interview, he made a comment
5 regarding Mr. Colton in -- that he had signed a passport
6 for a personal friend of his, but it wasn't until he was
7 arrested that he actually stated that Leo Colton was a
8 person who had provided him with the passports. Up to
9 then, his contention had been that he must have. He
10 admitted signing the passports and admitted signing them
11 not knowing the people who were involved, but he said he
12 must have been provided with documentation. But it was on
13 his arrest then he mentioned that Leo Colton had been the
14 person who had provided him with the passports for
15 signature.

16 289 Q. Now, neither prior to his arrest, on the occasion of his
17 arrest or on the occasion of his trial, did he ever disown
18 responsibility for his actions, isn't that right?

19 A. No, never did.

20 290 Q. In the car travelling to Navan Garda Station he gave you
21 certain information, it wasn't noted at the time, but he
22 confirmed that information when the conversation was put to
23 him again for record purposes, isn't that right?

24 A. Yeah, during the course of his detention he was consistent
25 with his replies on what he had committed, the offences
26 that he had committed, and his reason for doing so.

27 291 Q. I think that he was interviewed essentially by two teams,
28 one team comprising yourself as Detective Inspector and
29 Detective Superintendent Callinan, and the other team
30 comprised of Detective Garda Hanley and McGrath?

1 A. That's correct, yes.

2 292 Q. All extremely experienced officers dealing with serious
3 crime?

4 A. That is correct, yes.

5 293 Q. We would expect that each of those officers would
6 appreciate the significance of anything amounting to an
7 admission of criminality indicated during the course of any
8 interview, isn't that so?

9 A. That's correct, yes.

10 294 Q. Had, for instance, Mr. Hickey said in your presence that he
11 had on a previous occasion attended with another former
12 member of An Garda Siochana at the border to receive
13 smuggled goods, would you consider that to be a matter of
14 significance?

15 A. I would, certainly, yes.

16 295 Q. Is it a matter that ought to be noted?

17 A. I would expect it would be noted. It would certainly be
18 noted by both myself and Commissioner Callinan if it had
19 happened, yes.

20 296 Q. So, we can take it that no such remark was made in your
21 presence?

22 A. Absolutely.

23 297 Q. And insofar as retired Superintendent Finnegan has recently
24 made a statement suggesting that such a remark was made,
25 you were never appraised of it?

26 A. Today is the first day I am aware of that, Chairman.

27 298 Q. And had you been appraised of it, you would have felt it
28 something to investigate further?

29 A. Yeah, it would have been investigated, yes.

30 299 Q. Specifically, you would not have concluded your report to

1 the Director of Public Prosecutions without reference to
2 that?

3 A. Absolutely, yes.

4 300 Q. And I take it that in reviewing the file for the purposes
5 of sending the matter to the DPP, you reviewed all the
6 statements of the members, including Superintendent
7 Finnegan's statement?

8 A. That is correct, yes.

9 301 Q. And there is nothing in Superintendent Finnegan's statement
10 made at that time to suggest such a remark was made?

11 A. No, definitely not, Chairman.

12 302 Q. There is nothing in the notes of interview conducted by
13 Detective Hanley and McGrath with my client to suggest that
14 he ever made such a statement in their presence?

15 A. Not that I am aware of, no.

16 303 Q. Now, in relation to Mr. Hickey, he indicated I think
17 throughout this process that he was prepared to admit
18 guilt, and there was no trial, in fact, isn't that right?

19 A. No, he pleaded guilty to four of the counts on the
20 indictment.

21 304 Q. Now, he at no time, directly or indirectly, approached the
22 State seeking the facility for leniency in the event he
23 would turn State's evidence against any other party, isn't
24 that correct?

25 A. That's correct, yes.

26 305 Q. And I think that he was before the Special Criminal Court
27 and that you gave evidence?

28 A. I did, yes.

29 306 Q. And I take it that in preparing to give evidence to the
30 Special Criminal Court you had reviewed completely the file

1 in the case?

2 A. Oh, I had, yeah. I would have -- I was the person who
3 prepared the file and I would have absolute knowledge of
4 it, yes, at that time, yes.

5 307 Q. And in relation to anything that you would utter in
6 evidence to the Special Criminal Court, you wouldn't utter
7 anything that you did not know yourself to be true?

8 A. That is correct, yes.

9 308 Q. And insofar as expressions of opinion were given by you,
10 they were your professional opinion as a senior policeman?

11 A. They were professional opinion based on the full
12 circumstances of the investigation and the evidence that we
13 had obtained during the course of that investigation.

14 309 Q. I think that in giving evidence to the Court about
15 Mr. Hickey's background, you had indicated that he had
16 personal difficulties and his marriage had broken up in
17 1993?

18 A. Again, if I provided that evidence, that is what -- I just
19 can't remember the year now offhand. Certainly his
20 marriage had broken up, yes.

21 310 Q. And I think you indicated, and it wasn't challenged, that
22 at the time he had been drinking to excess, around 1995?

23 A. I am satisfied that was the case, yes.

24 311 Q. I think that he had secured promotion as a Sergeant
25 sometime around 1992, prior to these difficulties?

26 A. Oh, yes, he was a Sergeant when we interviewed him.

27 312 Q. Now, you then indicated to the Court that Mr. Hickey had no
28 association with illegal or subversive organisations?

29 A. That is correct, yes.

30 313 Q. And that is a statement you made having concluded a lengthy

1 investigation into what was a very serious crime?

2 A. That is a statement made based on the evidence that I found
3 throughout that investigation, yes.

4 314 Q. And I think it's fair to say that a starting point for an
5 investigator when passports are known to have found
6 themselves in the hands of the IRA is to investigate
7 whether the accused man had been complicit in collusion
8 with the IRA?

9 A. I think when he mentioned, I suppose, if you look back on
10 it, when he mentioned the fact that Leo Colton -- he had
11 signed those passports for Leo Colton, I think one of the
12 first questions I would have asked Mr. Hickey was did he
13 have an involvement with the IRA. And I just can't
14 remember the exact words of the questioning, but it was in
15 the car coming from -- that was my -- that was one of the
16 concerns that I would have had, yes.

17 315 Q. We will be coming to the discussion with Mr. Colton. But
18 do you recall from the period in Navan Garda Station that
19 he denied at all times any knowledge --

20 A. -- yes, absolutely --

21 316 Q. -- for the IRA? And it appears following your
22 investigation, that you agreed that that was, in fact, the
23 position?

24 A. I was happy -- very, very happy from the investigation that
25 he did not have a knowledge of where those passports were
26 going to or were going to utilised.

27 317 Q. And I think that that is, your expression of opinion in
28 that regard, is something that would be taken very
29 seriously by the Special Criminal Court?

30 A. I would imagine so, and it was an expression that I would

1 have taken very, very seriously myself in considering it.

2 318 Q. In the course of the evidence before the Court, and you
3 outlined the ultimate end of the passports, you indicated
4 that the accused man had been suspended and that he would
5 lose his job?

6 A. That's correct, yes, and that is what happened.

7 319 Q. And in relation to that, he made no attempt whatsoever to
8 challenge the disciplinary process; he accepted the
9 forfeiture of his job and in much the same way as he had
10 pleaded guilty and served his sentence, isn't that right?

11 A. As far as I remember, he left An Garda Siochana on the
12 following day after the court case, or certainly within two
13 or three days, yes.

14 320 Q. And I think would it be fair to say that having made
15 appalling errors of judgement and acted disgracefully in
16 terms of a member of An Garda Siochana, he actually acted
17 honourably in relation to how he dealt with this?

18 A. Sorry, I just missed the last bit of that?

19 321 Q. Having committed the offences and having been confronted
20 with them, he subsequently -- all his conduct was
21 honourable in terms of his admissions, his plea of guilty
22 and his resignation from the Force?

23 A. He certainly, when the case came up for hearing, he pleaded
24 guilty at the earliest opportunity, yes, and admitted his
25 guilt.

26 322 Q. In relation to the evidence before the Court, you indicated
27 that he had cooperated fully with you, and that is still
28 your position?

29 A. Oh, yes, most definitely he did cooperate fully, yes.

30 323 Q. And that he had confronted his former colleague?

1 A. That is correct, yes.

2 324 Q. He had admitted his part, and that he was not the main
3 instigator?

4 A. That is correct, yes.

5 325 Q. And that is your professional opinion based on your
6 investigation?

7 A. Yes.

8 326 Q. Now, he served a sentence in the Curragh Prison?

9 A. That's correct, yes.

10 327 Q. And that would indicate that he was not a person who would
11 be on the landing in Portlaoise?

12 A. That's correct, yes.

13 328 Q. And that would be an indicator that he is not, in fact, a
14 person in collusion with the IRA?

15 A. It suggests, certainly, yes, that there was -- there was no
16 evidence or anything to indicate that he was in any way in
17 collusion.

18 329 Q. I think the Tribunal has previously heard evidence from a
19 Garda convicted of an offence of assisting the IRA, who, in
20 fact, served a sentence in Portlaoise Prison, a Garda
21 Lynch, from memory?

22 A. Kelly, I'd say.

23 330 Q. Sorry, Kelly.

24 A. That's correct.

25 331 Q. Now, I would like just, if I may, to bring you back to the
26 description in your most recent statement of the meeting
27 between Mr. Colton and Mr. Hickey in Navan Garda Station.
28 Can you tell us how that statement came to come into
29 existence?

30 A. The statement that I have made today, is it?

1 332 Q. The statement that you made on the 23rd of September,
2 Assistant Commissioner?

3 A. Yes, in regard to -- I suppose in relation to the
4 preparation for this Tribunal --

5 333 Q. Yes.

6 A. -- I met with counsel for the Tribunal and --

7 334 Q. Who did you meet with?

8 A. Mr. Dillon.

9 335 Q. Was there anybody else present?

10 A. And Mr. Hayes.

11 336 Q. And what materials were made available to you before you
12 made your statement?

13 A. I certainly would have had my -- the copy of my file, the
14 investigation file that I -- that was part of the file to
15 the DPP.

16 337 Q. And your statements at the time?

17 A. And my statements would have been included in that, yes.

18 338 Q. And the statements of Gardaí Hanley and McGrath?

19 A. Yeah, every statement would have been available to me,
20 yeah.

21 339 Q. Who brought up the issue of the demeanour of Mr. Hickey
22 during that interview?

23 A. I think it was probably myself, I would imagine, in
24 relation to -- I may have been asked what I thought.

25 340 Q. Take your time, it's important that we try and get through
26 the order of this. You are now being asked to make a
27 statement some 13 years after this event?

28 A. That is -- that's correct, yes.

29 341 Q. OK. And for the first time you express the opinion that he
30 was "*distinctly uncomfortable and kept his head down*"?

1 A. That was an opinion, yes.

2 342 Q. But it's expressed for the first time 13 years after the
3 event?

4 A. That's correct, yes.

5 343 Q. You didn't express that opinion in your statement at the
6 time?

7 A. No.

8 344 Q. You didn't express that opinion in your report at the time?

9 A. No, I did not.

10 345 Q. Any observations to that effect are not contained in the
11 evidence of Garda Hanley?

12 A. That is correct, I am aware of that, yes.

13 346 Q. Not at the time -- Mr. Hanley -- Mr. Durack -- Mr. Hanley
14 also made a statement in September 2011, 13 years after the
15 event, in which he makes reference to Mr. Hickey's
16 demeanour, and I am wondering, were you interviewed with
17 Guard Hanley?

18 A. No.

19 347 Q. Separately?

20 A. Separately.

21 348 Q. So we have two separate statements both made in September,
22 both 13 years after the event, both mentioning for the
23 first time the demeanour of Finbarr Hickey. Are you sure
24 it was you asked the question about the demeanour? are you
25 sure you volunteered this or were you asked it?

26 A. Again, there was a conversation between counsel,
27 Mr. Dillon, and ourselves, and I certainly, I wasn't
28 asked -- I volunteered -- I mean, this is an opinion I have
29 had for, it was one of the abiding memories I had of the
30 confrontation, was that I would have liked if that

1 confrontation was a stronger confrontation and that he
2 would have looked Mr. Colton in the eye.

3 349 Q. Have you your report of the investigation in front of you?

4 A. Report of the?

5 350 Q. Yes.

6 A. Of which? Of the initial investigation?

7 351 Q. Your investigation?

8 A. No, I have nothing in front of me, Mr. MacGuill.

9 352 Q. Oh, you will be provided with that. Page 38 of your
10 report.

11 (Report handed to the witness.)

12 A. Yes.

13 353 Q. Now, where in your summary of that meeting do you express
14 an opinion that you would have preferred if the
15 confrontation was more confrontational?

16 A. I have already stated that I haven't made it in my
17 statement, I haven't made it in the report. This is
18 something that I held, it's an opinion. If you look at
19 this, this was a synopsis of the interview and the notes
20 that were written down and what would have been evidential,
21 purely my opinion. I don't think it's evidence at the end
22 of the day.

23 354 Q. No, but, Assistant Commissioner, 13 years after the event,
24 for the very first time, you introduce a statement "*During*
25 *this confrontation Finbarr Hickey was distinctly*
26 *uncomfortable and kept his head down when speaking to*
27 *Mr. Colton*"?

28 A. Do you know, Mr. MacGuill, I am satisfied that is my memory
29 of it, it's my abiding memory of it. I can't remember what
30 was said, but I can certainly remember the demeanour of

1 Mr. Hickey in the interview room.

2 355 Q. If it's such a stand-out detail that you recall it 13 years
3 after the event, why does it not make its way into your
4 statement?

5 A. Because I don't think it's evidence, one way or the other.

6 356 Q. Why does it make its way into this statement?

7 A. I was asked what I thought.

8 357 Q. I want to find out exactly what you were asked?

9 A. That is the general gist of the conversation. I can't
10 specifically remember, but certainly in the conversation I
11 offered this opinion to Mr. Dillon.

12 358 Q. Was there a stenographer present?

13 A. No.

14 359 Q. Were notes being taken?

15 A. No.

16 360 Q. So it was a casual conversation as a result of which you
17 went and prepared this statement?

18 A. Sorry, I beg your pardon, notes were taken. I understand
19 notes were taken by Mr. Hayes, yes.

20 361 Q. I wonder could they be provided?

21

22 MR. DILLON: I have to ask Mr. Hayes that, they are his
23 notes.

24

25 CHAIRMAN: Yes.

26

27 MR. DILLON: If Mr. MacGuill wouldn't mind continuing for
28 the time being.

29

30 362 Q. MR. MacGUILL: It's an extraordinary circumstance that both

1 yourself and Detective Garda Hanley recall this critical
2 detail 13 years after the event and didn't deal with it at
3 the time?

4 A. I am not aware of what Mr. Hanley has said.

5 363 Q. Well, then can I take you to Navan Garda Station. Now,
6 Mr. Hickey has been approached by you I think at
7 approximately 11 o'clock in the morning on the 29th at
8 home?

9 A. That's correct, yes.

10 364 Q. And I think he was questioned by yourself and the
11 Commissioner until approximately 3:40?

12 A. Yes.

13 365 Q. And I think at about 6:00 he is then taken in custody to
14 Navan Garda Station, a serving member of the Gardaí under
15 arrest?

16 A. Yes.

17 366 Q. You'd agree that is a pretty stressful and unusual
18 situation?

19 A. Yes.

20 367 Q. He is taken to Navan Garda Station where he is questioned,
21 he has got the whole panoply of caution, the signing in,
22 members in charge coming in and checking his movements.
23 Were you present when a meeting took place with his father?

24 A. I am not sure whether I was actually -- I am aware that he
25 did meet with his father. I just can't remember offhand
26 whether I was there or not.

27 368 Q. It's common case his father is a retired Chief
28 Superintendent?

29 A. That's right, yes.

30 369 Q. It's difficult to imagine anything more stressful for a son

1 meeting his father in those circumstances?

2 A. I would imagine so, yes.

3 370 Q. Weren't you present, wasn't he extremely --

4 A. I have said I cannot -- as I said, I am aware that he met
5 with his father. I can't just remember now whether I was
6 present or not.

7 371 Q. Was he calm and relaxed or was he a man under pressure and
8 under stress?

9 A. I can't remember being present at the meeting not to
10 know whether he was --

11 372 Q. During his period --

12 A. Oh, during the course of detention?

13 373 Q. Yes.

14 A. Oh, he wasn't under -- he wasn't under any noticeable
15 stress or pressure. I would imagine that obviously it's a
16 very stressful situation, but he didn't display it openly.

17 374 Q. Then, I think, he was kept in custody overnight?

18 A. That's correct, yes.

19 375 Q. Mr. Colton was arrested at 9:35 the following morning?

20 A. Yes.

21 376 Q. He is taken to Navan Garda Station, isn't that correct?

22 A. That's correct, yes.

23 377 Q. And at about midday Mr. Hickey is asked if he is prepared
24 to confront Mr. Colton, isn't that right?

25 A. That is correct, yes.

26 378 Q. Now, I think you'd accept that that as a procedure where
27 one suspect is brought to a room to confront another
28 suspect is not common case, it's unusual?

29 A. No, it would be unusual, yes, where people would be willing
30 to confront a person, a person who is arrested also and

1 arrested in connection with the same events.

2 379 Q. So the first thing: He agreed to participate in an unusual
3 event, designed to test that he was, you know, standing
4 over his word, isn't that right?

5 A. Yes.

6 380 Q. He was brought by two members of An Garda Siochana,
7 yourself and the Commissioner, to a room where there was
8 you and two other colleagues and Mr. Colton?

9 A. That is correct, yes.

10 381 Q. Was he sitting or standing?

11 A. Was who sitting or standing?

12 382 Q. Mr. Hickey?

13 A. I would imagine he was standing.

14 383 Q. Don't imagine. Is there a stand-out recollection?

15 A. Again, I have a very, very clear recollection of his
16 demeanour in the room. I would imagine he was standing,
17 yes.

18 384 Q. You imagine --

19 A. I just can't one hundred percent, but I would imagine he
20 was standing.

21 385 Q. Take your time, Assistant Commissioner. Who were in the
22 room and who were standing and who were sitting?

23 A. I would say that Mr. Colton was sitting, Mr. Hanley was
24 sitting and Mr. McGrath was sitting, and I would say we
25 walked into the room. We were there a very, very short
26 period of time. Mr. Hickey spoke to Mr. Colton, we left
27 the room. I'd say a few minutes is at the very most we
28 were in that room.

29 386 Q. What did he say to Mr. Colton?

30 A. It's in the notes. Can I refer to them?

1 387 Q. Please look at the notes.

2 A. What number notes, do you know?

3 388 Q. Well, I think the note we have, which seems to be the
4 verbatim note, is the Memo of Interview with Mr. Colton,
5 the 12:30 p.m. interview recorded by Hanley and McGrath,
6 finishing at 1:57, appears to be Exhibit 9 from some file.

7 A. Can I get a copy of that? (Memo handed to the witness.)
8 Yes, I have it here.

9 389 Q. Now, what is the first thing that Mr. Hickey says to
10 Mr. Colton?

11 A. Finbarr Hickey says: *"Leo, I am in deep shit, deep, deep*
12 *shit. Tell the truth about the passport application."* And
13 Leo Colton replies: *"I don't know what you are talking*
14 *about."* Finbarr Hickey: *"Please, Leo, I am in deep, deep*
15 *shit. You know I gave you those application forms. I*
16 *didn't know that they were for the Provos."* And Leo Colton
17 then said: *"I don't know what you are talking about, you*
18 *are away with the fairies."*

19
20 *"Asked to tell the truth about the passport application*
21 *that he gave to Finbarr Hickey. 'I have said my piece. On*
22 *the advice of my solicitor I have no more to say'."* And
23 both myself and Finbarr Hickey leave the room at that
24 stage.

25 390 Q. Take the last sentence: *"Asked to tell the truth."* Who
26 asked him to tell the truth?

27 A. Again, from memory, I would imagine that is one of the
28 people, either Mr. Hanley or Mr. McGrath.

29 391 Q. So the first thing we have him saying is, *"Leo, I am in*
30 *deep shit, tell the truth."*

1 A. Yes.

2 392 Q. Would you not categorise that as confrontational?

3 A. I am giving you, I am giving this, Chairman, my opinion as
4 to how I believed that Mr. Hickey's demeanour was in the
5 room. That is purely it, pure and simple. I am
6 obviously -- of course, it's a confrontation. He did go to
7 the room, he did confront, he did say what he said. I have
8 absolutely no difficulty with that. I am just making a
9 comment on my memory of the manner of that meeting.

10 393 Q. And, Assistant Commissioner, I am going to test your memory
11 because it is at odds with what was recorded at the time?

12 A. I don't believe so.

13 394 Q. So you don't accept that one prisoner telling another
14 prisoner to tell the truth is confrontational?

15 A. Oh, I do, yeah, it's confrontational, certainly.

16 395 Q. It couldn't be more confrontational?

17 A. It is confrontational, I never said it wasn't.

18 396 Q. You said you would prefer that the interview was more
19 confrontational?

20 A. No, I said -- well, maybe if I -- and again, what I have
21 said, but it certainly stronger -- if his challenge had
22 been stronger, that was my opinion.

23 397 Q. *"Tell the truth about the passport application."* Do you
24 not accept that to be a challenge?

25 A. It was the demeanour. of course, I have no difficulty, a
26 challenge, yes, agreed. Again, I am saying it is his
27 demeanour when he said that.

28 398 Q. *"Please, Leo, I am in deep, deep shit. You know that I*
29 *gave you those application forms."* Was that not a
30 challenge?

1 A. Yes.

2 399 Q. So that is a second challenge of a man who has come to the
3 room voluntarily?

4 A. Yes.

5 400 Q. *"I didn't know that they were for the Provos."* Is that not
6 confrontational?

7 A. Absolutely, yes.

8 401 Q. Now, when you concluded your report at the time, you came
9 to some opinions in relation to Mr. Hickey, isn't that
10 right?

11 A. I did, yes.

12 402 Q. Did you say in that report: *"His friendship and loyalty to*
13 *Colton went back to their years of work together in*
14 *Dundalk, and, in this regard, Colton, who is by nature*
15 *very... saw the weakness in Hickey and knew that he would*
16 *not question the authenticity of the applications."*
17 *(Quoted)*

18 A. That's an opinion, again. As I have already said in
19 evidence, this was -- the context of this report being
20 written was in relation to advising the DPP in relation to
21 their deliberations, and that is my opinion, purely my
22 opinion.

23 403 Q. In your report at the time, you accepted Hickey's honesty?

24 A. I have never doubted Finbarr Hickey's honesty.

25 404 Q. In your evidence to the Court, you commended him on the
26 confrontation; you told --

27 A. The fact that he did confront yes, yes.

28 405 Q. And it's only last week in response to questions from
29 counsel for the Tribunal, we will obviously get the notes
30 of those, that you introduce this new element?

1 A. It's purely an opinion, Judge, and it's my memory, and as I
2 said, I have a very clear memory of it in relation to his
3 demeanour, that is what it purely is.

4 406 Q. In relation to the visit to the Curragh Prison, I think
5 that was on the eve of Mr. Fox's trial?

6 A. No.

7 407 Q. It was in November, the trial was in January, isn't that
8 right?

9 A. I thought the trial was later in the year.

10 408 Q. It may not have proceeded in January but it was scheduled
11 for January, I think?

12 A. Well, possibly. I wouldn't call it the eve; I would say
13 two months maybe previously.

14 409 Q. Can we agree in preparation?

15 A. It's prior to it.

16 410 Q. In preparation for the trial?

17 A. Again, obviously, yes, one of the areas, but if the next
18 question is going to be Mr. Colton, I was more concerned
19 about Mr. Colton because we needed Finbarr Hickey's, I
20 suppose, his agreement to give evidence before we could
21 advance the issue in relation to Mr. Colton with the DPP.

22 411 Q. Well, let's approach it this way, because there is very
23 little difference between what Mr. Finbarr Hickey
24 recollects and you recollect. You took a note of the
25 meeting but he wasn't asked to sign them?

26 A. No, I would say the note was taken immediately afterwards.

27 412 Q. And at the meeting, on your account, there was a discussion
28 of Fox's trial which was imminent?

29 A. Yes.

30 413 Q. And your interest in Colton?

1 A. Yes.

2 414 Q. Who was not the subject of charges?

3 A. Not at that stage, no.

4 415 Q. Mr. Hickey doesn't recall Colton being discussed but he is
5 not disputing that he was discussed?

6 A. Yeah, well I am very, very clear that Mr. Colton was
7 discussed because I suppose it was certainly at that stage
8 we wanted to advance the situation with the DPP in relation
9 to Mr. Colton's situation as to whether, you know, to
10 finalise what the DPP's decision.

11 416 Q. We are not in dispute about that, but it's 13 years ago,
12 and your note wasn't provided to him to countersign at the
13 time?

14 A. No, that is agreed, yes.

15 417 Q. And it's absolutely the position that he said he would
16 think about giving evidence, that's agreed?

17 A. Yes.

18 418 Q. And I think his recollection is that you did come back to
19 the prison the following Wednesday?

20 A. We came back to the prison. I just cannot, again, remember
21 whether we met face-to-face with Finbarr on that occasion
22 or whether he passed on a message to us, I cannot remember.

23 419 Q. His recollection is, he decided he had had enough of it, he
24 wasn't going to give evidence and sent a message out to
25 that effect?

26 A. That could well be the -- I wouldn't disagree with that,
27 Judge.

28

29 MR. MacGUILL: Just subject to the issue about the manner
30 in which this last statement came into being, and the

1 notes, I have no further questions.

2

3 MR. DURACK: If I might correct a matter of fact that was
4 mentioned in the course of that cross-examination. I think
5 Mr. MacGuill said that there was no record made of the
6 conversation in the car, whereas, in fact, in the interview
7 which has been put up on the screen of 11:35 on 30/9/'98,
8 on the second page it is recorded that Mr. Callinan asks:
9 *"In relation to our conversation in the car yesterday, I*
10 *have made a written record of it. Read over notes. Agreed*
11 *correct. Signed by F. Hickey. Witnessed by members."*

12

13 MR. MacGUILL: I think, Chairman, the Assistant
14 Commissioner agreed with me that Mr. Hickey had the
15 discussion in the car and then confirmed the discussion
16 again for the purposes of the note that Mr. Durack is now
17 referring to. I didn't suggest that it wasn't noted.

18

19 MR. DURACK: No, I think that what Mr. MacGuill said was
20 that it wasn't noted at the time; it was noted
21 subsequently.

22

23 CHAIRMAN: Anyway, let's clarify that point. Mr. Dillon,
24 do you have some questions in re-examination?

25

26 MR. DILLON: A few matters arising, if I may, Chairman.

27

28 **THE WITNESS WAS RE-EXAMINED BY MR. DILLON AS FOLLOWS:**

29

30 420 Q. MR. DILLON: First of all, when you went to speak to the

1 journalist, Kevin Myers, it was in reference to an article
2 which he had written for *The Irish Times*, isn't that right,
3 in which he alleged that an unnamed guard had colluded in
4 the murders of a number of RUC personnel, isn't that right?

5 A. I am aware that it was in relation to an article written
6 about collusion, alleged collusion.

7 421 Q. Very good. Did he name the guard in the article?

8 A. I don't believe so, but again -

9 422 Q. Did he name the guard to you and to Sean Camon?

10 A. I don't believe so. Again, I would need to see the note of
11 that interview.

12 423 Q. Well, I will assist you because it's set out in the report.
13 This is --

14 A. My apologies, Chairman, in not being au fait with this, but
15 I wasn't aware that I was going to be questioned in
16 relation to this matter until Mr. Dillon asked the question
17 this morning, so in relation to interviewing Mr. Myers, I
18 just don't have the notes.

19 424 Q. Sorry, there is --

20

21 MR. O'CALLAGHAN: I think the Assistant Commissioner is
22 correct. The only reason I raised it is because Mr. Dillon
23 had asked him about whether he was present at the interview
24 with Mr. Myers. That is the only reason. I hadn't
25 realised the witness had been at that interview.

26 425 Q. MR. DILLON: It is actually set out in the report,
27 Assistant Commissioner, that Mr. Myers did not share with
28 you the name of the guard that he had witnesses --

29 A. I didn't think so, but I just -- at this remove, it's
30 difficult to remember.

1 MR. DILLON: If you don't mind, Chairman, we will leave it
2 at that. If there is any issue on that, I will find the
3 exact reference. I am just going backwards and forwards
4 and I can't trace it.

5 Now, I think it's the case that Sean Camon and Peter
6 Kirwan, in their review of the allegation of collusion in
7 the year 2000, also considered the position of Finbarr
8 Hickey, are you aware of that.

9 A. That is correct, yes.

10 426 Q. They included him in their review. However, it's noted at
11 the end of the report, the following paragraph, 16.5:

12 *"The case of DPP v. Finbarr Hickey and James Fox was due*
13 *for trial in the Special Criminal Court on 14 May, 2001.*
14 *The Director of Public Prosecutions advised that as it may*
15 *well be that a prosecution at some stage might be commenced*
16 *against Leo Colton, it would be important to avoid causing*
17 *any possible prejudice to the case."*

18 So it seems that further consideration of the position of
19 Finbarr Hickey was, if I put it this way, was suspended, in
20 light of that consideration, and it seems never to have
21 been revived?

22 A. Again, I am not aware of the full issue surrounding the
23 investigation carried out by Chief Superintendent Camon.

24 427 Q. OK. Now, you used a phrase in connection with the, if I am
25 not mistaken, in connection with the 1998 investigation you
26 were involved in, "All possible avenues of investigation
27 were explored." What do you mean by "avenues of
28 investigation"? Could you explain that to the Chairman?

29 A. Well, in relation to bringing, I suppose, any of the issues
30 that arose in any investigation that you are involved in,

1 you will go with -- stacked with an open mind as to what
2 happened, who is, who isn't, who isn't guilty, attempt to
3 gather the evidence in relation to what may or may not be
4 there, at the end of the day, whether it be evidence of
5 witnesses or evidence from -- technical evidence or
6 evidence of -- forensic evidence, and that is generally
7 what I'm in mind, is that all -- all potential inquiries
8 that open up during the course of that investigation, that
9 they are followed down to a conclusion, as best as
10 possible.

11 428 Q. And I will now come to the last matter, and just bear with
12 me a second, Assistant Commissioner.

13
14 I need to address you on this matter, Chairman. It has
15 been suggested that the Tribunal's notes should be
16 produced. With respect, and firmly, the Tribunal's notes
17 will not be produced. There are -- but what I can offer by
18 way of assistance is this: that on the point in question -
19 this is without prejudice to the Tribunal's position that
20 notes are not going to be produced - without prejudice to
21 that position, I can offer the following record, which is
22 as follows:

23
24 "JOM" -- they are your initials, Mr. O'Mahoney -- "*same*
25 *crestfallen appearance in room.*" Now, does that strike a
26 bell in terms of what you mention in the course of your
27 meeting with Tribunal counsel?

28 A. That's correct, yes.

29 429 Q. And could you explain to the Chairman how that came about,
30 that reference came about?

1 A. I can't think of -- the exact circumstances, I just
2 cannot think, but certainly that is the opinion I proffered
3 in relation to probably what was -- and it could be a much
4 wider issue, as to what is -- what Finbarr Hickey's
5 demeanour was, and it could have been a wider thing, but
6 that is certainly one of the things that has stayed with
7 me. And when you have a confrontation, something like
8 that -- there aren't that many confrontations that take
9 place, but I remember that, and just being, I suppose, not
10 surprised, or anything like that, but just being
11 disappointed, that I thought that the confrontation, that
12 he could have been stronger in relation to that.

13 430 Q. Oh, I appreciate that. But coming back to the meeting you
14 had, maybe just a little over a week ago, you say you
15 proffered that opinion. How did it come about that you
16 proffered that opinion? That is the question that
17 Mr. MacGuill has been --

18 A. Genuinely, I just cannot specifically -- was it in answer
19 to a question or just a general conversation, I just cannot
20 recall.

21 MR. DILLON: I won't press you any further on that. Thank
22 you.

23
24 CHAIRMAN: Thank you very much.

25
26 MR. MacGUILL: Arising from that, Chairman, a very serious
27 issue, both in terms of procedure and presentation, now
28 arises. We have a situation where, less than a week ago,
29 which is 13 years after the events being described, a
30 discussion takes place between counsel representing the

1 Tribunal and a senior member of An Garda Siochana, which
2 has been noted, and, as a result of that discussion, a
3 statement has been made, and you are being invited to rely
4 on that statement and we are being asked to accept it or to
5 challenge it with less than all the information. Now, we
6 have heard in the description, which is unacceptable to
7 simply say "we will give you an extract and move on,"
8 because we say there is no privilege can conceivably attach
9 to notes relating to preparation of a witness in this way,
10 but the word that is noted, that Assistant Commissioner
11 O'Mahoney used, is "crestfallen". Now, that is a phrase
12 that is devoid of culpable intent. It is consistent with a
13 person who has had his life shattered by the arrest and the
14 potential prosecution -- sorry, Chairman -- whereas that is
15 translated into the draft statement, which we need to know
16 where it was -- it was prepared by, to say that he was
17 distinctly uncomfortable, wording that is wholly
18 inconsistent with dishonesty and a person making a false
19 allegation and who is ashamed of it, and we need to be able
20 to explore with the Assistant Commissioner how one word
21 becomes the other, 13 years after a statement made, that
22 make no reference to this or anything like it. We would
23 like to see the notes.

24
25 CHAIRMAN: Well, now, wait a moment. You have concluded
26 your cross-examination of the witness. Are you asking
27 leave to cross-examine him further?

28
29 MR. MacGUILL: Chairman, I made it clear that without
30 prejudice to the issue -- I said -- I was asked to park

1 this issue while inquiries were made where the notes were.
2 I was asked to continue the cross-examination and I didn't
3 want to interrupt it, and I expressly said before I sat
4 down --

5

6 MR. DILLON: That is true.

7

8 MR. MacGUILL: -- and I expressly said before I sat down
9 that it was without prejudice to revisiting this issue. So
10 I am making no application to you to do what I was entitled
11 to do at the beginning. I want to explore this issue, and,
12 in aid of exploring it, I want to know how this topic was
13 raised with this witness and another witness in Navan Garda
14 Station, 13 years after the event, in terms of were not
15 covered at the time of the original investigation. We are
16 entitled to explore that. At a minimum, it goes to weight,
17 but it may give much more cause for concern than that. So
18 there is no privilege, in my submission, that can attach to
19 notes taken of a person who is then going to give evidence
20 arising from that meeting.

21

22 CHAIRMAN: Well, what are you asking me to do?

23

24 MR. MacGUILL: To provide us with the notes of the meeting
25 and any other material preparatory to the making of the
26 Assistant Commissioner of his statement of the 23rd of
27 September.

28

29 CHAIRMAN: Well, first of all, I think we can conclude the
30 evidence of this witness now. Your application, then, is

1 you want some notes and you want to cross-examine him
2 further on another occasion, is that what you are asking me
3 to do?

4

5 MR. MacGUILL: Yes. I have no desire to detain the
6 Assistant Commissioner, but I have, equally, no desire to
7 leave this unexplored.

8

9 MR. DILLON: Chairman, I am, quite genuinely, at a loss to
10 understand the problem. The Assistant Commissioner
11 explained, I believe quite correctly, that he was
12 preparing -- now, sorry, he didn't say this, but he
13 explained that it wasn't evidence, the demeanour of
14 Mr. Hickey was not evidence, and he may well have a point,
15 because he was in the process of putting together papers
16 which will become the book of evidence for the purpose of
17 the prosecution of Finbarr Hickey. He has taken that
18 point. I note that, and I say nothing further about it.
19 That is the first thing.

20

21 The second thing is this, though: I am bound to say, I
22 think that what the Assistant Commissioner has to say is of
23 assistance to Mr. Hickey, and I can't quite understand why,
24 somehow, it is being called into question. It's of
25 considerable assistance, in my perspective, to Mr. Hickey,
26 and I just don't understand why this issue is coming up
27 now. Perhaps if it could be explained to you where the
28 prejudice arises, then we can look at the matter again,
29 because then we are into a particular legal circumstance,
30 but I just don't see any prejudice whatsoever to

1 Mr. Hickey. On the contrary, it is to his benefit that
2 this evidence is being given. That is my submission.

3

4 MR. MacGUILL: Well, Chairman, the first thing is, the
5 Assistant Commissioner has the benefit of his report, which
6 is replete with observations that are not evidence. He
7 expresses opinions about people's manipulative nature, and
8 all the rest of it. Those opinions are in the report, so
9 it is not a complete answer to say that the reason that the
10 supposed timid nature or distinctly uncomfortable nature of
11 my client are not in the report is because it's not
12 evidence. Other material is there that is evidence.
13 Secondly, I would very much like to know how "crestfallen"
14 becomes "distinctly uncomfortable" and why, and why this
15 occurs months into your Tribunal's public sittings and not
16 in preparation for them. Mr. Hickey is entitled to know
17 where people are coming from in presenting an entirely new
18 aspect of evidence in relation to this, 13 years after the
19 event, three months into your hearings. He is entitled to
20 know that.

21

22 MR. DILLON: Well, I don't mean to continue a ping-pong
23 match, but, first of all, the circumstances in which this
24 portion of evidence has come about has been explained. It
25 was nothing untoward in the fact that the matter arose
26 recently; it's simply because the meeting between Tribunal
27 counsel and Mr. O'Mahoney arose recently. That's the only
28 reason. It's just a question of timing. That is the first
29 point. But I come back to this, where is the prejudice?
30 Whether one form of words, or another, is used, where is

1 the prejudice? Now, the Tribunal has been completely, in
2 this context, has put everything before you. You have the
3 evidence of the Assistant Commissioner, you have his
4 statement, but his evidence is obviously better evidence
5 than his statement, and you now are being told what is in
6 the notes. It's all out there. There is nothing on this
7 topic which prejudices Mr. Hickey - I am repeating myself -
8 it seems to assist him, and why this is being put into the
9 ground, I just do not understand. If the prejudice could
10 be explained, we would be on our way, but I don't see it.

11
12 CHAIRMAN: Well, I understand the witness to say that he
13 was there at the confrontation between Mr. Hickey and
14 Mr. Colton. He said that it was -- he didn't look him in
15 the eye; he thought it was a rather meek confrontation,
16 but, in the end, he came to the conclusion that he was able
17 to tell the Special Criminal Court that Mr. Hickey, while
18 he had done whatever he had done, that, you know, he
19 accepted Mr. Hickey's explanation that it was done
20 innocently.

21
22 MR. MacGUILL: No, lest you are not clear about this,
23 Chairman, my concern is not with the Assistant
24 Commissioner's evidence; my concern is what is happening,
25 what the Assistant Commissioner said and what the Tribunal
26 are turning it into. And I would be much less concerned if
27 you weren't asked, this morning, to accept as a submission
28 consistent with potential criminality that my client could
29 remember faces. I have no idea what, ultimately, would be
30 made of the phrase "distinctly uncomfortable," and I go

1 back to the point of saying if it was important enough to
2 warrant a meeting 13 years after the event and it's
3 important enough to become a new element in this new
4 investigation, it's important enough for us to see those
5 notes.

6
7 CHAIRMAN: Well, I think that is a totally separate
8 question, whether you are entitled to see notes of
9 counsel's interviews with a potential witness. I think
10 that is a totally separate question and I am not going to
11 deal with that this afternoon.

12
13 MR. DILLON: One word may have become another, is one
14 thing. You have the evidence of the Assistant
15 Commissioner, there doesn't seem to be any complaint with
16 that, and that is the evidence that you will receive.

17
18 CHAIRMAN: Yes, and that is the important part. Very well.
19 I want to thank Assistant Commissioner O'Mahoney very much
20 for coming here to give evidence today. You have been very
21 helpful and I am grateful to you for the help you have
22 given the Tribunal. Thank you very much.

23 A. Thank you, Chairman.

24
25 **THE WITNESS THEN WITHDREW.**

26
27 MR. DILLON: Chairman, there is one further witness for
28 today? Do you wish to rise for a minute?

29
30 CHAIRMAN: What witness?

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MR. DILLON: Over to Mr. Hayes.

MR. HAYES: It's retired Garda Edward Buggle, Judge, who is here today. He wasn't, I think, strictly scheduled in the list that has been circulated, but I don't believe that anybody has any difficulty. He will be a witness that will take no more than a quarter of an hour.

CHAIRMAN: Well, I think we should --

MR. HAYES: He has been here all day.

CHAIRMAN: He has been here all day and I think we should hear him, and I think now is as good a time as any.

1 EDWARD BUGGLE, HAVING BEEN SWORN, WAS EXAMINED BY MR. HAYES
 2 AS FOLLOWS:

3

4 CHAIRMAN: Oh, you are now retired, Mr. Buggle?

5 A. I am.

6 431 Q. MR. HAYES: Garda Buggle, I think that you retired
 7 relatively recently from An Garda Siochana?

8 A. Two years ago.

9 432 Q. And I think for a lot of your time you had been stationed
 10 in the Dundalk district?

11 A. Yes, I have all my service in around the border, yes.

12 433 Q. Yes. And I think you were stationed variously in
 13 Hackballscross for a time and in Omeath?

14 A. Yes, that's correct, Chairman.

15 434 Q. And when did you join An Garda Siochana?

16 A. 1978.

17 435 Q. 1978. And I think then, in 1989, you were at the time
 18 stationed in Hackballscross?

19 A. That's correct, Chairman.

20 436 Q. And can you recall how many of you were in Hackballscross
 21 station at the time, how many Gardaí there were?

22 A. There would be three -- roughly three to a unit, and that
 23 would be twelve.

24 437 Q. Twelve. And how many sergeants were there?

25 A. Probably, two; sometimes there was one.

26 438 Q. I see. And was there an inspector stationed in --

27 A. No, no inspector.

28 439 Q. No. And what were the sort of the -- the duties that you
 29 engaged in in Hackballscross in or around early 1989?

30 A. We would have been full-time on operational duties, mobile

1 patrol, checkpoints, security operations on the border,
2 that type of thing.

3 440 Q. And by mobile patrol, is that travelling in a car?

4 A. Travelling in the car. A lot of the time we have back-up
5 from the Irish army.

6 441 Q. Yes. And just making observations as you went?

7 A. Well, you'd patrol the border crossings and you checked on
8 known people.

9 442 Q. And you mention then, also, part of your duty involved
10 checkpoints?

11 A. Oh, yes, a lot of it checkpoints, yes.

12 443 Q. And were they always with the army or were they on
13 occasions --

14 A. On your own or with the army, it could be both. Some of
15 them would be set out in advance and they would have to be
16 done, like, with the army.

17 444 Q. Yes. Now, obviously when you were engaged in a checkpoint
18 with the army, the Garda was the lead -- had the lead role
19 in any checkpoint, is that correct?

20 A. That's correct, Chairman, yes.

21 445 Q. Were checkpoints done on an *ad hoc* basis or were they
22 planned, or was it a mixture of both?

23 A. Some of them would be planned. A schedule would come out
24 maybe three or four days beforehand --

25 446 Q. Yes.

26 A. -- with a list of checkpoints on it.

27 447 Q. Yes.

28 A. And then there could be a border operation where we would
29 have to seal off the border. If the northern security
30 forces were coming in close to the border, we would have to

1 cover off on this side.

2 448 Q. I see. And in respect of the ones that were planned, you
3 say that they were drawn up a number of days in advance.

4 Who, insofar as the checkpoints that officers from
5 Hackballscross were engaged in, who drew up the schedule of
6 those checkpoints, or are you aware?

7 A. Superintendent in Dundalk.

8 449 Q. The Superintendent in Dundalk?

9 A. Yes.

10 450 Q. And he would presumably feed that down through the ranks to
11 Hackballscross?

12 A. Yes.

13 451 Q. Yes. And would it be correct that that would, in the first
14 instance, go to one of the sergeants in Hackballscross?

15 A. Would go to the Sergeant, and he would put it into the duty
16 detail then.

17 452 Q. I see. So how much notice would you have, as a Garda in
18 Hackballscross, of where your checkpoints were going to be?

19 A. Possibly, three days.

20 453 Q. I see.

21 A. They'd be three different units, like.

22 454 Q. And then when the army were involved with you, what was the
23 arrangement for the army linking up with you to do the
24 checkpoint?

25 A. They came out to the station. They just came out at the
26 arranged time. They wouldn't know where the checkpoint
27 was.

28 455 Q. They would simply be told, sometime in advance, "go to
29 Hackballscross"?

30 A. Yes.

1 456 Q. I see. Now, on the -- do you recall the 20th of March,
2 1989, which was the day upon which Chief Superintendent
3 Breen and Superintendent Buchanan were murdered?

4 A. Yes, Chairman, I do.

5 457 Q. Yes. Were you on duty that day?

6 A. I was.

7 458 Q. And when were you on duty? Do you recall what shift?

8 A. I was working 2 p.m. to 10 p.m..

9 459 Q. I see. And can you recall, when you came on duty, what
10 duties you engaged in at 2 o'clock and thereafter?

11 A. Yes, I came on duty at 2 o'clock and we were one man short
12 on the unit, there was two working instead of three, and I
13 think Dromad were similar; they had two, as well.

14 460 Q. Yes.

15 A. So, normally, you'd have to have two in the car going out
16 on the border, so if there wasn't two for our car, we'd
17 link up with the Dromad car.

18 461 Q. Yes.

19 A. So, on that particular day, the Dromad car came over to
20 Hackballscross to meet me.

21 462 Q. To meet you. And who had --

22 A. Garda Joe Kilcoyne.

23 463 Q. Garda Kilcoyne had come from Dromad. So you got into the
24 car, and did you patrol then in the area?

25 A. Yes.

26 464 Q. And what is the general area that you would patrol? Did
27 you patrol the entire stretch of the border?

28 A. You normally patrol the border and around the main roads.

29 465 Q. Would you go from Hackballscross back to Dromad?

30 A. Yes, we'd have a look at Hackballscross first and then head

1 back towards Dromad and have a look at Dromad.

2 466 Q. I see. And on that day, do you recall observing anything
3 out of the ordinary?

4 A. Nothing unusual.

5 467 Q. Or that caught your attention?

6 A. No.

7 468 Q. Did you notice any particular helicopter activity in the
8 area?

9 A. No.

10 469 Q. I think then, later in the afternoon, I think you were
11 going back towards Dromad, is that correct?

12 A. Yes.

13 470 Q. And you received certain instructions?

14 A. Yes, we received instructions that there had been a
15 shooting at the border at McGeough's, and we headed there.

16 471 Q. Yes. And just where is McGeough's?

17 A. McGeough's is -- would be -- the far side of McGeough's
18 would be the Edenappa Road where the two officers were
19 murdered.

20 472 Q. I see. And McGeough's, I think, is a farm complex?

21 A. Yes.

22 473 Q. With a shop?

23 A. Straight on the border, really.

24 474 Q. I think there is a shop there and a scrap yard, as well?

25 A. There is a scrap yard. I don't know about the shop.

26 475 Q. I see. And do you recall what time you had received this
27 message at?

28 A. I think it was 4:15 p.m.

29 476 Q. At 4:15. And then you made your way to McGeough's on the
30 Edenappa Road?

1 A. Yes.

2 477 Q. And what did you do when you got there?

3 A. We set up a checkpoint just south of the border, prevented
4 any traffic from going north.

5 478 Q. And could you observe anything up the hill?

6 A. I am reading my statement here that I made at the time, and
7 it says that I was -- I could see a number of people
8 gathered about 500 yards across the border.

9 479 Q. Yes. Were there any other -- did any other -- this is
10 yourself and Garda Kilcoyne are there at the border --

11 A. Yes.

12 480 Q. Did any other Garda officers then come in the course of the
13 afternoon?

14 A. Superintendent Tierney from Dundalk and Inspector Murray
15 arrived at the scene.

16 481 Q. Yes.

17 A. And I think some members from the Detective Branch also
18 arrived.

19 482 Q. I see. And did any traffic pass you by at the time?

20 A. One car came from the north and was stopped by Sergeant --
21 or Garda Joe Kilcoyne.

22 483 Q. Yes. And that was let pass, was it?

23 A. It was stopped and searched, I think.

24 484 Q. And it wasn't detained, is that correct?

25 A. Oh, no, it wasn't detained. I think the driver was just
26 questioned because he was from that area.

27 485 Q. Yes. Now, you have made reference to the statement that
28 you made at the time, and perhaps Mr. Mills might just put
29 that up on the screen. Now, I will just read it into the
30 record and you might just confirm that this is the

1 statement that you made and what is in it is correct, as
2 far as you can recall.

3 It starts: *"Statement of evidence of Garda E. Buggle,*
4 *Garda Station, Hackballscross, County Louth. Made on*
5 *21/3/'89."* After the usual declaration, it continues:
6 *"I am a member of An Garda Siochana stationed at*
7 *Hackballscross Garda Station, County Louth. On the*
8 *afternoon of the 20th of March, '89, I was observer in*
9 *Dromad patrol car and was accompanied by Garda Joe Kilcoyne*
10 *of Dromad as driver. At approximately 4:15 p.m., while on*
11 *the main Dundalk-Newry Road, we received a report of a*
12 *shooting incident north of border crossing 10 in Edenappa*
13 *area. We went immediately to the area, travelling via*
14 *Faughart to border crossing 10, which is at McGeough's,*
15 *Carrickaneena. We arrived at McGeough's at 4:22 p.m. and*
16 *set up a checkpoint and blocked the road to traffic*
17 *travelling north. As we travelled from the New Inn, I did*
18 *not see any vehicle, except a school bus, which we overtook*
19 *at Faughart. I did not see any vehicle coming from the*
20 *area of the shooting. At McGeough's, Garda Kilcoyne*
21 *stopped motor car" -- and you gave the registration*
22 *number -- "coming from the direction of the scene of the*
23 *shooting incident. The driver of this vehicle was" -- and*
24 *you have named a member of the public -- "of Carrickaneena.*
25 *He was questioned by both Garda Kilcoyne and Superintendent*
26 *Tierney of Dundalk, who was also at the scene. When we*
27 *arrived at the scene, I could see the scene of the*
28 *shooting, which was about 500 yards north of the border*
29 *crossing 10. I could see a number of people gathered at*
30 *the scene. There was no other unusual activity in the*

1 *place. Shortly after we arrived at the scene,*
2 *Superintendent Tierney of Dundalk and Inspector Murray of*
3 *Dundalk arrived at the scene, Detective Branch members from*
4 *Dundalk arrived at the scene. I remained at the scene*
5 *until I was relieved at approximately 6 p.m. by Garda P.*
6 *Hartnett, Dromad. I prevented traffic travelling north and*
7 *no further traffic travelled south."*

8 And that was then signed by you?

9 A. Correct.

10 486 Q. And in as far as you can recollect, is that what you did on
11 the day?

12 A. That's correct, Chairman.

13 487 Q. Now, just going back to some matters of some generality.
14 In your time stationed along the border, were you aware or
15 did you ever observe illegal checkpoints north of the
16 border?

17 A. No, I was aware, Chairman, that there was, I think, a
18 checkpoint set up, but they would be always in the north,
19 so unless you were travelling -- I was aware that a couple
20 of members of the Gardaí travelling off-duty were actually
21 stopped and taken from their vehicles.

22 488 Q. Yes.

23 A. They were always in the north, not in the south.

24 489 Q. Did I say the south? Sorry, I meant the north.

25 A. Yes, I would never come across them, but I was aware that
26 they happened.

27 490 Q. Yes. And are you aware of -- did their frequency reduce at
28 any particular time, do you know, or --

29 A. Yeah. Well, when the watch towers went up, there was a big
30 decrease in all subversive activity in and around

1 Hackballscross.

2 491 Q. And just finally, in relation to smuggling that went on in
3 the area, did the Gardaí have any role in the apprehension
4 of that?

5 A. Yes, if you stopped a vehicle that you believed to be
6 smuggling, you would stop it and call the Customs.

7 492 Q. Yes. But it would then be a matter for the Customs to
8 investigate?

9 A. Customs would take it from there, yes.

10 493 Q. Yes. So would it be -- would it be an accurate
11 representation to say that, insofar as smuggling was
12 concerned, that the Gardaí were there to assist the Customs
13 rather than to lead any --

14 A. Oh, yes. Well, we didn't go out looking to try and stop
15 smuggling, but if we were doing a checkpoint and they came
16 along, we would hold the vehicle and call the Customs.
17 MR. HAYES: Thank you very much, Mr. Buggle. If you'd
18 answer any questions.

19

20 **THE WITNESS WAS CROSS-EXAMINED BY MR. McGUINNESS**

21 **AS FOLLOWS:**

22

23 494 Q. MR. McGUINNESS: I appear for An Garda Siochana. Can I ask
24 you this: When did you first get sent to Hackballscross?

25 A. Hackballscross, I would have went in 1981.

26 495 Q. 1981. So you'd been there, then -- did you remain there
27 until 1989, that period --

28 A. I think in around 1990 I left Hackballscross.

29 496 Q. After the murders?

30 A. Yes.

1 497 Q. Now, did Superintendent Buchanan ever call to
2 Hackballscross while you were there?

3 A. I can't say for definite. Possibly did, I am not sure.

4 498 Q. Did you know of Superintendent Buchanan or had you ever
5 seen him yourself?

6 A. No, I don't think I could place him.

7 499 Q. All right. And you wouldn't, presumably, obviously, have
8 been aware of the sort of car he drove?

9 A. No, no.

10 500 Q. But part of your duty involved going out along the border,
11 the crossing points visible, the different crossing points?

12 A. Yes.

13 501 Q. And you knew the various crossing points very well: Number
14 10 at Edenappa Road?

15 A. Yes.

16 502 Q. Number 11, further over at the bridge?

17 A. Yes.

18 503 Q. And you mention in your statement that there was a lot of
19 disturbance of the railway line north of the border?

20 A. Oh, yes. Well, that's very close to McGeough's, there,
21 where this incident happened. The railway line meets at
22 McGeough's there. It crosses the border very close to
23 McGeough's, about three or -- 200 yards.

24 504 Q. Yes. Garda records show that there was an explosion at the
25 Kilnasaggart Bridge on the 19th of December, '88, there was
26 another report of a bomb there on the 16th of January,
27 there was another explosion on the 6th of February at
28 crossing point 11?

29 A. Yes.

30 505 Q. And then there were further reports of bombs on the 13th

1 and 14th of March?

2 A. Yeah, they would be very frequent.

3 506 Q. Yes. Now, that period suggests a great deal of IRA
4 attention to the railway line north of the border, is that
5 right?

6 A. That would be correct.

7 507 Q. Did you experience such disruptions and explosions on the
8 railway line south of the border?

9 A. No, I can't -- I often walked the track from Dundalk to the
10 border, OK, if there was -- if there was a phone call in
11 that there was a bomb on it, but I have never found -- I
12 don't think there was ever any found in the south, like.
13 But I did often walk from Dundalk out to the border along
14 the line.

15 508 Q. North of Hackballscross and between Forkhill and Jonesboro,
16 there is a whole maze of roads north of the border, all of
17 which lead away from each other and back again?

18 A. Yes, it's a maze of roads, like. You have 36 border
19 crossings, 35 or 36.

20 509 Q. And have you an opinion as to whether the Edenappa Road was
21 dangerous?

22 A. Yeah, I wouldn't travel it, Chairman. It was one road I
23 wouldn't travel.

24 510 Q. What do you base that opinion on?

25 A. Because it was a back road. I think I only ever travelled
26 it once in my life.

27 511 Q. All right.

28 A. I wouldn't travel north on them back roads when I was a
29 guard.

30 512 Q. OK.

1 A. I didn't think it was safe.

2 513 Q. And, now, the illegal checkpoints that you have talked
3 about, I think you have clarified for Mr. Hayes that they
4 were all north of the border, is that right?

5 A. Yes.

6 514 Q. And you never actually saw any of them yourself, but you
7 heard tell of them, is that right?

8 A. Well, when I would be working, we wouldn't travel north.
9 You see, you would never see them on duty, like.

10 515 Q. Right.

11 A. You see what I am saying? We stay in the south and they
12 were in the north.

13 516 Q. Yes. During your time in Hackballscross and in the area
14 around that, would you have been -- become familiar with
15 the people who were alleged to be members of the IRA?

16 A. I would have a fair idea, Chairman, yes.

17 517 Q. And would you have been involved in many investigations
18 into IRA activity along the border during your time there?

19 A. Well, that would be -- subversive crime would be dealt with
20 by the Special Branch from Dundalk, but I was involved in
21 searches, and that type of thing.

22 518 Q. Yes. And from your knowledge and experience, were the IRA
23 very interested in acquiring intelligence about the
24 movements of RUC men?

25 A. I am sure they would have been.

26 519 Q. And have you any direct knowledge or experience of the fact
27 that the IRA did gather intelligence?

28 A. Not really, no, but I am sure they had their own
29 intelligence department within the organisation.

30 MR. McGUINNESS: All right. Thank you.

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CHAIRMAN: Any other questions?

MR. O'CALLAGHAN: No questions.

MR. COFFEY: No questions.

MR. HAYES: No questions arising.

CHAIRMAN: Well, that concludes it. Thank you very much, Mr. Buggle, for coming and helping the Tribunal with your evidence. I am very grateful to you. Then, 11 o'clock tomorrow morning.

THE TRIBUNAL THEN ADJOURNED TO WEDNESDAY, THE 28TH OF
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