

**Steering Committee
on Audio and Audio/Video
Recording of Garda Questioning
of Detained Persons**

Third Report — September, 2004

Contents

| | <i>Page</i> |
|---|-------------|
| Foreword | vii |
| 1. Section 1 – Background | 1 |
| 2. Section 2 – Activities since the Publication of the 2 nd Interim Report | 5 |
| 3. Section 3 – Policy for Preservation and Destruction of Tapes | 13 |
| 4. Section 4 – Conclusions and Recommendations | 17 |
| 5. Section 5 – Appendices | 19 |

Mr Michael McDowell, T.D.
Minister for Justice, Equality and Law Reform

I have the great pleasure on behalf of the *Steering Committee on the Audio and Audio/Video Recording of Garda Questioning of Detained Persons*, to present the latest Report of the Committee.

This is the third Report of the Committee on the electronic recording of Garda questioning of detainees. The first report was completed in March 1994 and as a result of its findings and recommendations a pilot scheme of audio/video recording of interviews in selected Garda stations operated between 1994 and 1999.

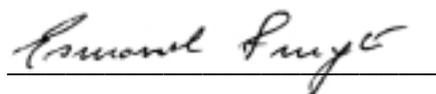
The second interim report, which was presented by me on behalf of the Committee in March 1999 strongly recommended that a nation-wide scheme of audio/video recording of Garda interviews with detained persons should be commenced at the earliest practicable opportunity and should be mandatory. That scheme has since progressed well, with 229 interview rooms in 132 selected Garda stations across the country fitted with the required audio/video equipment.

The scheme is now in operation in every Garda Division in the country. It has, I believe, been successful not least in providing a positive safeguard to persons being interviewed in these Garda stations with the specialised equipment, but also in providing the interviewing Gardaí with a way of defending themselves against unfounded accusations of unfair treatment of suspects being interviewed. Moreover, the Courts can, and have, sought to view such evidence in certain instances.

The purpose of this final report of the Committee is to provide an indication of the work of the Committee since its last report; the progress of the scheme in the intervening period; the Committee's views on the scheme which is now in widespread use; and observations that the Committee consider appropriate to make in the light of the experience of the scheme gained, particularly, over the past few years. On this latter point, it is important that the scheme be in operation for some time in order for firm conclusions to be drawn.

Finally, in presenting the Report, I would like to record my sincere thanks to the many members of the Committee who, over the years, gave freely of their time since the Committee started its work in 1993, and without whom the scheme of electronic audio/video recording of interviews of detainees in Garda custody, as we now know it, would not have been possible. On behalf of the Committee I would also like to record my sincere thanks for advises and assistance provided by Mr. Paul Linehan, Parliamentary Counsel in advising on and drafting the proposed regulations.

Yours sincerely,



Mr Justice Esmond Smyth
Chairperson

September, 2004

Foreword

The Steering Committee on Audio and Audio/Video Recording of Garda questioning of detained persons was established in 1993 to make recommendations to the Minister on all aspects of instituting electronic recording of detained persons in Garda stations. The terms of reference of the Committee are set out in appendix 1. The current membership of the Committee is listed in appendix 2. This is the third report of the Committee.

The first report of the Steering Committee was completed in March, 1994. Based on the findings and recommendations contained in the report, a pilot audio/video scheme operated in selected stations between 1994 and 1999.

The Steering Committee reported again to the Minister on its work in 1999 (the Second Interim Report) and, on the basis of its experience gained from careful monitoring of the pilot scheme, recommended that a nationwide scheme of audio/video recording should proceed.

At the conclusion of its report the Steering Committee indicated that it intended presenting a final report to the Minister on the progress of the scheme. The Government accepted the Steering Committee's Report and recommendations and authorised a nationwide scheme in July, 1999.

Therefore, this third Report of the Steering Committee is intended to describe the progress made since the Government decided in July, 1999 to implement the scheme on a nationwide basis. From a position where only a handful of selected Garda stations were equipped to undertake audio/video recording of interviews, there are now up to 229 interview rooms in 132 selected Garda stations in all Garda Divisions using such equipment on a regular basis.

This report sets out the Steering Committee's views on the nationwide scheme based on the experience gained from its widespread operation over the past few years.

1.1 *The following is a brief background and history of the scheme since its inception.*

1.1.2 On 29 November 1989 the Government approved the establishment of a Committee to enquire into certain aspects of Criminal Procedure. This Committee, chaired by His Honour Judge Frank Martin, examined whether additional safeguards were needed to ensure that admissions by persons detained in Garda stations are properly obtained and recorded and to make recommendations accordingly.

1.1.3 The Committee published its findings in March, 1990, and recommended that the questioning of suspects take place before an audio-visual recording device; and that it should be first introduced in selected Garda Stations on a pilot scheme basis.

1.2 *Establishment of Steering Committee*

1.2.1 Following publication of the Martin Report, the Department of Justice and the Garda Síochána engaged in a period of extensive analysis with regard to the recommendations relating to electronic recording.

1.2.2 Following full consideration of all matters and a recommendation by the then Minister for Justice, the Government approved on 26 May, 1992, the introduction of both audio and audio-video recording of the questioning of detained persons on a pilot basis in selected Garda stations in four Garda Districts, to include urban, rural and border areas.

1.2.3 A Steering Committee, currently chaired by Mr. Justice Esmond Smyth, including representatives of the Attorney General, the Director of Public Prosecutions, the Bar Council, the Incorporated Law Society, the Judiciary, the Garda Síochána and the Department of Justice, was established to oversee matters.

1.3 *First Interim Report to Minister for Justice (March 1994) and Approval to Commence Pilot Scheme*

1.3.1 The Committee considered it appropriate to actively seek out the knowledge and experience gained in other jurisdictions of electronic recording of police interviews of detained persons. This involved literature reviews, fact-finding visits to England and Scotland, and information received via the good offices of the Department of Foreign Affairs on the situation in European States and elsewhere.

1.3.2 The Committee recommended that the pilot scheme be carried out in two stages; first, through a preliminary, optional, scheme confined to persons detained at one Garda Station i.e. Tallaght ; and subsequently through a full pilot scheme, in accordance with agreed terms of reference.

1.3.3 The Committee considered that interviews in Tallaght Garda Station should be electronically recorded in relation to serious offences and, specifically, with regard to:

- (i) all persons detained under section 4 of the Criminal Justice Act, 1984
- (ii) all persons detained under section 30 of the Offences against the State Act, 1939

1.3.4 The requirement for a contemporaneous note of an interview under the Judges Rules and the Custody Regulations was not affected by the new Audio Video proposals.

1.3.5 The Steering Committee went on to make further recommendations in relation to essential modifications to be made to interview suites in Garda stations, audio and audio/video recording equipment and the training of members of the Garda Síochána in the use of such equipment. In addition, the Committee drew up a preliminary Code of Practice for the Garda Síochána.

1.3.6 These recommendations were submitted to the Minister for Justice, in the Committee's *First Interim Report*, which, with the Minister's approval, was published in March 1994. Following receipt of Ministerial approval to implement the Report's recommendations in April 1994, the Committee proceeded to establish the preliminary pilot trial at Tallaght Garda Station, to be followed by a full pilot scheme.

1.4 *Pilot Schemes*

1.4.1 The preliminary pilot scheme at Tallaght Garda Station, Dublin, commenced on 11 May, 1994. The scheme, based on the consent of detainees, involved the audio or audio/video recording of Garda interviews with persons detained under section 4 of the Criminal Justice Act, 1984 and section 30 of the Offences against the State Act, 1939, i.e., all statutes then extant providing for the detention of persons deemed necessary for the proper investigation of offences.

1.4.2 By late 1994, it was becoming increasingly evident that detainees were, in large part, declining to have their interviews electronically recorded, with take-up rates averaging only 8-9%. This low participation rate meant that statistical data, upon which proper scientific monitoring of the pilot scheme depended, was not available.

1.4.3 Accordingly, the Steering Committee decided to proceed with a full pilot scheme in a total of four Garda stations, in an effort to increase the quantity of available data. The pilot scheme was duly extended to Bridewell Garda Station, Dublin, on 24 March, 1995; to Portlaoise Garda Station on 11 May, 1995; and to Bridewell Garda Station, Cork, on 31 May, 1995.

1.5 *Experience gained from the full Pilot Scheme*

1.5.1 Statistical returns from the pilot scheme Garda stations clearly revealed continued reluctance on the part of detainees to consent to being interviewed using electronic recording. Take-up rates in the pilot stations, up to July 1995, were very low (13% on average). As a consequence the Committee considered that Regulations under the 1984 Act were necessary to allow for mandatory recording of interviewees.

1.6 *Statutory Regulations*

1.6.1 The Committee sought the approval of the Minister in June 1995 to introduce regulations for mandatory electronic recording under section 27 of the Criminal Justice Act, 1984.

1.6.2 Following receipt of the Minister's and Government's approval to proceed, the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997, came into effect on 1 March, 1997.

1.6.3 The Regulations provided, with specified exceptions, for the electronic recording of interviews with persons detained under specific legislation. These were first applied to the four Pilot Scheme Garda stations equipped for that purpose.

1.6.4 Following the introduction of the 1997 Regulations, the percentage rate of electronic recording of interviews increased dramatically. By the first quarter of 1998, the rate of electronic recording across the four pilot scheme Garda stations averaged approximately 75% and subsequently, increased further to approximately 81%.

1.6.5 On the basis of the experience of the pilot scheme, the Committee considered that the 1997 Regulations had proved a sound statutory basis for extending electronic recording of interviews on a nationwide basis.

1.7 *Recommendations of the Steering Committee – Second Interim Report – 1999*

1.7.1 In April 1999, the Minister was presented with the Committee's Second Interim Report which contained significant recommendations for a national scheme of audio/video recording to operate at the earliest practicable opportunity and in accordance with the provisions of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997. It recommended that the scheme apply to all persons detained under section 4 of the Criminal Justice Act, 1984; section 30 of the Offences against the State Act, 1939, as amended; section 2 of the Criminal Justice (Drug Trafficking) Act, 1996, or section 2 of that Act as modified by section 4(3).

1.7.2 To accommodate recording of interviews in cases of a threat to life, the Steering Committee proposed that the 1997 Regulations be amended to include a provision allowing for the interruption and/or discontinuance of an audio/video recording where a member of the Garda Síochána not below the rank of Chief Superintendent believes, on reasonable grounds, that there is a real and substantial risk to the life of any person and that insistence upon the electronic recording of the interview gives rise to this risk.

SECTION

2

Activities since the Publication of the 2nd Interim Report

2.1 Following the recommendation on the extension of the scheme in the 2nd *interim report of the Committee*, on 14 July, 1999 the Government approved (S.26382) the introduction of the nation-wide scheme.

2.2 *Progress of the Scheme in Garda Stations*

2.2.1 It is important to state that although there are in excess of 700 Garda stations countrywide, only 167¹ have detention facilities and are used to detain and interview people. Therefore, it was never the intention that all Garda stations would be equipped to carry out Audio/Video recording of interviews. Accordingly, necessary planning work was undertaken by the Garda Síochána, including a survey of all Divisions to identify the number and location of stations required to give a broad nation-wide coverage with audio/video systems to ensure that any interviews with detained persons are electronically recorded. Standards were also drawn up regarding the layout and sound-proofing of rooms so that recordings of the requisite quality would be produced. An E U. based tender process to procure a total of 252 audio/video systems for the national scheme was completed in April, 2001. Delivery and installation was commenced on 25 July, 2001.

2.2.2 Garda technical personnel together with personnel from the Office of Public Works, who fitted out the rooms to agreed specifications, installed the specialist equipment in the selected Garda stations in every Garda Division between July 2001 and late 2003.

2.2.3 At this point in time, 229 interview rooms in 132 Garda stations are equipped and are in use. The Committee is assured that, with the putting in place of additional units in a very small number of stations which already have facilities, there are a sufficient number of Garda stations, in all Garda Divisions, to ensure that all interviews as specified in the Regulations are recorded. Maps showing the nationwide distribution of Garda stations with audio/video facilities and a chart showing the annual rate of rollout is attached at appendix 3.

2.2.4 The Committee were concerned to allow the scheme adequate time to develop; to give the Garda authorities an opportunity to familiarise themselves with their responsibilities under the Regulations; to implement appropriate training programmes, and to have some experience of its operation in the Courts.

2.3 *Training of members of the Garda Síochána*

2.3.1 (a) *Analysis of requirements*

At the outset, a National Training Needs Analysis was carried out by the Garda Síochána. The results of this analysis, conducted by Regional Coordinators, in accordance with agreed criteria, indicated that eight thousand, six hundred and twenty one members (8,621) required training. A training course of two days duration was devised and provided training and education on the following matters:—

¹ In addition, there are Garda Stations that have detention facilities available but are not utilised for a number of reasons i.e. limited opening hours, etc.

- The regulations currently governing the Audio/Video recording of suspect interviews
- Guide to interviewing and awareness of interviewing suspects with potential psychological problems
- Relevant case law and international conventions
- Use of the audio/video equipment
- Guidance on current best practice through the medium of a number of case studies made for the purpose of training.

The Case Study approach enabled two trainers working as a team to train twelve members on each course.

2.3.2 (b) *Course Design*

The design of the training course is based on experience gained in the pilot scheme, the advice and guidance of the Steering Committee on Audio/Video recording of Garda interviewing of detained persons, study of current best international training practices, and, in particular, the P.E.A.C.E. model of interview training currently being delivered in the U.K. which is based on scientific research and contributions from Police Practitioners, Barristers, Psychologists and other academics.

The research focused on the development of more effective interviewing skills and best practice in the field of Audio/Video recording of suspect interviews. The mnemonic P.E.A.C.E. stands for:—

Planning
Engage and explain
Account, Clarification & Challenge
Closure
Evaluation

This approach to interviewing in an audio-video recorded environment provided a good model for training, as it gave guidance on the structure and best practice in approaches to this type of interviewing. Similar to the UK approach, the cornerstone of training in Ireland is a practical approach, involving case studies and the use of the installed equipment.

2.3.3 (c) *Case Studies*

The Case Study approach included the use of role-play, where the participants took part in simulated interviews which were later replayed to the participants as a teaching tool. The Studies enabled the participants to experience the use of the equipment and to discuss through the medium of a debriefing session, the interviewing of suspects in an audio video recorded environment.

This approach enabled, in so far as is possible, a replication of a '*near real world situation*' and which enabled members to receive guidance on the practical application of the regulations, the interviewing skills, and best practice on approaches to this type of interviewing.

2.3.4 (d) *Deployment of Training*

The training programme, designed for the roll out of Audio/Video recording of interviews of detained persons, was devolved to each Garda Division for delivery by members nominated as

Divisional Trainers and was co-ordinated by Regional Coordinators with support from the Garda College Project Team. The role of the Regional Coordinator was to provide clear lines of communications between the project team, the Divisional trainers and Garda Management within each Region/Division. Training was delivered at Divisional level by two members nominated by Divisional Management. The nominated Divisional trainers themselves received a one-week training course, to enable them to deliver the required training.

2.3.5 With regard to relevant Specialist Units, these also appointed a Coordinator, who performed the same role as Regional Co-ordinators. Training for personnel from the various Specialist Units was included at the selected divisional training centres in the Dublin Metropolitan Region on a pro rata basis.

2.3.6 With specific reference to the Detective Training Course, all members appointed to a Detective/Crime Investigation Unit undergo a Five (5) week Training course. Throughout the Programme, the various aspects of Interviewing and the conducting of interviews, and taking of statements is addressed.

2.3.7 To date, the required numbers of Gardaí have been trained in the use of the specialist equipment.

2.3.8 *Training procedures after nationwide training programme*

Subsequent to the completion of the nationwide training programme as outlined above, the training of all Probationer Gardaí in the Audio/Video recording of suspects' interviews is incorporated into the Student/Probationer Training programme provided at Templemore Training College.

2.4 *Introduction of New Regulations*

2.4.1 During the period 2000 to 2003 the Steering Committee met on average twice each year to consider the progress of the scheme and issues arising.

2.4.2 In particular, the Committee discussed in some detail the provisions of the current (1997) Regulations with a view to including not only the change to the Regulations agreed by the Government, i.e. the discontinuance of a recording by a Chief Superintendent if there is real and substantial risk to the life of any person (see paragraph 1.7.2) but also other changes considered desirable by the Committee in the light of experience gained with the wider use of the equipment countrywide. The Committee were also concerned to improve the format of the Regulations.

2.4.3 The Committee had the benefit of regular contact with, and advice received from, the Attorney General's Office and indeed members of the Committee met with the Parliamentary Counsel to the Government on a number of occasions.

2.4.4 The Committee considers that, with some amendments, the 1997 Regulations are still appropriate for the purposes for which they were made. However, with the passage of time, and the greater use of, and experience gained by Gardaí, of audio/video recording and experience gained from Court use, etc. the Committee considers that certain modifications are appropriate to the Regulations.

2.4.5 The Committee considers that the 1997 Regulations, if amended as now suggested, would improve their effectiveness and would allow for advances in technology and for the use of other

methods of recording of interviews in the future. Accordingly, the Committee has attached draft Regulations to this Report. It should be noted that although these regulations have been substantially cleared by the Parliamentary Counsel to the Government, a small number of changes have to be finalised by the Parliamentary Counsel. When completed, the Committee recommends that the Minister bring these draft Regulations into force. The Committee is indebted to the Parliamentary Counsel to the Government, Mr. Paul Linehan, for his valuable advices and assistance in drafting the changes to the Regulations.

2.4.6 Apart from changes of style or format, these Regulations differ in a number of respects from the current Regulations. Specifically,

- (a) The Government decision that an appropriate provision be made for discontinuance of an interview in certain specific situations, or that it not be commenced at all, on the direction of a Chief Superintendent has been included at Regulation 11.
- (b) The Regulations provide for a redefinition of the word 'Tape'. The Committee consider that this redefinition is necessary to allow for a variety of technological possibilities going forward.
- (c) The Regulations are drafted, for clarity reasons, to reflect necessary differences between the discontinuance of an interview for good reasons (as provided for in the Regulations) and the temporary suspension of an interview.
- (d) The period after which a person who has been interviewed may apply to have the working copies of tapes of his/her interview destroyed, has been extended to twelve months from the current six months. Similarly the period of extension given to a Superintendent to retain tapes has also been extended to twelve months.
- (e) Periods for the preservation of tapes have been specified, with provisions for extending the period in certain circumstances. A distinction has been made between "master tapes" and "working copies" in this regard. Details of issues considered by the Committee are contained in section 3 of this report.
- (f) A person who has been interviewed or his legal representative or both shall, where practicable, be given the opportunity to be present when the seal of the master tape is broken and to view and listen to the tape on a date to be specified by the member in charge of the station. The Committee consider that this amendment will make the provision more manageable for the Gardaí at station level without adversely affecting the interviewee's rights.
- (g) A refusal to give a copy of a tape of an interview to the person interviewed will be a matter for the Chief Superintendent and not the Superintendent as in the current Regulations.
- (h) The removal of the section in the current Regulations dealing with the certification by a Garda Superintendent that sufficient members assigned to the station are trained in its use. This is considered unnecessary as there are now sufficient operational Gardaí trained in the use of the equipment.
- (i) An appropriate transitional provision from the existing Regulations has been provided.

2.5 *Review of National System*

2.5.1 In addition to the above matters, the Committee addressed other salient issues and matters which are brought to the attention of the Minister. In reviewing the national scheme, the Committee had regard to such matters as the extent of use of the system in accordance with the Scheme; the occasions when recordings of interviews did not take place; the instances of accusations by those being interviewed of coercion or impropriety by the interviewing Gardaí.

2.5.2 From analysis of Garda statistics for the period January to November, 2003, the Committee are pleased to note the very high rate of audio/video recording of interviews. During the period a total of 16,126 interviews were conducted as provided for in the regulations. Of these 15,032 were recorded representing 96% of the total. This is a marked increase on earlier reports from the Pilot scheme. The Committee examined the reasons why the balance of interviews (4%) were not recorded. Specifically, there are two main reasons as follows:—

- (i) equipment already in use/room not available;
- (ii) objections by interviewees.

2.5.3 With regard to ‘equipment already in use / room not available’, this accounted for 1.5% of the total. Arising from an analysis of the statistics on usage, the Gardaí have identified a small number of locations (stations) for which additional equipment is required, in addition to the equipment already provided at those locations. The Garda Síochána will be addressing this matter.

2.5.4 Recently the Committee have become aware that there may be a need to review the technical quality of recordings. The Committee is aware of two instances in the Courts where the quality of recordings was called into question. The Committee recommends that the Garda Síochána should conduct a quality review of all recording suites to ensure that recordings are of the requisite standard. The review should be carried out during busy periods to simulate normal activity and extraneous noise around the interview suite. The Committee considers that this review should take place as soon as possible.

2.5.5 With regard to ‘objections by interviewees’, the Gardaí report that they are happy with the high compliance rate in respect of videoing interviews and regard the facility as a safeguard for both the Gardaí and the interviewee alike. While it is reasonable to expect that some detained persons will refuse to be interviewed on tape, it is encouraging that only 1.8% of all interviews were not interviewed on tape because the interviewee objected to such recording.

2.5.6 The Committee considers that, wherever possible, such objections by interviewees should be recorded on tape.

2.5.7 Considering the nationwide coverage of interview rooms fitted out with the equipment, the fact that almost all operational Gardaí have been trained in the use of the equipment and that the scheme has now been operating successfully for a significant period of time, the Committee considers that all interviews with persons detained under the statutory provisions of the Criminal Justice Act, 1984 and who are interviewed pursuant to the provisions of the (Electronic Recording of Interviews) Regulations, 1997 should be recorded on Audio/Video equipment. The only exceptions to this should be the exceptions as provided for in the Regulations.

2.5.8 The advent of Audio Video recording has been the subject of some comment from the Judiciary. In a recent case, Mr. Justice Hardiman, giving the judgement of the court, (Director of

Public Prosecutions -v- Martin Connolly, 2003 2 I.R.167 CCA) commented that the time cannot be remote when a submission will be made that absencing extraordinary circumstances it is unacceptable to tender evidence which has not been recorded.

It is the Committee's view that because of the nation-wide scheme now in operation, this should obviate any suggestion that it is necessary to bring a detained person to a station other than those which have been fitted out with the necessary facilities to audio/video interviews. Therefore, the Garda Síochána must make every effort to ensure that all interviews are recorded on Audio/Video and that all available options are explored before any of the exceptions, as provided for in the regulations, are invoked.

2.6 *Production of Tapes in Court*

2.6.1 Initially, the Committee considered that there would be relatively few occasions when it would be necessary to produce audio/video recordings in court. However, in recent times it has come to the notice of the Committee that there have been cases where the tapes were not just required to be produced in court but were played as well – the purpose being to compare the written notes of an interview with the actual recording to test whether there is a conflict between one and the other.

2.6.2 It is anticipated that other issues could arise during the trial process as to the manner in which an interview was conducted, e.g. whether it was oppressive, or suggestive of threats or inducements – factors which may not always be apparent from a written note.

2.6.3 On the present figures available to the Committee, the production of tapes in court has been the exception rather than the rule. Indeed, as far as the Committee is aware, up to June 2004 there have only been 44 occasions where this has occurred. Complete figures for the number of times that tapes have actually been played in court during the trial process are not to hand at present. However, the Committee are aware of at least 2 cases where the tapes of interviews were played in court and in one of those cases, the court was told that it would take 14 hours replaying the tapes – in reality 3 days of court time.

2.6.4 In the course of its early discussions for the preparation of its 1st Report, the Committee identified that one of the advantages of the audio visual recording of interviews with detained persons is that it would lead to a reduction in the number of voir-dires, or trials within trials, thus saving court time and expense.

2.6.5 In view of this, the Committee considers that the extent to which the production and playing of tapes in court may become part of the trial process will need to be carefully monitored in future. If necessary, appropriate procedures could be considered so that the issue could be determined, to some extent, at a pre-trial hearing. The treatment of contemporaneous notes of interviews, which may also have a bearing on this issue, is discussed below.

2.6.6 A report in May, 2003, from the Working Group on the Criminal Jurisdiction of the Courts, chaired by Mr. Justice Fennelly, made recommendations, on, inter-alia, pre-trial procedures on indictment. To take matters forward, a committee chaired by Mr. Justice Paul Carney, has been established. Procedures for the playing of tapes at pre-trial stage may be an issue that could be fruitfully examined by that Committee.

2.7 *Use of contemporaneous Notes*

2.7.1 The Committee re-considered this issue which was first considered in the 1st Report of the Committee in 1994. The practice as introduced at that time, and continuing to the present, was that the Gardaí carrying out the interview would take contemporaneous notes in addition to the Audio / Video recording. This is in line with the Judges Rules and Custody Regulations in relation to this matter. In the light of the passage of time and experience gained, the Committee looked again at the issue. The main arguments against the continued taking of such notes relate to the time taken, and that the taking of such notes may disrupt the flow of the interview.

2.7.2 While it is clear that the Audio Video recording is the best evidence of what happens at the interview and accordingly, there may be a case to be made that the full written note of interviews is superfluous, nevertheless, there are a number of arguments in favour of the retention of the status quo.

2.7.3 In the event that the full written notes of interviews were to be dispensed with, then it could transpire that defence and prosecution teams would seek a transcript of the recorded interview. This could give rise to significant cost implications.

2.7.4 In considering cost, regard has to be given not just to the actual time taken by the person typing the transcript but also to checking and certification of the transcript by the Garda Síochána. Also, the timeliness of transcripts will impact on the resources required. For example, it is considered that the transcript would be required to be submitted to the Director of Public Prosecutions / State Prosecution Solicitor with the prosecution file. This would mean that transcripts would have to be prepared very quickly after the interview. Should this not happen, staff in these offices would be required to view the tapes. The Committee consider that this would be totally unsatisfactory and virtually unworkable as it would be extremely time consuming with several viewings necessary where files are reviewed or submitted for approval of a particular course of action.

2.7.5 The time taken by a typist to transcribe a video tape is estimated at a factor of 5 times the interview duration. Audio tape is estimated to take 3 times the interview duration and one estimate of video tape is that transcription could take up to 10 times the interview duration. However, this is regarded as an upper figure and accordingly a factor of 5 is considered more accurate for estimate purposes. Because of the need for speedy transcription, for specialised equipment and for economies of scale, it is considered that the process of transcription would require to be centralised.

2.7.6 Assuming it will take 5 hours work to transcribe 1 Hour of interview, it is estimated that based on the number of tapes created per annum, in the order of 30-50 staff would be required in the direct task of transcription. When the cost of supervision, equipment and accommodation is factored into the equation as well as allowing for Garda time to check the output, it is estimated that transcription would cost over €5m per annum. This is assuming one centralised operation. The costs would rise significantly if the tasks were to be carried out at Garda Divisional level. The costs also assume an even throughput and do not take account of peaks in demand. Such peaks would have to be catered for by overtime or additional staff as the transcriptions are required within a short period of time by the Gardaí to prepare the Book of Evidence.

2.7.7 The Committee would be concerned that if there were to be a change to the Judges Rules dispensing with full contemporaneous notes of interviews, this could have an impact on the

conduct of criminal trials. If in the future such changes were to be introduced, their effect on criminal trials could be obviated by such matters being dealt with as pre-trial matters by the trial Judge. The use of such pre-trial procedures would provide for viewing of recordings by defendants or their legal representatives before commencement of the criminal trial.

2.7.8 With the passage of time the legislature may look at the question of modification of the Judges Rules to continue with contemporaneous notes, in the light of further experience gained with audio/video recording of suspect interviews. Due regard will also have to be given to the Custody Regulations if changes are proposed. The Committee is of the view, however, that contemporaneous notes should continue to be used for the present.

2.8 *Advances in Recording Technology*

2.8.1 The Committee is conscious of the fact that recording technology is changing at a rapid pace, particularly in the case of digital technology as applied to audio and video transmission and recording.

2.8.2 The Committee would wish to acknowledge the very valuable advice it received from its Technical Advisor, Professor James G. Lacy, in this regard, particularly to the use of DVD technology in the context of audio video recording of suspect interviews.

2.8.3 The Committee was aware of this technological change at the time of its Second Interim Report in 1999. However, having considered the matter carefully at that time, it recommended an adherence to the VHS system of recording on tape of interviews in Garda stations. In this regard, the Committee was of the view that the VHS recording system was a mature technology and had been shown to be reliable during the previous years of Pilot trials and that the technology met the specific requirements set out in the Regulations.

2.8.4 The Committee also had regard to the advice of its Technical Advisor that the medium of DVD was not mature enough at that time. The Committee has again considered this matter and some issues which are advised by its Technical Advisor, which need to be considered before any change to DVD is contemplated. Principal among these is the question of whether the method by which digital images are recorded and stored represents the best evidence available. In addition, significant hardware and software development would be required to produce a DVD system to meet the operational requirements. Details of the specific issues involved are outlined at Appendix 4.

2.8.5 Accordingly, the Committee, while providing for the possibility in the proposed draft Regulations of using DVD technology in the future, considers that the existing VHS technology be continued. Any future decision for replacement of the technology will need to take into account the issues raised above as well as issues such as the availability of parts and support of the existing systems. The Committee considers that the matter be kept under review going forward.

2.8.6 The Committee has also made recommendations regarding the need to review the quality of existing recordings to ensure acceptable standards are maintained. (paragraph 2.5.4 refers.)

SECTION

3

Policy for Preservation and Destruction of Tapes

3.1 The Committee has considered, in the light of experience gained to date with the scheme, a number of issues surrounding the preservation and destruction of tapes. Specifically, on the destruction of tapes the Committee considered:

- that material on tape may be required in future either by the person on tape or by third parties who may be directly affected by the content of the tapes;
- the rights of persons not to have material relating to them stored on tape indefinitely;
- issues with the longer term storage of tapes and the expected lifespan of the tapes themselves.

3.1.1 *Existing legislation on destruction of evidence*

Existing legislation relating to the destruction of evidence is contained in Section 8 of the Criminal Justice Act, 1984 and in Section 4 of the Criminal Justice (Forensic Evidence) Act, 1990. Section 8 of the 1984 Act states that the destruction of evidence – photographs, fingerprints, palm prints – must be carried out within a six month period where proceedings for an offence are not instituted against the person and the failure to institute such proceedings within that period is not due to the fact that he has absconded or cannot be found. Section 8 also provides for the destruction where proceedings have been so instituted and the person is acquitted or discharged or the proceedings are discontinued.

Section 4 of the Criminal Justice (Forensic Evidence) Act, 1990 also makes similar provisions regarding the destruction of forensic evidence.

Both Acts also make provision for application by or on behalf of the Director of Public Prosecutions to the Courts for retention of the evidence, provided it can be shown that there is good reason why records and samples should not be destroyed. This option is also available to the person from whom the sample was taken in respect of forensic evidence under the 1990 Act.

3.1.2 *Preservation and Retention of evidence*

The Criminal Procedure Act, 1993 provides for the review by the Court of Criminal Appeal of alleged miscarriages of justice or excessive sentence. The Act refers to new or newly-discovered facts as a basis of appeal. The Committee considers that there could be circumstances where such facts may be contained on the tape of the interview and as such, preservation and retention needs to be considered in this light.

3.1.3 The Committee also investigated relevant case law regarding the obligation of the Prosecution to preserve and disclose evidence to the Defence. A summary of the relevant case law since the current Regulations came into force is set-out in appendix 5.

3.1.4 In reading the relevant case law, there can be no doubt that the video tapes of interviews of detainees may constitute some evidence in relation to the specific crime being investigated.

Therefore, it is clear that such tapes should be retained until all matters in connection with the investigation and proceedings arising therefrom have been completed.

3.1.5 However, a tape of an interview of itself is unlike physical or forensic evidence or a copy of CCTV footage of a crime being committed in that it is not necessarily evidence of the crime itself. An exculpatory statement during an interview is not of itself evidence of a crime. That said, tapes continue to be, and will always be, of evidential value in the criminal process.

3.1.6 The Committee considers that it would not be possible to predict with the required certainty at the conclusion of a case whether the contents of the tapes of the interview could be of evidential value either to the interviewee or to a third party at some future time. The contents of the interview could be of evidential value either in bringing further prosecutions or in an application for a retrial. In drafting the proposed regulations, the Committee are, therefore, concerned to allow for this potential as well as the need to preserve evidence for re-trials under the Criminal Procedure Act 1993.

3.2 *Rights of individuals to have tapes destroyed*

3.2.1 The Committee is concerned that circumstances may arise in the future where a recording of an individual being interviewed for, say, a serious offence, would be stored indefinitely and potentially might get into the public domain many years later. This could be regarded as a grave injustice to the individual concerned.

3.2.2 Other issues could arise if one individual implicates another and events later show that that individual was not involved in a crime, yet the tape implicating him is permanently stored. These issues not only relate to the rights of the individual concerned but also would be of concern if they were to be seen as a disincentive by interviewees to participate in a taped interview when detained.

3.2.3 The Committee recognise the need to safeguard the rights of the interviewed persons and others who may be implicated on tape. However, it also recognises the possibility of conflict between the proposed regulations and other legislation such as Data Protection, Freedom of Information or National Archives etc.. The Committee suggests that this is an issue that may need to be examined by the legislature going forward.

3.3 *Storage of Tapes*

3.3.1 One of the factors to be considered is the volume of tapes which will be generated over time and consequently the logistical factors arising such as the appropriate storage requirements as well as the need for regular re-winding of individual tapes in storage.

3.3.2 Undoubtedly, the three deck system of audio/video recording of suspect interviews currently in use nationwide has had the effect of generating a large volume of tapes. In addition, the other two factors which determine the number of tapes generated are the number of interviews carried out in stations each year, and the average number of tapes used per interview.

3.3.3 Experience suggests that with toilet breaks, tea breaks or other interruptions it can mean that on average 12 tapes are used in the course of a detention.

Data supplied by the Gardaí indicate that the total number of tapes used in 2001 was 7,307. In 2002 this figure had grown to 51,577 and in 2003 the figure had reached 180,384.

3.3.4 Currently, storage of both Working Copies and Master tapes takes place in Garda stations where the interviews are conducted, and that is of concern to Gardaí in the context of available space in busy Garda stations, and the requirements of ensuring that the chain of evidence is not broken or compromised in a way that could at a later stage prove critical to an investigation.

3.3.5 With this in mind, a Tape Storage Repository in which all master tapes will be stored and which the Committee understands is being built to the highest specifications, will greatly improve matters, not only in individual Garda stations but also, and more importantly, from the point of view of safe storage of tapes thus maintaining an unbroken chain of evidence. The Committee understands that this purpose built Repository is at present being fitted out. Working copies will continue to be retained locally in stations.

3.3.6 Another consideration in the long term storage of tapes is the need to have tapes rewind on a regular basis. If this is not carried out the tapes will not be useable in the longer term. Although specific tape re-winding equipment has been acquired by the Garda Síochána for this purpose, it is a time consuming task and would not be feasible to perform on working copies at each Garda station.

3.4 *Recommendations for preservation / destruction of Tapes*

3.4.1 Regulations for the Audio Video interviewing of suspects are made under Section 27 of the Criminal Justice Act, 1984. Specifically, sub-section 3 provides that the regulations shall include provision for the preservation, for such time and in such manner as may be prescribed therein, of every recording made in accordance with the regulations. In setting down provision for preservation of tapes for a specific period, it is implicit that they may well be destroyed after that period. Accordingly, legal provision needs to be made to lay down procedures for the destruction of tapes.

3.4.2 The Committee notes that the destruction provisions referred to in paragraph 3.1.1 above (relating to fingerprints, photographs etc.) are provided for in primary legislation. However, this is a matter being considered by the Parliamentary Counsel in the context of finalising the draft regulations.

3.4.3 Considering the expected difficulties with the long term storage of working copies in particular, the Committee considers that a distinction can be drawn between working copies and master tapes. The necessity to retain working copies is significantly reduced after a case is completed. It is also the case that provided the master tape is retained, it can be viewed as required in accordance with the regulations in place. Accordingly, separate provisions for preservation and destruction of working copies of tapes and master tapes are included in the draft regulations.

3.5 *Treatment of Working Copies*

3.5.1 In respect of working copies, as well as making provision for the interviewee or his legal representative to apply for the destruction of tapes, provision in the regulations is also made for the destruction of tapes by the Gardaí after a period of 2 years from specified events such as completion or discontinuance of legal proceedings. This is in recognition of the longer term storage issues that will arise with the local storage of these copies.

3.5.2 However, the Garda Superintendent may authorise the preservation of the working copies of the tapes for a further period of two years on being satisfied that they may be required for the purposes of proceedings with an offence.

3.6 *Treatment of Master Tapes*

3.6.1 Having explored all of the above issues, the Committee considers that Master Tapes should be retained for a significant period of time after the completion of proceedings. Accordingly, the draft regulations have been drafted on the following lines.

3.6.2 In cases where proceedings for an offence are not instituted against the person or the failure to institute such proceedings is not due to the fact that he has absconded or cannot be found, the Committee recommends that master tapes be retained for a period of 25 years. One of the reasons for this suggested lengthy period of tape preservation, is that future advances in technology such as DNA profiling etc., may allow cases which cannot be proceeded with now, to be prosecuted in the future.

3.6.3 Where convictions have been obtained, the Committee considers that such master tapes be retained for as long as is practicable. In this regard, consideration will have to be given to the longer term storage requirements as well as the practicalities of regular re-winding of tapes to keep them in working order. While it is not known how long the physical video tape can be retained and still be in useable condition, a period of 40 years has been suggested for preservation. In this regard, while the Committee does not recommend a move to DVD technology at this time, future technological advances may well mean that the storage problem may not create the same difficulties into the future, particularly with the physical storage space required and the durability of the storage media. Also, we should not rule out that it may be possible to convert existing video to a new format thus obviating the storage and longevity problems with video tape. (A change to the Act / regulations will be required before such a course of action is contemplated.)

3.6.4 The seal of master tapes should only be opened in specific circumstances as provided for in Article 15 of the draft regulations. Such circumstances should only arise by and large after the working copies have been destroyed. These circumstances include, a direction of the Courts, a request from the Garda Síochána Complaints Board or from a Chief Superintendent as part of investigation of disciplinary matters against a member of the Force.

3.6.5 To give effect to Article 15 of the draft regulations, the Committee recommends that provision be made in law for a judge of the District Court, upon application, from either

- a Chief Superintendent;
- the interviewee (or his/her legal representative); or
- a person who is charged with an offence (or their legal representative)

to direct that the seal of the master tape be broken where the court is satisfied that it may be required for the purposes of other proceedings.

3.6.6 In arriving at these conclusions, the Committee is concerned to balance the need to have tapes available in the future should they be required for further legal proceedings, and the rights of interviewees by providing that such tapes can only be viewed in particular circumstances or on application to the Courts. The Committee consider that the draft regulations meet these requirements while taking on board, as far as possible, the longer term issues with storage of master tapes.

SECTION

4

Conclusions and Recommendations

4.1 Overall, the Committee is satisfied with the operation of the scheme to date. The Committee is pleased to note the high percentage of interviews which are now recorded under the Regulations using the Audio/Video recording systems. (paragraph 2.5.2)

4.2 There are a small number of stations where additional room(s) will have to be fitted out to ensure sufficient availability of rooms for interviews. The Garda Síochána must ensure that sufficient interview rooms are available. (paragraph 2.5.3)

4.3 The Committee is strongly of the view that all interviews as specified in the Regulations be recorded using the system with the specific exceptions provided for in these Regulations (paragraph 2.5.7). The Committee consider that because the scheme is now in operation on a nation-wide basis, it should obviate any suggestion that it is necessary to bring a detainee to a station other than those which have been fitted out with the necessary facilities to audio/video interviews. Therefore, the Garda Síochána must make every effort to ensure that all interviews are recorded on Audio/Video and that all available options are explored before any of the exceptions, as provided for in the regulations, are invoked. (paragraph 2.5.8)

4.4 In order to ensure that all recordings are made to the required standard, the Garda Síochána should carry out a review of all recording suites and make improvements, where necessary. (paragraph 2.5.4)

4.5 The Committee is concerned that, wherever possible, objections by interviewees to having their interviews recorded should be recorded on tape. (paragraph 2.5.6)

4.6 The Committee has considered the existing Regulations covering the scheme and recommends a number of changes dealing with a range of issues (paragraph 2.4.6). These include:

- provision for the discontinuance of the interview or for it not to commence at all in specific circumstances on the direction of a Chief Superintendent;
- rules on access, preservation and destruction of tapes;
- changes to definitions to cover advances in technology. Also, the draft Regulations are modified to take account of the principal that all interviews be recorded except for those provided for in the Regulations.
- The Regulations are drafted, for clarity reasons, to reflect necessary differences between the discontinuance of an interview for good reasons (as provided for in the Regulations) and the temporary suspension of an interview.

4.7 The Committee has set-out a policy for the preservation and destruction of tapes in Section 3 of this report, including:

- making a distinction in the treatment of Working copies and Master tapes;

- Setting down a policy for the opening, the preservation and the destruction of master tapes taking into account, inter-alia, the rights of interviewees, the need to preserve and retain evidence and the practical and logistical issues connected with the long-term storage of tapes;
- Setting down a preservation period and procedures for the destruction of working copies.

The conclusions reached by the Committee have been incorporated into the draft Regulations where possible.

4.9 The Committee has considered the extent of the production and playing of tapes in court (paragraph 2.6). While the number is currently very small, the Committee considers that this is a matter which requires close monitoring going forward. This is the sort of issue that could perhaps be considered by the committee set up to examine pre-trial procedures arising from the report from the Working Group on Criminal Jurisdiction of the Courts (Fennelly Report). (paragraph 2.6.5 – 2.6.6)

4.10 The Committee recommends the continuance, for the present, of the requirement of taking contemporaneous written notes of interviews. (paragraph 2.7.8)

4.11 The Committee, which has had the advice of its Technical Advisor available to it, considered the use of DVD technology and concluded that there are certain issues to be addressed before a change from the existing VHS technology is contemplated. (paragraph 2.8.5).

4.12 *General Conclusion*

The Committee considers there is a need to keep the scheme under review and to monitor progress going forward. In this regard, the Committee will continue to keep under review the progress of the scheme to audio/video record interviews with detained persons in Garda stations and meet as required to discuss any developments arising including the operation of the scheme in the Courts. The Committee will report again on any concerns/findings to the Minister.

Accordingly, the Committee submits this latest report for the Ministers information and due consideration.

SECTION

5

Appendices

Terms of Reference

In March 1993, following the request and receipt of nominations for the Steering Committee, the then Minister for Justice, Ms. Máire Geoghegan-Quinn, T.D., appointed members with terms of reference as follows:

- (i) To make recommendations to the Minister for Justice, on the following matters, for the purpose of establishing field trials:
 - location of field trials;
 - essential modifications to be made to Garda interview rooms;
 - the Garda training required;
 - the type of equipment to be used (subject to the approval of the Department of Justice and Finance and having regard to the appropriate technical advice);
 - whether any amendments to the Judges’ Rules may be necessary because of the change to electronic recording of Garda questioning;
 - the special arrangements (adverted to by the Martin Committee) which will, on the basis of the advice of the Garda Commissioner, need to be applied in cases where questioning by the Gardaí relates to organised crime or terrorism, so as to ensure, in particular, that intelligence gathering by the Gardaí on such matters is not affected; and
 - a code of practise which would include the procedures to be followed in relation for example, to the introduction of participants in the interview, the suspect’s rights, admissions off camera (at the scene, on the way to the station, etc.), interruption of the interview for any reason, technical breakdowns during the interview, opportunity for the suspect to clarify anything he may have said, signing off at play-back of the cassettes in Court.

- (ii) To make arrangements in relation to the following matters when the Minister has considered the foregoing recommendations and agreed the features of the pilot scheme:
 - stringent scientific monitoring of the pilot scheme and of four controlled Garda Districts;
 - assessment of the operation and cost of the pilot scheme, the likely effects of audio and audio/video recording on the criminal justice system as a whole and the extent to which the pilot scheme shows that an effective and economic basis can be found for a national scheme; and
 - submission for the Minister’s consideration of a report on the outcome of such assessment.

Membership of the Steering Committee

The current members of the Steering Committee are as follows:

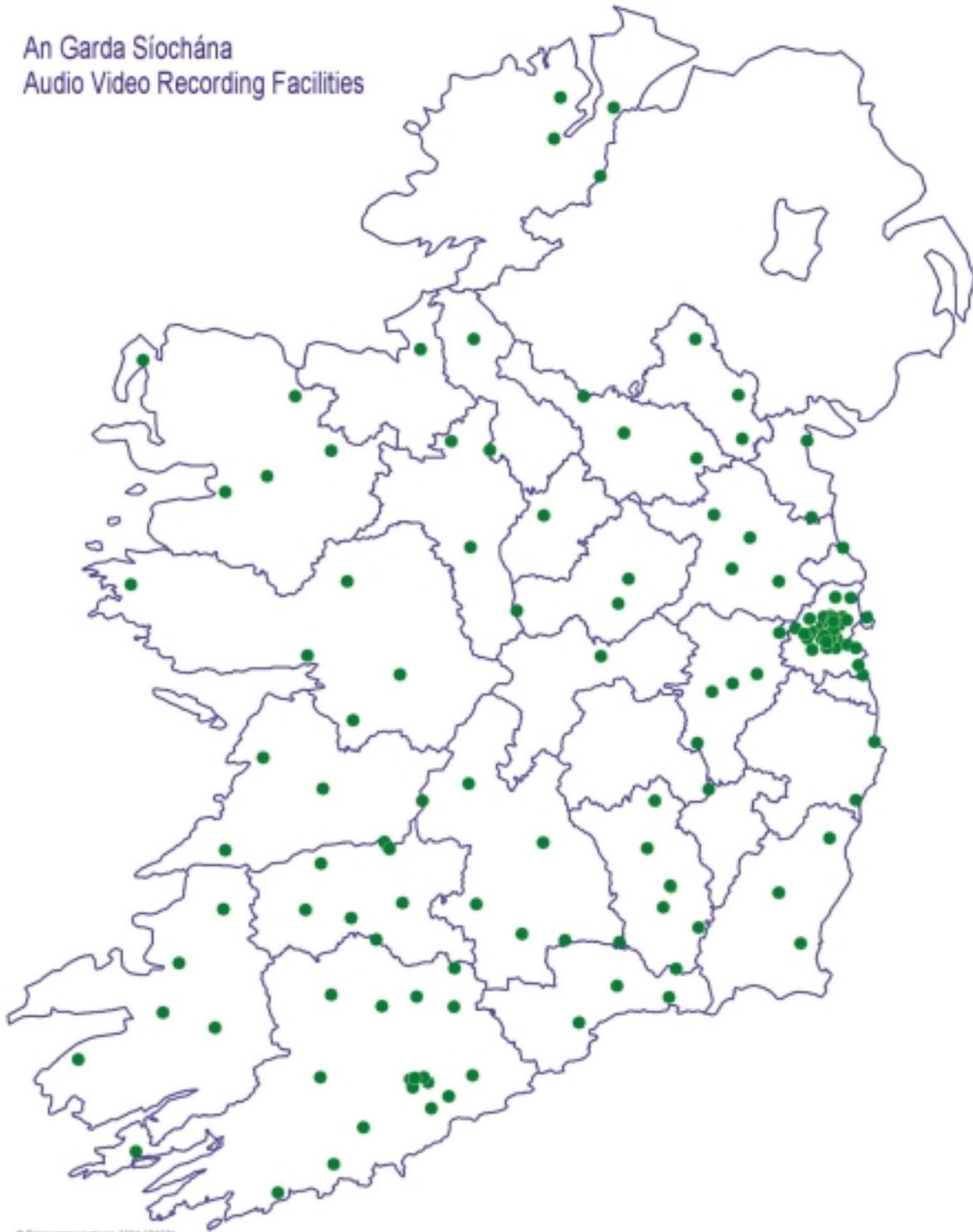
1. Mr. Justice Esmond Smyth (Chairperson)
President of the Circuit Court
2. Assistant Commissioner Patrick Crummey
An Garda Síochána
3. Chief Superintendent Noel White
An Garda Síochána, Operational Adviser
4. Mr. David Gormally
Legal Assistant,
Office of the Director of Public Prosecutions
5. Ms. Claire Galligan
Office of the Chief Prosecution Solicitor
6. Mr. Patrick Gageby, S.C.
The General Council of the Bar of Ireland
7. Mr. Michael Staines
The Incorporated Law Society of Ireland
8. Mr. Michael Kirrane
Garda Planning Division
Department of Justice, Equality and Law Reform
9. Professor James G. Lacy, B.E., C.Eng., F.I.E.E., F.I.E.I., Emeritus
Professor of Electronic Engineering, University College Dublin.

The Committee would like to acknowledge the contribution since the publication of the 2nd Report of past members, namely, Detective Superintendent John McElligot, Mr. Roy Pearson, (Office of the Chief State Solicitor), Mr. John Cronin and Mr. Fergus O'Callaghan (Department of Justice, Equality and Law Reform).

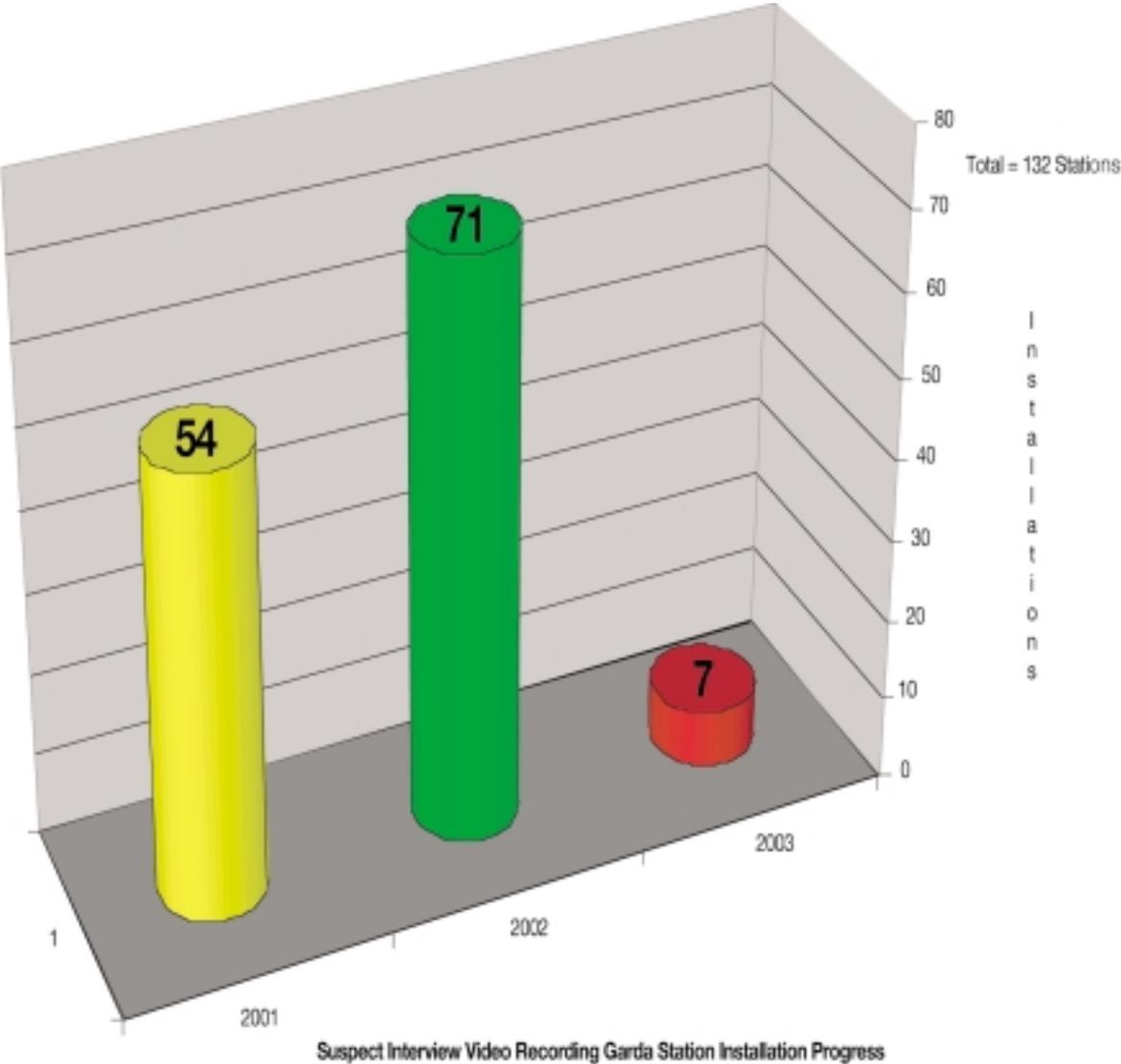
The Committee would also like to acknowledge the work of its Secretary, Mr. Peter Lumsden, Department of Justice, Equality and Law Reform, as well as past secretaries.

Maps of locations of Audio/Video facilities and graph of rollout

An Garda Síochána
Audio Video Recording Facilities



Location of Audio/Video facilities in Dublin Stations



Technological issues regarding introduction of DVD

In considering any possible advantages that DVD recording might offer, in the context of the work of the Committee, it is worthwhile to restate the specific operational requirements, which have led to the development of the present system. These include that:

1. The system should provide the best available evidence of the interview proceedings. This requirement was deemed to be met by video recording of the interview with sound. (Martin, 1989)
2. The integrity of the system i.e. its “tamper proofing” should be mainly ensured by strict administrative procedures rather than technological means. The principle of these procedures is that the primary recording/s of the interview is/are sealed in the presence of and signed by the interviewee. This is the so called “master copy / copies”. The requirement of a “working” copy dictated the simultaneous production of a second recording. The interviewee’s right, as detailed in the Regulations to a copy of the recording is met by the production of a third simultaneous recording. The alternatives to this third recording could have been the provision of either centralised or local tape copying facilities. These options have considerable logistical and cost implications compared with the system adopted.
3. The master copy (copies) should be stored following strict administrative procedures, preserving the chain of evidence. The fact that they are never played and that the seal remains unbroken serves as a protection against accusations of tampering.
4. Each frame of the picture should be time and date stamped electronically and the recording machine be physically incapable of rewinding or recording on other than a blank section of tape.
5. The equipment should be uncomplicated and be easily operable by an ordinary non-technical member

These operational requirements have led to the specification of the present triple deck recorder, which simultaneously records colour video and audio, on three blank tapes.

DVD (Digital Versatile Disk or Digital Video Disk) is an entirely different recording medium and process. The disks are identical in size and appearance to a standard audio CD (compact disk).

The Committee recognises that DVD has important qualities such as:

1. The recording if made on a DVD ROM (**R**ead **O**nly **M**emory) is a once only process and so is of its nature incapable of alteration. Providing that the chain of evidence is maintained, this would remove forever any suspicion of tampering, as there is an inbuilt inalterability with DVD ROMs. The acronym WORM (**W**rite **O**nce, **R**ead **M**any times) is used to describe this type of disk.

2. The storage requirements would be dramatically reduced compared with tape storage.
3. Although not a prime factor, due to various factors inherent in the digital image processing involved (see below), the picture quality may be perceived to be superior to the VHS system. This is mainly due to the absence of background “noise” and constant colour saturation.
4. High speed copying is possible.

The Committee is advised, however, that considerable non-trivial work would be required to design an optimum DVD system to meet the operational requirements as set out above. The principal reason for concern lies in the recording process. In order to fit, say, one and a half hours worth of video on a DVD ROM it is necessary to resort to compression of the original digital information obtained, when the analogue camera output signal is digitized. Compression schemes such as MPEG (**M**oving **P**icture **E**xpert **G**roup) 1, 2 etc. are classified as “lossy”. In general, these work by storing the immobile parts of the images. The first frame is stored in the processing system followed by the second frame. The moving parts of the picture are determined by difference and predictions are made of the movement direction. These predictions are subsequently corrected before the errors spread too far. It is this information regarding the image, rather than the image itself, which is then impressed on the DVD ROM. Digital signal processing, is then necessary during playback to produce a facsimile of the original image. Whether this image is the best available evidence is a matter of some debate. In that regard, the Committee is advised that the use of digital video surveillance systems is already causing evidential problems in other jurisdictions. It would be vital that this question be resolved before proceeding further. Considerable hardware and software development would then be required to produce a system to meet the operational requirements.

The existing system is operating satisfactorily at present and in this regard factors such as the lifespan of the existing equipment including the need to obtain a return on the existing investment, availability of tapes into the future, the cost of storage and the availability of replacement parts *and* support for the existing equipment all need to be considered before replacing the existing technology.

Further information on MPEG’s compression which has been downloaded from the internet are contained in the following pages.

Extract from Web Site of “thefab.net”

The Tricks of MPEG Explained

The key to MPEG’s compression success is basing some frames on information stored in others, and describing just the changes.

The most common system for the compression of video is MPEG-1. It works like this: The single data stream off the CD-ROM is split into video and audio components, which are then decompressed using separate algorithms. The video is processed to produce individual frames as follows. Imagine a sequence of frames depicting a bouncing ball on a plain background. The very first is called an Intra Frame (I frame). I frames are compressed using only information in the picture itself just like conventional bitmap compression techniques like JPEG.

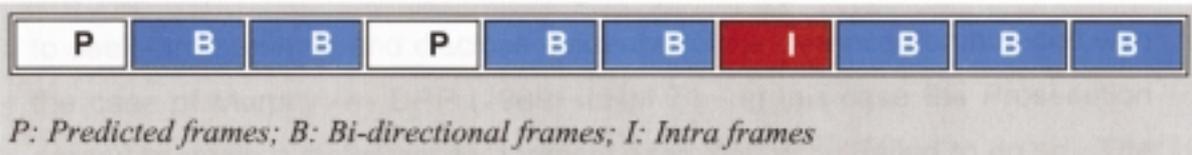
Following I frames will be one or more predicted frames (P frames). The differences between the P frame and the I frame it is based on are the only data that is stored for this P frame. For example, in the case of a bouncing ball, the P picture is stored simply as a description of how the position of the ball has changed from the previous I frame. This takes up a fraction of the space that would be used if you stored the P frame as a picture in its own right. Shape or color changes are also stored in the P frame.

The next P frame may also be based on this P frame and so on. Storing differences between the frames gives the massive reduction in the amount of information needed to reproduce the sequence. Only a few P frames are allowed before a new I frame is introduced into the sequence as a new reference point, since a small margin of error creeps in with each P frame.

Between I and P frames are bi-directional frames (B frames), based on the nearest I or P frames both before and after them. In our bouncing ball example, in a B frame the picture is stored as the difference between the previous I or P frame and the B frame and as the difference between the B frame and the following I or P frame.

To recreate the B frame when playing back the sequence, the MPEG algorithm uses a combination of the two references. There may be a number of B frames between I or P frames. No other frame is ever based on a B frame so they don’t propagate errors like P frames. Typically, you will have two or three Bs between Is or Ps, and perhaps three to five P frames between Is.

In order to provide 72 minutes of video on a CD either you have to reduce the quality or compress the data massively in such a way that you can still decompress it in real time. If you work out the sums, the compression ratio required is nearly 200:1!



Summary of Case law dealing with the preservation and disclosure of evidence by the Prosecution

The line of Judicial Authorities dealing with the obligation on the Prosecution to seek out, preserve and disclose evidence to the Defence commenced with the case of *Murphy -v- DPP* (1989) ILRM 71. In this case the Prosecution agreed to retain a stolen car for forensic examination but failed to do so. The Court held that even though the forensic examination may have yielded nothing the Defendant was deprived of a reasonable possibility of disputing the evidence against him and therefore prohibited his Trial. In *Braddish -v- DPP* (2001 3.I.R. 127) a robbery was caught on video camera. The Gardaí claimed that the video showed the Applicant committing the robbery. The Applicant made a statement admitting the robbery. The Gardaí returned the video to its owner after the Applicant had been arrested for the robbery but before the Trial.

The DPP argued that the retention of the video was unnecessary once the Applicant had admitted the robbery. The Supreme Court rejected this contention and Hardiman J's remarks on Page 133 and 134 are very instructive in relation to the problem we are concerned with. 'It is the duty of the Gardaí, arising from their unique investigative role, to seek out and preserve all evidence having a bearing, or potential bearing, on the issue of guilt or innocence. This is so whether the Prosecution proposes to rely on the evidence or not and regardless of whether it assists the case the prosecution is advancing or not'.

He continues, "It is important to bear in mind that the evidential items to which the foregoing applies are not only those with a direct and established evidential significance but includes those which, in the words of Lynch J., in *Murphy -v- DPP* 'may give rise to the reasonable possibility of securing relevant evidence' ".

At Page 134 he states "moreover, a member of the Garda Síochána is not entitled to dispose of evidence, or omit to disclose it, simply because he personally has formed a view that it would not be helpful".

In *Dunne -v- DPP* (2002. 2 I.R 305) the Applicant was charged with the robbery of a petrol station. There had been a video of the robbery but the Gardaí had not retrieved the video tape. The Applicant later made a statement of admission to the robbery. He then sought a prohibition of his trial on grounds that the Gardaí failed to preserve potentially exculpatory evidence i.e. the video of the robbery. The applicant succeeded in prohibiting the trial, though the judgements indicate different strands within the jurisprudence.

In *Bowes -v- DPP* (unreported 6th February 2003) the Supreme Court upheld the already established principles but held against Bowes because he failed to identify any reason for a requested fingerprint examination either at the time of his arrest or at any time since.

In *McGrath -v- DPP* (unreported 6/2/2003) the accused had been charged with Dangerous Driving causing death. She had asked for the motor vehicle to be preserved for forensic engineering examination. This had not been done so it was held that Ms. McGrath had suffered the loss of a reasonable prospect of obtaining evidence to rebut the case made against her because the motor vehicle had been parted with by the Gardaí.

Finally, in *McKeown -v- The Judges of the District Court and the DPP* in a Judgement delivered by Judge McCracken on the 9th April 2003 (unreported) where he held that the Applicant had not justified the necessity for a fingerprint examination of a vehicle. In that case the accused was charged with assaulting a Garda with a petrol can which he had taken from a vehicle which he had broken into.

In this case it is note worthy that McCracken, J while following the principles set out in the *Murphy, Dunne and Braddish* cases indicated that these principles must be tempered by the application of the concept of reasonableness. At page 10 he points out that there obviously are limits to the length to which the Gardaí must go in either seeking out or preserving evidence. To that extent each case must be judged on its own facts. He reiterates this point at the bottom of page 10 and the top of page 11 of his Judgement. On page 135 in the *Braddish* case Hardiman J stated as follows:-“ but in cases where the evidence is not of such direct and manifest relevance the duty to preserve and disclose has to be interpreted in a fair and reasonable manner”. He continued later on “certainly it cannot be interpreted as requiring the Gardaí to engage in disproportionate commitment of manpower or resources in an exhaustive search for every conceivable kind of evidence. The duty must be interpreted realistically on the fact of each case”.