



Report of the Tribunal of Inquiry into the Facts and
Circumstances Surrounding the Fatal Shooting of John
Carthy at Abbeylara, Co. Longford on 20th April, 2000

**Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts
1921 – 2002**

CHAIRMAN: The Honourable Mr. Justice Robert Barr

Solicitor to the Tribunal: John V. Nolan

Registrar to the Tribunal: John McGreevy

© Government of Ireland 2006

ISBN 0-7557-1701-5

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE,
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
51 ST. STEPHEN'S GREEN, DUBLIN 2,
(Tel: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
or through any bookseller.

€5.00

Tribunal of Inquiry

*(Into the facts and circumstances
surrounding the fatal shooting of
John Carthy at Abbeylara, Co. Longford
on 20th April, 2000)*

Sole member:

The Honourable Mr. Justice Robert Barr

Tribunal Office

*Jameson Building,
12/13 Bow Street,
Dublin 7
Tel: 01 8175290
Fax: 01 8175501*

20th July, 2006

Mr. Kieran Coughlan,
Clerk of Dáil Éireann,
Leinster House,
Kildare Street,
Dublin 2

Re: Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Acts 1921 – 2002 by the Minister for Justice, Equality and Law Reform consequent upon Resolutions of Dáil and Seanad Éireann on respectively 17th and 18th April, 2002 to inquire into, *inter alia*, the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co. Longford on 20th April, 2000; to report thereon to the Clerk of Dáil Éireann and to make such findings and recommendations as it sees fit in relation to these matters.

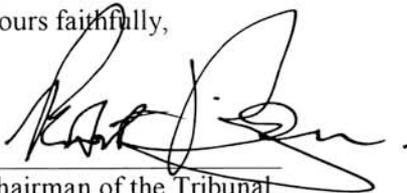
Dear Mr. Coughlan,

I am pleased to inform you that the work of the Tribunal is completed. My report has been prepared based upon the evidence adduced over a period of 208 hearing days in which 169 witnesses testified *viva voce*. By agreement, written statements made by certain other witnesses were admitted in evidence without formal proof.

The report contains, *inter alia*, an analysis of relevant evidence, including international expert advice and testimony; my conclusions and recommendations based thereon; an assessment of existing statute law regarding sporting guns and proposed amendments thereto. The Tribunal also examined and ruled upon complaints made to it about Radio Telefís Éireann and Independent Newspapers regarding the contents of respectively a radio broadcast and an article published in the Sunday Independent about matters of concern to the Tribunal. Both are unrelated to each other, but occurred while the Inquiry was at hearing.

I enclose three copies of the Tribunal's report. As arranged, 300 copies for distribution to members of the Oireachtas are being delivered to you also on this date. Copies are being made available now to parties who participated in the Inquiry, to the media and also to members of the public through Government Publications.

Yours faithfully,



Chairman of the Tribunal

Contents

CHAPTER 1 – INTRODUCTION	7
CHAPTER 2 – TERMS OF REFERENCE AND INTERPRETATION	11
CHAPTER 3 – JOHN CARTHY – BACKGROUND	17
Section A: Family background, health, medical diagnosis and treatment up to April, 2000	17
Section B: 1 st to 18 th April, 2000 – significant events	40
CHAPTER 4 – THE EVENTS OF 19TH AND 20TH APRIL, 2000	49
Section A: Prior to the arrival of the gardaí	49
Section B: The arrival of the first responders	52
Section C: The involvement of senior officers	67
Section D: The arrival of the Emergency Response Unit	89
Section E: The night of 19 th /20 th April	105
Section F: The morning's events	125
Section G: John Carthy makes contact with Kevin Ireland	143
Section H: The events of the afternoon at the scene	149
Section I: The subject's mental state during the siege	160
CHAPTER 5 – THE FINAL MINUTES – JOHN CARTHY'S EXIT FROM THE HOUSE AND SUBSEQUENT FATAL SHOOTING	175
Section A: Introduction and summary	175
Section B: Eyewitness accounts	179
Section C: Relevant training	199
Section D: John Carthy's body position when the fourth shot was fired	206

CHAPTER 6 – THE MANAGEMENT OF THE INCIDENT AT ABBEYLARA – SIEGE MANAGEMENT PRINCIPLES	215
Section A: Isolation, evacuation and containment	216
A.1 Cordons and containment – observations of international policing experts	216
A.2 Training of members of the Garda Síochána in relation to siege management	225
A.3 Containment and flexible cordons at Abbeylara	235
A.4 The role of local officers and the potential for a “blue on blue” shooting	243
A.5 Observations of garda senior officers and others regarding the evidence of international experts and matters arising from training	250
Section B: Information and intelligence gathering, log keeping and family liaison	273
Section C: Negotiations	285
Section D: Previous operational experience – Bawnboy	372
CHAPTER 7 – THE AFTERMATH – POST-MORTEM, FORENSIC AND BALLISTIC EXAMINATION	379
Section A: Post-mortem examination	379
Section B: Forensic and ballistic examination	385
CHAPTER 8 – CONCLUSIONS	409
Section A: John Carthy – his family history; his life; background; health; behaviour and personality	409
Section B: The shotgun – fears and allegations	412
Section C: The burning of the goat mascot	413
Section D: December, 1998 – a relapse in Galway and subsequent medical history	417
Section E: Four events in January/February, 2000	418
Section F: The response of the Garda Síochána at Abbeylara	424

Section G:	Where the ERU is engaged who should command?	428
Section H:	Criticism of the Garda Síochána response	431
Section I:	The scene commanders	432
Section J:	A cover-up?	434
Section K:	Four crucial command mistakes	436
Section L:	The performance of other senior officers	441
Section M:	The negotiator	446
Section N:	The shooting of John Carthy by Detective Garda (now Sergeant) Aidan McCabe	453
Section O:	A summary of command failures at Abbeylara	456
Section P:	What might have been done at Abbeylara	459
Section Q:	The confiscation and return of the gun – Dr. Shanley’s letter	462
CHAPTER 9 – THE MEDIA		469
Section A:	RTÉ – “Five/Seven Live” broadcast on 20 th April, 2000	469
Section B:	The <i>Sunday Independent</i> published on 31 st October, 2004	494
CHAPTER 10 – RANK AND STRUCTURE IN THE GARDA SÍOCHÁNA AND THE ROLE OF THE EMERGENCY RESPONSE UNIT		497
CHAPTER 11 – LESS LETHAL OPTIONS		505
Section A:	Less lethal devices	505
Section B:	The potential use of dogs at the scene	517
CHAPTER 12 – POLICE PRACTICE IN OTHER JURISDICTIONS		521
Section A:	Victoria, Australia	521
Section B:	New Zealand	541
Section C:	Canada	553
CHAPTER 13 – GUN LICENSING LAW AND RELATED MATTERS		561

CHAPTER 14 – VICTIM PROVOKED POLICE SHOOTING – “SUICIDE BY COP”	581
Section A: Background	581
Section B: Experts’ opinions	586
Section C: Conclusions	601
CHAPTER 15 – RECOMMENDATIONS	603
CHAPTER 16 – COSTS	607
APPENDICES	
Appendix 1: Opening statement of Mr. Justice Robert Barr, the Sole Member of the Tribunal, made on 7 th January, 2003	609
Appendix 2: Memorandum on procedures	623
Appendix 3: Individuals or groups to whom full or limited representation was granted	629
Appendix 4: Key persons	631
Appendix 5: Photographs	643
Appendix 6: Floor plan of the Carthy house	673
Appendix 7: Rulings and statements	675
A. Ruling, 20 th May, 2003 “Five/Seven Live” broadcast	677
B. Ruling, 18 th July, 2003 Expert testimony and further evidence from Dr. Shanley	679
C. Ruling, 7 th October, 2003 (modifying Ruling of 18 th July, 2003) Modules 1 and 2	685
D. Ruling, 29 th October, 2003 Ascertaining and assessing evidence	687
E. Ruling, 13 th January, 2004 Chairman’s function in questioning and assessing witnesses	689

F.	Ruling, 16 th January, 2004 Fifth bullet	695
G.	Ruling, 24 th March, 2004 RTÉ application	697
H.	Statement by the Chairman, 27 th May, 2004 Proposed review of gun law	701
I.	Ruling, 9 th July, 2004 RTÉ module	703
J.	Preliminary Ruling, 3 rd November, 2004 Improper press publicity	705
K.	Ruling, 19 th November, 2004 Front page article published in the <i>Sunday Independent</i> on 31 st October, 2004 and stated to be an exclusive story written by Maeve Sheehan	709
L.	Ruling, 19 th November, 2004 The application made by counsel for the Commissioner and the group of junior garda officers relating to the evidence of Ms X	723
Appendix 8:	Proposed application form for a Firearm Certificate	735

CHAPTER 1

Introduction

John Carthy was born on 9th October, 1972 and died on 20th April, 2000. He was a single man and at the time of his death was residing with his widowed mother, Mrs. Rose Carthy, in a dwelling house on the Toneymore road, a rural area outside the village of Abbeylara, near the town of Granard in Co. Longford. The house had been the Carthy family home for three generations from the time when built by the local authority in or about 1906. It had become seriously dilapidated and unfit for occupation as a dwelling. The local authority agreed to replace it by a new house on the site which in the latter part of April, 2000 was almost ready for occupation. As part of the new arrangement, the local authority required that the original dwelling be demolished when the new one was ready for use. On 19th/20th April demolition of the old house was imminent and this had major significance for the deceased.

From in or about 1991 John Carthy suffered from mental illness (bipolar depression) which had entailed several periods of in-patient psychiatric treatment over the years. He was liable to substantial manifestations of mental disturbance from time to time arising out of stress factors in his life. The imminent demolition of the old Carthy home was one such stress factor. Another, which was related to the latter, was the imminent tenth anniversary of his father's death. He had died on Holy Thursday, 1990. Holy Thursday, 2000 was on 20th April which transpired to be the day when the subject was fatally shot. John Carthy had been close to his father and he associated the old home with him and with his grandfather. On or about 19th April he decided to defend possession of the original dwelling. He possessed a double-barrel licensed shotgun and a substantial quantity of ammunition. During the afternoon of that day he fired some shots from the house not at any particular target and required his mother to leave the dwelling and go to her sister's house nearby. Mrs. Carthy and other members of the family who reside in the area were concerned about what John Carthy might do to himself and perhaps to others in view of his state of mental agitation which was more severe than it had ever been before. It was decided to report the matter to the police at Granard, the nearest garda station, and to seek their assistance. Local officers were sent to the scene and shots were fired in their direction by the subject. Chief Superintendent Tansey and Assistant Commissioner Hickey, who were the most senior officers in the area, decided at an early stage soon after the involvement of the gardaí, that the assistance of the police Emergency Response Unit should be obtained. It is a specialist body with particular expertise in the area of armed sieges. The local scene commanders had no such prior experience. A detachment of the ERU took up duty at the scene on the evening of 19th April. It comprised a tactical group of four officers, who took over from local armed gardaí the role of providing an inner armed cordon around the Carthy house, and a negotiator with an untrained assistant. Three additional tactical officers were deployed to the scene and arrived there at lunchtime on 20th April. Shots were fired

by John Carthy occasionally. He was not disposed to negotiate with the garda negotiator or with certain friends who had been brought to the scene from time to time in the hope that they might be successful in having a dialogue with him.

At about 5:45 p.m. on 20th April the subject left his house armed with the shotgun without any prior notice or warning. He ignored armed ERU officers who were close to him when he commenced walking up the road towards Abbeylara. They had called on him to surrender his gun but he did not do so. A short distance from John Carthy on the Abbeylara side of the road a garda jeep was parked which was being used as a command post by the scene commander. Beyond the jeep was another garda car then containing four civilians, including Ms Marie Carthy, the subject's sister, and his psychiatrist, Dr. David Shanley, who was waiting to be brought to the scene. There were several local armed officers and also uniformed officers on the road in the vicinity of the command jeep as the subject walked towards them. Some of them feared for their lives. At that point two armed ERU officers who were on the road close behind him fired at John Carthy as he walked away from them. He was struck first by two bullets in the left leg fired by Detective Sergeant Jackson, the negotiator, then by two bullets in the back fired by Detective Garda McCabe, the second of which was fatal and caused the death of the subject about one or two minutes later.

Having been informed of the shooting soon after it happened, the Commissioner of the Garda Síochána (hereinafter referred to as "the Commissioner") responded by appointing Chief Superintendent Culligan to carry out an immediate investigation into the circumstances of the event and related matters. The latter assembled a team of investigators and embarked upon his task. He furnished a formal report to the Commissioner on 30th June, 2000.

The circumstances relating to the death of John Carthy caused substantial concern at local and national level. It was also considered by the Oireachtas where it was referred to the Joint Committee on Justice, Equality, Defence and Women's Rights for investigation. That body commenced a formal hearing into the death of Mr. Carthy. Early in the proceedings an application was made on behalf of certain involved garda officers to the High Court, and on appeal to the Supreme Court, for an Order directing the Oireachtas Committee to discontinue its investigation into the death of the subject. The application was successful and an Order was made providing that the Committee shall discontinue its proceedings.

Arising out of the foregoing judicial intervention, it was determined by the Houses of the Oireachtas on respectively 17th and 18th April, 2002 that a tribunal be established under the Tribunals of Inquiry (Evidence) Acts, 1921 - 2002 to inquire into, *inter alia*, the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co. Longford on 20th April, 2000; to report to the Oireachtas and to make such findings and recommendations it sees fit in relation to these matters. Pursuant to the foregoing resolutions the Minister for Justice, Equality and Law Reform by Instrument given under his seal on 1st July, 2002 appointed me as Sole Member of the Tribunal. I duly took up office and proceeded with the tasks

assigned to me. I appointed a solicitor and a team of counsel to assemble evidence, interview witnesses and assist me in my work.

Preliminary investigations were substantially completed in December, 2002 and the first formal hearing of the Tribunal took place on 7th January, 2003. It comprised an Opening Statement by me which included an outline of how the Tribunal proposed to conduct its investigation; the procedures which it intended to adopt in the performance of its work, and the facts and issues which the Tribunal perceives arise out of the fatal shooting of John Carthy. It was specified that they would be dealt with in a series of modules, details of which were furnished. Applications for legal representation at the Tribunal were ruled on in course of the hearing. The Opening Statement is set out in Appendix 1. It was specifically stated that *“the Tribunal is not a court of law but a Tribunal of Inquiry, the purpose of which in the instant case is to examine and, where possible in the light of the evidence, make findings on the facts and circumstances surrounding the fatal shooting of John Carthy . . . The Tribunal’s Inquiry is not a trial of alleged wrongdoing by any particular person or group of persons. It is an exercise designed to establish, if possible, what circumstances brought about or contributed by act or omission to the death of John Carthy on 20th April, 2000; why that tragedy happened and what might be learned from it.”* It was stated that the operation of the Tribunal is inquisitorial in nature rather than adversarial.

The Tribunal sat in connection with evidential hearings and rulings for a total of 208 days and heard 169 witnesses, including certain garda witnesses who by arrangement were recalled after relevant expert testimony had been given. In addition, the statements of evidence of a number of witnesses were read into the record by general agreement. An excellent stenographic service was provided by Gwen Malone Stenography Services Ltd. It included provision of daily transcripts of evidence: 208 volumes in all were furnished. In addition, there were many volumes of medical records, expert medical and police reports and assorted other documentation which were introduced into the system and all of which appeared on screen in course of the hearings within seconds of being required. The Tribunal is grateful to Gwen Malone, the technical staff and Pearl Communications for providing an outstanding service of great skill. It is also appropriate that I should record my particular appreciation of the dedication and devotion of the team of lawyers who acted for the Tribunal and who were invaluable in achieving what I hope will be regarded as a good result, worthy of the huge effort which has been made to achieve it. I wish to include also the Tribunal registrar and the secretarial and management services provided for the Tribunal which also contributed much to the success of the project – not least their perennial good cheer and kindly thoughtfulness which I especially appreciate.

There is one other important matter which it is appropriate that I comment on at the outset of this report. As already indicated, in essence my primary function has been to review the response of the Garda Síochána to the grievous crisis situation presented by John Carthy at his home in Abbeylara on 19th and 20th April, 2000 and which ultimately lead to his fatal shooting by a garda officer. As made clear by me in course of observations at a hearing on 29th October, 2003, *“I have approached my task in this Tribunal, in investigating the death of John Carthy, from the premise*

that the crisis presented by [him] at his home in Abbeylara was unique in Irish police experience; was potentially extremely difficult to contend with and was a very far cry from the crisis situations for which the ERU and the Garda Síochána are trained to contend.

I fully appreciate the gravity and unique difficulty of the problem which faced the scene commanders and the ERU, who were the officers primarily concerned in contending with it.

Secondly, the pivotal police witnesses at this Tribunal have been Detective Sergeant Jackson, as he then was, the negotiator, and Detective Sergeant Russell, the strategic tactician, both of the ERU. [They] have given evidence at great length and have been subjected to in-depth examinations by counsel and by me. Two points emerge beyond doubt in my mind arising out of that evidence. Both of these officers, I am absolutely satisfied, did their best to bring the situation at Abbeylara to a peaceful end without loss of life or injury and worked with . . . great devotion in attempting so to do. . . . Both emerge as honourable, courageous police officers who have endeavoured to give a fair, balanced account of what they did at Abbeylara, which is, if I may say so, an object lesson for others to follow. . .”.

I have carefully assessed the evidence of Detective Sergeants Jackson and Russell and other officers. Criticisms contained in this report are not intended to detract from my foregoing observations on the unique difficulty presented by the late John Carthy at Abbeylara and on the dedication of the latter officers in the performance of their work.

As will be observed from the Contents, the report comprises 16 chapters. These include findings of relevant fact relating to the life of John Carthy and to the events at Abbeylara which culminated in his death on 20th April, 2000 and also what happened afterwards. Facts relating to siege management and negotiations at the scene are reviewed, including the performance of the scene commanders; their senior officers, the negotiator and the ERU tactical commander. There follows a chapter setting out my conclusions regarding the shooting of John Carthy, performance of the Garda Síochána at Abbeylara and related matters.

The remainder of the report comprises chapters which include a review of firearms legislation; the use of less lethal weapons; police practice in other jurisdictions; Garda training, rank and structure together with recommendations relating to such matters. There is also a chapter on problems relating to the media.

CHAPTER 2

Terms of Reference and Interpretation

1. Resolutions of Dáil Éireann and Seanad Éireann

“By Resolutions passed by Dáil Éireann and Seanad Éireann on respectively 17th and 18th of April, 2002, a Tribunal was established under the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002 to inquire into the following definite matter of urgent public importance:

- the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co. Longford on 20th April, 2000;*

and to report to the Clerk of Dáil Éireann and to make such findings and recommendations as it sees fit in relation to these matters.”

A full text of the Terms of Reference is incorporated in the opening statement of the Chairman contained in Appendix 1 to this Report.

2. Opening Statement of the Tribunal

In my Opening Statement of 7th January, 2003, I outlined a number of issues, facts and questions which it was proposed to address in a series of modules (see Appendix 1 for details). These were stated not to be exhaustive. As the evidence progressed further issues arose which required to be addressed by the Tribunal from time to time.

It will be observed that my Opening Statement also contained the following passage:

The Tribunal’s Report

Having considered all of the evidence, including relevant documentation and expert advice, the Tribunal will publish a report the first part of which will deal with the matters raised in each of the first four modules referred to herein and the Tribunal’s assessment of the facts and of the performance of those who participated in events at Abbeylara up to the fatal shooting of John Carthy on 20th April, 2000. [The aftermath of the deceased’s death will be referred to also in the report.]

The second part of the report will review and may contain recommendations on two matters which arise out of the events surrounding the death of Mr. Carthy and matters pertaining to the fifth and sixth modules:

- (a) Changes in statute law relating to gun licences and possession of firearms by members of the public, including the possible introduction of an obligation on applicants for gun licences (including*

renewals thereof) to furnish written medical reports in a prescribed form completed by a medical practitioner in active practice certifying the mental fitness of the applicant to obtain a gun licence and to possess a firearm, and possible requirements directed to medical practitioners and others who have reasonable grounds for believing that a gun licensee has a mental illness, psychiatric disturbance or other disability which renders him/her unfit to hold a gun licence and to possess a firearm having regard to the risk of injury to the licensee and others.

- (b) *Possible recommendations regarding the training and organisation of Garda officers, including the Emergency Response Unit, in dealing with dangerous situations such as that which was presented by John Carthy at Abbeylara, arising out of mental illness, psychiatric disturbance or other similar disablement.*

3. Media Module

During the course of the evidence to the Tribunal, issues arose in relation to the media handling of the incident at Abbeylara. Specifically it was contended that an RTÉ Radio One broadcast, being part of the “Five/Seven Live” evening news and current affairs programme on 20th April, 2000 constituted an intrusion into the process upon which the Garda Síochána had embarked in attempting to peacefully resolve the incident. RTÉ was put on notice of this allegation and subsequently sought and was granted representation in a ruling of the Tribunal made on 20th May, 2003 establishing a media module. The extent and scope of the inquiry was further ruled upon by the Tribunal on 24th March, 2004 and 9th July, 2004. The matters addressed by the Tribunal in this regard are contained in Chapter 9. In that chapter the Tribunal also refers to issues arising out of a story relating to the Abbeylara investigation published by the Sunday Independent on 31st October, 2004. The Chairman’s ruling thereon is contained in Appendix 7. K.

All other statements and rulings of the Tribunal are contained in Appendix 7 to this Report.

4. The Tribunal’s Memorandum on Procedures

The Tribunal prepared and adopted a Memorandum on Procedures which is contained in Appendix 2.

During the course of its preliminary investigations the Tribunal was furnished with over 200 witness statements, the vast majority of which were taken by members of the Garda Síochána during the course of an investigation carried out by Chief Superintendent (now Assistant Commissioner) Adrian Culligan. Potentially relevant witnesses were furnished with copies of their statements and requested to consider them and to clarify or add any matter deemed to be of relevance. In addition the Tribunal was furnished with documentation submitted to the Oireachtas Sub-Committee established to investigate the Abbeylara Incident. This documentation

was supplied to the Tribunal following the passing of appropriate resolutions of both Houses of the Oireachtas. The Tribunal was also furnished with further information by the Garda Síochána, interested parties, members of the public and by experts retained by the Tribunal during the course of the investigation.

5. Parties Granted Representation

The Tribunal had power at its discretion to grant legal representation to individuals and bodies who appeared to be substantially connected or associated with or affected by the death of John Carthy on 20th April, 2000 at Abbeylara, Co. Longford. Such individuals or groups included the Garda Commissioner; the family of the late Mr. Carthy; the Emergency Response Unit of the Garda Síochána and other Garda officers who were present at the scene during events at and about the Carthy home on 19th and 20th April, 2000 or who were commanded by officers there at that time; and medical doctors who had some involvement in events at Abbeylara and/or who had treated Mr. Carthy for psychiatric disturbance prior to his death.

Some parties granted representation had an interest in a limited amount of modules only, for example Module 6 relating to possible amendment of existing gun law, including the possible creation of statutory obligations affecting relevant medical, legal and sporting organisations. Such bodies were granted legal representation limited to possible changes in the law affecting those whom they represented.

A full list of parties granted representation before the Tribunal is contained in Appendix 3 to this Report.

6. Opening Statements of Counsel

Opening statements were made by counsel for the Tribunal on the commencement of various modules. In the interest of the Carthy family and other friends and neighbours of the late John Carthy, the formal opening of the Inquiry by counsel for the Tribunal took place at the County Council Chambers in Longford on 12th February, 2003. The courthouse in Longford was not available as it was closed pending major reconstruction and renovation. It was not possible to conduct the entire Inquiry in Longford as there was not sufficient accommodation continuously available there and consequently the hearings were held in the Tribunal's premises in Dublin.

7. The Evidence of Police and Medical experts

The Tribunal was assisted by a number of medical experts and also overseas police experts, details of whom are as follows:

1. Mr. Alan Bailey, firearms expert and retired Superintendent with the West Mercia Police Constabulary, UK.
2. Dr. Ian McKenzie, retired Superintendent with the London Metropolitan Police, forensic and occupational psychologist.

3. Mr. Frederick Lanceley, police negotiator, formerly with the Federal Bureau of Investigation, USA.
4. Mr. Ray Shuey, Assistant Commissioner, Victoria Police, Australia. Mr. Shuey retired from that position in 2003.
5. Mr. Robert Leatherdale, former Assistant Commissioner of the Royal Canadian Mounted Police.
6. Superintendent Neville Matthews, New Zealand Police Force.
7. Sergeant David Lee, police expert in the use of dogs, West Mercia Constabulary, UK.
8. Dr. John Sheehan, Consultant Psychiatrist, Mater Hospital, Dublin.
9. Dr. Douglas Turkington, Consultant Psychiatrist, Royal Victoria Infirmary, Newcastle upon Tyne, UK.
10. Professor Jack Phillips, Consultant Neurosurgeon, Beaumont Hospital, Dublin.

All represented parties were invited to submit reports from experts.

To this end the Commissioner of An Garda Síochána proposed and evidence was given by the following witnesses who were adopted as witnesses to the Tribunal:

1. Dr. Harry Kennedy, Consultant Forensic Psychiatrist, Central Mental Hospital, Dublin.
2. Professor Tom Fahy, Institute of Psychiatry, King's College, London, UK.

The Carthy family proposed:

1. Mr. Michael Burdis, retired Detective Chief Superintendent, South Yorkshire Police, UK.
2. Professor Christopher Milroy, University of Sheffield, also pathologist attached to the Home Office, UK.

Dr. David Shanley proposed:

1. Professor Kevin Malone, Department of Psychiatry, St. Vincent's Hospital, Dublin

A brief synopsis of the Curriculum Vitae of expert witnesses who gave evidence to the Tribunal (along with an introduction to other key persons who gave evidence) is contained in Appendix 4 to this Report.

In relation to the reports of the experts retained by the Tribunal, they were prepared on the basis of documentation provided by the Tribunal, including statements of all relevant witnesses, transcripts of relevant evidence and, where appropriate, documents (including training and medical records) discovered to the Tribunal.

The experts' reports were circulated to all represented parties likely to be affected by the contents thereof. They were invited to propose experts in reply and to furnish any reports upon which they intended to rely. In addition, parties and individuals likely to be affected by any observations, comments or conclusions in the reports were afforded the opportunity to examine the experts and also to address any issues raised. Further, in the light of the evidence received by the Tribunal, parties likely to be affected by issues arising therefrom received letters seeking further clarification and/or answers to various questions posed by the Tribunal. These issues, and matters arising out of the reports of experts, were addressed by witnesses when recalled to give further testimony.

The Tribunal acknowledges and appreciates the assistance afforded to it by all experts, i.e., those retained by the Tribunal and others proposed by the parties.

The Tribunal also wishes to acknowledge with gratitude the assistance of Professor John Harbison, former State Pathologist, who gave evidence to the Tribunal.

CHAPTER 3

John Carthy – Background

Introduction

In this chapter consideration is given to events that occurred in John Carthy's life, up to 19th April, 2000, which the Tribunal considers relevant to its Inquiry. It has been divided into sections. Section A deals with his family background, health and medical diagnosis and treatment. In section B, John Carthy's life events in April, 2000 up to the time of the siege are considered. The confiscation and return of his shotgun in 1998 is considered at sections B and Q in Chapter 8, and his arrest, detention and interrogation at Granard garda station in connection with the burning of a large goat mascot and transporter in September, 1998 is considered at section C in that chapter.

SECTION A: – Family background, health, medical diagnosis and treatment up to April, 2000

1. Family background

John Carthy was born on 9th October, 1972. He was the only son of Mrs. Rose Carthy and the late John Carthy who died on 12th April, 1990. He had one sister, Marie, who was born on 9th December, 1974. His father was a Bord na Móna employee.

The family lived in a three bedroomed house situated at Toneymore, Abbeylara, County Longford. This was constructed in or about the year 1906. Mrs. Rose Carthy lived there all her married life. John Carthy attended the local national school at Abbeylara. Thereafter, he went to technical/secondary school in Granard, County Longford. He completed his Leaving Certificate examination at Granard Convent in 1991. Having obtained his Leaving Certificate, he attended agricultural college at Warrenstown, County Meath in September, 1991. Mrs. Rose Carthy gave evidence that her son was in good health up to the time he went to Warrenstown. While there he began to have symptoms of depression.

The background facts relating to the Carthy family home have already been recounted in Chapter 1. In addition to the demolition of the old house, as part of the agreement made by the local authority for the replacement of this house by a new one, it required the transfer to it by Mrs. Carthy of the site on which both the old and new houses were situated. The provision of a new house was approved by the local authority on 30th September, 1997. By letter of 25th August, 1998 Mrs. Carthy wrote to the county council engineer dealing with the matter, asking that the old house be retained and that only part of the existing site be transferred. This letter was signed by Mrs. Carthy but the evidence was that it was written and composed

by her son. In it she stated that if the county council was agreeable to this course she would make “a formal promise” to keep the old house in good condition. This was followed by a letter from E.C. Gearty, solicitor, Longford on behalf of Mrs. Carthy making the same request of the local authority. The county council would not agree to this course and by letter of 5th October 1998 to the local authority Mr. Gearty confirmed Mrs. Carthy’s agreement to the transfer of the entire site and to the demolition of the old house.

Mrs. Carthy told the Tribunal that her son “wanted the old house kept”, his wish being that he would stay in the old house and that she would move into the new house.

2. Health – General

Physical Health

There is no evidence to suggest that John Carthy was other than well from a physical perspective, but he was involved in two accidents – one at work in 1993 – and the second, a road traffic accident, in February, 1997. He did, however, suffer from chest infections/coughs at various times. Dr. Shanley gave evidence that such events, e.g. colds, flu and infections can have a knock-on effect in terms of psychiatric difficulties. The post-mortem examination carried out by Professor Harbison on 21st April, 2000, suggests that the subject was physically in good shape immediately prior to his death.

Mental Health

John Carthy became depressed in early 1992. He was subsequently diagnosed with bipolar affective disorder. He was treated with therapy and medication. Medication primarily consisted of antidepressants and lithium, a mood stabiliser.

3. Key medical personnel

A number of medical personnel gave evidence of either treating or seeing John Carthy during this period. These were:

Dr. Patrick Cullen, a general practitioner, practising at Coole, County Westmeath. He qualified in 1980 and spent four years in general hospital medicine. Apart from general medical training he did not have any specific training in psychiatric medicine. Dr. Cullen commenced practice in Coole in 1984. John Carthy became a patient of his in 1988.

Dr. John McGeown, a consultant psychiatrist, attached to St. Loman’s hospital, Mullingar. St. Loman’s is a psychiatric hospital. Dr. McGeown’s services formed part of the psychiatric service provided by the Midland Health Board at that time, which included St. Loman’s in-patient hospital and an out-patient or day clinic at Granard.

Dr. Niall Donohoe, a general practitioner, practising at Granard from 1991. Mr. Carthy was not a regular patient of his but he attended him on a number of occasions

when Dr. Cullen was unavailable. Dr. Donohoe was aware that the latter was John Carthy's doctor. He was called to the scene on 20th April, 2000 and pronounced John Carthy dead at 6:11 p.m.

Dr. Gerard Meagher, a general practitioner, practising with Dr. Cullen at Coole.

Dr. David Shanley, a consultant psychiatrist, attached to St. Patrick's hospital and St. James's hospital, Dublin. At the time of his evidence to the Tribunal he had been a consultant attached to St. Patrick's and St. James's for twenty-five years, treating public and private patients on a routine basis. John Carthy was referred to him by his general practitioner, Dr. Cullen, by letter dated 4th April, 1995.

Following this referral, Dr. Shanley saw the subject for the first time on 11th April, 1995. He diagnosed him with bipolar affective disorder and prescribed lithium, in addition to the medication he was already taking. He last saw John Carthy on 11th June, 1999, though he had telephone contact with persons on his behalf in January/February, 2000, when his prescription was changed. In early April, 2000 an appointment was made by Marie Carthy for her brother to attend Dr. Shanley at 2:00 p.m. on 20th April, 2000, the second day of the siege. He was contacted by gardaí on the morning of 20th April, 2000. He came to the scene in the afternoon. He was in a car on the roadway outside Walsh's house when John Carthy was fatally shot.

Dr. Desmond Bluett, a general practitioner, practising at Castlelawn Medical Centre, Galway. John Carthy attended his surgery during 1999 and 2000 while living in Galway.

Dr. Dympna Horgan, a general practitioner, practising in Galway. She covered on an "out-of-hours" basis for Dr. Bluett. She saw John Carthy at a garda station in Galway on 20th February, 2000 after his arrest under the Mental Treatment Act, 1945.

4. Bipolar Affective Disorder, its nature, diagnosis and treatment

Bipolar affective disorder

Bipolar affective disorder is a mood disorder that affects approximately 1% of the population. It was previously called manic depression. It affects both men and women equally and is not related to socio-economic status.

The disorder is generally characterised by episodes of elation and depression with a normal mood in between. The first episode is usually before the age of thirty. The elation may be described as hypomania or mania depending on the severity of the mood disturbance, with mania being a more severe form of hypomania. An episode of elation can last for up to six months. The depressive episodes are classified as mild, moderate or severe. If depressed, a patient may develop suicidal ideas (ideation) or actual suicidal intent. A depressive episode can last for up to two years.

Manic episode

Manic patients are often excited, over-talkative and hyperactive. Their mood is euphoric but may also be irritable. It may be labile, changing from laughter to irritability to depression within minutes. Manic patients have a low frustration tolerance which leads to anger and hostility. Speech becomes rapid and possibly incoherent due to the rate at which the patient talks. Concentration deteriorates and the patient is distracted easily. Self-confidence increases.

The patient may lose touch with reality developing false beliefs (delusions) of either a grandiose or persecutory (paranoid) nature. Grandiose delusions include beliefs of having great abilities or powers. Paranoid delusions include a belief that the patient is being deliberately persecuted so that he becomes distrustful of others and guarded in his dealings with them.

However, even when deluded, orientation and memory remain intact. The patient is not confused or disorientated. The patient is aware of his surroundings but may not demonstrate a rational approach to difficulties. Impulse control is impaired with many patients becoming assaultive or threatening. Judgement is also impaired with the patient demonstrating a recklessness that would not be seen normally. Some patients spend money excessively whereas others become sexually disinhibited. Excessive alcohol consumption may occur and may be a sign of the onset of elation. The patient usually loses insight into the fact that he is ill when manic. Insight usually returns when the mood reverts to normal.

Depressive episode

Generalised psychomotor retardation with a slowing down of both thoughts and movements is seen most commonly in depressed patients. Agitation may occur and is more common in the elderly. Agitation is characterised by hand wringing or hair pulling. Typically, the patient has gaze avoidance and a stooped posture with little active movement. The mood is depressed with a loss of interest and enjoyment. Social withdrawal occurs. The rate, volume and quantity of speech are decreased. Delusions and hallucinations may occur. The delusions typically relate to poverty, guilt, failure or terminal illness. The patient has a negative view of himself or herself, the world and the future. The patient's thoughts are morbid with an emphasis on bad things. Hopelessness, helplessness and suicidal thoughts or intent can occur. Possibly up to 10 to 15% of depressed patients commit suicide.

Rapid Cycling

Rapid cycling is essentially defined as a condition where a patient experiences within a 12 month period four or more episodes of mood disturbance, be they spells of elation or depression.

Mixed Affective State

Occasionally, a patient may exhibit features of both hypomania and depression in the same episode. The term mixed affective state is used to describe such a situation.

Diagnosis

The diagnosis of bipolar affective disorder is made on the history given by the patient and the doctor's examination of his or her mental state. Often, collateral information is obtained from other sources such as family members. Typically, the patient has a history of recurring episodes of depression and elation.

Between episodes of elation and depression, a person may be perfectly well, holding down a job and functioning normally.

Episodes of depression are frequently triggered by what are termed "life events" that occur in the months prior to the onset of the depression. Examples of "life events" include bereavement, loss of a job and a relationship breakdown.

Treatment

Treatment of bipolar affective disorder is divided into psychological, social and physical aspects. The psychological treatments include advice and support (supportive psychotherapy) and specific counselling treatments such as cognitive therapy. The social aspect of treatment includes addressing the patient's social needs such as financial and accommodation needs. Physical treatments include medication or, occasionally, electroconvulsive therapy.

The treatment of the depressive phases is usually with antidepressant medication such as gamanil, lentizol, surmontil or prothiaden. The periods of elation are treated by major tranquillizers such as stelazine or melleril. In an effort to prevent episodes, a mood stabilizer such as lithium is used and this is effective in approximately 66% of patients. Relapse can however occur while on therapeutic doses of lithium. Minor tranquillisers (anti-anxiety medications) such as xanax can also be used for associated anxiety.

Whether elated or depressed, the prognosis for each episode of illness is generally good. However, episodes tend to recur but in an unpredictable way. Poorer prognosis is associated with male gender, poor occupational status, alcohol dependence and depressive and psychotic features.

Relevant medications

The following descriptions were given in evidence as to the nature and effect of the various medications prescribed for John Carthy. These descriptions are not intended to be comprehensive, but are set out as a guide to the reader.

Xanax is a minor tranquilliser used in the treatment of anxiety associated with illness.

Gamanil, surmontil and prothiaden are antidepressants used commonly in the years 1990 to 2000.

Stelazine and melleril are major tranquillisers, which bring a patient's mood down, and are prescribed when a person presents with elation.

Lithium is a mood stabiliser, which is effective in approximately 66% of patients, but a relapse can occur while on therapeutic doses of lithium; camcolit is a proprietary name. It is used as a prophylactic measure to prevent a recurrence of illness, being more effective against recurrence of mania rather than of depression. It can also reduce the severity of an episode of mania.

The medical evidence indicated that the medications prescribed for bipolar patients can be a combination of the foregoing, and the dosages remain under constant review so as to take into account the phase of the illness affecting the patient.

5. Medical history. Diagnosis, treatment and hospital admissions, 1992 to 2000. Chronological analysis

This section is based on a review of John Carthy's relevant medical records and the evidence of his medical attendants, particularly Dr. Cullen, Dr. McGeown and Dr. Shanley.

Christmas, 1991 to April, 1992

The subject became unwell at Christmas 1991. Dr. Cullen first saw him in relation to difficulties of a psychiatric nature in February and March, 1992 and referred him to St. Loman's hospital on 24th March, 1992. Prior to such referral his depression was considered by Dr. Cullen to have been severe. He had no interest in activities; he was feeling low about himself and had poor self-esteem. He was distressed by his depression and agreed to go to hospital as an in-patient rather than to a local out-patient clinic. The St. Loman's hospital admission notes for 25th February, 1992 indicate that he was feeling "*fairly well*" until Christmas, at which time he missed his exams. He returned to Warrenstown College in January, 1992 and felt under pressure as he had to "*make up*" for missed time and exams. His mood began to get depressed in January. He gradually disimproved and approximately six weeks prior to his admission to St. Loman's he felt "*very bad*" and suicidal. The notes also reveal that Dr. Cullen gave him xanax; that he failed to comply with this medication; and that he later returned to his general practitioner who arranged a private appointment with a psychologist. He advised him to take xanax and to take a rest from college. He was found to have been "*down*" for approximately six weeks and thought of his father's death and also of his deceased uncle who had died five years previously. He was preoccupied with his father's death and worried about his sister's Leaving Certificate.

John Carthy was admitted to St. Loman's on four occasions as a voluntary patient between March, 1992 and January, 1995. He was first admitted on 25th March, 1992 and came under the care of Dr. McGeown. He remained there until 6th April, 1992. On admission, he was accompanied by his sister, Marie, and a neighbour. A history of depression/hopelessness and suicidal ideation was recorded. Following his discharge on 6th April, 1992 Dr. McGeown reported to Dr. Cullen by letter dated 10th April, 1992.

When giving evidence to the Tribunal, Dr. McGeown had no specific recollection of John Carthy apart from what was contained in that letter. His report to Dr. Cullen records the history of the subject's first episode of depression recounted by him to hospital personnel. He had two episodes at Christmas 1991. He missed two weeks in college. When he returned there in January, 1992 he felt depressed, was low and was unhappy. His mood tended to fluctuate. At times he was in reasonably good form but most of the time he was below par. He had feelings of being very depressed and described suicidal ideation. Dr. McGeown's report records that John Carthy "*at times has a death wish. He had suicidal ideas for two months and had thoughts of drowning himself. . .had thought of going to the nearby lake and jumping in*". He was also noted as having "*threatened to drown himself at home today*". He is recorded as having felt that if he was "*out of the way*" his sister and mother would have a better life. He denied ideas of persecution but felt that people were talking about him. He had pseudo-hallucinations of his father – being visual and auditory mental images, but had not experienced external hallucinations. Sometimes he felt completely hopeless and felt his family would be better off without him. His energy was impaired and he had lost interest in his studies in college and in his usual recreational activities. It was recorded that he was under a "*terrible burden*" and feeling that he had let his late father down because of his loss of interest in college. Dr. McGeown confirmed that any expression of suicidal ideation was taken seriously but that the subject, insofar as he could recall, did not express any intent at that time. He made a diagnosis of "*endogenous depressive illness*" in a person he described as "*a somewhat diffident, sensitive young man*". He prescribed treatment in the form of oral medication, gamanil and xanax.

April, 1992 to January, 1995

The period between first and second voluntary admissions to St. Loman's hospital, April, 1992 to July, 1993

The hospital notes of 3rd April, 1992 record John Carthy as "*thinking about doing an apprenticeship as a fitter*"; that he preferred not to go back to college "*but had not made a final decision on that*". Nevertheless, after his discharge from St. Loman's hospital, he left college and commenced working in a bakery, loading trolleys. During this period he maintained contact with Dr. Cullen who stated that John Carthy would normally attend the surgery for prescriptions for ongoing medication and possibly for review. The alternative would have been for him to be followed up by the local psychiatric outpatient clinic but he wanted to go to Dr. Cullen rather than the clinic at that time. Prescriptions were written, usually on a monthly basis. He attended Dr. Cullen for approximately three months, once per month, following his discharge from hospital. Dr. Cullen in his notes recorded that further relapses could not be ruled out.

In July, 1992 John Carthy went off his medication. There is no record of him seeing Dr. Cullen from 12th May, 1992 – when he gave him a prescription for gamanil – until 29th March, 1993. On 24th April, 1993 he was involved in an accident at a bakery where he worked. He got caught between two trolleys while loading one and suffered a back and left sided injury.

Dr. Cullen saw him on the 25th April, 1993 in relation to that accident. He thought that his patient was not, at that time, continuing to take medication which had been prescribed at St. Loman's hospital. He formed this opinion primarily because he did not return to obtain more medication following his initial voluntary admission. Dr. Cullen was unaware of whether he attended elsewhere during that period. Dr. McGeown confirmed that he had no other personal contact with him until his readmission to hospital in July, 1993.

The subject returned to the care of Dr. Cullen on 7th June, 1993, with a complaint of low back pain. He described this as being severe and attributed it to the accident at work. He complained of various symptoms which the doctor did not feel were in keeping with the physical injuries which he had sustained. Dr. Cullen was concerned about depression, to the extent that John Carthy had been depressed previously and would be predisposed to recurrence in adverse circumstances. Therefore, he recommended an out-patient's appointment with a psychiatrist and this was arranged for 24th June, 1993 at the clinic in Granard, although Dr. Cullen was unaware as to whether the appointment was kept. The reason for the referral was the discrepancy between the history of what had occurred in the accident when given at an initial consultation, and the degree of physical complaints. These did not fit together, according to Dr. Cullen. There is evidence to suggest that he attended the clinic in Granard. He was prescribed with the medication, lenthizol, an antidepressant. Dr. Cullen thought that this may have been prescribed in Granard. The prescription was continued by Dr. Cullen. He remained out of work, certified by his G.P., from the time of the accident in April, 1993 until October, 1993.

Second voluntary admission to St. Loman's hospital, 19th July, 1993

On 18th July, 1993, when Dr. Cullen was not available, John Carthy called to Dr. Donohoe, complaining of pain in his back. Dr. Donohoe referred him to Mullingar general hospital, where he was seen on that date. No serious problem with his back was discovered. He remained in a "very upset state" and returned to Dr. Donohoe later on that day. He felt depressed, anxious and was upset about his pain. He appeared to be tearful and excessively upset. Therefore, Dr. Donohoe thought there was an element of depression present. He wrote to St. Loman's hospital where John Carthy was admitted on the following day, 19th July, 1993. While in hospital, he was noted not to have suicidal ideas and that his back pain had "*much improved*". He was assessed on 4th August, 1993 and was found to have seemingly "*recovered from depressive episode . . . no back pain, sleep (yes), appetite (yes) mood (yes)*". He was discharged on 4th August, 1993 on a prescription of gamanil and melleril; and referred for review at Longford clinic (Granard), on 2nd September, 1993.

Third voluntary admission to St. Loman's hospital, 12th August, 1993

Dr. McGeown had advised John Carthy that he should return if he did not feel well and he subsequently telephoned Dr. McGeown to this effect. He was once again admitted on a voluntary basis on 12th August, 1993. He complained of feeling withdrawn. As a result he stated that he had to stay at home and he could not go to a G.P. for a prescription. He had not taken his medication for four to five days.

He was found not to be psychotic or suicidal. He remained in hospital until 31st August, 1993.

Dr. McGeown wrote to Dr. Donohue on 16th August, 1993 and described his patient as being depressed, tearful and agitated. On admission he had been preoccupied with his back complaints and was virtually unable to talk about anything else. According to Dr. McGeown, the subject claimed that he was unable to bend from the waist and could only walk very slowly. There was no thought disorder and his mood was one of depression with "appropriate affect". He had some guilt feelings and no psychotic symptoms were elicited. He denied suicidal ideation or intent. Dr. McGeown described a relapse of unipolar depressive illness in a young man with a "fairly strong history of manic depressive illness". Dr. McGeown formed the view that he was a rather sensitive, insecure, diffident young man probably relatively easily upset by any kind of physical or emotional trauma. In Dr. McGeown's letter to Dr. Donohue he stated that "*it is perhaps of some significance that the accident happened on the precise anniversary of his father's death*" (in fact the accident happened on 24th April, 1993). At the time he gave evidence, Dr. McGeown did not know why he had stated this in the letter but said that he thought that "*he had not entirely gotten over his father's death and that the anniversary at that time of year was a significant time for him, at a time that he was probably more emotionally vulnerable*".

Dr. McGeown felt that he did not talk enough about his father's death. On his admissions in 1992 and in 1993, he continued to express feelings of blaming himself in some way in connection with his father. This was quite consistent with being depressed. On 31st August, 1993, John Carthy was discharged and was in "good form", with a referral for Granard clinic on 16th September, 1993. Medical documents record him as having attended there on that date. The records show that he had no symptoms of note; that he got a call from Letterkenny RTC to do mechanical engineering and that he "*may go there at the end of the month*". The notes record that he was advised to take the offer. He was continued on stelazine.

Dr. Cullen prescribed gamanil and melleril for his patient in September and October, 1993. Melleril was discontinued subsequently and he was given stelazine. Dr. Cullen stated that he may have changed the medication because of an allergy or the possibility that melleril was unsuitable at that time. John Carthy does not appear to have been seen by Dr. Cullen from September, 1993 to September, 1994, when he attended on 19th September, for soft tissue injuries to his left zygoma, having received a "box" outside the Final Fence public house on the previous night. In the summer of 1994, he engaged in seasonal work with Bord na Móna, and then worked from October to Christmas in Longford.

Fourth admission to St. Loman's hospital, 18th January, 1995

John Carthy was out of work after Christmas 1994. Dr. Donohue saw him on 8th January, 1995. He referred him to the local psychiatric clinic in Granard though it appears that he may then have chosen to go to St. Loman's hospital, which he did on 18th January, 1995, in what has been described as a "self referral". On this admission he is recorded as having spoken of rats in the house, from which he stated

he caught an infection; and spending the previous night in his aunt, Nancy Walsh's house: "The doors were rattling . . . I thought they wanted to get rid of me – as they could get the land". The notes also referred to relations feuding "over some land which was divided between his mother and her sister". However, he was noted to have "no delusion" – but "has paranoid ideation".

He was discharged from St. Loman's hospital "against medical advice" on 14th February, 1995. At that time his medication was stelazine, surmontil and cogentin. He was referred to Granard clinic. On 15th February, 1995, Dr. Cullen made a house call to John Carthy's home following his discharge from St. Loman's hospital. He was seen at Granard clinic on 2nd March, 1995. Discovered records also indicate a further visit by him to the clinic on either 1st or 6th April, 1995.

6. Referral to Dr. Shanley on 4th April, 1995

On his visit to Dr. Cullen on 4th April, 1995, the subject stated that he was unhappy about attending St. Loman's hospital. Dr. Cullen stated in evidence that John Carthy was concerned about his lack of progress and requested to see if anything could be done for him. Therefore, Dr. Cullen referred him to Dr. Shanley, who had been suggested by the patient himself. Dr. Cullen's letter of 4th April, 1995, reads as follows:

"Dear Dr. Shanley, I would be grateful for your assessment on this patient. He has a history consistent with a diagnosis of manic depression. He has been an in-patient in the local psychiatric hospital on two occasions, most recently in February this year. He was previously an in-patient in April of 1992. He has otherwise attended with various aches and pains and back complaints. No definitive physical reason was found for any of these. His medications at present are: 1. Surmontil, 2. Stelazine, 3. Cogentin. I have discussed with him and encouraged him to get onto a local FÁS scheme, which is commencing shortly, and I have also advised him that he should attend the local "Grow" meetings. He is unhappy about his progress and feels that he would like a second opinion on his state of mind to see if anything further can be done for him. I would be grateful for your opinion and advice on him. Many thanks for seeing him. Yours sincerely, Dr. Patrick Cullen."

First visit to Dr. Shanley, 11th April, 1995

Dr. Shanley saw John Carthy for the first time on 11th April, 1995. On examination, he was informed by him that he had been working on the bog during the summer, that he was overactive, had been drinking heavily and had been sleeping poorly. According to Dr. Shanley, that indicated to him that the subject almost certainly had a hypomanic episode of very short duration and did not require any treatment. On initial presentation to Dr. Shanley, the patient had complaints of difficulty he had at puberty. He was sensitive about that. He felt that he may have had problems in terms of maturing. He had been drinking a lot. He had heard voices, particularly when he stopped drinking, including the voice of his cousin saying that he was mad. Dr. Shanley felt that John Carthy had been drinking excessively for a short period and

the hearing of voices may have been associated with withdrawal from alcohol. On this visit Dr. Shanley did not believe that he was psychotic or out of touch with reality associated with his illness. He confirmed that he was not suffering from depression at that time.

Initial assessment is important because it can take up to an hour and Dr. Shanley felt that he had an opportunity during the course of that interview to get to know his patient as a person. He confirmed that he was a far better historian than many people with his illness. Mental health examination is carried out routinely by psychiatrists every time they see a patient. Some patients with depression may be unable to tell their stories; their thinking may be slow and they may not be concentrating. John Carthy described his history to Dr. Shanley in detail.

Dr. Shanley's diagnosis

Dr. Shanley made the diagnosis of manic depression or bipolar affective disorder on John Carthy's second visit to him on 4th May, 1995. Consideration was then given to prescribing lithium treatment. The subject complained of being tired but his mood was stable. In view of the fact that he had at least one bout of elation it was felt that lithium should be considered. His general practitioner was informed that preliminary blood tests should be taken. He was prescribed surmontil and stelazine. The notes also record that he was working on a FÁS course at that time. Further contact occurred between Dr. Cullen and Dr. Shanley between May and July of 1995. The evidence of when he commenced on lithium is not entirely clear; documentation suggests that it was commenced in July, 1995. Dr. Shanley's evidence suggests that his patient was commenced on such medication sometime between 4th May and 29th June, 1995. Because of the travelling distances involved between Abbeylara and Dublin it was arranged that lithium levels would be monitored by Dr. Cullen and blood tests were carried out on a monthly basis between May, 1995 and December, 1996. Lithium levels remained within the therapeutic range.

Although there is evidence that John Carthy may not have been medication compliant from time to time, particularly in the early stages of his illness, Dr. Shanley thought that he had good insight and awareness of his illness. His ability to take medication as requested, and turning up regularly for blood tests, all are factors which indicated that his performance was *"much better than other people whom I treat"*. Dr. Shanley observed in evidence that approximately 1% of the community is bipolar and holds down responsible jobs; no one would know that such persons, who respond to treatment, have such an illness. Dr. Shanley told the Tribunal that at no stage did he witness John Carthy being aggressive. He would not have described him as having an aggressive personality: *"Far from it, John was a quiet sort of person, a very sensitive sort of person"*.

The subject had long periods in his life when he was perfectly normal – he did not have rapid cycling. Dr. Shanley said that it would be a mistaken impression for people to feel that John Carthy was either depressed or elated all of the time. He was liable to swings. The former agreed that the hearing of voices is a feature which could be associated with either endogenous depression or bipolar depression. With elation,

one can get heavy drinking. He agreed that it is relatively common for patients to present who have heard voices in the aftermath of excessive consumption of alcohol.

With regard to the accident at work in 1993, Dr. Shanley agreed with Dr. McGeown's analysis. Holy Thursday was a significant day for John Carthy – his grandfather and father both died on a Holy Thursday. According to Dr. Shanley these were important events in terms of John Carthy's reaction to them. It brought up feelings of loss associated with his father and grandfather and he "*would probably be at his most vulnerable*" at that time of the year. The 20th April, 2000, the second day of the siege and the day on which John Carthy died, was Holy Thursday.

Dr. Shanley suggested that John Carthy return to local psychiatric services. He stated that the standard of medical and nursing practices operated by personnel in St. Loman's was the same as in Dublin. He felt that the subject should continue to attend St. Loman's and advised him that there was a high standard of care there. However, a family relative asked him to take over his psychiatric care and the subject agreed with that request. Dr. Shanley consented to do so. He wrote to Dr. Cullen to this effect on 12th April, 1995.

June, 1995 to February, 1997

Dr. Shanley saw John Carthy again on 29th June, 1995. At that time, he was sleeping well and his concentration and interests were good. He was on a FÁS scheme which was due to continue until February, 1996. There was no evidence of elation or depression. Dr. Shanley was not sure whether he had in fact commenced lithium when seen on 29th June, 1995. Stelazine and camcolit were prescribed.

On 3rd July, 1995, Dr. Shanley contacted Dr. Cullen by letter. He noted that the subject's mood appeared to have stabilised. He was seen again on 8th September, 1995. On that occasion he had commenced lithium at a dosage of 750mgs. Dr. Shanley felt that he was taking his illness seriously. He was informed by him that he had attended lectures by a psychiatrist who founded the voluntary help organisation AWARE. According to Dr. Shanley, at that time, September, 1995, John Carthy was doing his very best to overcome his difficulties. On clinical presentation he was perfectly well. There was no evidence of depression or elation.

There was a further follow-up appointment made for 1st December, 1995, though he failed to attend on that day. He did not attend Dr. Shanley during the course of 1996. However, between May, 1995 and December, 1996 he attended Dr. Cullen monthly for prescriptions and blood tests.

February, 1997 to July, 1998

John Carthy was involved in a road traffic accident in the early hours of Sunday morning, 23rd February, 1997 and was seen at Accident & Emergency in Cavan general hospital. Dr. Cullen saw him on the following day. He had a laceration to his right forearm which had become infected. As the former had not seen him since November, 1996, he believed that he may have said something to him at the time of examination in February, 1997 in relation to lithium/bloods because John Carthy

returned on 4th March, 1997 to have his blood level rechecked. Lithium levels remained within therapeutic range. Dr. Cullen continued to see him in March and April, 1997 and this was primarily related to the road traffic accident.

On 2nd May, 1997 he was once again seen by Dr. Shanley, who noted that the car crash on 23rd February, 1997 had been a “*very significant*” event in his (John Carthy’s) life. As a result he had difficulty sleeping and developed psychological symptoms. He had nightmares and had a phobia about travelling in cars. According to Dr. Shanley, the subject recounted that he had been 100% well before the accident. The psychiatrist’s assessment, from the point of view of the bipolar illness, was that his patient was well on that occasion and that the psychological difficulties he was having appeared to be more related to his experience in the accident rather than to his underlying bipolar affective disorder. Dr. Shanley made the point during the course of his evidence that a serious accident as described would very likely, in somebody that was not on lithium, precipitate a bout of depression or elation. That did not happen in John Carthy’s case. Dr. Shanley thought that he had “*some symptoms suggestive of post-traumatic stress disorder*”. He provided a medico-legal report requested by his patient’s solicitor. Sleeping tablets were prescribed. Dr. Cullen confirmed that John Carthy’s blood tests were carried out in May, 1997 “*as regularly as they had done previously*”. The results were within therapeutic range without any signs of side effects. Dr. Shanley saw him again in June, 1997 when he was noted to be working in Longford. His notes record that on 17th July, 1997, his patient’s appointment was cancelled at short notice and that he failed to keep a further appointment on 29th August, 1997.

Dr. Shanley stated in evidence that although the attendances in 1997 were primarily related to his patient’s experience in the road traffic accident, he believed that he would have inquired and would have “*kept a close eye on his mental state*”. If he had felt that John Carthy had been depressed then almost certainly he would have “*followed up on that*”. He did not follow up on John Carthy’s mental state as he felt that he was not depressed at that time.

Dr. Cullen’s records show an entry on 3rd November, 1997 when the level of stelazine prescribed was reduced. The records also reveal a further visit by John Carthy to Dr. Shanley – primarily related to the road traffic accident. The psychiatrist also wrote a prescription for him for stelazine and lithium.

On further review by Dr. Shanley on 9th January, 1998, there was no evidence of depression or elation. There was no overactivity or over talkativeness, the key symptoms in someone who is high or elated. He was still thinking about the accident. On 25th February, 1998, he was seen by Dr. Cullen for his prescription and blood tests.

During the year 1998 the subject was seen by Dr. Shanley at approximately eight weekly intervals. He was seen on 6th March, 1998 when he was somewhat down, but it “*may have been significant that he had flu recently*”. According to Dr. Shanley, following flu or a viral infection, one can actually become depressed. People that

have never had experience of depression in the past can become depressed after a viral infection, particularly flu. John Carthy had some sleep disturbance but he was “going out to discos”.

On further review by Dr. Shanley on 8th May, 1998, there was little change and the patient was not depressed. At that time he was working in Longford and was also recorded as “sleeping well”. In May, 1998 his lithium levels remained within normal limits. In relation to his road traffic accident injuries, he was given a “final cert” by Dr. Cullen on 15th July, 1998.

7. July, 1998 to December, 1998

A number of significant events in John Carthy’s life occurred in late summer/early autumn, 1998. He had a dispute with his then employer and lost his job. His firearm was taken from him as a result of threats allegedly made by him and he was arrested and interrogated in relation to a “goat mascot” which had been burned in the local village. Both the latter incidents are considered in Chapter 8 sections B and C. His medical condition at that time is considered here.

The subject was seen on 16th July, 1998 when he informed Dr. Shanley that he had lost his job and that he felt upset at what he considered the aggressive attitude of his employer. He also informed Dr. Shanley that he had seen a solicitor. Further, his court case relating to the traffic accident was settled for £22,000. According to Dr. Shanley this probably would have been the first occasion when he felt that the subject was more upset than he had previously observed. However, he did not feel that John Carthy was at that time clinically depressed, nor was he elated. Clinical notes also record that he “might move to Galway as his sister was there” and that he “was working in the Longford area doing a bit of plastering”. On 5th August, 1998, he was again seen by Dr. Cullen and received a three monthly prescription. He attended Dr. Cullen once again on 10th August, 1998. He was “high” by which Dr. Cullen meant he was “speaking excessively” and “in all probability he was also restless”. According to Dr. Cullen it was possible that his condition was beginning to change at that time. It was “clouded” by the fact that he had obviously had alcohol over the previous weekend and Dr. Cullen noted that he had “chatted [with him] about alcohol and medications”. Dr. Cullen indicated that alcohol could have the effect of altering a patient’s behaviour and that he or she may also forget to take routine medication. Dr. Cullen said that it is desirable that such a person should not drink to excess; any consumption of alcohol should be moderate.

It is to be noted that at some stage during the months of August or September, 1998, Dr. Cullen was requested by John Carthy to provide him with a letter of support for return of his shotgun which he did not provide. This is considered in more detail in section Q of Chapter 8.

The next occasion when John Carthy was seen by Dr. Cullen was on 25th September, 1998. He was consulted in relation to an allegation of an assault by a garda during

interrogation at Granard station on the previous night. This is considered in section C of Chapter 8.

Dr. Shanley saw John Carthy on 8th October, 1998 when he found no evidence of depression or elation. He was reported as sleeping well and *“operating normally”*. He described himself as working in the Longford area. On that date Dr. Shanley wrote a letter of support to the local superintendent in Granard for the return of John Carthy’s shotgun (this is dealt with in detail in Chapter 8, section Q). On 22nd October, 1998 further medical prescriptions were provided by Dr. Cullen.

Dr. Shanley saw John Carthy once again on 30th November, 1998. He informed him that he had been elated towards the end of October/early November; that he had been overactive; had been drinking excessively at that time; that he was sleeping fewer hours and described himself as being *“full of energy”*. When asked whether this was a different condition from that observed on 8th October, 1998 (the day on which the letter of support was sought), Dr. Shanley said that it was not different, but there had been, in between, perhaps a period of a week or two when he had been feeling high or was elated. Indeed, on 30th November, 1998, John Carthy informed Dr. Shanley that he had been *“very high at one stage and spent a lot of money on alcohol and clothes”*. He told him that he had *“spent a few thousand pounds”*. Dr. Shanley thought that this was probably some of the traffic accident compensation he had received. At that consultation, he believed that his patient had difficulty sleeping and he advised him to stop taking alcohol. He felt that prescribing prozac may have been warranted if John Carthy was becoming depressed. However it was not clear to Dr. Shanley whether he was depressed at that time, although in examination by counsel for the Commissioner, he stated that he was *“becoming depressed”*. He prescribed lithium and stelazine. He agreed that the circumstances in which John Carthy presented to him on 30th November, 1998 constituted a change in his medical condition from the previous occasion in that he was more depressed. Dr. Shanley did not communicate with Dr. Cullen in this regard.

8. December, 1998 – Galway – John Carthy’s admission to University College Hospital, Galway on St. Stephen’s Day, 1998

During the Christmas period, 1998, John Carthy and his mother went to Galway to stay with his sister. According to Marie Carthy, he was feeling a bit down in himself and *“he asked to be admitted or he asked me to bring him to the doctor or the hospital or whatever, because he didn’t want to be admitted back into St. Loman’s again and he knew he was sick himself”*. Ms Carthy and her mother brought him to hospital. He was admitted to University College Hospital Galway on 26th December, 1998. On admission he had complaints of poor sleep for the previous two weeks, feelings of irritability and exhaustion and poor concentration. The admission note recounts him as *“admitting to abusing alcohol whenever he became elated”*. His speech was rapid but he was not suicidal. Objectively he was *“mildly elated”*. No formal thought disorder was elicited. He gradually settled in the ward. His mood stabilised. His speech became more normal and coherent. The hospital records noted that he was *“not sleeping well,”* his mood was *“labile since he arrived in Galway”*

yesterday” and that *“he feels he has let everyone down”*. Under the heading *“significant life crisis”* was recorded *“death of father eight years ago”*.

In her evidence Ms Carthy stated that prior to his admission to University College Hospital, Galway, John Carthy was tired. She also stated that alcohol did not play a major role in relation to his mood and condition at that time. As far as she was aware her brother was medication compliant. He was discharged on 6th January, 1999 and was followed up as an out-patient. At the time of his discharge, he denied *“suicidal ideation, death wish or thoughts of self harm”*. The prognosis was described as *“guarded”* due to *“dubious compliance with medications”*.

On 11th January, 1999 he was admitted to the psychiatric day hospital in Galway and advised to attend three days per week. He was subsequently discharged from hospital care on 30th January, 1999. In the hospital discharge he was described as having no symptoms of mood disorder, no thoughts of self harm and denying psychotic features.

9. January, 1999 to 20th February, 2000

Dr. Bluett is a general medical practitioner practising at the Castlelawn Medical Centre in Galway. He saw John Carthy on two occasions, i.e., 12th January, 1999 and 24th May, 1999. On the first occasion, the subject attended with a respiratory infection. He informed Dr. Bluett that he had a psychiatric history and had recently been on treatment for manic depression. He provided him with prescriptions for both illnesses. He observed: *“I can’t remember him very well, but certainly he didn’t strike me as somebody who was grossly disturbed at the time. He seemed to be quiet and affable, from what I remember of him”*. Dr. Bluett agreed that John Carthy did not ever show any evidence of being disturbed during his visits.

Dr. Shanley saw his patient on 29th January, 1999. He informed him that he had been in hospital immediately after Christmas in Galway and that he had been discharged on 4th January, 1999. He had been elated during that admission to Galway and his elation *“cleared up very dramatically”*. He was discharged on stelazine and lithium (1,000mgs) to a day hospital which indicated that he was able to reside *“presumably with his sister, Marie, in Galway”* while attending the day hospital. The lithium dosage was relevant, according to Dr. Shanley, because when the subject was seen by him in November, 1998, he had actually increased his lithium from 750mgs to 1,000mgs, as a result of his patient informing him of what appeared to be a bout of elation. He thought that the increasing of lithium levels might prevent bouts in the future. Dr. Shanley again saw him on 11th March, 1999, when the patient told him that he was concerned about his size and his stature; that his concentration was poor; that his appetite was fair and that he had not been drinking. Dr. Shanley noted that it was important to realise that alcohol can be a depressant, and particularly with somebody drinking, he or she would become more depressed. John Carthy, he stated, had not been drinking but was depressed and he prescribed surmontil, an antidepressant. In March, 1999 John Carthy moved from Abbeylara to gain employment in Galway.

The subject was further reviewed by Dr. Shanley on 22nd April, 1999, when he was in Galway and out of work. He was living on his own, had made inquiries and was hoping to get back to the building trade. He was sleeping well and was drinking “a few pints now and again”. His appetite was fair and his concentration had improved. He complained of tiredness in the morning. He informed Dr. Shanley that he was attending AWARE meetings in Galway. Dr. Shanley thought that he might be a little over sedated and changed his medication to a less sedating antidepressant, prothiaden.

On 24th May, 1999 John Carthy visited Dr. Bluett to have blood tests performed in order to check his lithium level which was marginally above the therapeutic range. His treatment was not changed. He informed Dr. Bluett that he was attending Dr. Shanley in Dublin.

On 11th June, 1999 John Carthy attended his final consultation with Dr. Shanley. He informed him that his mood was a little better, he was sleeping well and his concentration had improved. He described his appetite as not being what it was. He told Dr. Shanley that he was working a few days a week; he had no problem meeting people and he was staying in a flat with other men; drinking occasionally and smoking up to 30 cigarettes per day. Dr. Shanley thought that he seemed to have adapted to living in Galway and to be getting on well. In his opinion, John Carthy was not then depressed or elated.

The psychiatrist confirmed that he had no involvement or knowledge of the renewal of John Carthy’s firearm certificate in 1999. He had no specific recollection of any further contact which he may have had with him between June, 1999 and April, 2000. He was aware that his sister, Marie, telephoned requesting that he see her brother a few days before Easter, 2000. He conceded that there may very well have been a telephone call to his office sometime in early 2000. This is reflected in the evidence of Dr. Meagher, who was acting as a locum for Dr. Cullen on 17th February, 2000, and who made an entry in the medical records on that date that John Carthy “recently went high. Dr. Shanley decided to stop the prothiaden for the present. He has been off work since 21st January, 2000”. Dr. Shanley stated that contact may have been made with him about that incident by either John Carthy himself or another member of the family. If a patient stated that he was becoming high, “standard advice would be immediately cold turkey, stop your antidepressant”. Dr. Shanley, however, had no recollection of giving that advice over the phone. He was unaware of the incident which occurred on 21st February, 2000 in Galway to which reference is made at paragraph 10 below. He was unaware that Dr. Horgan, who saw John Carthy on that night, suggested that he be contacted the next day. He did not believe that he had been contacted:

“Equally, having read the transcript, it would appear that things settled down and that the family may not have felt that there was a need to contact me. But I have no recollection of being contacted.”

John Carthy once again attended Dr. Bluett’s practice to receive a repeat prescription on 16th June, 1999. The prescriptions from Dr. Bluett and Dr. Shanley were filled on

approximately six occasions between June and November, 1999. On 10th August, 1999, Dr. Bluett prepared a letter for a medical card renewal.

In September, 1999 Dr. Gerard Meagher first had contact with the Carthy family. Mrs. Rose Carthy attended to collect a prescription for lithium, prothiaden and stelazine for her son. Dr. Meagher informed her that it would have been preferable if John Carthy came to collect his own prescription, because he was on long term lithium treatment and he would require regular blood tests. Mrs. Carthy mentioned to him that her son was being monitored in Galway.

On 1st December, 1999, a further prescription was written by Dr. Cullen who could not recollect if his patient had told him whether he had been on medication while in Galway or under any other doctors while there. He confirmed, however, that he did receive a report from University College Hospital, Galway, dated 15th January, 1999. Dr. Cullen did not see John Carthy between 24th November, 1998 and 1st December, 1999.

In August, 1999, the subject had commenced work as a general labourer with a firm of building contractors on a site at Edward Square, Galway. Fellow employees on the site during this time included Martin Shelly (otherwise known as "Pepper"), who left the site at Christmas 1999, and Kevin Ireland. He was particularly friendly with both of them. In the week of 16th January, 2000, John Carthy had a dispute with his employer. He handed in his notice as he had secured work with a plasterer who worked on the same site. It appears that he was unhappy in his employment due to a disagreement he had with another employee. Before he had worked out his notice it appears that he made an allegation of wrongdoing on the part of another employee and was then dismissed from work. Mr. Shelly and Mr. Ireland stated that John Carthy felt aggrieved at being let go from his employment. He mounted an unofficial picket outside the site and also contacted a Union representative. The matter was subsequently resolved with his employer.

Mr. Shelly saw John Carthy on a daily basis at this time and expressed the opinion that he was then elated, or "high". This, he thought, was related to the difficulties he had at work. Mr. Ireland stated in evidence that at the time John Carthy mounted the picket he gave him a piece of paper, on which was handwritten the name of a solicitor, Michael Finucane, and which also included a Dublin address and telephone number. Apparently Mr. Carthy gave this to Mr. Ireland, as he was concerned about the legality of a one-man picket. Mr. Carthy wished Mr. Ireland to call Mr. Finucane in the event of him being arrested or getting into trouble. Mr. Ireland returned the piece of paper to his friend some time later.

Kevin Ireland stated in evidence that he thought that John Carthy had previously said that this solicitor was a Republican solicitor who had helped him get his gun back.

On 26th January, 2000 Rose Carthy collected a repeat prescription for lithium, prothiaden and stelazine, on behalf of her son, from Dr. Meagher. The latter confirmed that this was a three-month prescription. It does not appear that it was filled until 18th April, 2000.

John Carthy had an intimate relationship with a young lady (referred to as “Ms X” in the interest of protecting her right to privacy). He had met her while working in Galway. The relationship was terminated by Ms X on Sunday, 20th February, 2000 arising out of manifestations by John Carthy of his mental illness in the previous weeks.

10. February, 2000 to April, 2000

John Carthy’s living accommodation in Galway was terminated and he stayed with Ms X for three nights because, according to her statement, she was told that his sister, Marie, refused to let him stay with her (in her bed-sit). He went to Abbeylara for the weekend and returned to Galway on Sunday 4th February. He stayed with Ms X for the following two weeks, until 20th February, 2000, when their relationship was ended by her. During this period, John Carthy was trying to sort things out in Galway. At some stage then he returned to Abbeylara as Dr. Meagher saw him on 17th February, 2000.

This was the first occasion on which Dr. Meagher saw John Carthy. The purpose of his visit was to obtain social welfare certificates because he had been off work since January. Dr. Meagher recorded in his notes at that time that the patient seemed somewhat high. His recollection is that John Carthy mentioned that:

“he had been in contact, or a relative had been in contact with Dr. Shanley as regards this and that he was advised to reduce or to stop his prothiaden for the present”.

Dr. Meagher’s contemporaneous note of 17th February, 2000, records as follows:

“subjective symptoms, recently went high. Dr. Shanley decided to stop the prothiaden at present. Has been off work since 21st January, 2000. Needs certificates to cover him for this. Discussed lithium levels and he is due to have these taken with Dr. Bluett.”

On the evening of 20th February, 2000 John Carthy was in the company of his sister, Marie, and friend, Martin Shelly, in Galway city. Marie Carthy and Martin Shelly joined her brother in a public house. She could not say whether he had consumed much alcohol prior to their meeting, but their friend Martin Shelly described him as having had a few pints. Ms Carthy said there was some verbal altercation between her brother and another customer. Martin Shelly told the Tribunal that John Carthy and the other man were *“pushing one another”*. John Carthy, his sister and Martin Shelly were asked to leave the public house.

On leaving the premises they went to a fast food restaurant in Eyre Square. Marie Carthy described her brother as being *“a bit down on himself”* that evening. Mr. Shelly described him as being *“a bit high, a bit hyper in himself . . . a little bit angry . . . he was kind of giving out you know about things.”* He also described him as being *“giddy . . . very uneasy in himself”* and that this was a bit more pronounced than he had seen before. Mr. Shelly stated that he was of the opinion that John Carthy had

too much drink taken and that he was “high” from drink. This episode occurred after Ms X had terminated her relationship with John Carthy earlier on that day.

Ms Carthy was worried about her brother and about the fact that other people, not knowing that he had depression, might misunderstand him. She decided to seek the assistance of the Garda Síochána. She approached two officers, Garda Mary Ann O’Boyle and Garda Oliver White, who were on general duty in the Eyre Square area. She told them that her brother had depression and asked them if they would be able to get a doctor for him.

Garda O’Boyle told the Tribunal that at about 11:30 p.m. she was approached by Marie Carthy who “expressed the fear that he was depressed and she felt he was suicidal.” Garda O’Boyle questioned Ms Carthy on this and informed the Tribunal that she had replied that her brother “had said to her that he wouldn’t be around much longer”. In evidence, Marie Carthy stated that she did not recall saying that her brother was suicidal: “I am not saying I didn’t say it, I just don’t remember saying that . . . I could have because they weren’t keen to help us in the first place”. Ms Carthy, however, told the Tribunal that the gardaí were helpful in the end and that “they were very good”. Garda O’Boyle told the Tribunal that Ms Carthy “was very worried” and that she could “see the worry in her face”. She advised her of the assistance that the Garda Síochána could give, namely, aiding her in bringing her brother to the psychiatric unit in the general hospital if he was willing to go there voluntarily; or to arrest and commit him involuntarily under the Mental Treatment Act, 1945. The procedures under the Mental Treatment Act, 1945 were explained to Marie Carthy and she was also informed that she, as a family member, would have to sign a committal form. Garda O’Boyle advised her that this was a serious decision to make and encouraged her to give it careful consideration. She said that Ms Carthy’s response was to tell her that “there was nothing left to do . . . she [Marie Carthy] could find him in the river in the morning”. Garda White confirmed that such a remark was made. Ms Carthy told the Tribunal that she had no objection to her brother being arrested but that she would not sign him into a psychiatric hospital. She told the Tribunal that it was her opinion that he was not suicidal that night and that he had never expressed suicidal ideation. Martin Shelly was not privy to any of these conversations between Garda O’Boyle and Marie Carthy but thought that Ms Carthy’s concern was not that her brother would do harm to himself but that he might get into a row.

Marie Carthy and Martin Shelly went back into the fast food restaurant accompanied by the gardaí. She approached her brother and told him that the gardaí were helping to get a doctor for him. John Carthy’s reply was to ask her “what have you gone and done?”. Garda White gave evidence that John Carthy seemed very upset with his sister for involving the Garda.

The subject was arrested under the Mental Treatment Act, 1945 by Garda O’Boyle and brought to the garda station in Mill Street to be examined by a doctor. Garda O’Boyle and the other garda drove him in a patrol car to the police station. While in the car she said that he seemed annoyed at having been arrested and queried her

as to why she didn't arrest a real criminal instead of someone like him. She told him that the only reason was that she had to act on such complaints. Garda O'Boyle told the Tribunal that this was the only time that John Carthy expressed any annoyance at the gardaí and that on leaving the station he thanked her and shook her hand. Garda White similarly did not detect any animosity directed towards him or other members of the gardaí while John Carthy was in the station.

Having ascertained that Dr. Bluett was John Carthy's general medical practitioner in Galway, Garda O'Boyle attempted to contact him; however he was not on call that evening. Dr. Horgan, who was then on rota duty, was requested to attend the station. She was informed by Garda O'Boyle of the circumstances of the arrest and that it had been made at the request of John Carthy's sister who was "*concerned he might be suicidal*".

Dr. Horgan told the Tribunal that John Carthy presented as a very pleasant young man. On examination she formed the view that he was "*slightly elated*". When she put this to John Carthy he did not agree and said that he was just "*rather stressed*". She found no evidence that he was depressed or suicidal and was not "*unduly worried about him*". She noted that he was capable of giving an account of himself and a good account of the medication he was taking. In this regard he told her that he was taking lithium and stelazine but that he had stopped taking the antidepressant prothiaden. Because she did not know him and was aware that people were concerned about him, Dr. Horgan asked him if he was willing to be admitted to University College Hospital, Galway. The subject indicated, however, that he was not. Dr. Horgan advised him to increase his stelazine and told him that he should see Dr. Shanley as soon as possible.

On completion of her examination, Dr. Horgan spoke to Ms Carthy and expressed to her the opinion that her brother did not require to be committed. She was interested, however, in ascertaining Ms Carthy's opinion based on her knowledge of him. She expressed the view that he would not be prepared to be admitted voluntarily to hospital and in discussion with Dr. Horgan it was decided that it would not be appropriate to commit him involuntarily. Dr. Horgan questioned Ms Carthy about whether she was concerned that her brother was suicidal. Dr. Horgan told the Tribunal that she did not receive an "*absolutely direct answer, but she [Marie Carthy] said she was concerned about him*". Dr. Horgan informed the Tribunal that Ms Carthy agreed to take her brother home with her that night. She informed her that she had asked John Carthy to increase his stelazine. Dr. Horgan requested him to see his psychiatrist Dr. Shanley. Ms Carthy stated that Dr. Horgan informed her that she had advised her brother to see "*his own doctor*" and that this could have referred to either his psychiatrist, Dr. Shanley, or his local general medical practitioner, Dr. Bluett. Marie Carthy has no specific memory of Dr. Shanley being contacted on foot of this incident. She presumed that her brother saw Dr. Bluett following Dr. Horgan's advice. The latter contacted Dr. Bluett on the following day to inform him of the incident. There was a note on Dr. Bluett's file that Dr. Horgan had seen John Carthy. Dr. Bluett had no recollection of any discussion with Dr. Horgan or anything apart from what

was contained in the notes – that John Carthy had been seen in the garda station and that his medication had been increased.

Ms Carthy's evidence is that her brother stayed in her house with her that night. Martin Shelly said that she and her brother left the station together and that they all then headed off to their respective homes. The evidence of John Carthy's cousin Thomas Walsh is that John Carthy told him that he had hitched a lift back to Abbeylara that night.

Thomas Walsh met John Carthy on the following day, 21st February, 2000 in Abbeylara. He thought that he seemed "*slightly high.*" He told the Tribunal that the latter had informed him that he had been drinking brandy and did not remember much about what had happened but that he had been arrested and brought to the garda station in Galway. He said that John Carthy appeared frightened by the incident and told him that when he saw a cell in the station he could picture himself "*inside for years*" and that he thought he was going to be committed. Thomas Walsh spoke to him about drinking excessively while taking medication. They discussed the fact that he was annoyed with his sister and Thomas Walsh told him that she was acting in his interests and for his benefit. Thomas Walsh said that his cousin accepted this although he was still somewhat upset.

Garda O'Boyle gave evidence that John Carthy was annoyed with his sister for orchestrating his arrest but that this annoyance dissipated on release from custody as he realised he was not going to hospital. Ms Carthy told the Tribunal that her brother was "*annoyed for a few days*" with the fact that the gardaí had been involved but that a few days later he was grateful to her for the fact that he had seen a doctor. Martin Shelly felt that John Carthy was annoyed because his sister was worrying about him and he did not want her to worry.

On 29th February, 2000 John Carthy was again seen by Dr. Cullen, when blood samples were taken. The doctor thought that he was elated, restless and agitated but it did not raise any concern in his mind as there was nothing out of the ordinary to alarm him. His stelazine was increased.

Entries in Dr. Cullen's records for 1st March, 2000 reveal that his patient's blood tests were normal. On 7th March, 2000, he attended Dr. Bluett's practice for the purpose of obtaining a fresh prescription. This prescription was for two items (stelazine and camcolit), with the dosage of stelazine increased from one tablet a day to two tablets a day; earlier prescriptions had contained four items (stelazine and camcolit, melzine and prothiaden).

On 10th March, 2000 Dr. Cullen once again saw his patient and noted that he was coping better. He reduced the dosages of stelazine. Blood samples were tested on 29th February, 2000 and were within normal therapeutic range. Dr. Cullen felt that he was much more settled at that time.

On 20th March, 2000 John Carthy attended Dr. Meagher's surgery to obtain a social welfare certificate and a final certificate to return to work. He appeared quite well

and Dr. Meagher's recollection was that he had been informed by him that he had obtained a new job in Longford and he seemed content to start that work. Dr. Meagher felt that he was as good as *"I would have expected him to be and I was happy that he would return to work"*. When asked whether he had noticed any change or improvement in his condition from the previous occasion on which he had seen him on 17th February, he stated that he felt that John Carthy was more settled and he also felt that he was quite capable of returning to work. He was able to discuss his condition and *"had things marked out"*. It was the doctor's recollection that he was going to *"get on with his life"*.

Dr. Meagher confirmed that in March, 2000, John Carthy did not describe any subjective symptoms of being high. He seemed a lot more settled and gave an indication that he had been *"restored to normal"* and that the high symptoms had settled.

Dr. Meagher prepared a certificate for social welfare services. Such certificates entitle patients to payment while they are ill and the Department of Social, Community and Family Affairs have a process whereby they carry out random checks on patients who claim social welfare benefits. They employ their own doctors and have a panel who examine patients and who call them for examination to ensure that illnesses are valid and are true and that no fraudulent claims are made. For that purpose the Department frequently issues documents to be completed by the claimant's general practitioner. Dr. Meagher noted on the form: *"has had an episode of mania. Retains a lot of insight. Anxious to start work as soon as possible"*. Under the heading "Mental Health" in the form, Dr. Meagher categorised the condition as severe. This assessment was based on his analysis in February, 2000, when John Carthy described his subjective symptoms. He felt that the illness had been severe insofar as he could not work. He assessed John Carthy's capacity for learning as *"moderate"*, and that his illness would have affected his ability to concentrate or take in new skills as regards work. He noted, in the context of a query as to whether his patient was fit to attend medical examination, that he was, but commented on the form that *"I don't think it would benefit either John Carthy or yourself"*; his reasoning being that John Carthy had returned to work at that point and calling him for examination would have disturbed his work routine. Such an assessment would primarily have involved a question and answer session which would have been probing as regards his illness. Dr. Meagher felt that John Carthy might find such assessment intimidating. Considering the fact that he was just getting over an episode, he did not think that that kind of examination would have been helpful to him. Dr. Meagher completed the form on the basis that the medical assessor would see that there was a definite very real illness but that he would not call him for assessment, as he had become fit for work and was back in employment.

Dr. Meagher stated that if his patient was not taking his lithium medication this is something he would have recorded. He therefore assumed that he was taking the medication. Dr. Meagher also noted the blood test results of 1st March, 2000, appeared to have been normal. With regard to his reference, *"recently went high"*, Dr. Meagher's impression was that this was in the very recent past. When making

this entry he was unaware that John Carthy had problems in Galway. Dr. Meagher confirmed, as far as he could recollect, although he knew him only very briefly, that John Carthy had a good understanding of his illness. He also confirmed that when he saw him on 17th February, 2000:

“John told me more about his symptoms rather than me actually seeing them on examination . . .so at that particular time on that particular day, I can’t be exactly sure as to whether he was elated, very elated or not elated at all, but certainly on that date, he seemed to have quite a bit of insight into his illness and he seemed to be doing the right things”.

The last occasion on which Dr. Meagher saw John Carthy was 20th March, 2000.

At some stage in early April, 2000, Ms Carthy contacted Dr. Shanley to arrange an appointment for her brother on 20th April.

SECTION B: – 1st to 18th April, 2000 – Significant Events

1. Early April

On 3rd April, John Carthy was employed by Mr. Gerard Delaney as a plasterer on a job in Mollaghan’s store in Longford Town. The job was due to last for three weeks. For the first two weeks he attended work each day, commencing at 8/8:30a.m. and finishing at 5:30p.m. Mr. Kieran Lennon worked with him on this job. He told the Tribunal that while having breakfast one morning in mid-April John Carthy told him *“I am depressed from drink”*. He also told him *“about his father dying and about the goat and the guards bringing him into the station”*. He told him that gardaí had taken his gun from him but that he had got some solicitor in Dublin to get it back for him. He said that John Carthy named the solicitor but that he could not recall the name. He also said that the subject told him that *“he hadn’t much time for the guards after he was brought into the station”*. John Carthy said to him that he was getting on well with his mother and that they were moving into a new house. Mr. Lennon said that such conversations took place over a number of different days but that on almost every day John Carthy would mention the gardaí.

Dr. Shanley received a telephone call from Ms Marie Carthy approximately two weeks before the events of 19th and 20th April, although the exact date is unknown. She told him that her brother felt unwell and needed to be seen. Dr. Shanley was out of the country the week before holy week but he made an appointment to see him on Holy Thursday as he felt that there was a sense of urgency that he should see his patient.

Mrs. Patricia Mahon, a cousin of John Carthy, recalled meeting him on either 11th or 12th April. She was driving to Abbeylara and gave him a lift. They chatted about the new house and he told her that it was his intention to go back to Galway when his mother was settled in the new house. According to Mrs. Mahon *“he seemed to be*

looking forward to it'. He did not indicate to her any desire or intention to stay in the old house.

2. Thursday, 13th April, 2000

On 13th April, John Carthy received a letter from Mr. Gerard Carthy, a solicitor working with Mr. Mark Connellan, solicitors in Longford, seeking a fee of £35 in connection with a letter sent on his behalf to Mr. William Crawford regarding allegations that John Carthy believed Mr. Crawford had made when the goat mascot was burnt. Ms Carthy told the Tribunal that her brother complained to her about the letter from the solicitor and that her mother also made some mention of it. She believed that he did not mind paying the bill but that the letter reminded him of the incident. She felt that he was annoyed that people around the village were still *"slagging"* him about the goat episode.

That evening John Carthy telephoned his friend Kevin Ireland. The call lasted a little over four minutes.

3. Friday, 14th April, 2000

On the Friday before the incident, Mr. Brendan McLoughlin met John Carthy in a nearby village at around 6:00 p.m. He described him as being in *"great form"*. Mr. McLoughlin was about to commence foundations for a new house and John Carthy offered to come down the following day to give him a hand.

John Carthy also met Mr. Pat McLoughlin, brother of Brendan McLoughlin, that evening. Pat McLoughlin told the Tribunal that he was *"in his usual good spirit. He was talking and he was giving out, as usual, smoking"*. They chatted for about 45 minutes.

A little later that evening, around 7:00 p.m., Mr. Patrick Reilly was driving back home from the village and saw John Carthy walking along the road. He gave him a lift. They went to Mr. Reilly's house and chatted for about thirty minutes. Patrick Reilly had seen him previously when he was *"a bit down"* but stated that on this evening he appeared in *"good form"*.

4. Saturday, 15th April, 2000

On Saturday, at about 8:15 a.m., Mr. Larry Boland met John Carthy in the village of Abbeylara. He said that the subject was in bad form because he had no cigarettes and that he was blaming William Crawford for this as he was barred from Crawford's pub. He told Mr. Boland that he would *"shoot Willy Crawford, only for his mother still living in the village"*. Mr. Boland said that he did not take this threat seriously. He felt John Carthy was in bad humour because he did not have cigarettes.

At 10:00 a.m. John Carthy went to Brendan McLoughlin's house to assist with the building work. He remained there until about 3:30 p.m. or 4:00 p.m. Mr. Pat McLoughlin noticed a change in his humour from the day before. He thought it might

have been due to the presence of another man from the village *“and seemingly there was some bit of aggro going on between them”*; John Carthy was giving out about him being there. Pat McLoughlin spoke briefly to John Carthy, who he said, was also *“in a bit of a state about Frank McHugh”*. Pat McLoughlin felt that he had brought up the issue of Garda McHugh because he, Pat McLoughlin, and Garda McHugh were neighbours. Pat McLoughlin felt that John Carthy was *“aggravated”* about the arrest in relation to the burning of the goat mascot and the fact that he was detained in the station for a number of hours. According to Pat McLoughlin, John Carthy was obsessed with *“this thing about being brought into the garda station and all this type of stuff”*. He told the Tribunal that John Carthy had said something about *“McHugh doing something to him”* but that he couldn't be more specific as to the comment as it was said to him while they were working. However, he was sure that he was not told that Garda McHugh had abused him *“or anything like that”*. John Carthy also gave out generally about the people of Abbeylara to Pat McLoughlin. He told him that they were *“a shower of cunts”* and that he *“would shoot the heap of them”*. Pat McLoughlin thought that he was angry with people in general in Abbeylara but he didn't know why. However, he wasn't particularly alarmed by this comment and felt that John Carthy was thinking out loud and did not mean anything by it.

In relation to the subject's humour that day, Brendan McLoughlin said that John Carthy was *“giving out hell”* about the delay in the delivery of the concrete and that he said that a man should be in the pub at 3:00 p.m. on a Saturday, rather than spreading concrete.

On Saturday evening, Mr. Bernard Reilly met John Carthy in McCormack's bar in Abbeylara village. There were approximately ten people in the pub. John Carthy joined him for a drink at the bar and told him that there had been some slagging between himself and Kieran McCormack and that Mickey McCormack had told them to *“calm it down a bit”*. Bernard Reilly had seen the subject and Kieran McCormack talking but did not realise there was any slagging as there was no obvious disturbance.

Later that evening Mr. Carthy went to Kiernan's pub in Longford. At approximately 11:30 p.m. he approached Mr. Bernard Brady, a musician whom he knew well, and asked him for a lift home. Mr. Brady dropped him home at the end of the night. He said that John Carthy seemed *“like somebody a little bit maybe agitated but not anything serious that you would notice too much, like somebody in bad humour.”* He noted that he had been drinking but that he was not drunk.

Throughout Saturday John Carthy made numerous telephone calls to his sister. Telephone records indicate that 19 calls were made from his mobile phone to his sister's phone between 8:36 a.m. and 4:48 p.m. However, only two of these calls are of any significant duration (13:43.40 – duration 2 minutes and 59 seconds; 16:56.29 – duration 1 minute and 15 seconds). Marie Carthy could not recall the precise nature of either of these conversations. However, when asked about the frequency of calls made that day and over the subsequent days, Marie Carthy told the Tribunal that the discussion was all about the Easter weekend that she and Martin

Shelly were planning to spend in Abbeylara. She also explained that her brother ordinarily telephoned her every day and sometimes several times a day.

John Carthy also telephoned Kevin Ireland on two occasions on Saturday afternoon.

5. Sunday, 16th April, 2000

For most of the day John Carthy remained at home. At around 8:00 p.m. he telephoned Bernard Reilly and asked for a lift to Castlepollard. Apparently it was not uncommon for him to make such requests as he did not have a car, nor had his mother or sister. He went to the Town and Country Pub in Castlepollard where, at approximately 8:30 p.m., he met Mr. Sean Farrell and told him that his mother was giving out to him in relation to drinking when he could not afford it. He also mentioned something in connection with work, although Mr. Farrell could not ascertain whether he was looking for work from him or just inquiring about Mr. Farrell's work in a general way. Mr. Farrell told the Tribunal that he advised him to go home early that night to keep his mother happy. However John Carthy told him that he was going to a nightclub in Oldcastle. Mr. Farrell felt that he *"looked a little bit annoyed or a little bit, . . . maybe agitated, or a little bit upset . . . in his face, you could see a little bit of depression maybe"*. He explained *" . . . he looked a little bit upset like, you know, his eyes, or that type of thing. To me he just wasn't quite himself from what I would have normally seen him"*. However, Mr. Farrell did not think that he sounded upset.

At approximately 10:45 p.m. John Carthy got a taxi to Oldcastle. He went to the Mountain Dew Pub where he stayed until approximately 12:30 a.m. He had four pints of Guinness. Mr. Noel Clyne met him at 11:00 p.m. and asked him how he was and what he was doing there. John Carthy told him that he was there for *"the session"*. Mr. Clyne thought that he looked *"quite sober"*; he was sitting alone and reading a paper. He told Mr. Clyne that his stomach was *"bad"*. At midnight, as Mr. Clyne was leaving the pub, John Carthy asked him for a lift. However Mr. Clyne did not have a car that night. John Carthy told him that it didn't matter as he had decided to stay the night. He inquired in the pub if accommodation was available and was advised to go to the nearby Finn Court Hotel.

John Carthy telephoned his sister twice that evening (5:50 p.m. – duration 7 minutes and 50 seconds; 7:44 p.m. – duration 1 minute). Ms Carthy told the Tribunal that he had spoken about the fact that he had been out over the weekend and they chatted about the forthcoming weekend when both she and Martin Shelly would be travelling to Abbeylara. She further told the Tribunal, in relation to the telephone calls, that there was nothing to give rise to concern in relation to her brother's condition.

6. Monday, 17th April, 2000

John Carthy did not attend work on Monday, 17th April. He had breakfast in the coffee shop of the Finn Court, Oldcastle at about 8:30 a.m., following which he had two or three bottles of Budweiser in the bar. The owner of the bar stated that John

Carthy wanted to engage in conversation or general chit-chat and also requested that the jukebox be turned on. He left the bar at around 11:00 a.m.

At approximately 12:00 p.m. he went to the Napper Arms in Oldcastle. He ordered a pint of Heineken. He said that he had no money but subsequently he did pay for the drink. According to the proprietor he had his feet up on chairs and *“seemed as if he was going to sleep”*. She observed that *“he was rough and untidy, he had big boots on him and he looked like he could be after sleeping out”*. He snoozed in a chair and left in the afternoon.

Shortly after midday, John Carthy telephoned the office of Mr. Mark Connellan, solicitors in Longford. On foot of this call an e-mail was generated stating that Mr. Carthy would call Mark Connellan on 2nd May, 2000. Marie Carthy speculated that he called to the office to speak to Mark Connellan about a letter in connection with outstanding fees, that her brother had received on 13th April. In her statement to the Tribunal, Mrs. Rose Carthy stated:

“We were just waiting to go into this house. John and myself were worrying about getting money to furnish the new house. I went to the Bank of Ireland in Granard for a loan and they wouldn’t give it to me. John then got on to Mark Connellan’s, solicitor’s office and made an appointment for 2.5.00 as he was away on holidays. He was John’s solicitor and he thought he might help him with a loan to furnish the house.”

Mrs. Carthy was aware that Mr. Connellan had acted as her son’s solicitor.

At approximately 2:00 p.m. John Carthy telephoned a taxi driver, Kathleen Nolan, and requested to be collected at the Napper Arms in Oldcastle. Ms Nolan went into the hotel to fetch him. She said that John Carthy was sitting by the fire and that he *“seemed flushed from the fire”* and was *“very talkative”* in the taxi. She did not, however, notice any problems with him. She dropped him to his home in Abbeylara at 2:30 p.m.

John Carthy visited the McLoughlins that afternoon where brothers Pat and Brendan were working on the house. The McLoughlins were attempting to convert metric measurements into their imperial equivalents. John Carthy walked in on the job and said to them that they should go and buy an *“effing conversion ruler”* and make it simpler for themselves. Pat McLoughlin thought that he made the comment in jest. He appeared to be in good form until Brendan McLoughlin said to him *“you were drinking last night”* and Pat McLoughlin stated that he indicated to John Carthy *“as a friend”* that he shouldn’t be drinking. He was aware that John Carthy was on medication and he felt that he knew him well enough to give him that sort of advice. Apparently John Carthy reacted and became *“very bold about it”*. He jumped up and said *“you effing insinuating that I cannot drink?”* Pat McLoughlin was surprised by his outburst. He felt that in the twelve months since John Carthy had first left Abbeylara, *“we will say from the time he was in Galway to the time he came back, he had changed. His tone of voice was completely out of character”*. He suggested to the subject that he go for a walk to *“cool off.”*

Pat McLoughlin, who described John Carthy as a decent fellow for whom he had respect, told the Tribunal that he thought he looked pale that afternoon and that he may have had a hangover. He also thought that he was “*agitated*”. He told his brother Brendan, that he should “*ring the gardaí and get him lifted*”. No such call was made.

John Carthy’s telephone records show that he telephoned his sister 22 times between 12:19 a.m. and 1:38 p.m. on Monday. Five of these calls were made in the hour after midnight but are of no significant duration. At 5:32 a.m. John Carthy telephoned his own voice mail. Just before 7:00 a.m. he called his sister three times, two of the calls were of 15 seconds duration. Between 8:27 a.m. and 9:20 a.m. he called her twice, and these were again of no significant length. He telephoned her twice just before midday and six times between 13:13.41 and 13:38.42; however the longest call lasted for only eight seconds.

John Carthy also telephoned Kevin Ireland twice that day between midday and 1:00 p.m. Mr. Ireland’s statement says: “*He [John Carthy] rang me at about 12:30 p.m. He sounded in bad form and said he was in Dublin just for the day*”. When giving evidence before the Tribunal, Mr. Ireland could not recollect the specifics of the call but said that John Carthy would occasionally ring him to tell him that he was in Dublin. He also said that when John Carthy telephoned him from Abbeylara he would often say that he was in bad humour living at home because it was too quiet for him and that he wanted to move back to Galway.

Just before 8:00 p.m. John Carthy received a telephone call from Kieran Lennon. Mr. Lennon was working with him on the building site in Mollaghan’s in Longford Town at this time and they had become quite friendly. Kieran Lennon asked him if he was coming to work on Tuesday. John Carthy told him that he had had a few drinks on Monday but that he would be in work on Tuesday morning. Mr. Lennon told the Tribunal that he did not notice anything wrong with him during the conversation and that he seemed in “*all right*” form.

John Carthy telephoned Bernard Reilly at 9:20 p.m. Mr. Reilly felt that he had just telephoned for “*a chat*” and that this was not uncommon. He told the Tribunal that he could not recall what they spoke about but that there was nothing noteworthy about the conversation.

Marie Carthy telephoned her brother just after 10:00 p.m. that night. The call lasted for a little over a minute and a half.

7. Tuesday, 18th April, 2000

At approximately 7:40 a.m. John Carthy thumbed a lift from Abbeylara to his workplace in Longford Town. Mr. John Scally, a local electrician, who knew him, stopped and gave him a lift. They chatted about work and about the place where Mr. Scally was working at the time. The subject told Mr. Scally that he felt that his employer and another local businessman, whom he named, did not look after some of their employees well enough. He said “*both of them should be shot.*” Mr. Scally

was surprised by this comment, but he told the Tribunal that he didn't take it seriously. John Carthy then told him about a disagreement with his girlfriend. Mr. Scally told the Tribunal that he seemed *"quite calm, quite cool, and quite normal"* when he made the comments about the local businessmen and that *"the only time his voice did raise or the pitch of his voice slightly changed was when he mentioned he was having difficulties with his girlfriend"*. He asked if he could have a lift the following morning and the witness told him that he would pick him up if he were out on the road.

The subject arrived at work at 8:30 a.m. From 10:00 a.m. to 10:30 a.m. he had breakfast with Kieran Lennon. At 11:30 a.m. he telephoned solicitor Mark Connellan's office and spoke to Ms Ann Doyle, a member of the administrative staff. He asked to speak to Mr. Connellan but was told that he was out of the office for a few weeks. When asked whether he would like to speak to anyone else he replied *"No, it has to be Mark, I need to speak to Mark"*. Ms Doyle was familiar with him as he was *"a client in and out of the office"* and she had previously taken calls from him. From the tone of his voice, Ms Doyle formed the opinion that he was *"more anxious than he would normally have been on the phone"* and that he *"seemed a little distressed"*. Marie Carthy told the Tribunal that she was not aware of the fact that her brother had tried to make contact with Mark Connellan on that occasion.

The subject took his lunch break from work and went with Kieran Lennon to the Longford Arms, where he had two pints of Guinness. Mr. Lennon told the Tribunal that they would occasionally have a drink during the working day. After lunch John Carthy went to the shopping centre. At 3:00 p.m. he returned to work and asked Mr. Lennon to go back to the Longford Arms with him. Mr. Lennon declined. John Carthy asked him to tell his employer Gerard Delaney that he, John Carthy, would not be back to work that day but would collect his stuff at 5:00 p.m. Mr. Delaney asked John Carthy why he returned from lunch and then left again in the afternoon. The subject told him that he had a few drinks down town whereupon Gerard Delaney told him that he didn't want anybody drinking on the job and that he would be better off going home. He left work and said he would be back at about 5:30 p.m. to collect his things. He told Mr. Lennon that he *"might as well go to the bookies"*. He returned to work to get his bag. He said that he was going to the shopping centre and would get the 6:00 p.m. bus home. He asked Mr. Lennon to telephone him over the weekend to arrange to meet up. Mr. Lennon thought that John Carthy believed that he had been let go from work completely but that he did not appear bothered by this as he was due to finish up at the end of the week regardless.

Sometime during the day the subject collected medication in respect of a prescription that had been written in January, 2000. The prescription was for lithium, stelazine and prothiaden.

That evening Mr. Kevin Ireland called John Carthy's mobile phone. However, Mrs. Carthy answered the call and said that he was not yet home from work. Mr. Ireland told the Tribunal that he was trying to contact his friend because he was curious as to why he was in such *"bad form"* the day before.

That evening, Ms Anne Walsh and Ms Alice Farrell were doing some work in the garden of Farrell's house, cleaning out the pond. At approximately 8:30 p.m. Ms Farrell went next door to Carthy's house to see Mrs. Carthy. As she was passing the kitchen at the gable end of the Carthy old house she heard music coming from a radio that was tuned to Shannonside. She tapped on the kitchen window to let the Carthys know that she was coming. John Carthy met her at the door. Alice Farrell recounted the conversation she had with him to the Tribunal as follows:

"I says, I was thinking you were here John when I heard the rock music, you know, joking like. He says 'Alice', he says, 'the party is over, no more laughing and the guards won't be here anymore'. I took it up, I says, John, I never sent the gardaí to you or what are you worrying about? He says, 'the guards won't be here anymore'".

Alice Farrell stated that she reassured him not to worry but knew, by looking at him, that he wasn't well and that it was best to leave it alone. She felt that he was a bit high. John Carthy told his mother that he was going to Abbeylara to buy some cigarettes. Ms Anne Walsh, who had overheard the conversation, joined Ms Farrell and John Carthy on the driveway of Carthy's house. Ms Walsh asked him what was wrong and he replied, *"the guards won't be here anymore, there will be no more laughing"*. This was said in a normal tone of voice that was not aggressive or angry. Ms Walsh felt that somebody may have been teasing him and saying that they had called the Garda about him at some stage. She reassured him that this was not the case. He did not respond and walked off towards Abbeylara village.

Ms Walsh told the Tribunal that she believed he was elated at that time but that she did not pursue it any further as she knew he had an appointment with Dr. Shanley in two days' time. Prior to this encounter on the driveway, she had not spoken to him since she had tea with him in Carthy's old house several days before. At that time he appeared to her to be quite well. He told her he was getting bored around home and was looking forward to getting his mother into the new house and moving back to Galway. When asked by counsel for the Commissioner whether she knew his feelings about the old house being knocked, she replied, *"John was looking forward to getting rid of the old house and into the new house"*. She had not been aware of his visit to or attempts to contact his solicitor Mark Connellan.

Mrs. Carthy told the Tribunal that she did not overhear the conversation between Ms Farrell and her son but that he did not mention anything to her about the Garda that evening. She stated that he was in good form and was playing music in his room.

That evening he went to McCormack's pub in Abbeylara. The proprietor, Mr. Michael McCormack, refused to serve John Carthy a pint because he *"had given cheek"* to a nephew of Mr. McCormack's who had been serving behind the bar on Saturday night. He had two glasses of 7up instead. Mr. McCormack stated that he was in *"very bad humour and didn't talk very much"*. Mr. McCormack said that he had never barred him from the pub but that on occasions he had refused to serve him and that he had always accepted that. Subsequently, Mr. John Gilligan went into McCormack's to get some cigarettes and saw John Carthy talking to two men. He

thought that he appeared to be “*sort of narky*”. He heard him pass some comment to the two men to the effect that he did not know them and they did not know him. He told the Tribunal that he remembered noting that John Carthy must have been in “*bad form*”.

Mrs. Carthy stated that her son returned home from the village after approximately half an hour. She said that he had not had any alcohol that evening and was in “*good form*” when he returned from the village.

CHAPTER 4

The Events of 19th and 20th April, 2000

SECTION A – Prior to the Arrival of the Gardaí

Morning events

Mrs. Rose Carthy told the Tribunal that her son got up on 19th April, 2000 at 10:00 a.m. While they did not talk that morning, she described him as being “*in good form*”. He did not leave the house during the day and was, she said, listening to the radio and watching television. They remained alone in the house until Mrs. Carthy left in circumstances described below, sometime before 5:00 p.m.

Lunchtime

At lunchtime Marie Carthy telephoned her brother on four occasions from a public telephone near where she worked in Galway. She kept getting cut off, which explained the number of calls. Her brother was, she said, “*messing*” with her on the phone, telling her that he had a bottle of whiskey and was “*going drinking*”. Marie Carthy stated that she knew he was not going drinking because drink was not kept in the house.

The afternoon

Mrs. Carthy stated that John Carthy got somewhat agitated or upset during the course of the afternoon, sometime between 3:00 p.m. and 4:00 p.m. There was a discussion between them regarding moving to the new house. He stated, she said, that no one was going to put him out of his house. Mrs. Carthy could not recall whether he “*believed*” that someone was going to “*put him out*” of his house but he was, she said, against the demolition of the old house. She recalled that her son had stated several times “*during the year*” that no one was going to put him out of the house, that he would remain in the old house and that she would move to the new one. This, she said, was similar to the plan which he had in 1998. See the reference to the letter dated 25th August, 1998 to the local authority drafted by John Carthy regarding retention of the original house – Chapter 3, section A.

Mrs. Carthy confirmed that the new house had just been finished and they were awaiting a power connection. There was no particular date set for the move. She told the Tribunal that this was the only topic she could remember them discussing.

The first shots are discharged

In her evidence Mrs. Carthy recounted that shortly after 4:00 p.m. her son, without saying anything, went to the locker in the hall where his gun was kept. He got the gun out of the locker and brought it back to the kitchen. He repeated that *“no one would put him out of the house, he was staying in it all the time”*. He then proceeded outside the house and discharged his weapon. Mrs. Carthy did not see where he went and could not remember how many shots he discharged. He spent a few minutes outside the house. According to Mrs. Carthy, her son had never acted like this previously. When he came back into the house he *“just said hello”*. He sat down in the kitchen and then he told her to go to her sister up the road for a visit. Mrs. Carthy had no further discussion with him. He did not say why he wanted her to go out. This was, she said, the only occasion when he had ever asked her to leave the house. She stated that she agreed to go up to her sister. He then said *“good luck”* or *“goodbye”*. While she did not recall whether the gun was loaded or unloaded when he came back into the kitchen, at the time that he asked her to go to her sister’s house, he had not reloaded his gun. It was broken open and had not been reloaded. He left the box of cartridges on the table. Mrs. Carthy then left for her sister Nancy Walsh’s house. She stated in evidence she was afraid that, having the gun, he would harm himself.

Mrs. Carthy goes to Nancy Walsh’s house

Shortly after 5:00 p.m. Ms Ann Walsh was collected from work by Ms Alice Farrell. She proceeded to Abbeylara to see her mother, Nancy Walsh. On arrival at her mother’s house, she heard noises, which she subsequently discovered were two shots. She thought that these came from *“Burke’s next door”* and was not startled by them. As she was in the house talking to her mother, there was a knock at the door. It was her aunt, Mrs. Carthy, whom she described as being *“hysterical”* and crying. Ms Walsh instantly thought of the two shots and asked Mrs. Carthy what was wrong. She asked, *“is it John?”* Her aunt confirmed that it was her son, and that he had a gun. Ms Walsh stated in evidence that Mrs. Carthy was afraid that *“John would shoot himself”* but she did not tell her anything about the background to what had occurred. Ms Walsh became alarmed. She believed, although she could not be 100% sure of this, that Mrs. Carthy thought John would *“blow his brains out, but not that John had said it”*. When her aunt settled, she told them that her son had told her to come up to Mrs. Walsh’s for a few hours and not to worry about him.

The contents of a statement made by Mrs. Nancy Walsh to the effect that *“he told Rose to go up to me for a couple of hours and the first garda to come was going to get it”* were put to Mrs. Carthy. In evidence Mrs. Carthy stated that she could not remember that discussion and stated that her son made no reference to the gardaí before she left the house. She also stated in evidence that she did not tell anybody in the Walsh household that her son had put her out of the house. She reiterated in evidence *“He didn’t put me out of the house.”* She confirmed, however, that she was very upset and agreed that the people in the house were worried.

Contacts with the Garda

Ms Walsh told the Tribunal that Mrs. Carthy believed that the gardaí should be called. At 5:20 p.m. Ms Walsh picked up the telephone to ring the gardaí but rang her sister Mrs. Rosaleen Mahon in error. She then dialled the number of Granard garda station and handed the phone to Mrs. Carthy who spoke to a garda for a few minutes. This was Garda Maeve Gorman.

Mrs. Carthy informed Garda Gorman that her son had taken his gun out and that she was concerned and afraid that he would harm himself. She confirmed that Garda Gorman may have been given the impression that she, Rose Carthy, had been *“put out of the house”* and further accepted that it would have been reasonable for Garda Gorman to interpret Mrs. Carthy’s communication in that way.

According to Ms Walsh, Mrs. Carthy was not making much sense. Her aunt then handed the phone back to her and she spoke to Garda Gorman and informed her that she thought that John Carthy had put his mother out of the house: *“I think I just wanted to get the gardaí out quickly to take care of John”*. She informed the garda that he had a gun, that he had fired shots and that he was a manic-depressive.

After a few moments, Ms Walsh became concerned that gardaí had not arrived immediately and she was, she stated, *“terrified that John was going to shoot himself”*. She subsequently telephoned the garda station once again and informed Garda Gorman that she was anxious that the gardaí would come out as fast as possible. Ms Walsh stated that she was assured that somebody was on the way. She also agreed she conveyed to Garda Gorman that they were worried that John Carthy might shoot himself. She recounted in evidence that she was concerned about the subject harming himself because *“it was totally out of character”* for him to have *“taken out the gun”*. However, she did not believe Mrs. Carthy had concern for her own safety.

Garda Gorman’s evidence of initial contact

On 19th April, 2000 Garda Maeve Gorman was station orderly at Granard garda station, having taken up duty at 2:00 p.m. She stated in evidence that she received a telephone call at approximately 5:25 p.m. from Mrs. Rose Carthy. She spoke to her for only a few seconds but found it difficult to hear her. She appeared to be very agitated and upset. It appeared to her that Mrs. Carthy had been crying. The telephone was then handed over to Ann Walsh. Garda Gorman considered the matter to be quite urgent. She made a record of the telephone call in the occurrence book that *“the caller had reported that her son had locked himself into the house, that he had a loaded gun and had fired a few shots”*. She stated, however, that she was not informed by the caller that she thought that the gardaí might be at risk by attending at the house. She detailed Garda White and Garda John Gibbons to go to the scene. At 5:34 p.m. Ms Ann Walsh telephoned Granard garda station inquiring whether the gardaí were on the way. According to Garda Gorman, Ms Walsh *“just said that there was a field between them and they wanted to get out of the house in case he would come up through the fields to them”*.

Contact with Dr. Cullen

When telephoned in error Mrs. Rosaleen Mahon thought that there may have been something wrong with her mother, Nancy Walsh, and she went to her mother's house, arriving there shortly after the call was made to the gardaí. Her mother answered the door and there present were Nancy Walsh, Rose Carthy, Ann Walsh and Alice Farrell. Mrs. Rosaleen Mahon was informed that John Carthy was down in the house and had fired shots. Mrs. Mahon stated that there was concern that he would do something to himself; she inquired whether anyone had telephoned Dr. Cullen. As no one had done so, she telephoned him. She explained to Dr. Cullen that the subject was at home and had fired shots. Dr. Cullen was, she said, *"taken aback"*. The doctor inquired whether the gardaí had been called. He requested her to telephone the gardaí and tell them to come out and that he would meet them there. At that time the gardaí had already been contacted. Dr. Cullen confirmed that he would come to Abbeylara. At 5:32 p.m. Mrs. Rosaleen Mahon contacted Garda Gorman and notified her that Dr. Cullen had been contacted, was on his way to the scene, and would meet them in Abbeylara. She was informed by Garda Gorman that gardaí had already been dispatched. Mrs. Mahon initially thought that she might go down and speak to her cousin but she was dissuaded by other members of her family from so doing. She considered telephoning him and got his number from Mrs. Carthy. As she was putting the number into her phone she then considered that *"if they left John until the gardaí arrived that that would be the best thing to do"*. Mrs. Mahon also confirmed that Mrs. Carthy was afraid that her son would shoot the gardaí. However, Mrs. Mahon's sole worry was that he might harm himself. She was not worried about her own safety at that time. She was aware of the goat incident and John Carthy had informed her about the allegations in connection with that event. This incident is discussed in Chapter 8 section C.

Garda Gibbons and Garda White are contacted

Garda John Gibbons and Garda Colin White had been on duty in a patrol car on that day, having commenced duty at 2:00 p.m. Detective Garda James Campbell was, at that time, on his way to work and due to commence at 6:00 p.m. Garda Gorman directed Garda Gibbons and Garda White to attend the scene.

SECTION B – The Arrival of the First Responders

The arrival of Dr. Cullen

Dr. Cullen was concerned initially that John Carthy was going to harm himself. In his work he had experience of patients committing suicide by gunshot. He told the Tribunal that he was taken aback when he learned that his patient had a gun and was not aware that he had received the weapon back. However, he had not previously thought, based on his experience of John Carthy, that he was likely to commit suicide. Neither had he witnessed him being aggressive.

Dr. Cullen had just finished his surgery in Coole that evening when he received the telephone call from Mrs. Mahon. He immediately made his way to the scene and

drove past Carthy's towards Farrell's house. He parked his car in Farrell's driveway and waited in it for the arrival of the gardaí. Within a few minutes, "*probably within ten minutes*" the gardaí arrived. While waiting he heard a number of shots and he assumed that these were coming from the vicinity of Carthy's old house, though it was unclear to him at that time whether the shots were coming from inside or outside. He recounted in evidence that he was concerned for his personal safety when John Carthy was shooting out the window, although he thought it unlikely that his patient would have been aware of his arrival at the scene because of where he parked. He did not attempt to make contact with him before the arrival of the gardaí and he did not go to Walsh's house.

Having knowledge of John Carthy's allegation of assault while in detention in the garda station in Granard, Dr. Cullen was concerned and stated:

"it was a concern that while the gardaí obviously were needed on the one hand to try and remove that gun from him, that there may be a problem with regard to what happened with the alleged assault in the garda barracks previously".

He was therefore concerned about heightened animosity on the part of his patient to the gardaí.

Garda Gibbons and Garda White leave for the scene

At approximately 5:25 p.m., Gardaí Gibbons and White returned to the station where they were informed by Garda Gorman that Mrs. Rose Carthy had telephoned and informed her that she had been put out of the house by her son; that he had a loaded shotgun; that he had fired a number of shots and had locked himself into the house. Garda Gibbons was the senior member in the station at that time and was qualified to carry a revolver. He took off his uniform and put on a flak jacket over which he put on "*a civilian jacket*". In dealing with a firearms incident where shots were discharged, it was standard procedure that a member authorised to carry and use firearms would arm him or herself when responding to such an incident. He took a Smith and Wesson revolver from the station and signed and completed an entry in the firearms book. Garda White remained in uniform and did not arm himself. Gardaí Gibbons and White drove in a marked car to the scene.

Garda Gibbons's prior knowledge of John Carthy

Garda John Gibbons was based in Granard for 27 years at the time of the incident and knew John Carthy to speak to. He had met him briefly on social terms on a number of occasions. During the course of his work, he had become aware that a complaint had been made in 1998 that John Carthy was alleged to have burned the goat mascot and had been arrested in connection with that event but released without charge. He had not, however, been involved in the investigation of the matter. He knew that John Carthy had a shotgun; that it had been taken from him during 1998 because of allegations that he had made threats against certain members of the public and he was also aware that the shotgun had been returned to him. He

was aware of these matters because Garda Oliver Cassidy who had been involved in the confiscation and the return of the shotgun, had worked on the same unit as him. He was further aware that John Carthy had a medical history; that he had a mental illness, that he had experienced “*bouts of depression*” and that he had been in St. Loman’s hospital “*a few times*”. He was aware of the existence of the gun restoration file but had not seen the letter from Dr. Shanley, nor had he seen the file itself. He “*presumed*” such a file would exist. He stated in evidence that he had never heard of Dr. Shanley until the morning of 20th April. He had no knowledge of the fact that John Carthy had been upset by what was described as alleged mistreatment in Granard station; nor was he aware of that allegation.

Arrival of the gardaí in Abbeylara

Between 5:35 p.m. and 5:45 p.m., Garda Gibbons and Garda White arrived at the scene in a white, marked patrol car; one was in plain clothes (Garda Gibbons), and one in uniform (Garda White). Dr. Cullen did not know them by name.

Gardaí Gibbons and White drove into the driveway of Burke’s house and met Mr. Michael Burke. Mr. Burke confirmed that John Carthy had been firing shots.

The gardaí visit Walsh’s house for the first time

As Garda Gibbons was “*not sure whether he [John Carthy] had moved into the new house*” they went to Walsh’s house. Garda White drove the patrol car in around the back of Walsh’s house. At that stage there were a number of women in the house, including Mrs. Carthy, Nancy Walsh, Ann Walsh and Alice Farrell. According to Garda Gibbons there was “*total panic*”. When he went into the kitchen, he stated that he heard Ms Alice Farrell saying that “*he shouldn’t have a gun. Why was it given back to him?*” He stated that he told her “*to calm down, that that was a separate issue*”. They all were “*talking at the same time*”. Mrs. Walsh was panicking and had to be consoled by her daughter. Garda Gibbons spent approximately ten minutes in the house. He formed the impression that the women were concerned for their own safety, although he agreed that their expressions of concern could be equally consistent with concern for John Carthy’s safety. He inquired what had happened. He stated that Mrs. Carthy informed him that she was put out of the house, that her son had a loaded shotgun, had fired a number of shots and was on antidepressant tablets. Garda White asked was there a telephone in the house. He was informed that John Carthy had a mobile phone. Garda White stated that Mrs. Carthy reluctantly gave him the number. He said that she felt that her son might not be too happy with her for giving out that information. She also told him that “*he will know that it was me who gave you this number*” and he thought that she “*seemed to be in fear*”. Garda Gibbons also accepted that his perception in this regard could equally be consistent with Mrs. Carthy being anxious for her son’s safety. He did not agree that there was any mention of Dr. Shanley’s name, or the mention of a psychiatrist in Dublin, while he was in the house. Garda White did not recollect any reference to Dr. Shanley’s name being made by Ms Alice Farrell or any other person in the house during his visit there. He noted that Mrs. Carthy was very upset. He stated that they

had little meaningful conversation with her. Garda White stated in evidence that it was either Mrs. Carthy or Ms Farrell who told them that John Carthy had depression and that he received medication on the first day of every month. They were also informed that Dr. Cullen had been called and was on his way.

Garda Gibbons inquired as to who was the best person to talk to John Carthy, and he was told that Thomas Walsh (a cousin, who worked in Cork) was such a person. He asked the ladies to telephone Thomas Walsh, which they did, but he thought that they could not get through to him at that time.

Mrs. Carthy did not know the gardaí by name. She had no clear recollection of what information she gave them, but she stated that she told them that her son was in the house, he had a gun and she was concerned about him. She could not remember all the questions she was asked by the gardaí but she confirmed that she was asked about his medication. She could not remember whether there was a discussion about his depression or whether there was any mention of Dr. Cullen. According to her, John Carthy liked Dr. Cullen. It should be noted, however, that Dr. Cullen thought their relationship was “average”, although he had not noted any personal animosity on John Carthy’s part towards him. Mrs. Carthy recounted in evidence that she knew that her son would not come out and talk to him; he might think that Dr. Cullen was “going to put him into St. Loman’s hospital”, although she could not recollect whether she mentioned this to the gardaí at that time.

Ms Walsh stated that the plain-clothes garda asked “*what are we up against here?*” She stated they told him about John Carthy being a manic-depressive, for which he was on medication. She observed that he stated something about “*is it a shoot-out or what?*” Garda Gibbons denies this was said by him. Subsequently, according to Ms Walsh, all the women participated and everybody was giving their “*input*”. While Ms Walsh knew that John Carthy was on lithium, she did not know the name of his antidepressant tablets. She asked Mrs. Carthy for the name of the tablet but “*she couldn’t remember*”. She stated that she informed the guards of John Carthy’s feelings about the police. According to her:

“we told them that the time he was accused of burning the mascot goat, that he would have had a bad feeling about the guards since. That we didn’t know how he would react”.

Ms Walsh confirmed she did not inform the gardaí of the conversation that she had had with John Carthy on the previous evening. She did not recall Garda Gibbons’s recollection to the effect that the persons in the house were frightened and kept asking why he was given the gun back. Further, she said that no one raised the issue of the restoration of his gun licence. In fact she stated that she was unaware of that issue. In summary, Ms Walsh confirmed that she informed Garda Gibbons:

- i. that her cousin was a manic-depressive;
- ii. that he had animosity towards the guards because of difficulty relating to the mascot incident;
- iii. that he had a shotgun;

- iv. that he was firing shots;
- v. that he had never done anything like that before when he was not well and that it was *“totally out of character for him to have gone and taken out the gun when he would be in a manic-depressive state”*; and,
- vi. that there was a fear that he might injure himself.

Ms Walsh thought that in the interview with Gardaí Gibbons and White that Mrs. Carthy said that her son had an appointment with Dr. Shanley on the Thursday of that week.

Ms Walsh agreed that in her statement to the Tribunal, she had indicated that Mrs. Carthy had said that her son had put her out of the house. However, in her evidence she stated she was clear that Mrs. Carthy did not say that he had put her out of the house.

Ms Farrell said she remembered saying that John Carthy was attending Dr. Shanley in St. Patrick’s hospital in Dublin. She also said that she had told Garda Gibbons that Dr. Shanley was his psychiatrist. While she let the family deal with the matter, she said she helped with the identity of the psychiatrist, because she knew Dr. Shanley. In examination by counsel for the Commissioner, she agreed that she did not make any mention in her statement to the Tribunal of having told Gardaí Gibbons and White about the previous involvement of Dr. Shanley, saying that she was in shock when she made her statement, and that *“we didn’t get that much time to really do a lot of thinking”*. She said that she was *“never asked and it just never came into my head at that time”*. She also agreed that there was no mention in her second statement to the Tribunal that she, or any other member of the Walsh or Mahon family, had mentioned Dr. Shanley’s name to the gardaí, and said that the reason for this was *“because it was never asked of me and I didn’t think of it”*.

Mrs. Rosaleen Mahon stated that two gardaí arrived, a plain-clothes and a uniformed garda. She knew Garda John Gibbons to see. She stated that when they came into the house they were told what was happening. They both asked what frame of mind John Carthy was in at the time and what medication he was on. They were given this information. While she could not be 100% sure, she thought the gardaí were told that he was suffering from manic depression and that he was on medication. The gardaí were concerned to know how much he had taken – had he taken more medication or was there medicine missing. She stated that she informed the gardaí that Dr. Cullen was his general practitioner. Mrs. Mahon thought that Rose Carthy was in shock.

Ms Walsh believed that Mrs. Carthy stated that her son had an appointment with Dr. Shanley on Thursday and that *“I know I spoke at some stage to them about his psychiatrist”*. It is a matter of dispute whether Dr. Shanley’s name was mentioned at that stage of the evening. According to Ms Walsh a female garda was informed that Dr. Shanley was a psychiatrist in Dublin and that her cousin was going to see him in St. Patrick’s. Ms Walsh gave evidence that there was a further discussion regarding

Dr. Shanley with the gardaí later that night when they were in her sister's house, though she was unclear as to whom the information was given. Later in her evidence, however, she agreed she did not refer to Dr. Shanley's name being mentioned in her initial statement to the Culligan Inquiry, as she had not recalled it then. She stated that there were a lot of things that she had since recalled. She also confirmed that in her second statement she did not refer to informing the gardaí about Dr. Shanley. She accepted that she did not believe she was asked by either of the gardaí the name of the person under whose care John Carthy had been treated. She observed that her evidence in this regard "*may be a bit vague of when it was said but I definitely know that the psychiatrist, Dr. Shanley, and his medication were told to the gardaí*". She confirmed that it was not she who mentioned Dr. Shanley's name but that it was either Mrs. Carthy or Alice Farrell who did. The name of the garda to whom this information may have been given remains unclear. It was suggested to her that it was not until 7:00 a.m. on the following morning that Dr. Shanley's name was mentioned, when reference was made to an appointment that day. However, she believed it was also referred to in her mother's house on the previous evening. Garda White and Garda Gibbons stated that Dr. Shanley's name was not mentioned to them.

Mrs. Mahon stated she was not quite sure whether it was on the first or second visit by the gardaí that they were told about medication; about the subject having attended St. Loman's; and that he was attending a psychiatrist in St. Patrick's hospital in Dublin. She could not be definite whether Dr. Shanley's name was actually mentioned. She stated in evidence that she was not one of the people who inquired why he had been given his gun back and she thought it was Alice Farrell who said that. She knew his gun had been taken. She did not know the reason why and she was unaware it had been returned. She told the Tribunal she was subsequently informed by the gardaí that it was too dangerous for Dr. Cullen to speak to John Carthy. Mrs. Mahon stated that when the gardaí arrived they were given as much help as possible by the family.

The gardaí leave the Walsh house

Gardaí Gibbons and White decided to leave Walsh's and go down to see if they could talk to John Carthy, and "*hopefully get him to talk to the doctor*". Ms Walsh stated that after the gardaí left the house she became concerned about the safety of others in the house, particularly Mrs. Carthy. She did not know what her cousin's state of mind was at that time. Knowing his feelings about the gardaí, she was afraid he would have known that his mother must have called the guards from Walsh's house and that he would have been angry with her. She was concerned that there were only two guards there. She stated that Mrs. Carthy was anxious that the detective who arrived may have been the officer involved on the night her son was taken in for questioning in relation to the mascot. She was afraid if it were he, that John Carthy would shoot at him. However, it is to be noted that Ms Alice Farrell assured Mrs. Carthy it was not the same detective.

First approach by gardaí to the Carthy dwelling

The two gardaí proceeded down to Carthy's. Garda White drove the car up the driveway of the Carthy house. Before driving into the driveway of the house, the gardaí stated they had not considered or attempted to make contact with John Carthy on his mobile phone. Garda Gibbons confirmed that he had not, at that time, formed any opinion as to whether they were dealing with either an aggressive or non-aggressive individual. He had known that John Carthy was depressed, but this fact on its own would not necessarily mean that he would be aggressive, he said. At that time, he (the witness) had no reason to believe that the subject might be aggressive towards any particular individual or member of the Garda. As the patrol car was being driven up the driveway, and at a point approximately halfway between the gate and the old house, two shots were heard coming from the old house in what was described as quick succession. On hearing the shots, he reversed out of the driveway and drove down past Carthy's. As they approached Farrell's house they saw Dr. Cullen.

The meeting with Dr. Cullen

Meeting Dr. Cullen – Garda Gibbons's evidence

Garda Gibbons stated that they met Dr. Cullen outside Farrell's. He sat into the back of the patrol car and informed them that his patient was suffering from depression and, according to Garda Gibbons:

“he also told me that he mightn't be too happy to see the gardaí because of an incident that happened at the time he was arrested in Granard relating to the mascot”.

Garda Gibbons stated that he had no further discussion with Dr. Cullen as to why John Carthy might not be happy to see the gardaí, nor did he speak to Dr. Cullen about any animosity that he may have had towards the gardaí. When it was put to him that Dr. Cullen had stated in evidence that he probably *“put it more strongly”* than John Carthy not being too pleased to see the gardaí, Garda Gibbons stated that the foregoing was all he could recall. He did not inquire from Dr. Cullen as to why there might be animosity because, he said, at that point in time, Garda Campbell arrived on the scene. He thought that it was *“possibly”* the arrival of Garda Campbell that led to the termination of his discussion with Dr. Cullen. Garda Gibbons did not inquire whether John Carthy was having specialist treatment, and did not find out any more information about his illness, nor did he inquire of Dr. Cullen as to how he thought it would be best to deal with John Carthy. He did not ask him for advice, nor did his colleagues ask for such help. Garda Campbell did not speak with Dr. Cullen.

Meeting Dr. Cullen – Garda White's evidence

Garda White stated that Dr. Cullen got into the patrol car and a conversation ensued about the subject. The doctor told them that John Carthy was suffering from depression. Garda White was unable to recall whether Dr. Cullen had spoken of treatment or medication. He was not able to recall any discussion about the subject's

attitude towards the police. He accepted that such conversation may have taken place but this was his first time to deal with a firearms situation and that he felt that his sole responsibility was to protect life and property. He told the Tribunal that he *“would not have stood idly by and watched from a distance on the basis that John had a grievance against members of An Garda Síochána”*. Either he or Garda Gibbons gave John Carthy’s mobile phone number to the doctor and asked him to phone his patient. This Dr. Cullen did, but he reached the answering machine. He did not think that the doctor had left a message and, he stated, the caller did not try the number again. When he had finished attempting to contact John Carthy, Garda Campbell arrived. Garda White stayed with Dr. Cullen while Garda Gibbons and Garda Campbell approached the Carthy house for the second time. Garda White stated that he was in and out of the car while Dr. Cullen remained in it during this period. Garda White also confirmed that the car was out of the line of vision of the house *“unless John Carthy stuck his head out the window”*.

The meeting with Dr. Cullen – Dr. Cullen’s evidence

In evidence Dr. Cullen stated that he met the two gardaí on the roadway outside Farrell’s house and introduced himself. He then got into the back of the patrol car and had a conversation with them. He stated:

“My recollection is that I told them that John might be high in terms of his illness”.

He was not entirely sure of whether he informed the gardaí about the illness, but he stated that he believed he had referred to the illness as *“depression”* rather than *“manic depression”*. He confirmed that the discussion with the gardaí took the form of questions and answers. He told the Tribunal that he informed them that:

“John might be aggressive towards them in view of the incident with the mascot and his detention in the station in Granard”.

He was questioned on whether he told the gardaí about the allegations that John Carthy had made, namely, that he had been wrongly accused and that he had alleged that he was assaulted. He stated he was *“not one hundred per cent sure on that”*. He did not recollect receiving any reaction from the gardaí on this. He was questioned as follows:

“Q. Did you tell them about how you thought that the animosity, so to speak, might manifest itself?”

A. Yes, I said that John might not be pleased to see them.

Q. Did you put it any more strongly than that?”

A. Probably”.

When questioned whether he was sure that he had gone into that level of detail on this issue regarding *“being accused in the wrong”*, and of the allegation of assault, he stated he could not be *“sure”* but, that to the best of his recollection, he gave the gardaí *“an outline of what had happened”* and that he *“would have assumed that [he] would have told the gardaí that”*. He believed he answered whatever he was

asked, though he could not specifically recall the nature of the questions asked. He also accepted that the gardaí who arrived on the scene “*tried and did their best to involve*” him to assist in their dealings with his patient. Dr. Cullen also stated that he informed them that John Carthy might have consumed alcohol because the only other time that he had seen him so upset, from a medical perspective, was when he had alcohol taken; that was in August, 1998.

While at the scene he spoke to these two gardaí only. The conversation lasted for “*minutes*”. He did not recall them seeking advice from him but he stated that he gave them the history “*as best I could, which I thought might be of help to them*”, and that from his “*professional judgment and clinical knowledge of the man*” he “*shared with them*” what he knew, to the fullest extent he could. Dr. Cullen confirmed, in response to counsel for the Commissioner, that he told the two gardaí “*the salient facts in relation to John Carthy, his condition, his possible feelings of aggression and the fact that he was firing out of the house*”. Dr. Cullen stated that while they were in the car, Garda Campbell arrived from the Abbeylara direction in an unmarked garda car. His name was unknown to Dr. Cullen at that time. Dr. Cullen was unsure whether he spoke to Garda Campbell at that time, but believed that he did not.

Dr. Cullen’s attempt at mobile phone contact

Dr. Cullen also confirmed that Garda White had obtained John Carthy’s mobile phone number and that he, the witness, attempted to telephone him but without success. He believed it was after he had attempted to contact his patient on the mobile phone that he informed the gardaí that he might not be pleased to see them. Dr. Cullen had never been involved in an incident similar to this which involved negotiating skills. During the course of his evidence to the Tribunal, Dr. Cullen stated, that he did not believe that he would be in a position to talk to John Carthy while he was in possession of the gun, but was hopeful that once the gun had been taken out of the situation he would be able to communicate with him. He thought that the subject might be more amenable to listening to him, rather than to a stranger.

Detective Garda Campbell’s call to the scene

Garda Gorman received a phone call from Garda White shortly after he and Garda Gibbons arrived at the scene to say that more shots had been fired since their arrival. She therefore contacted Garda Campbell at about 5:30 p.m. She informed him shots had been fired by John Carthy at his home and she required him to go there as quickly as possible. He drove to Granard garda station where he was informed by Garda Gorman that Garda Gibbons and Garda White had already gone to the scene and that Garda Gibbons was carrying a firearm. He got his gun from his locker, put on a flak jacket under his civilian jacket, and drove to Abbeylara.

Detective Garda Campbell’s prior knowledge of John Carthy

Prior to the events of April, 2000, Garda Campbell stated that he did not particularly know John Carthy. He was unaware of his mental health difficulties, but was aware,

from records in the station, that he had been arrested in connection with the burning of the goat mascot. He said that he remembered looking at the custody record and knew that Garda McHugh and Garda Bruen had been dealing with it, but was not involved in inquiries at that time. He stated that he knew nothing of the fact that John Carthy had been wrongly accused and he did not raise this topic with anyone either when he was called to the incident, or subsequently in the course of the siege.

Detective Garda Campbell's arrival at the scene

When Garda Campbell got to Walsh's house he saw the marked garda patrol car parked facing towards him – he parked just in front of it. His colleagues got out and told him that Dr. Cullen was in the car. He knew Dr. Cullen by name, although he did not know him to see. Garda Gibbons and Garda White informed him that Dr. Cullen was John Carthy's general practitioner. They informed him that the subject was suffering from depression and that, as a consequence of his arrest, "*that he mightn't be too happy to see us*". Garda Campbell however, did not speak to Dr. Cullen or pursue this issue with him. Gardaí Gibbons and White then told him that they had spoken to some of the Carthy family members, and had been informed that Mrs. Carthy was in Walsh's and had been put out of her house. Garda Campbell was not aware of the relationship between the Walshs and the Carthys at that stage. He stated that he was told by the two gardaí that the people in the house "*were in pure panic*" and, "*they were afraid*". They then had a discussion about the background information that had been received from Dr. Cullen and from the people in Walsh's. They were aware that John Carthy had depression, that he was on medication for it, and that he would not be pleased to see the gardaí because of the mascot incident. He also learned that Gardaí Gibbons and White had attempted to drive into the Carthy house and that they had heard a couple of shots. He thought that Garda Gibbons might have mentioned that John Carthy's gun had been taken from him previously and that it was given back to him. He believed that he asked why the gun was taken and was almost sure that Garda Gibbons informed him that it was as a result of reports of the threats made by John Carthy. He believed that the panic and fear among the people in Walsh's house arose from the fact that they were afraid that the subject might come up with the shotgun. Garda Gibbons expressed concern that John Carthy might leave the house and go to Walsh's. Garda Campbell stated that he was concerned that the subject might have injured himself.

The second approach to the house

Garda Gibbons got into Garda Campbell's car and they drove to the boundary between Carthy's and Burke's where they stopped behind the hedge. Garda Campbell believed that walking to the house would be too dangerous. Therefore, he decided to park outside the extension of the old house where there was no window. This would give them time to get out of the car and take cover around the side of the house. He did not, however, know the layout of the house. The car was parked in what Garda Gibbons described as "*a safe position*". They both got out of the vehicle, went around the gable of the house and proceeded towards the front door. Garda Campbell was in front. The latter left the keys of the car in the ignition. Both

had their guns drawn. It was their intention, to *“get up close and talk to John and get him to talk to his doctor”*. Garda Gibbons did not agree with the suggestion that it was unlikely that John Carthy would discuss matters if he saw the drawn weapons. He believed that John Carthy could not have seen whether they had weapons. They proceeded to the porch of the house. Garda Campbell stated that he intended to speak to John Carthy to find out what his problem was. As he passed by the gable window he was in a crouched position. He was not previously aware that there were windows on the porch side of the house.

Garda Campbell recounted that he stopped just short of the porch, reached around with his left hand and knocked on the door. He told John Carthy that he was Jim Campbell from Granard garda station and asked him *“are you ok?”* In response he heard glass breaking behind him and then a loud shot from a shotgun. He described how, at this stage, he feared that he was going to be shot. Garda Gibbons could not say from where the shot came, but it was *“right at my left ear”*. It did not come through glass, he thought. Garda Gibbons had heard glass breaking behind him. He was unsure which window was broken. He then heard what he thought was furniture being moved about inside. They then decided to move to the gable furthest from the road. Garda Campbell covered Garda Gibbons as he made his way and then followed him to that gable. He heard what he thought was a further shot coming from the gable facing the roadway. From this new location Garda Campbell told John Carthy that they were gardaí and they wanted him to throw out the shotgun. He told him that there was no harm done and that there was nobody injured. According to Garda Campbell, John Carthy’s response was *“fuck off”*. He stated that he then told the subject that Dr. Cullen was in the car, and that if he threw out the shotgun he could speak to Dr. Cullen and everything would be okay. Garda Campbell stated that immediately after Dr. Cullen’s name was mentioned another shot was fired from the back of the house. This one struck the left front wing of the unmarked garda car in the driveway. Garda Campbell once again spoke to John Carthy. He stated that he tried to assure him that he would be treated well if he came out, and again asked him to throw out the shotgun. The response to this, he said, was *“come in here you fucker, I’m not going out”*. Garda Campbell then thought he heard more shots from inside the house, discharged in quick succession. He heard another shot coming close to where he was positioned and he saw dust or gravel going up in the air. He attempted once more, he stated, to reassure John Carthy that there was no harm done and that all would be alright if he threw out the shotgun. On each of these occasions the reply he received was *“I’m not coming out of here”* and *“you can come in here you fucker, I’m not going out”*. Garda Campbell thought John Carthy was not acting rationally at this stage. He felt that he was aggressive and believed that he got nowhere in dealing with him.

Garda Gibbons stated that he gave consideration to withdrawing from the house, but as he could not go back the way he came, he felt trapped. Although he could not hear a voice, he heard furniture being knocked around inside the house. He described feeling that his life was in danger. However, he said, they still wanted to try to talk to the subject and that even after the shot was fired Garda Campbell asked whether John Carthy was *“okay”*. When questioned on whether Garda Campbell

made reference to the shotgun, he said that *“he could have told him to throw out the shotgun at that stage”*. Garda Gibbons then took cover. Garda Campbell, he said, continued to try to talk to the subject from a position of cover. Two more shots were discharged. Garda Gibbons could hear him *“mumbling”* inside the house, but could not hear what was being said. He heard Garda Campbell saying that they were there to help and to throw out the gun. He also heard Garda Campbell mention Dr. Cullen’s name, and that he was there to assist, and to come out and talk to him, *“or words to that effect”*. He observed that *“when Dr. Cullen’s name was mentioned, the shot was fired at the patrol car”*. Garda Gibbons who, at that stage, was crouched down behind a mound of earth to the rear of the house saw the car being struck. He did not have a radio with him; neither did Garda Campbell. However, Garda Campbell did have a mobile phone.

Garda Gibbons confirmed in evidence that Garda Campbell had requested that John Carthy would first have to throw the gun out before matters could progress.

Request for back-up

At approximately 6:15 p.m., Garda Campbell telephoned Garda Gorman to inform her of what was occurring at the scene; to request that the district officer, Superintendent Michael Byrne, be informed; and, that assistance be sent.

Garda White’s observations

Garda White remained near the patrol car, which was parked somewhere between the entrances to the Burke and Carthy houses, and observed Garda Campbell driving up the driveway. The two gardaí drew their firearms and moved in a *“hunkered”* position under the gable window of the cottage, around to the front of the house. He heard the sound of breaking glass and then observed a side-by-side shotgun protruding through the gable window. He then heard either one or two shots being fired in quick succession and he sought further assistance from Granard station.

Garda White considered his location to be unsafe and he reversed the patrol car back towards Abbeylara. He went as far as Walsh’s with a view to evacuating the house. Garda Brendan McGuinness and Garda Edward Martin had arrived at this stage. Garda White stated that a number of sergeants then arrived and Superintendent Shelly followed at a later stage. Garda White remained at the scene and assisted in check-point duty.

Dr. Cullen’s observations

During this time, Dr. Cullen was sitting in the back of Garda White’s patrol car which was parked in the vicinity of the corner of the boundary ditch between Carthy’s and Burke’s. The vehicle was facing down the road, from which point Dr. Cullen could see the unmarked car in the driveway. He saw the two gardaí get out and approach the house in different ways, one from the left of the car, towards its gable end; the other from the right, towards the rear of the house. Both gardaí stated that they

approached by the same route. Dr. Cullen could not clearly hear the conversation between the gardaí and John Carthy. He heard what he described as mumbled sounds. He confirmed that his patient did make a verbal response to the garda but he could not make out what was being said. He heard his own name being mentioned. He heard shots from the back of the house, which damaged the unmarked car, and the noise of the impact with it. He stated that Garda White then reversed the car to Burke's entrance. Dr. Cullen did not really know what happened after that. He did not again see or speak to either Garda Gibbons or Garda Campbell on that evening. He got out of the car and waited near it with Mr. Michael Burke. Some time later he asked "*some member of the Garda*" whether it was "*okay*" to leave the scene, as he had patients waiting in his surgery in Coole. He could not recollect which person he spoke to but he was told he could leave.

Dr. Cullen was questioned whether he might have been "*useful*" had he stayed at the scene. He thought that "*in the event that John was disarmed*" that "*hopefully I would be able to talk to him, to decide what we would be able to do from there for him*". He would not have been happy to approach his patient before he was disarmed. In answer to the Chairman, he stated that he would have been amenable to a situation of meeting John Carthy "*. . .at a halfway house. . .if he was persuaded to leave his gun in the house and come out to his porch or some distance beyond the porch . . .*" and have a conversation with him "*. . . if that would be possible*". However, he thought that such an approach would not have been possible after the shot was discharged at the car, because "*tensions had risen considerably as a result of that*". He could not say what John Carthy's feelings were, but from his perspective, when his name was mentioned, the subject's immediate reaction was to shoot at the unmarked car. He subsequently agreed, however, that from what he could hear, he did not know the context in which his name had been used. He believed that by the time that shot was discharged, any ability he may have had to interview John Carthy was gone, and his "*usefulness*" was spent. In a handwritten note made by Dr. Cullen shortly after the shooting, he recorded that "*mention of my name . . .worsened him*". Dr. Cullen felt that his patient was very distressed at that time. He thought that the firing of the shot when his name was mentioned was more a sign of his patient being unwell, rather than a sign of possible aggression towards him.

Dr. Cullen leaves the scene

In order to collect his car which was parked near Farrell's, Dr. Cullen stated that another garda brought him back into Abbeylara and around side roads to the Farrell side of the Carthy house. He returned to his surgery and arrived there sometime between 7:20 p.m. and 7:30 p.m. The evidence indicates that he left the scene before Superintendent Shelly arrived. It also emerges from statements and discovered documentation that on his return to Coole, someone in his practice made preliminary arrangements by telephone for John Carthy's admission to St. Loman's. In answer to counsel for the Carthy family, he agreed that if the incident had not ended tragically, he would have considered, in conjunction with the family, committing the subject to hospital "*voluntarily or otherwise*", as he was a possible source of danger to himself

or to others and was not very rational at that stage. John Carthy, he said, *“could not be treated as a rational person”*.

Garda White returns to Walsh’s

Ms Walsh stated in evidence that Garda White subsequently came back to the house. He told them that her cousin was still shooting. She said that he inquired again about the subject’s medication and she said that Garda White was told *“again”* that he was taking lithium and an antidepressant and *“at that stage Aunt Rosie was able to tell him what antidepressant he was on”*.

Garda White however told the Tribunal that the purpose of this visit to Walsh’s house was solely to ask the occupants to leave the house for safety reasons. He stated that he did not go into the house and only spoke to the person who answered the door; he was not sure who this was.

Walsh’s house is evacuated

Around 7:00 p.m., having been informed by Garda White that they should leave, the occupants of Walsh’s house went up to Ms Walsh’s sister, Mrs. Patricia Mahon’s house located on the Coole road, approximately one mile away. Mrs. Mahon recounted how she met her sister, Ms Walsh, Alice Farrell, Mrs. Carthy and her mother at the crossroads in the village and they proceeded to her house. According to Mrs. Mahon, Mrs. Carthy was very upset and she was afraid that her son was going to do something to himself with the gun. When she asked Mrs. Carthy what had happened and why had he become upset, she stated, that Mrs. Carthy just said that her son kept saying *“to go up to Nancy for an hour or two”*, and that Mrs. Carthy did not seem to know why he did this. It was completely out of character and *“we just seemed to be at a loss to know why, what happened”*. The witness said that nobody could find a reason for it.

Thomas Walsh is contacted

At approximately 5:45 p.m., Ms Ann Walsh telephoned her brother Thomas, who was in Cork, and left a message on his mobile telephone. The message was to the effect that she was in their mother’s house, that John Carthy was firing shots and the gardaí had been called. Mr. Thomas Walsh stated that he picked up this message at 6:20 p.m. and immediately returned the call. His sister informed him that Mrs. Carthy had come up to his mother’s house in a distressed state; that his cousin was firing shots and the gardaí had been called. She was upset and told him that she was worried that there might be a confrontation with the gardaí. Mr. Walsh reassured her that John Carthy would not hurt anyone and advised her and the others to leave the house. He told her that he would leave Cork for Abbeylara immediately. Mr. Walsh in evidence stated that his sister had expressed her concern for John Carthy and a potential conflict with the gardaí; and not for her own safety or the safety of the other members of her household. Shortly after leaving Cork he telephoned the garda station in Granard and spoke to Garda Gorman. She informed him that John Carthy

had fired at a garda squad car and that he was still in his house. Mr. Walsh was advised by her not to attempt to telephone the subject as the gardaí at the scene may be trying to attempt dialogue with him. Garda Gorman also stated in evidence that she told him that others had been inquiring about going down to talk to John Carthy, but that he informed her that it should be left until he got there because he was the best person to speak to his cousin. Thomas Walsh then telephoned a friend, Garda David Martin, who was based at Smear, Co. Longford, to see if he knew any more information about the situation. He also requested Garda Martin to arrange to have the family moved from Walsh's house as he felt that they sounded distressed. In addition, he was concerned about his mother, an elderly woman, who had a heart condition. Garda Martin stated in evidence that he telephoned Granard garda station and made inquiries. He telephoned Mr. Walsh back informing him that the houses had been evacuated and confirmed that the family was going to stay with Patricia Mahon. Garda Martin's evidence was to the effect that Mr. Walsh had informed him that *"John had gone berserk in the house"*.

Mr. Walsh also telephoned Mr. Bernard Reilly to ascertain if he had any further detail. Mr. Reilly did not know what could have caused John Carthy to act in this way, but he did refer to an incident in McCormack's public house in Abbeylara the previous weekend where the subject had a disagreement with another customer at the bar.

Thomas Walsh drove to Abbeylara and arrived there at approximately 9:00 p.m.

Sergeant Dooley and Sergeant Mangan are contacted

Sergeant Tom Dooley was stationed in Edgeworthstown, Co. Longford. At approximately 6:10 p.m. he received a call from Garda Gorman saying that she required a member of the Garda Síochána to go to the scene to divert traffic from the Ballywillin side. Garda Gorman informed him that there were no occupants in the house other than the person who had discharged the firearm and that he had put his mother out of the house. Sergeant Dooley detailed Garda McGuinness, also from Edgeworthstown, to go to the scene. Sergeant Dooley went to the garda station in Granard. When he arrived at the station he met Sergeant Mary Mangan. He learned from Garda Gorman that the man involved in the incident was John Carthy. He did not know the latter personally, and although he was aware of the goat incident, he was not aware of the subject's alleged connection with the burning of it.

He was also informed that Garda Gibbons, Garda Campbell and possibly Garda White and Garda Martin were at the scene. He learned from Garda Gorman that shots had been discharged and that one of these shots had struck the patrol car. He travelled to Abbeylara with Sergeant Mangan arriving at the scene at 6:40 p.m. Sergeant Dooley was the senior officer present at the incident prior to the arrival of Superintendent Shelly; as such he had overall command until Superintendent Shelly arrived. When he reached Abbeylara he spoke to Garda White who informed him that the occupants of the houses in the immediate vicinity, Farrell's, Burke's and Walsh's had been evacuated. He also told Sergeant Dooley that as far as he could establish the subject was in the front of the Carthy old house, and that Garda

Campbell and Garda Gibbons were “*pinned down at the back of the house*”. Sergeant Dooley was aware that Dr. Cullen was in the vicinity on the Ballywillin side of the Carthy house. His immediate concern, however, was his own welfare and the welfare of his colleagues as he felt that John Carthy could leave the house, and with only two armed members at the scene, he stated that he felt vulnerable. Sergeant Dooley was also made aware that John Carthy “*suffered from depression*”.

Sergeant Mary Mangan was stationed in Granard and had taken up duty at 6:30 p.m. She did not know John Carthy prior to this incident. When she came on duty she spoke to Garda Gorman who informed her about the events then taking place in Abbeylara. She recalled Garda Gorman telling her that the subject had put his mother out of the house. Shortly after being briefed she went to Abbeylara with Sergeant Dooley. They knew that Superintendent Shelly was on his way and that other assistance had been requested. Sergeant Mangan drove out to the scene in her own car. She parked it some distance back from Walsh’s house in the direction of Abbeylara. She and Sergeant Dooley walked down to the scene from the car. When they arrived, she stated that they met three uniformed gardaí, including Garda White and Garda Martin, at a location somewhere between Walsh’s and Burke’s house. She could also see Garda McGuinness at this point. Garda Martin and Garda White briefed the two sergeants in relation to what had transpired at the scene. In particular, they were told about the approach by Garda Campbell and Garda Gibbons to the house. As a result of this briefing, Sergeant Mangan believed Garda Campbell and Garda Gibbons to be at the rear of the Carthy house with a view of the front door. Garda White briefed both sergeants in relation to the interview that he and Garda Gibbons had with the extended Carthy family in Walsh’s house. Sergeant Mangan learned that the family were upset and anxious; that they were worried that he had the shotgun and were concerned for him. In evidence, she could not recall the specifics of the briefing, but felt that she hadn’t learned anything that she did not already know.

SECTION C – The Involvement of Senior Officers

First contact with senior officers

When Garda Gorman was informed by Detective Garda Campbell that shots had been fired and that a patrol car had been hit, he requested her to contact Superintendent Byrne, the district officer for Granard. She contacted the latter who informed her that he was at a meeting in Dublin at the time and would return to Granard as soon as possible. He asked her to contact Superintendent Joseph Shelly, the district officer at Mullingar and request him to take charge of the event in the meantime. Both districts are in the same division. Garda Gorman contacted Superintendent Shelly at approximately 6:25 p.m. and informed him of the incident. She stated she conveyed to him such information as she had at that point. On her own initiative she also made contact with other garda stations at Ballinalee and Edgeworthstown, to seek further assistance.

Superintendent Shelly

Superintendent Shelly was at his office in Mullingar when he received the call from Garda Gorman who informed him that a number of shots had been discharged at gardaí who attended the scene of the incident and that a patrol car had been hit. He was also informed that nobody had been injured. Because of what he described as the seriousness of the situation he felt it best to go to Granard garda station first, and then to the scene. He understood that his function was to take charge at the scene if the situation was ongoing on his arrival.

Chief Superintendent Tansey is informed

The offices of Superintendent Shelly and Chief Superintendent Patrick Tansey, the divisional officer, were in the same building in Mullingar. Superintendent Shelly conveyed such information as he had to Sergeant Feeney, the divisional clerk, for further transmission to Chief Superintendent Tansey. Superintendent Shelly informed Sergeant Feeney that there was an armed incident in progress. According to Superintendent Shelly, the reported incident was an important matter; it was an emergency and he wanted Chief Superintendent Tansey to be informed of where he was going. He understood that his chief superintendent would have a role to play because he was in charge of the division. It was his expectation that he would receive guidance or advice from him in relation to any matter that would require serious consideration. If Chief Superintendent Tansey had advice to give him, or to offer, he would "*gladly accept it*". He would also follow any orders received. The chief superintendent received a note from Sergeant Feeney which recorded a number of matters, including that at 5:30 p.m. one John Carthy of Toneymore, Abbeylara, who was 28 years old, a manic-depressive and on medication, had put his mother out of the house and started firing shots. It stated that he had fired approximately eight shots from a shotgun since the gardaí had arrived and that his doctor was at the scene. Sergeant Feeney also informed him that the patrol car had been damaged by gunfire and that Superintendent Shelly had gone to the scene. Sergeant Feeney also told Chief Superintendent Tansey that Garda White and Garda Gibbons, who was armed, were the first two gardaí to arrive and that they were joined shortly afterwards by Garda Campbell who was also armed. The chief superintendent was informed that the latter had endeavoured to speak to John Carthy, but had got no response and that some shots had been fired. Sergeant Feeney also informed Chief Superintendent Tansey that Mrs. Carthy was safe, and was in the home of her sister nearby. Sergeant Feeney was not in a position to inform the chief superintendent whether the gardaí had spoken to Dr. Cullen. He learned subsequently that it was the family who had called the doctor.

Superintendent Shelly seeks the assistance of further armed gardaí

Superintendent Shelly's assessment of the incident was that it required the attendance of further armed gardaí. He contacted Detective Garda Eugene Dunne and Garda Shane Nolan. Both were armed plain-clothes gardaí, one a detective and the other an "aid". Garda Nolan worked with the detective unit full time. They

accompanied Superintendent Shelly to Abbeylara. He also contacted Detective Sergeant Aidan Foley, Athlone garda station, and requested him to assemble armed gardaí and to go to the scene as soon as he could. While he stated that he had not given consideration to the number of armed gardaí that might be necessary to deal with the incident at that time, he anticipated a requirement of somewhere in the region of nine or ten armed officers. He was not aware of the number of gardaí that might be available until they arrived at the scene.

Superintendent Byrne contacts Superintendent Shelly. Further assistance is obtained

On his way to the scene, Superintendent Shelly was contacted on his mobile phone by Superintendent Byrne who informed him that he had been in touch with Inspector Martin Maguire who was stationed at that time in Longford. Superintendent Shelly requested Superintendent Byrne to arrange for armed gardaí from the Longford area to proceed to Granard. It was his understanding that approximately two or three gardaí at most, would be available from Longford. He anticipated getting three from each source.

Superintendent Shelly arrives in Granard

When Superintendent Shelly arrived at Granard garda station, Inspector Maguire was present, as were Detective Garda Jack Kilroy and Detective Garda Gerard Barrins from Longford. Garda Gorman informed him of what had happened at the scene. Superintendent Shelly did not previously know John Carthy. He was not given any information on whether he had a criminal record and he did not make inquiries at that time. He stated in evidence: *“to be honest, it was a question of getting as much information as we could in a very short space of time and to get down to the scene and to look after things out there”*.

He did not, at that time, make any inquiries as to any dealings that the gardaí may have had with John Carthy. He later became aware that the subject had a legally held shotgun. There is no garda station in Abbeylara and therefore people from Abbeylara attend Granard for renewal of firearm certificates. No information was brought to Superintendent Shelly’s attention in Granard garda station, nor was there any discussion of the fact that there had been an issue in 1998 regarding John Carthy’s firearm. There was no formal discussion as to what was going to be done. The main priority, he stated, was to get to the scene to assess what was happening and to put a strategy in place to deal with the event. Superintendent Shelly directed the officers there to go to the scene. He requested Garda Gorman to inform the gardaí from Athlone, who had not yet arrived, to follow them to the scene. He was, he said, concerned about the safety of his officers and was aware of the predicament in which they had found themselves. He *“remembered thinking that Detective Garda Campbell and Garda Gibbons, because of where they were, might be in some difficulty”*.

Chief Superintendent Tansey contacts Superintendent Shelly

Superintendent Shelly received a telephone call from Chief Superintendent Tansey at approximately 6:50 p.m. He informed the chief superintendent that he believed the situation to be very dangerous and that he had contacted a number of stations looking for armed back-up. He informed his superior that a number of shots had been fired and that the patrol car had been struck. He told him that when he got to the scene he would evaluate what was happening and would report back. There was no discussion regarding the potential involvement of the ERU at that time.

Superintendent Shelly arrives at the scene

The car Superintendent Shelly travelled in was parked outside Walsh's house. He was met by Sergeant Dooley and Sergeant Mangan, and both he and Inspector Maguire were informed that John Carthy was still in the house, and that he was alone. Superintendent Shelly stated that he was glad to hear this because he now knew that he was not dealing with a hostage situation. He was also informed of the locations of Garda Campbell and Garda Gibbons who were near the gable-end of the Carthy house. Superintendent Shelly was not aware of the precise number of gardaí who were present at the scene when he arrived. There were at least two sergeants, Garda Campbell, Garda Gibbons and his own men. However, there were other uniformed gardaí present as well. Adjacent houses had been evacuated by Garda White and two other uniformed gardaí. Check points were established. Garda White had been on his own in the early stages and had attempted to divert traffic away from the scene. Superintendent Shelly detailed Sergeant Mangan to make contact with Garda Campbell and Garda Gibbons, to direct them to come back from the point which they were at, if it was safe to do so. Both gardaí then withdrew. Superintendent Shelly proceeded to the area of the ESB pole at the boundary of the Carthy and Burke properties and saw the unmarked garda car in the Carthy driveway. Inspector Maguire stated that he learned from Sergeants Dooley and Mangan that Mrs. Carthy and the Walsh family had been interviewed and that Mrs. Carthy was afraid that her son might harm himself and that they were afraid for their own safety.

Garda press office notified

Chief Superintendent Tansey telephoned Sergeant Ronan Farrelly of the Garda press office at approximately 6:55 p.m. and informed him of the incident. He told the Tribunal that he was concerned to ensure that the press office heard of the incident from him rather than from a radio or television news broadcast. Sergeant Farrelly transmitted this information to his colleagues in the office and subsequently contacted the Garda Press Officer, Superintendent John Farrelly. Calls were received over the course of the evening to this office from members of the press inquiring into "*what was happening in County Longford*". Sergeant Farrelly also confirmed that it was possible that confirmation of the occurrence of the incident emanated from his office shortly before the matter was broadcast on TV3 at approximately 7:12 p.m. This is the first evidence of the matter being broadcast nationally. Sergeant Farrelly stated that the press office did not contact the media in an unsolicited way. Superintendent Farrelly confirmed to the Tribunal that the Garda Code requires that

divisional and district officers should promptly notify the Garda press office of incidents that are likely to attract national or international media attention.

Other senior officers are informed and the services of the ERU are requested

At approximately 7:00 p.m. Chief Superintendent Tansey contacted Assistant Commissioner Tony Hickey and discussed the matter with him. The latter raised the issue of calling in the ERU and referred to a previous incident, which occurred at Bawnboy, Co. Cavan. Chief Superintendent Tansey told the Tribunal that at that time he had no more detail of the Bawnboy incident than what he had read in the newspapers, but that Assistant Commissioner Hickey was familiar with it and he went through it in detail with him. At 7:10 p.m. Chief Superintendent Tansey telephoned Superintendent Shelly for an update on the situation. He then telephoned Detective Chief Superintendent Basil Walsh, who was the officer in charge of the Special Detective Unit in Dublin, whose responsibilities included overall command of the ERU, and informed him of the position. Chief Superintendent Walsh informed Chief Superintendent Tansey that he would have to assess the situation and would telephone him back.

Chief Superintendent Walsh subsequently telephoned Chief Superintendent Tansey and informed him that he was sending to the scene Detective Sergeant Michael Jackson, a member of the ERU, who was a trained negotiator. He had just returned from a negotiating course with the London Metropolitan Police which had taken place in March, 2000. He also informed Chief Superintendent Tansey that he was sending members of the ERU with Sergeant Jackson, but did not inform him of the number of members of the unit directed to attend. At approximately 8:00 p.m. Chief Superintendent Tansey phoned Superintendent Shelly to inform him that a request had been made that the ERU be deployed to the scene; which request had been granted, and that a unit was on its way together with a negotiator, Sergeant Jackson. Superintendent Shelly agreed that the first occasion upon which he became aware that the assistance of the ERU had been sought was after the decision had been made in this regard by Assistant Commissioner Hickey and Chief Superintendent Tansey. However, he stated that he had *“absolutely no difficulty”* with that and in fact *“I was glad to hear it”*. He agreed that he did not have any involvement in the request for their services. Superintendent Shelly was not at that stage given information as to what role the ERU would play at the scene. He confirmed that Chief Superintendent Tansey just told him that given the circumstances which had been outlined by him that the ERU *“were coming”*. The intent was, however, that because of his rank he would continue as scene commander. He did not agree that the decision to call in the ERU was one which was made *“without reference”* to him. He believed that the information which he had earlier conveyed to Chief Superintendent Tansey was information upon which that decision was based. He accepted that Chief Superintendent Tansey and Assistant Commissioner Hickey did not *“ring me up and say what do you think? They made it on the information – on the basis of the information I gave them and I was happy with that”*. If the situation had gone on much further, *“maybe I would have suggested it to either Chief*

Superintendent Tansey or Assistant Commissioner Hickey that consideration be given to it", he stated.

Assistant Commissioner Hickey described his operational role as involving the coordination of operations within his region. While he delegated tasks, he nevertheless retained responsibility for what happened in any operation or investigation. The factors that weighed in his mind when he made the decision to request the assistance of the ERU were that the unit had a trained negotiator; darkness was approaching, and the unit would have additional equipment that local officers would not have; the relative inexperience of the local officers; and the fact that the ERU would know each other, were used to working as a unit and a team, and had tactics for such situations based on training and experience.

Superintendent Shelly confirmed that he was in contact with Assistant Commissioner Hickey that evening. He informed him of the situation; that shots had been discharged, and that the situation was dangerous and volatile. He informed him that he had a plan of containment in place; that checkpoints had been established, and that they were going to commence negotiation. He did not receive any advice from Assistant Commissioner Hickey at that time and he felt that he was happy *"that I was in control and he was happy with the plan that I had in place and we worked on from there"*.

Superintendent Shelly is briefed by Garda Gibbons and Detective Garda Campbell

Between 7:00 p.m. and 7:15 p.m. after Garda Gibbons and Garda Campbell were withdrawn from the area near the house, Superintendent Shelly spoke to them. According to his evidence they went through the situation with him. Garda Gibbons informed him that they had spoken to Mrs. Carthy and that there were five women in the house when they first arrived. He was informed that Mrs. Carthy had told Garda Gibbons that her son had put her out of the house and that a number of shots had been discharged. Garda Gibbons also informed Superintendent Shelly that Mrs. Carthy and the other ladies were in fear of what might happen to them and that they were afraid that the subject might come back up the road and shoot them. Garda Gibbons stated that he told Superintendent Shelly that Mrs. Carthy was afraid to give him her son's mobile phone number because she was concerned that he might find out that she had given it to the gardaí. However, she did in fact give them the number. Superintendent Shelly was also informed that Mr. Walsh was John Carthy's best friend and his cousin, and that he would be a good person to talk to him. He also informed Superintendent Shelly that they had spoken to Dr. Cullen at the scene. Garda Gibbons's evidence was that when he spoke to Superintendent Shelly sometime after 7:00 p.m., he informed him that Dr Cullen had indicated to Garda Gibbons that the subject might bear some animosity or might not be pleased to see the gardaí. He stated, however, that he did not mention to Superintendent Shelly that there was a gun restoration file in Granard. Garda Gibbons also recounted in evidence that when he came from the Carthy house he met Superintendent Shelly at the back of Burke's house and told him *"all what had happened"*. He informed

the Superintendent of John Carthy's condition; that he had been a patient in hospital, and how he had discharged shots.

Superintendent Shelly stated in evidence that Dr. Cullen had departed before his arrival and therefore he did not have an opportunity to talk with him at that time. He was questioned on whether either Garda Gibbons or Garda Campbell had informed him that they had been told by Dr. Cullen that John Carthy might not be pleased to see the gardaí. He stated that there was no reference to that information at that stage and that he had no knowledge of this at that time. Later in the evening, he said, he became aware that there was a problem, that John Carthy *"might have a problem with some of the gardaí but I didn't know it the first time I spoke to them"*. Superintendent Shelly could not say for sure the time at which he became aware of John Carthy's antipathy towards the Garda Síochána. He stated that he became aware that there was some difficulty over him being arrested and blamed for the burning of a goat or a mascot. Although informed of this, he did not make any further inquiry about that incident. In evidence, he stated that he had arrived at the scene and *"you could appreciate I had a lot of things to put in place"*.

Garda Campbell stated that he recounted to Superintendent Shelly what had happened but said that he did not inform him of the information he had received from Garda Gibbons when he had arrived at the scene. He believed that he probably told Superintendent Shelly about the shot striking the car but was unsure whether he mentioned this in connection with the mention by him of Dr. Cullen's name to John Carthy.

Inspector Maguire meets Garda Gibbons and Detective Garda Campbell

Inspector Maguire met Garda Campbell and Garda Gibbons at the gable of Burke's house and he was briefed by them. They also informed him of their conversations with Dr. Cullen and outlined what Dr. Cullen had said. Inspector Maguire stated that he did not learn of John Carthy's antipathy towards the gardaí at that time. Garda Gibbons informed him of his visit to the Walsh household. He told Inspector Maguire that he had been informed by Mrs. Carthy that her son had put her out of the house and that she was in fear for her life. He stated that she told him also that he could be aggressive and that she had called the guards to calm him down. Inspector Maguire was also informed that he was a manic-depressive; that he was on medication and had been to St. Loman's but did not like it there. He was not aware that John Carthy had been a patient of Dr. Shanley nor was he aware, at that time, that his shotgun had been taken by the gardaí and subsequently returned to him.

At around 9:30 p.m., Inspector Maguire became aware, from conversation with local officers, that John Carthy's shotgun had been taken from him and subsequently returned to him some eighteen months previously. Inspector Maguire stated that he did not form any view or opinion of the subject's attitude towards the gardaí when he learned of the mascot incident and the confiscation of the shotgun.

Containment by local officers begins — cordons established

Following the withdrawal of Garda Campbell and Garda Gibbons, Superintendent Shelly deployed armed gardaí to various locations around the house. Garda Kilroy and Garda Barrins, from Longford, were directed to the gable at the back of the house. He requested Garda Dunne to proceed to a position at the hedge between Farrell's and Carthy's. At approximately 7:15 p.m., Detective Sergeant Aidan Foley and his fellow officers arrived from Athlone. Superintendent Shelly directed Garda Campbell, Garda Gibbons and Garda Nolan to take up a position at the end of Burke's house. Garda Gibbons believed that his function was to make sure that John Carthy did not come out and harm anyone. He was also told that no unauthorised people were to be allowed down the road, but his main function was to "keep an eye on the Carthy household". Superintendent Shelly instructed Garda Campbell to remain at Burke's gable. He directed Sergeant Foley and a number of his men to take up positions at the ESB pole between Burke's and Carthy's. He deployed gardaí to five locations. This was what he described as "the inner cordon of armed people. That was the first cordon that was put in and they were put in place there to contain the situation". Superintendent Shelly was aware of the type of firearms that each garda had. A number were in possession of Uzi sub-machine guns and others were in possession of their standard issue .38 revolvers. When deploying personnel and in positioning them around the house, he tried to distribute what he described as the heavier firearm, the Uzi, as evenly as possible at locations around the house. Apart from flak jackets, they had no other equipment. All of the personnel around the house were in plain clothes. Superintendent Shelly stated that he was unaware of whether they had radios with them. Some of the uniformed gardaí had radios, walkie-talkie radios, but "I don't think that they had [referring to local armed gardaí]". Superintendent Shelly also stated and confirmed that the manner in which orders or information might be communicated to the armed gardaí was by way of mobile phone, which he knew some of them had.

Instructions to local officers

Before deployment, Superintendent Shelly confirmed that he spoke to the gardaí as a group and instructed them as follows:

"I told them that I wanted to put in place, to achieve a cordon, an inner cordon of armed people, and I told them that my strategy was that I wanted to contain the situation, to contain John Carthy in the house. In so doing I believed that while he was contained in the house the likelihood of danger or risk to anybody present was minimised. Then I told them that it was my intention to start to commence negotiations. I was, as I have said already, satisfied that the houses were evacuated..."

Superintendent Shelly was also asked what instructions he gave to his men if it happened that John Carthy emerged from the house. He replied:

"I told them that two situations were likely. He could come out in what I called a controlled manner, and if he came out in a controlled manner, he would be unarmed. We would confront him, subject him to arrest and search in a safe

manner. The second scenario was if he came out of the house in an uncontrolled manner. In that situation, John Carthy would have possession of his firearm. Again, I told them that in dealing with the uncontrolled exit, we would confront him, disarm him if possible in safety and subject him to arrest and search''.

According to Superintendent Shelly the members who were present could not have been in any doubt as to the strategy to be employed at the scene.

Inspector Maguire was delegated by Superintendent Shelley to organise an outer cordon, consisting of checkpoints manned by uniformed gardaí. Garda McGuinness set up a checkpoint on the Ballywillin side approximately 200 yards from Farrell's house. Inspector Maguire later moved the checkpoint back about 600 or 700 yards and posted Garda Seamus Barrett to assist in manning the checkpoint. Garda Martin and Garda White had set up an initial checkpoint at the boundary between Burke's and Walsh's house and this checkpoint was moved back by Inspector Maguire approximately 150 to 170 yards towards Abbeylara. He then directed Garda Thomas Judge, who was in uniform and unarmed, to take up duty further out into the fields behind the Carthy house. At this initial stage, Inspector Maguire also directed Garda Charles Dunleavy to take up duty in the field at the back of Burke's house. The purpose of stationing unarmed gardaí in the fields behind the houses was to prevent any members of the public gaining access to the scene from that direction. Inspector Maguire gave instructions to the uniformed gardaí that they were to prevent any person coming into the area and in the event of any developments they were to seek cover immediately and not present themselves as targets. Inspector Maguire communicated to the uniformed members that the plain-clothes members would deal with John Carthy and that their function was to man checkpoints and to prevent people from accessing the scene. Inspector Maguire also placed another checkpoint in the vicinity of the church in order to prevent members of the media from encroaching on the scene. At the same time he informed the uniformed members, who were at the rear of the houses, to be on the alert for the media.

Inspector Maguire and Superintendent Shelly decided to maintain the presence of uniformed officers in the vicinity of Burke's and Walsh's houses, and on the roadway around the two houses. The rationale for so doing, it was stated, was that in the event of John Carthy's emergence he would be "reassured" by the presence of uniformed gardaí and would not be confronted solely by armed plain-clothes gardaí. Inspector Maguire was conscious that there was a risk in positioning these uniformed officers at that location. However, he did not consider it a major risk at that particular time and considered that there was a benefit to having uniformed gardaí present there.

Controlled and uncontrolled exit

Superintendent Shelly described a "controlled exit" as one where the subject came out of the house without his shotgun, or with his arms in the air, or in some manner by which he was indicating compliance with instructions. He described an

“uncontrolled exit” as the subject coming out of the house armed with his firearm. He stated that he had envisaged two scenarios. First, if his firearm was broken open John Carthy would be considered less of a threat than if the firearm was closed. He also confirmed that in his instructions to the gardaí at the scene he distinguished between a situation where John Carthy might come out of the house with the shotgun broken and a situation where he might emerge from the house with a shotgun in the ready position. In either event, with the shotgun broken or unbroken, it would be an uncontrolled exit. The strategy, he stated, was to confront John Carthy, attempt to disarm him in safety and subject him to arrest and search. It was an individual decision as to what action members might take, given the degree of danger they might have felt that they or others were in. Confronting the subject meant that the gardaí would identify themselves as armed gardaí, and call on him to submit to arrest and search and to ask him to drop his firearm. He did not specifically tell this to the members present because *“I knew that they would understand that. These are all people who are trained in firearms and that they would readily understand what was meant”*. He stated that each member had an understanding of what they were to do. Superintendent Shelly told the Tribunal that if John Carthy did not submit to arrest, that it was his understanding that the members would *“have to try”* to contain the situation, to stay with him, pleading with him and asking him at all times to do what they set out to do – to try to disarm him safely and in a peaceful manner. That, he said, would *“continue for as long as it would continue”*.

Superintendent Shelly was also questioned whether at that stage, 7:15 p.m. to 7:30 p.m., there was any discussion concerning keeping the area between the outer cordon and inner cordon free of any unarmed personnel. He said that there was not. However, he stated that anybody who was there had a function. He confirmed that he understood that it was important that no civilians could get through the checkpoints, apart from the people who were living there, but they would not get further than Walsh’s house. He did not consider it necessary to issue an instruction to keep unarmed gardaí out of the area between the inner and outer cordon.

Garda Campbell’s evidence in relation to the instruction he received individually from Superintendent Shelly was that when he was at the gable wall of Burke’s house he was told that John Carthy was to be contained within the house while attempts were made to negotiate with him. Containment was to be achieved by placing armed officers around the house. He was also told that if John Carthy came out on the side that he was on and gave himself up, he would have to go in and deal with the situation. He understood that if the subject came out in a *“controlled”* manner, that is to say without a gun, he was to be arrested and searched. If he came out in an *“uncontrolled”* manner, that is with the shotgun, his instruction from Superintendent Shelly was to confront him and take whatever measures were necessary to try and get the shotgun from him. His recollection was that Superintendent Shelly, in his instructions, did not make any distinction between the situation where the shotgun was a threat, or not a threat, but he understood that if he came out in an uncontrolled way, he was a threat. Whether there was an immediate threat or not would be for him, Garda Campbell, to decide in accordance with training and the regulations. He

did not receive any further instructions on this matter when Superintendent Byrne came on duty at midnight.

Sergeant Dooley and Sergeant Mangan seek further information from Mrs. Carthy

Following the withdrawal of Garda Gibbons and Garda Campbell, Superintendent Shelly requested Sergeant Dooley and Sergeant Mangan to go to the Mahon household to speak to the family and to Mrs. Carthy *“to find out for me as much information as they could about him and what generally had happened”* and to obtain any information which might assist in the resolution of the incident. They were also directed to ascertain the layout of the house and any information that might be available about his firearm and the amount of ammunition which he might have. Sergeant Mangan rang the Mahon household to alert the people there that they were on their way to see them.

When they arrived at Mahon’s house, Rose Carthy, Ann Walsh, Alice Farrell and Patricia Mahon were present. Although the two sergeants spoke to the people present as a group, most of the questions were addressed to Mrs. Carthy. The sergeants were there for approximately one hour. During this time Sergeant Mangan left on two occasions. According to Sergeant Dooley, Ms Alice Farrell in particular, and to a lesser extent, Ms Ann Walsh answered questions. Sergeant Dooley stated that he reassured Mrs. Carthy that no one had been hurt; that her son was uninjured; that the gardaí would continue to maintain that situation and do their best to get him out safe and well. Sergeant Dooley inquired as to what had caused him to behave in the manner that he had, but, he said, the family could not offer any reason for this behaviour. He was informed that John Carthy had been drinking and there was, he said, talk of the availability of alcohol in the house. The sergeants also inquired as to who was the best person who might be called on to intervene and to whom John Carthy might listen. Thomas Walsh was mentioned by the family and Sergeant Dooley stated that they were told that Mr. Walsh was working in Cork and that he was on his way to the scene. Sergeant Dooley also stated that they discussed John Carthy’s mental health with the family and they were informed that he had manic depression. They were told that he was on prescribed drugs and the drug lithium, he said, was mentioned. He further stated that he inquired as to whether John Carthy had been in a psychiatric hospital and was informed that he had been treated in St. Loman’s on more than one occasion. He was not told, however, the identity of the treating specialist. Sergeant Dooley could not recall whether there was a discussion concerning more recent treatment in St. Patrick’s hospital under Dr. Shanley. He stated in evidence that he suggested to the family that a possible motive for John Carthy’s actions was anxiety to avoid going back to St. Loman’s. The family agreed that it was a possible reason why he was behaving as he was. It was indicated to him that he did not like St. Loman’s. Sergeant Dooley did not take notes of this interview.

Sergeant Dooley also made inquiries of the family as to the number of firearms and ammunition in the house. He was informed that the subject had one weapon, a double-barrelled shotgun, but those present were unable to be specific about the

amount of ammunition. Also he made inquiries as to where he purchased his ammunition and he was informed that it was most likely purchased in Longford. He also learned that there were a number of local firearm dealers, Jerome Reynolds in Ballinalee and Deniston's in Longford. From his inquiries, he stated that he had formed the view that John Carthy probably had about one box of ammunition. Sergeant Dooley inquired whether the subject could do harm to himself or others. They were unable to give him assurance one way or the other, he stated. He noted the concerns of the family over media coverage, occurring as it did within two hours of the event, which they felt would be very upsetting for Mrs. Carthy.

Sergeant Dooley also asked if they could draw a rough sketch of the house including a layout of the rooms within. However, he felt that the map drawn was inadequate and confusing and he did not show it to Superintendent Shelly. He ascertained that there was only one external door to the house and informed Superintendent Shelly of its location. Sergeant Dooley informed the Carthy family that the gardaí had professional negotiators available to assist. When he returned to the scene, he stated that he relayed all of the information received to Superintendent Shelly.

Sergeant Mangan recounted that Mrs. Carthy could not give any explanation for her son's behaviour. She got the impression from Mrs. Carthy that it was not unusual for him to fire shots out the back of the house but that her concern had arisen when he asked her to leave the house and to go to Nancy Walsh's. Sergeant Mangan learned that Mrs. Carthy was satisfied that her son was taking his medication as prescribed. Sergeant Mangan was also told about his sister, Marie, who worked in Galway. The family were anxious that she should be present. Sergeant Mangan left the house for approximately fifteen to twenty minutes to make arrangements for the transportation of Marie Carthy to the scene.

Sergeant Mangan said that there was no reference to Dr. Shanley during her conversations with members of the family or to the fact that John Carthy had a psychiatric appointment in Dublin the following day. She left the house at approximately 7:40 p.m.

Ms Ann Walsh's recollection of events was that a female garda arrived at the Mahon house at approximately 7:30 p.m. She stated that there was a conversation concerning the incident having been reported in the media and, while she had not heard the news herself, that this was going to be "*absolutely detrimental*" to her cousin, "*hearing that on the news*". She inquired of the garda as to who had called the media and it was confirmed to her that it was not the gardaí. She stated that later she informed the garda that the landline had been disconnected and asked "*could they have it reconnected because Aunt Rosie kept saying that John's battery would go flat on the mobile*". She stated that she also informed the garda that her brother, Thomas, was on his way from Cork to talk to the subject and that he was the closest person to him. Earlier, at approximately 6:30 p.m., her brother had contacted her by telephone and informed her that he was making arrangements to drive to the scene from Cork. She stated that she conveyed information regarding his dislike for the gardaí to two "*banghardaí*". Ms Walsh confirmed that the garda was in Mahon's for

“possibly an hour, maybe longer”. Ms Walsh also stated in evidence, that at some unspecified time early in the evening, a male garda told her that the professionals were on their way down. She stated that she thought that this was a reference to psychiatrists and psychologists. Mrs. Carthy gave evidence of speaking to a female garda (apparently this was Sergeant Mangan) and Sergeant Dooley, but could not remember the content of the conversations. Mrs. Carthy confirmed that she was concerned for everybody’s safety. Ms Ann Walsh stated also that she told Sergeant Mangan that her cousin would be conscious of the gardaí using a loudhailer to communicate with him. Sergeant Mangan did not recall these concerns being raised.

Information from Sergeants Dooley and Mangan transmitted to Superintendent Shelly

The information which had been obtained by Sergeant Dooley and Sergeant Mangan from Mrs. Carthy was relayed to Superintendent Shelly. He was told that the subject was a manic-depressive and that he was on lithium. He was also informed that Mrs. Carthy had said that she could not give any guarantee that he would not hurt himself, or anybody else. She informed them that he had been drinking and that he did not like St. Loman’s hospital, Mullingar. Inspector Maguire was present when Sergeant Dooley and Sergeant Mangan returned from interviewing Mrs. Carthy and the rest of the family. His impression was that they found the family to be *“vague”*.

Superintendent Farrelly and Superintendent Byrne are contacted

Some time after 8:00 p.m., Chief Superintendent Tansey received a call from Superintendent Farrelly, the Garda Press Officer. Chief Superintendent Tansey invited him to come to Abbeylara to take charge of dealing with the media. Additionally, at about that time, Chief Superintendent Tansey spoke to Superintendent Byrne to see if he, Superintendent Byrne, could come to the scene.

Marie Carthy is contacted

Ms Walsh stated in evidence that she spoke to Sergeant Mangan about letting the subject’s sister know about the incident. It appears that no one had contacted her before this. She was working in Galway at the time. Ms Walsh did not want to call her until transport had been arranged, as she did not want to have her upset in Galway, with no transport available. Sergeant Mangan left the Mahon house to speak to Superintendent Shelly about transport. He directed her to contact the Garda in Galway to arrange transport; which she did. She then returned to the Mahon household. Ms Walsh confirmed that Sergeant Mangan informed her that transport arrangements had been made and that she could now call Marie Carthy to inform her of what was happening. It should be noted that at this stage Sergeant Mangan did not consider herself to have been an appointed family liaison officer, although she accepted that this situation had developed.

Martin Shelly (“Pepper”) is contacted

Mr. Martin Shelly received a telephone call from Ms Walsh at approximately 8:00 p.m. He stated that Ms Walsh was attempting to make contact with Marie Carthy and was having difficulty getting through to her on her mobile telephone. Mr. Shelly also spoke with Mrs. Rose Carthy at that time who he thought seemed anxious to get in touch with her daughter. Marie Carthy then received a telephone call from Ms Walsh who informed her of the events in Abbeylara. She telephoned Mr. Shelly who immediately went to her house. Ms Walsh described Marie Carthy as being very upset. The latter, she said, wished to come to Abbeylara straight away. Sergeant Mangan agreed to a request from Marie Carthy that Mr. Shelly be permitted to accompany her to the scene.

Marie Carthy and Martin Shelly are transported to the scene

At approximately 9:00 p.m., two members of the Garda Síochána stationed in Salthill collected Marie Carthy and Martin Shelly from her home in Galway and drove them to Abbeylara. En route to Abbeylara, she attempted to telephone her brother on his mobile phone, but was unable to make contact as the telephone was not answered.

Shots from the house during this period

Approximately seven shots were discharged by John Carthy after the arrival of Superintendent Shelly and before the arrival of the ERU (14 shots had been discharged by him before Superintendent Shelly arrived; four of these having been discharged before the arrival of the first responders). On at least one occasion Superintendent Shelly noticed dust rising from the wall in front of the Carthy house, close to where a number of his men were located and that gave rise to concern. He was asked what action did he take and he stated that the people were instructed to be careful, and

“they remained in position. . . obviously the degree of fear that was there would have been heightened. One shot would have been bad enough but to have that many shots discharged in that manner in a relatively short period of time would have been cause for concern, but I was quite satisfied that the gardaí on duty, the armed gardaí, would be able to contain the situation”.

Telephone landline is reconnected

Superintendent Shelly had been made aware that the house telephone landline had been disconnected. He made arrangements to have the line reconnected. The reconnection of the telephone line did not entail any physical intervention at the scene, but was arranged at the telephone exchange.

Attempted negotiations by Superintendent Shelly and Sergeant Dooley

Sergeant Mangan received a call on her mobile phone from Sergeant Jackson who was travelling to Abbeylara from Dublin and who told her that he was trying to contact Superintendent Shelly at the scene, but was unable to do so. Sergeant

Jackson, she said, was anxious to give Superintendent Shelly some advice on negotiation and how to get that underway. She stated that he was anxious that she would contact Superintendent Shelly with a view to him moving to a different location where the reception would be better. She drove to the scene and spoke to Superintendent Shelly. Sergeant Jackson then made telephone contact with the superintendent, who gave him background information and details of the incident. He informed him that John Carthy was a 27 year old single man who was living with his mother. He was a manic-depressive, and was taking the lithium which had been prescribed for him. Sergeant Jackson was also informed that he had fired shots, including one at a garda patrol car, and that there were no hostages. He was told that his mother had been *“put out of the house after some argument”*, with the subject. Sergeant Jackson further stated that he was informed that Mrs. Carthy feared for her own safety, and for the safety of others, and that she was not sure what her son might do. He said that he had been told about Dr. Cullen’s presence at the scene, *“but nothing more than that”*. He was informed by Superintendent Shelly that negotiations had been attempted but to no avail. He advised Superintendent Shelly that he should delegate somebody to speak to John Carthy and he was informed that Sergeant Dooley had undertaken this task. Sergeant Jackson then spoke to Sergeant Dooley and gave him advice as to how to initiate and carry on negotiations.

Superintendent Shelly informed Sergeant Jackson that he was going to talk to John Carthy through the megaphone. Although the superintendent was aware that the subject had a mobile phone, he did not attempt to contact him via the phone. He asked Sergeant Jackson how he should conduct those negotiations. Sergeant Jackson advised him to address John Carthy on first name terms, to introduce himself to John Carthy:

“he told me to call him by his first name and to tell him who we were and what we wanted to achieve. Generally to try to convey to him that no matter what had happened, we could talk about it and we could sort something out”.

Superintendent Shelly agreed that he did not discuss the use of the mobile phone or landline with Sergeant Jackson. As far as he could recall, he thought that he had spoken to Sergeant Jackson first, before commencing negotiations. He was not sure of this and agreed that negotiations may have commenced before he spoke to Sergeant Jackson. He stated that if he did speak to the subject before the contact from the negotiator, it was very brief. He confirmed, however, that he knew *“generally”* how to talk to people in such a situation:

“what he told me wasn’t a whole lot different from what I knew already, but I suppose when he talked about issues like personalising the thing. . .and you call yourself Joe and refer to him as John rather than use garda speak”.

These initial attempts at negotiation were conducted from the ESB pole between the Burke and Carthy houses, because:

“while I wanted to talk to him and I felt it was important that I talk to him and open negotiations with him, nevertheless, I didn’t and I couldn’t put myself in danger, so I felt that I was safe there in that area”.

While Sergeant Jackson was “. . . far more experienced and better at it than I would be”, Superintendent Shelly’s initial communication with John Carthy was along the same lines as that advised by Sergeant Jackson. He introduced himself and informed him of his identity. He continued:

“I asked him to throw the gun out the window on a number of occasions. I tried to explain to him that basically no matter what had happened, it wasn’t the end of the world and we could sort something out. At all times I conveyed to him that it was our wish to bring the matter to a peaceful resolution and I was hoping that that would be a quick resolution as well”.

He confirmed that he asked John Carthy to throw out the gun “almost immediately” after introducing himself. Superintendent Shelly stated in evidence that the gun would have to be thrown out, “yes the gun was a problem, and there was no point saying otherwise, I wanted him to throw that gun out the window”. He did not agree, however, that the impression was conveyed to the subject that the gun would have to be thrown out before further discussions could take place. The gun, he stated, was “part of it” but he stated that he was going to “talk to him anyway”. He stated in evidence that if the gun was thrown out they would be “a long way” towards resolution of the situation. Superintendent Shelly confirmed that he wanted to try to get through to John Carthy, to connect with him and to open some dialogue with him. He stated that the subject responded by firing two shots out of the window. Superintendent Shelly told the Tribunal that he ceased attempting to negotiate sometime after 9:00 p.m.

Sergeant Dooley spoke to Sergeant Jackson shortly after he had returned from the Mahon house and the latter told him how best to make use of the megaphone. He stated that he was informed that it was important to commence dialogue as soon as possible and that he was told to “call himself Tom” during attempted negotiations. Sergeant Dooley stated that Sergeant Jackson emphasised to him the importance of assuring John Carthy that no harm had been done; that nobody was injured; telling him that the gardaí were there to help him, and asking him in what way they could assist him. Sergeant Dooley had no prior negotiation experience. He proceeded to the ESB pole and commenced attempting to make contact. Sergeant Dooley told John Carthy who he was. He emphasised, he stated, that no one had been hurt, that they were there to help him and to listen to what he had to say. Sergeant Dooley heard two shots being fired in response. He again attempted to make contact but got no response. He was at the ESB pole for approximately three periods of ten minutes. He stated that Superintendent Shelly and he rotated their attempts at negotiation during this time. He heard Superintendent Shelly asking John Carthy to throw out the gun.

Superintendent Shelly’s knowledge of the availability of Garda negotiators

Superintendent Shelly was aware that there were non-ERU trained negotiators in the Eastern Region, possibly in Carlow and Portlaoise, but none in the Longford/Westmeath Division. He did not consider contacting those negotiators.

Members of the Emergency Response Unit are deployed to the scene

Detective Sergeant Jackson and Detective Garda Sullivan

Sergeant Jackson received a call on his mobile phone from his supervisor, Detective Inspector Patrick Hogan. He was informed that there was a siege in Abbeylara and he was directed to go to the scene as garda negotiator with Garda Michael Sullivan as his assistant. He was told that a man had fired shots, was in his house and was refusing to come out. He was also told that there was no other individual in the house. This information was relayed to Garda Sullivan by Sergeant Jackson. He stated in evidence that he told Garda Sullivan that his functions as assistant were to maintain a log of events in relation to the negotiation and to liaise with the scene commander regarding the flow of vital information. He said that in addition they discussed Garda Sullivan's role of briefing any intermediaries or other non-Garda personnel, who may become involved in the negotiations. Garda Sullivan stated that he understood that his duties included note-taking and liaising with the scene commander. He was informed by Sergeant Jackson that there may be other duties that he would have to perform, but that this would emerge as the matter developed. He did not anticipate that he would be personally involved in negotiating. They drove to the scene, leaving headquarters at Harcourt Square, Dublin at approximately 8:00 p.m. Prior to leaving, they gathered together their equipment including specialised clothing, communications equipment, lighting material, a flip chart and tape recorder.

Detective Sergeant Gerard Russell is contacted and travels to the scene

Sergeant Russell commenced duty at 3:00 p.m. on 19th April and was based in the Dublin area. He received a call at approximately 7:40 p.m. from Inspector Hogan and was informed by him that a man had discharged a legally held firearm in the direction of gardaí, who had been responding to a domestic disturbance in Abbeylara. He did not receive further information concerning the subject's state of health or background until he arrived at the scene where he was briefed by Superintendent Shelly. Sergeant Russell was aware, however, that no hostage had been taken.

He was instructed by Inspector Hogan to select three detective gardaí and the necessary equipment for a situation such as this, which he then believed to be a barricaded incident, and to travel to the scene.

During the course of his evidence, Inspector Hogan stated that he cautioned Sergeant Russell in relation to any activity which he might carry out at the scene, by way of containment or reconnaissance and that he was to avoid confrontation with John Carthy "at all costs". Sergeant Russell stated that while he could recall being advised to avoid confrontation, he was unsure about the expression "at all costs", because it would be difficult for him to accept such an instruction given the fact that he did not know the circumstances in which he might find himself. He fully understood, however, that his instructions were to avoid confrontation, if possible. He understood this to mean that the ERU was not to initiate any tactical response to engage the subject, or to offer a tactical intervention at that time, such as, for example, to invade the house. He was also informed that Sergeant Jackson and

Garda Sullivan had been deployed and he stated that he understood, and was informed by Inspector Hogan, that his role was to:

“provide a secure and safe environment so that negotiations could be carried on in the safest possible manner, considering the actual situation as it prevailed which was a serious or dangerous one”.

Equipment brought to scene

Sergeant Russell instructed his colleague Detective Garda Ronan Carey to sign out two Uzi sub-machine guns, one Bennelli semi-automatic shotgun and one Heckler & Koch .33 rifle, together with necessary ammunition. He informed Detective Garda Oliver Flaherty, a trained first aider, to take the necessary first-aid kit and technical equipment for a siege or a barricaded incident, the latter equipment being night-vision equipment and some pyrotechnics. In his evidence, Sergeant Russell explained that the latter are distraction devices and are more commonly known as stun grenades. They are similar in appearance to a grenade, but they do not fragment on impact. Their function is purely to create noise and flash. They are used to create distraction and confusion in order to afford a team member time and opportunity to engage in some other action. Such grenades are thrown by hand and have a pin reliever which must be engaged. There are two types of such grenade, one with steel casing and the other with aluminium casing. The latter, according to Sergeant Russell, had a tendency to be unstable and to move. He preferred not to use it because it was difficult to control. On this occasion, they brought grenades with steel casing. Sergeant Russell confirmed that depending on the proximity of the person and the area where they are thrown, such devices could in fact cause injury. He also instructed Detective Garda Tony Ryan to sign out the necessary breaching equipment required for an incident with *“a barricaded suspect or a siege type situation”*. Breaching is the technical term for a forced entry to a premises. Cold breaching involves the use of equipment or implements other than explosives. Garda Ryan was the unit breacher. He brought cold breaching equipment.

The numbers of ERU team members

Sergeant Russell regarded four tactical officers as an appropriate number of personnel to respond to the situation, given that they were aware that they were dealing with one individual. If he had thought it appropriate to have a greater deployment of members, he would have requested it.

Detective Sergeant Russell’s evidence on his role

Sergeant Russell stated that he was aware that Sergeant Jackson was a trained negotiator and that he was conscious of the two distinct roles that he and Sergeant Jackson would play. His role was that of tactical team leader; Sergeant Jackson was responding as a negotiator. He stated that he had no real function to play within the negotiation role and that he had no qualifications or training in that area. He confirmed in evidence that there was dialogue throughout the course of the incident between Sergeant Jackson and himself in relation to the strategy to be adopted. In particular, he stated that he spoke to Sergeant Jackson whenever he had concerns for safety or security. He was informed by the negotiator that he should be aware of

the issues that he (Sergeant Jackson) was dealing with and to try to respond with those considerations in mind. In relation to the issue of the location of the negotiation point he explained to the Tribunal that he would “prefer if it was . . . as safe as possible” but that he would have to bear in mind Sergeant Jackson’s “particular issues or concerns that he may wish to get as close as possible to engage in dialogue”.

Lighting is brought to the scene

Superintendent Shelly believed that John Carthy, if he wanted to, would have a better chance at getting out of the house under the cover of darkness. He therefore felt that lighting should be brought to the scene. Lighting was arranged and put in place some time shortly after 9:00 p.m. It was placed in the garden of Burke’s house and a further light was placed shining towards the front of the house. Superintendent Shelly agreed that the generators which powered the lighting created noise.

Arrival of Chief Superintendent Tansey at the scene

Chief Superintendent Tansey told the Tribunal that it was his policy to visit the scene of any serious incident that takes place or happens in his division and that he went to the scene to observe the strategies that Superintendent Shelly had in place for the peaceful resolution of the incident. He saw his role as “consultancy insofar as Superintendent Shelly was concerned and to assist him in whatever way I could. I was also there to support my own people, to support Superintendent Shelly and all of my people on the ground there.” He saw his role as consultative, advisory and supportive, but not one that had any involvement in the preparation of the strategy or the operational activities that would ensue therefrom. These were part of the role of the scene commander, in this case Superintendent Shelly, who outlined his plans to Chief Superintendent Tansey. He told the Tribunal that if he had not agreed with those plans, there would be a discussion between himself and Superintendent Shelly but this did not occur. He saw no reason to add to the plan prepared by the scene commander.

When asked what he understood Chief Superintendent Tansey’s function at the scene to be, Superintendent Shelly stated that he saw his role as being a consultative one. Although Chief Superintendent Tansey was now the senior officer at the scene, Superintendent Shelly confirmed that he continued to be the person with responsibility for overall operational command:

“Chief Superintendent Tansey . . . is in charge of the division but it was my responsibility, I was in charge. It doesn’t follow that because he is the chief, which is a rank higher than me, that he would assume charge when he came or if Commissioner Hickey came, that he was in charge then, that is not the case. I was the one taxed with that responsibility. I was the person in charge and they would depend on me to see that everything was O.K. and that things were run properly”.

With regard to the role of Chief Superintendent Tansey, Superintendent Shelly understood that:

“his role was to ensure to be happy himself, as the divisional officer, that everything that I was doing and the people under my command was correct, and that everything insofar as it was possible was running smoothly”.

Any decisions to be taken, said Superintendent Shelly, would be based on consensus, but in any event he said there was no difficulty between the senior officers at the scene in relation to any decisions taken.

When Chief Superintendent Tansey arrived at the scene at 9:00 p.m. he met Superintendent Shelly and Inspector Maguire and was updated on the situation. There was, he said, no pre-prepared plan for dealing with situations such as this. He said that he agreed with Superintendent Shelly that the policy should be one of containment and negotiation. He also agreed with the establishment of an inner and outer cordon and with the manner in which Superintendent Shelly had allocated and positioned his armed officers. Inspector Maguire gave him details of the duties that had been assigned to the various members that were on duty at the scene and Chief Superintendent Tansey approved of these. There was no discussion at that stage between Chief Superintendent Tansey and Superintendent Shelly as to the designation of a command post.

Chief Superintendent Tansey stated that he was present when Superintendent Shelly began to speak to John Carthy. He observed that after the first two or three sentences of Superintendent Shelly’s attempt, two shots rang out. He was present when Sergeant Dooley began negotiations and he heard him introducing himself and asking what the problem was. He then heard Sergeant Dooley ask the subject to *“please throw out the gun and bring this thing to a conclusion”*. The sergeant, he confirmed, got no response to these requests.

Thomas Walsh arrives at the scene and meets members of the Garda Síochána

Shortly after 9:00 p.m. Thomas Walsh arrived in Abbeylara from Cork. He was allowed through a checkpoint and went to the brow of the hill outside his mother’s house where he met Garda Gibbons. Garda Gibbons informed him of the developments to date and of the garda response. The former inquired of Mr. Walsh whether he knew what was upsetting John Carthy. Mr. Walsh stated in evidence that he told Garda Gibbons that his cousin had animosity towards the gardaí as a result of his arrest and questioning in Granard garda station in relation to the burning of the goat mascot. He stated that he further told Garda Gibbons that the subject had been assaulted while in garda custody and that the gardaí calling to the Carthy house was not going to help the situation, as his cousin did not trust them. This information had not been in Mr. Walsh’s initial statement to the Tribunal, and was put to Garda Gibbons. He denied that such a conversation took place. Mr. Walsh also stated that he told Garda Gibbons that his cousin’s relationship with his girlfriend had recently ended and that he had manic depression. Garda Gibbons was also recalled to deal with the contents of Mr. Walsh’s evidence on this point and denied that such a conversation took place.

Garda Gibbons took Mr. Walsh to meet Superintendent Shelly. He inquired generally of Mr. Walsh as to what sort of person John Carthy was. Mr. Walsh told the superintendent that the subject had manic depression and that it would aggravate the situation if he could see gardaí. He stated that he informed Superintendent Shelly that if John Carthy saw the gardaí who were involved in his arrest and questioning at Granard station, he might shoot at them.

Superintendent Shelly was aware that Mr. Walsh was agreeable to talk to his cousin. This however, was not in response to a request from the subject to speak to Mr. Walsh.

In the course of his evidence to the Tribunal, Inspector Maguire stated that he met Mr. Walsh when he arrived some time after 9:00 p.m. Mr. Walsh, he stated, gave him some background information to the effect that John Carthy was suffering from depression; that he had been in St. Loman's hospital on more than one occasion and that he could be aggressive. He was also informed, he stated, that the subject was an exceptionally good shot. Inspector Maguire said that he was told by Mr. Walsh that his cousin was on medication but, according to the witness, he was unable to provide a motivation for his behaviour. Inspector Maguire stated that he did not raise the arrest incident or the gun incident with Mr. Walsh, but did inquire as to what ammunition he might have. Inspector Maguire discussed the fact that John Carthy was not happy in St. Loman's, but he did not make any inquiries as to his treating psychiatrist. He said that Mr. Walsh was anxious to talk to his cousin.

Thomas Walsh attempts to talk to John Carthy

Mr. Walsh requested to speak with the subject. Garda Gibbons accompanied him to the ESB pole and advised him to try and cheer his cousin up by speaking about positive things they had done together in the past. He was advised by Superintendent Shelly to encourage him to give some sort of sign or signal that he was still alive, such as switching on and off the light in the house. Mr. Walsh then tried to communicate by way of a loudhailer. He told his cousin that he was going to telephone him on his mobile phone. He received no sign or signal from the house at that stage. After several attempts to telephone him, John Carthy eventually answered. According to Mr. Walsh, he sounded angry and in response to an inquiry as to whether he was okay, John Carthy replied "*what the fuck do you care*". Mr. Walsh reassured him that he did care, but John Carthy responded saying that Mr. Walsh had not come to visit him while he was in St. Loman's hospital. Again Mr. Walsh reiterated that he did care and that he had brought Mrs. Carthy to St. Loman's to visit him on several occasions. John Carthy responded by saying "*don't disgust me Walsh*" and hung up the telephone. Mr. Walsh also used the loudhailer to tell him that his friend Martin Shelly was on his way to see him, and he believed that he may also have told him that his sister, Marie, was also coming to see him but he was unsure on this point.

Mr. Walsh subsequently meets Superintendent Shelly and Inspector Maguire

After Mr. Walsh returned from his attempts to engage John Carthy, he had a further discussion with Inspector Maguire. The latter stated that sometime between 9:00 p.m. and 9:30 p.m. he learned from a local uniformed member that John Carthy had been arrested and accused of burning a goat mascot, had been questioned, and subsequently released when it became apparent that he was innocent. He told the Tribunal that he discussed with Mr. Walsh the burning of the goat mascot. Mr. Walsh confirmed that his cousin had been arrested; that he was annoyed with the locals for accusing him of burning the goat, and that he was getting some slagging over it. The impression that Inspector Maguire had from Mr. Walsh was that his cousin was annoyed with the locals over the slagging he was receiving, as opposed to being annoyed with local gardaí. He brought Mr. Walsh down to meet Superintendent Shelly at the ESB pole. He heard Mr. Walsh suggest that Sean Farrell would be somebody that John Carthy would want to talk to. Inspector Maguire also stated that sometime that night, between 9:00 p.m. and 9:30 p.m., he asked Mr. Walsh whether John Carthy had a solicitor. Inspector Maguire said that Mr. Walsh replied in the negative and said that he didn't know the family's solicitor. Mr. Walsh has no recollection of a conversation in relation to a solicitor with Inspector Maguire or any one else at this time.

Chief Superintendent Tansey meets Thomas Walsh

At approximately 9:30 p.m., Chief Superintendent Tansey was introduced to Mr. Walsh by Superintendent Shelly. They had a brief conversation. At that time Chief Superintendent Tansey was aware that the subject had been arrested in relation to the goat incident, and that he had a grievance about that arrest. He stated that he had no knowledge whatsoever of his allegation of mistreatment. He believed that John Carthy's grievance was because he had been arrested for the burning of the mascot. He was told about this by Superintendent Shelly. Chief Superintendent Tansey spoke to Mr. Walsh and he stated that he thought that Mr. Walsh was "downbeat" and "disappointed". He tried to encourage him by saying that he had done his best.

Thomas Walsh leaves the scene

Mr. Walsh then left the scene and travelled to his sister, Patricia Mahon's house, where Mrs. Carthy and his mother, Nancy Walsh were staying. He spoke to Mrs. Carthy briefly who told him of the events of the morning and early afternoon and that John had said to her "*that nobody was going to put him out of the house or take his gun or words to that effect*".

Superintendent John Farrelly arrives at the scene

At approximately 9.30 p.m. Superintendent Farrelly, the Garda Press Officer, arrived at Abbeylara. He went into a local shop, Farrell's, and sought directions. Shortly before this, Ms Ann Walsh had returned to the village from Mahon's. She stated that,

at that time, the area near the church was cordoned and manned by two uniformed gardaí. She saw media vans around the church. She went to Farrell's shop. She stated that she was annoyed and disgusted that this was happening, *"that the media were there so quickly for John"*. Ms Walsh stated that she recalled telling Superintendent Farrelly that the media was not going to be any help. She stated that he confirmed that he was there, *"to keep them at bay"*. She stated that she also informed gardaí on checkpoint duty that the media presence was not helping the situation.

SECTION D – The Arrival of the Emergency Response Unit

Arrival of the ERU at the scene at 9:50 p.m.

Detective Sergeant Russell and three members of the unit travelled to Abbeylara. Detective Garda Flaherty accompanied Sergeant Russell in a garda jeep, with Detective Garda Carey and Detective Garda Ryan travelling together in another jeep. En route to Abbeylara Sergeant Russell informed his colleagues that the matter was urgent and that when they arrived at the scene they were to get into their safety equipment and gear as quickly as possible. They arrived at the scene at approximately 9:50 p.m.

Superintendent Shelly's previous experience of working with the ERU

Superintendent Shelly confirmed that he had operated on previous occasions with the ERU in relation to matters such as searches. This was the first occasion that he had an active involvement with members of the ERU in *"a siege type situation"*. He was aware of the capabilities of the ERU. When asked what his understanding of the role of the ERU would be, when they arrived at the scene, he stated:

"it was more or less the same role that we ourselves were performing up to that time, that they would assist in the policy of containing and negotiating with John Carthy and that effectively they would be performing essentially the same role as the local armed gardaí".

Detective Sergeant Russell's previous experience of working with those at the scene

Sergeant Russell knew Detective Sergeant Jackson for twenty years and had worked with him in Kilmainham garda station. He had also worked with him throughout his service in the ERU, both as a detective garda and a detective sergeant. However, he had never worked with him when he was operating in his capacity as a negotiator on any previous occasion. While he recognised Superintendent Shelly, he never worked with him previously. He had never been involved in an operation where either Superintendent Shelly or Chief Superintendent Tansey was involved. He was not aware of whether he had in fact worked with Superintendent Byrne on any previous occasions. If he did, he said that it certainly was not work of a substantial nature.

Detective Sergeant Russell meets Superintendent Shelly and Chief Superintendent Tansey

Superintendent Shelly's evidence

Superintendent Shelly stated that he informed Sergeant Russell that he considered the situation to be very dangerous; that John Carthy suffered from manic depression, did not like St. Loman's hospital in Mullingar and that he did not want to go back there. The witness told Sergeant Russell that he felt that John Carthy had a grievance against some gardaí, that he felt that he had been wronged and that he had been accused of something that he did not do. Superintendent Shelly mentioned the burning of the goat mascot to Sergeant Russell. The superintendent stated in evidence that he was not then aware of the nature of the grievance other than the fact that John Carthy had considered that he was being blamed for something that he did not do. Nor, he said, at that time had he any details and was unaware of any complaint made by John Carthy regarding his treatment in the garda station in 1998. As far as he could recall, he understood that John Carthy was annoyed with certain gardaí and was also annoyed with certain people in the locality who had also blamed him. He stated that he was also unaware, and had not been informed, that John Carthy had made a complaint about this to his doctor, Dr. Cullen.

He told Sergeant Russell of the location of the cordons that he had put in place. Sergeant Russell briefed him on the type of equipment that the ERU brought with them, including the nature of the firearms and other devices. Superintendent Shelly had no input into the type of equipment the ERU brought to the scene. That was, he said, a matter for the ERU to decide.

Detective Sergeant Russell's evidence

In his evidence, Sergeant Russell stated that he met Superintendent Shelly who introduced him to Chief Superintendent Tansey. The information, recounted in Superintendent Shelly's evidence, was imparted to Sergeant Russell. He was also informed that John Carthy was suffering from a psychiatric illness; that he was a manic-depressive, and that a doctor had attended at the scene. Superintendent Shelly, he stated, informed him that he had placed an inner cordon of armed personnel around the house and an outer cordon of uniformed personnel manning checkpoints. Nearby houses had been evacuated at that stage and the subject was "*now contained within the house*".

An exit plan is discussed

Both Superintendent Shelly and Sergeant Russell gave evidence of discussing an exit plan, which, they stated, anticipated two possibilities: a controlled exit where John Carthy would come out of the house unarmed, be confronted and subject himself to arrest and search; and an uncontrolled exit where he would come out with his shotgun, in circumstances where he would comply with garda requests to put down his gun, or alternatively where he would not comply with such a request and would pose a threat or danger to the gardaí present. This plan, it was contended, also made provision for the cordon moving with John Carthy on his exit from the house in

circumstances where his conduct was uncontrolled, but where he did not pose an immediate threat. This exit plan is considered in detail in Chapter 6.

Entry plan

While consideration was given to the possibility of entering the building, an immediate entry was ruled out. The strategy which had been devised was one of containment and negotiation and therefore Superintendent Shelly did not consider the option of entering the building at that time.

Detective Garda Campbell meets Detective Sergeant Russell

Garda Campbell brought two members of the ERU around to the mound at the back of Carthy's house, through Burke's garden. He was then told by Sergeant Russell that the ERU were taking charge of the inner cordon around the house. Garda Campbell returned to a position at the gable of Burke's house. At that time he understood that the ERU were an inner cordon and that he was now part of an outer cordon. He stated that no one had specifically instructed him *"one way or the other about that"*. He also understood that the ERU personnel had moved in closer to the house than the local officers had been.

Detective Sergeant Russell inspects the area and tightens the inner cordon

Sergeant Russell carried out a visual inspection of the area. He looked at the house and the surrounding environment. He carried out a brief topographical assessment of the area, including the building. Having done so, he informed Superintendent Shelly that it would be helpful to tighten the cordon as he had concerns that John Carthy might attempt to leave the house with a shotgun during the hours of darkness. He stated that should that occur, the ERU would have difficulty in dealing with such a situation. He suggested to Superintendent Shelly that they, the ERU, should get closer to the house.

Detective Sergeant Russell's evidence on the purpose of the cordon

Sergeant Russell was specifically responsible for tactics at the inner cordon. He stated that the purpose of the inner cordon, now manned by the ERU, was to contain the subject within that cordon and to make sure it was not breached. The outer cordon was to ensure that no one entered the area from outside. It was also *"a back-up to the inner cordon"*, he stated. The outer cordon was to ensure that no unauthorised personnel such as civilians, family members, or others, would gain access to the area,

"everything must be controlled through the scene commander and no one would enter it without knowledge of the control, which would be the scene commander".

It was taken for granted, he said, that uniformed personnel might be located between the inner and outer cordons *"it is just a fact of life in dealing with situations that there will be, as we are primarily a uniformed force ... and there would always be a*

uniformed presence on any operation, particularly of a public nature like that". He observed that the outer cordon had two elements, one located close to the house and close to the ERU, and, the other, part of the outer cordon located further away, providing checkpoints dealing with road traffic and regulating personnel entering the area of the scene. He was now "*happy*" that the local armed men were forming the outer cordon. It should be noted, however, that the geographical location of a number of local armed officers effectively remained the same as that which it had been prior to the arrival of the ERU when local armed officers comprised the inner cordon around the stronghold.

Relocation of the inner cordon and redeployment of local armed officers

The two local armed gardaí who had been deployed by Superintendent Shelly at the back of the mound of clay behind the old house were moved further back. Garda Ryan of the ERU took that position, from which he covered the only external door. The local armed gardaí who had been positioned at Burke's house stayed there and those at the ESB pole remained where they were. Two local armed gardaí present at the boundary pillar between Farrell's and Carthy's were moved back towards Farrell's house. Garda Carey of the ERU assumed a position at that pillar. The two local armed gardaí who had been deployed within the bounds of Farrell's house remained in position. A third ERU member, Garda Flaherty, was positioned at the front left corner of the new house. Sergeant Russell stated that he personally retained a certain flexibility.

Local armed officers are informed of their "back-up role"

Superintendent Shelly stated that he instructed the senior local officer, Detective Sergeant Aidan Foley, to inform local officers of their change of role and that they were now back-up to the ERU. Sergeant Foley said that he was told by Superintendent Shelly that the local armed officers "*were then back-up to the ERU in the event that John Carthy exiting the house, the ERU members would deal with him. We were to move and allow the ERU room to deal with John Carthy.*" Sergeant Foley stated in evidence that he notified his men that they were now in a back-up role to the ERU who had taken over the inner cordon. He conveyed this instruction to Gardaí Boland, Nolan, Kilroy, Barrins, Dunne, Faughnan, Mulligan and Quinn.

Communication with the ERU and other gardaí

Sergeant Russell stated that he maintained radio contact with the other members of his unit approximately every fifteen minutes to ensure that they were alert and updated. With regard to communication with non-ERU personnel, he informed the Tribunal that arrangements were made with the scene commander to use the communications equipment in the ERU jeep. Sergeant Russell did not have any direct radio communications with persons who were not at the jeep. Contact was through the scene commander, or whoever was manning the command vehicle at any given time. He did not see himself as having a direct role in communicating with non-ERU

members which was, he stated, effectively a matter for the scene commander. They were under the control of the scene commander while he had responsibility for the inner cordon and his own personnel only.

Arrival of Detective Sergeant Jackson at the scene and the information imparted to him

At approximately 10:00 p.m., Sergeant Jackson and Detective Garda Sullivan arrived at the scene. Sergeant Jackson spoke to Superintendent Shelly and was informed about John Carthy's arrest over the goat mascot and that he harboured ill feelings towards the Garda. He gave evidence that Superintendent Shelly did not expand in great detail, but told him that the subject would have difficulty with gardaí because of this particular incident; that he felt that he had been wronged by the local gardaí and that he believed that he had been arrested in the wrong. There was, he said no discussion in relation to the fact that John Carthy had made complaints, or that he had alleged that he had been ill-treated while in Garda custody. Sergeant Jackson stated that on a scale of 1 to 10, he had assessed John Carthy's mistrust of the gardaí at 10. This assessment, he said, *"wasn't going to be reinforced any stronger . . .if I had been made aware of the allegation of assault"*. He contended that he measured the feeling of John Carthy being wronged *"in the optimum"*.

Superintendent Shelly informed him that the subject had lost his job in Galway a couple of months earlier; that he had difficulty with his employment; that he was annoyed about this and that he had also broken up with his girlfriend in Galway. He was also informed by Superintendent Shelly that the landline telephone connection to the house had been reconnected. Superintendent Shelly gave him John Carthy's mobile phone number. Sergeant Jackson was also informed of Mr. Walsh's presence and his attempts to make contact with his cousin. He discussed the subject's medical background with Superintendent Shelly and learned that Dr. Cullen had been at the scene, but had since left. Sergeant Jackson stated that he was of the view that it was important to find out what phase of the bipolar disorder John Carthy was in, that is to say, whether he was elated or depressed. Sergeant Jackson believed he was also informed by Superintendent Shelly that Sergeant Dooley had inquired of the Carthy family as to the involvement of a specialist, but that there was none such that they (the family) were aware of. (This could not be true. The family were well aware of Dr. Shanley's involvement which had been over a period of years and that, ironically, the subject had an appointment to see the specialist at St. Patrick's hospital in Dublin on the following day). He learnt that Marie Carthy was on the way from Galway to the scene. He stated that he was apprised of the contingency plans in relation to a controlled or uncontrolled exit from the house. He also stated that he discussed with Superintendent Shelly the strategy in relation to negotiations.

Sergeant Jackson informed the superintendent that he:

- i. was going to attempt to make contact with John Carthy and ascertain what had caused the crisis;
- ii. was going to try to get him to discuss the issue of the shotgun;

- iii. was going to try to link in with his motivation for the siege;
- iv. needed to make contact and to talk to him directly to see what his difficulties were;
- v. would assess what condition he was in; and,
- vi. would generally see if he could make some inroads in relation to communicating with the subject.

Isolation of telephone lines

Sergeant Jackson did not give consideration to the isolation or restriction of the landline, or to the isolation or monitoring of John Carthy's mobile phone.

Tactical role of negotiators

Sergeant Russell stated in evidence that it was not anticipated by him that the negotiator and his assistant would form part of the inner cordon and he did not factor them into the tactical response.

Role of local unarmed officers

After the arrival of the ERU, Inspector Maguire saw his ongoing function as one of overseeing the uniformed members and of monitoring events on the periphery of the scene. This role included supervising the outer checkpoints and outer cordon and evaluating any information that might come into possession of uniformed gardaí. However, he confirmed that up to the time he went off duty at midnight, no officer had been specifically allocated the duty for collating and gathering intelligence. He also confirmed that before going off duty he had briefed Superintendent Byrne on his conversations with Thomas Walsh. Inspector Maguire confirmed that there was to be no change in relation to the role of local uniformed members. The local unarmed members were told by Sergeant Murray that the ERU were forming the inner cordon. Inspector Maguire spoke directly to Garda Carthy, Garda Dunleavy and Garda Judge, who were in the vicinity of Burke's and told them and Sergeant Murray that the ERU were now in command, and that in the event of the subject exiting or coming close to them they were to protect themselves, take cover and leave it to the armed members.

Sergeant Mangan prepared a roster for the uniformed gardaí.

Command post location is chosen

An ERU jeep was chosen as the command post for the incident by Superintendent Shelly. It was located on the roadway between Burke's gateway and the ESB pole on the boundary of Carthy's property. He felt that this was the best place for the command post as it gave the scene commander a view of the scene. While chosen by Superintendent Shelly, it was maintained as the command post by Superintendent

Byrne. No other senior officer, or Sergeant Russell, expressed dissatisfaction with its location, which is considered in more detail in Chapter 6.

Negotiation post location is chosen

Initially, Sergeant Jackson chose as the negotiation position, a point between Carthy's and Burke's at the pole on the roadway. This gave him what he considered to be a good view of the house, being at a somewhat higher position than the building. This is also discussed in more detail in Chapter 6.

Meeting of senior officers at 10:15 p.m.

Sometime between 10:00 p.m. and 10:15 p.m., a meeting took place between the senior officers at the scene, Chief Superintendent Tansey, Superintendent Shelly and Superintendent Byrne, who had just come on duty. Superintendent Shelly updated the other two officers on progress. The meeting, he stated, was mainly for the benefit of Superintendent Byrne. He informed him of the identity of the ERU sergeants; their roles, and the roles of the other members of the ERU. There was, he stated, also a discussion about the command structure at the scene. Superintendent Shelly retained the position as overall operational commander. Sergeant Russell had now assumed tactical control of the inner cordon:

“which effectively meant that he was in charge of that unit and Detective Sergeant Jackson would have sole responsibility for the negotiation with John Carthy and he would be assisted by a detective garda”.

It was agreed that Superintendent Shelly would continue as scene commander until midnight when that position would be assumed by Superintendent Byrne who would continue until 9:00 a.m. at which time Superintendent Shelly would resume that role. Superintendent Shelly commenced a log of the events at around this time.

Tactical supervisor

While both superintendents were qualified tactical supervisors, no tactical supervisor was specifically appointed. Initially, Superintendent Shelly said that he thought that he had *“enough knowledge and expertise myself to deal with it”*. Later in evidence he said that a combination of his training as a tactical supervisor and Sergeant Russell's role at the scene meant that they were more than capable of dealing with the issue. However, Superintendent Byrne stated that he was satisfied that Sergeant Russell, who was in tactical charge of the inner cordon, could fulfil this role. Superintendent Byrne was also of the view that Abbeylara was an emergency situation, not a planned operation within the meaning of the Garda Code, which refers to the appointment of tactical supervisors at Chapter 25.45. He considered that Sergeant Russell was acting as tactical supervisor having been deployed as part of the ERU. He did not consider it necessary to seek the assistance of any local officer in that capacity from the division or district.

Lighting is switched off

Sergeant Russell observed the commencement of the negotiations from his initial position which was close to Farrell's house and outside the perimeter wall. He could see John Carthy moving around the room, holding the shotgun. The light was on in the kitchen. The light, previously positioned by the gardaí to the rear of the premises, lit up the hedge near Burke's, and shone down on garda positions. It was inhibiting Sergeant Russell's view. He was concerned that this light had a blinding effect and was serving to highlight the garda position. He did not wish that these would be "a visible target". He requested that the light be switched off, which was done.

Detective Sergeant Jackson attempts contact with John Carthy

At approximately 10:20 p.m., Sergeant Jackson rang John Carthy's mobile telephone number, but did not receive any reply. He then endeavoured to telephone him on his landline, and again received no reply. He used the loudhailer and called out to the subject as follows "I am Mick, I work for the gardaí and I am here to help". At 10:25 p.m. a shot was discharged from the house.

A shot is fired at 10:25 p.m.

At this time, according to Sergeant Russell's evidence, John Carthy was pacing around the room holding the shotgun, peeking out the window occasionally in their direction. At approximately 10:25 p.m., he fired a shot which was stated to be in the direction of Sergeant Russell and Garda Carey. That shot, said Sergeant Russell, came quite close to them. They were crouched down behind the wall and could hear the pellets striking the other side.

Relocation of negotiation position

Sergeant Jackson became concerned that the negotiating position he had adopted required reassessment. He felt that John Carthy may not have been able to hear him. A decision was made to move the negotiation point to the pillar at the boundary wall almost directly in front of the gable window in the kitchen. Sergeant Jackson discussed the repositioning with Superintendent Shelly and Sergeant Russell. This is discussed in detail in Chapter 6.

Detective Sergeant Russell's role in the negotiation process

Sergeant Russell stated in evidence that his function was to provide safety for those who might be introduced to the scene as negotiators or intermediaries when coming to, or leaving the area. It was not part of his function, or duty, to decide on who should attempt to talk or negotiate, or when that should take place. Further, it was not part of his function, he stated, to locate those who might be so introduced. These were functions of the scene commanders and the negotiator. When questioned on whether his views were canvassed about the negotiations, he stated that the only advice that he gave Sergeant Jackson was when he learned that John Carthy may have had some difficulty with St. Loman's hospital. He stated that he did not mean

this to be a criticism of St. Loman's, but he informed Sergeant Jackson that John Carthy may have a difficulty because it was common in rural Ireland that there was a certain stigma attached to psychiatric illness and in particular to the local hospital, not just St. Loman's, but any local mental hospital. That, he said, had been his experience as a policeman. (It is interesting to note that Sergeant Russell trained as a psychiatric nurse in St. Loman's hospital in 1980 but had not practised as a qualified psychiatric nurse.) He stated that he did not come across the same problem in Dublin when he had worked in the Kilmainham area. Sergeant Russell stated that he was not privy to all of the dialogue between Sergeant Jackson and Garda Sullivan, or between Sergeant Jackson and John Carthy. He did, however, overhear some conversation and observed a number of matters that took place.

Garda Cunniffe is detailed to liaise with the family

At about 10:30 p.m. Sergeant Mangan directed Garda Sinéad Cunniffe to go to the Mahon house, as it was considered that it would be of benefit to have a Garda presence in the house if this was acceptable to the family. Sergeant Mangan then telephoned the Mahon house and, she stated, the family agreed to her suggestion. Sergeant Mangan saw Garda Cunniffe's role as being a support to the family and also a link between the gardaí and the family. Sergeant Mangan informed Superintendent Shelly and Superintendent Byrne of Garda Cunniffe's presence in the Mahon house. The two superintendents approved of her decision. At 2:30 a.m. Sergeant Mangan left the scene and went back to the Mahon house. She remained there until 3:30 a.m. and then she and Garda Cunniffe left.

Garda Cunniffe was a probationer garda at this time, stationed at Granard garda station. She was directed by Sergeant Mangan to provide them with support and to relay to the family information that might become available, or to pass on any information that she learned from the family to the gardaí.

She had no prior knowledge of John Carthy, or his background. She was briefed by Sergeant Mangan in relation to the events. She learned from Sergeant Mangan that he had some mental illness. Sergeant Desmond Nally brought her there at approximately 10:30 p.m. when she was introduced to Mrs. Carthy.

Mr. Christy Mahon, Mrs. Patricia Mahon, Ms Ann Walsh, Ms Alice Farrell, Mrs. Nancy Walsh and Mr. Thomas Walsh were present in the house. Garda Cunniffe did not receive any information from the scene or from Granard garda station to be conveyed to the Carthy family during her time at the Mahon house. She kept in touch with Sergeant Mangan and Sergeant Nally and informed the family that there was "*no new information forthcoming*". She remained with them until 3:30 a.m. approximately. During that time she spoke to Mrs. Carthy and asked her about her son. She formed the impression that Mrs. Carthy was a quiet lady who did not "*appear to be very talkative*." She stated that she did not obtain any information from Mrs. Carthy or from the other members of the family. The impression that she formed was that they were puzzled by what had happened. Garda Cunniffe stated that she received no specific information about the nature of John Carthy's illness. At 8:30

a.m. on 20th April she returned to the Mahon house. Garda Cunniffe was unaware of the subject having made specific requests – in particular one for a solicitor and cigarettes during the night. She was not in a position to give the family any further information as to what was happening. At 10:30 a.m. Marie Carthy, escorted by Garda Reynolds and Garda Carthy, arrived and Garda Cunniffe met her. They had, she said, no real conversation of substance. Garda Cunniffe subsequently left the Mahon house at approximately 11:00 a.m. and went off duty.

Superintendent Byrne was aware that Garda Cunniffe had been appointed to liaise with the family. He did not review this during the night. However, at 8:00 a.m. on Thursday 20th April, he sent Garda Frank Reynolds to Mahon's to see how Mrs. Carthy was and to ascertain whether there was anything new at that stage.

Dr. Cullen makes telephone contact at 11.00 p.m.

Dr. Cullen stated that at approximately 11:00 p.m. he contacted the garda station in Granard to *"see what was happening"*. He was, he said, informed that there had been no further developments. He also stated that he felt sure that he had asked whether he could be of assistance, but that this was not requested at that time.

Further attempts to communicate from the new negotiation position at 11:00 p.m.

Having moved to that position, Sergeant Jackson recommenced attempts at negotiation and at 11:00 p.m. he spoke to the subject on the loudhailer, and called out his mobile telephone number. He stated that he said to him again, *"I am Mick, I am with the guards, I am here to help"*.

At approximately 11:20 p.m., John Carthy spoke to Sergeant Jackson in reply and said *"who are you, are you a guard?"* He spoke quickly and appeared agitated. Sergeant Jackson said *"I am, and I am here to help you"*. John Carthy replied, *"go away"* and *"fuck off"*. Sergeant Jackson said *"John, you sound very angry, you sound very upset, what is the problem, what has caused all of this, I am here, I want to hear about it"*. Sergeant Jackson went on to say, *"I want to talk to you, it would be great if we could talk on the phone and maybe if you would just put the gun aside and we could talk"*. He did not get a positive reaction to this. John Carthy *"mumbled"* something and turned up the volume of the television. He lowered and levelled the gun at Sergeant Jackson who was forced to duck behind the wall.

Marie Carthy arrives at the scene

Ms Carthy and Mr. Martin Shelly arrived in Abbeylara village by garda car from Galway at approximately 11:00 p.m. They noticed a *"strong media presence"*. They were driven through the checkpoint at the church to Walsh's house. On the road outside the house they met some members of the Garda and the ERU. Superintendent Shelly was also present. He informed Sergeant Jackson of their arrival, via Sergeant Russell. When Ms Carthy arrived at the scene, Superintendent Shelly

was aware that Garda Sullivan was anxious to speak to her. For safety reasons he wished to do this at the Ballywillin side. It was understood that Garda Sullivan, rather than Sergeant Jackson, would speak to her at that time. A uniformed garda at the scene drove Ms Carthy, Mr. Shelly and Mr. Walsh to the Ballywillin side in the garda jeep. They were driven via Granard as it was considered too dangerous to go directly past the house. Superintendent Byrne and Superintendent Shelly followed them in another vehicle. Superintendent Shelly stated that he had only very briefly met Ms Carthy. He had no discussion with her at that time.

On arrival at the Ballywillin side, a few hundred metres from the Carthy residence, they met with Superintendent Shelly and Garda Sullivan. Garda Sullivan sat into the garda jeep with Marie Carthy and Martin Shelly. He asked her general questions about her brother. She informed him of his depression. In relation to a query as to what might be annoying him, she said that she referred to the imminent move into the new house. She believed that he was concerned about ensuring that his mother would be well settled in the new house. Marie Carthy stated in evidence that she told Garda Sullivan that in the context of a person with depression that the best thing to do was *“just to leave him alone and the main thing you don’t do with someone that has depression is confront them”*. She also stated that she informed them that he did not like the gardaí and that:

“the best thing to do would not be to confront him and give him his own space for a little while and he would have come out. I told him that with all the gardaí around the house and the media presence, it wasn’t very good for someone suffering from depression and especially for John who didn’t trust the gardaí”.

In evidence to the Tribunal, Sergeant Jackson and Garda Sullivan stated that at approximately 11:20 p.m. they became aware that Ms Carthy and Mr. Martin Shelly had arrived. Sergeant Jackson sent Garda Sullivan to speak to them for the purposes of getting as much information as he could from them. What was uppermost in Sergeant Jackson’s mind at this stage, he stated, was to find out why John Carthy had embarked on the behaviour which he had demonstrated or was demonstrating. Garda Sullivan said Ms Carthy and Mr. Shelly informed him that there might be a number of reasons:

- i. that he used to have a job labouring on the buildings in Galway working with “Pepper”, but that he had lost it around the end of January; that he was upset about this and felt that he had been sacked in the wrong;
- ii. that he had broken up with his girlfriend about four weeks before this; that he had been going out with her for about six weeks and that he was *“mad about”* her. They said that this was a *“touchy subject”* with John Carthy and to mention it might upset him;
- iii. that his father’s anniversary was a Holy Thursday, his father being ten years dead, and that he was very close to him. Garda Sullivan said that he was told that this had been the start of John Carthy’s depression and that he had been in and out of St. Loman’s hospital since his father’s death;

- iv. that he had been barred from his local pub, McCormack's, the previous weekend and that had upset him also.

Garda Sullivan said that this was the *"sum total of the information he was given"*.

In relation to Garda Sullivan's recollection that he was informed that John Carthy's depression began in and around the time of the death of their father, Ms Carthy felt that Garda Sullivan may have misinterpreted what she said as her brother's depression did not begin until two years after the death. She believed that the death of her father meant that her brother took on board duties in relation to his mother and herself which became too much for him and which manifested itself in depression.

Martin Shelly confirmed that the information recorded by Garda Sullivan was the information that was given by Marie Carthy, himself and Thomas Walsh. He specifically informed Garda Sullivan about the recent employment difficulties that John Carthy had encountered and the recent break-up of a relationship. He also believed that either Marie Carthy or Thomas Walsh informed Garda Sullivan that *"John didn't like the gardaí and that it would be best if they kept back and gave him a bit of room, a bit of breathing space."* He also stated that Thomas Walsh told Garda Sullivan that John Carthy's dislike of the gardaí arose out of the incident of the burning of the goat mascot and his subsequent arrest and questioning in Granard station where he was abused by the gardaí. It should be noted that Mr. Shelly did not include this information in his original statement made to the Culligan Inquiry, which had been adopted as his original statement to the Tribunal. It was included in a statement made subsequent to his first appearance at the Tribunal.

Garda Sullivan thought that Marie Carthy was distressed and that it was difficult to get a coherent reply from her; he described Mr. Shelly as being quieter. Garda Sullivan stated that he asked them if they would be willing to speak to John Carthy and they said they would. Garda Sullivan then returned to the scene and, he stated, conveyed this information to Sergeant Jackson.

John Carthy makes a request for a solicitor at 11:38 p.m.

Sergeant Jackson informed the Tribunal that at approximately 11:38 p.m. he telephoned the subject and said *"John, this is Mick"*. John Carthy, he stated, immediately said *"where is my solicitor?"*, followed by *"get the fuck out of here"*. Sergeant Jackson spoke to him saying *"who is your solicitor, John; where can we contact him and we will get him for you"*. John Carthy replied, *"I want the best, the best, the best"*. Sergeant Jackson again asked who his solicitor was and told the subject that he would get him. He asked him where the solicitor could be contacted. John Carthy, he stated, did not reply.

Sergeant Jackson then asked the subject to come out and leave the gun behind; that he would arrange to have a solicitor meet him outside in the garden. John Carthy's reply to this was that *"I want him to come in here, in here"*. Sergeant Jackson stated that he observed John Carthy banging the gun off the table. He then told the subject

that he was worried about the gun and that it would be a problem for a solicitor to go into the house. He stated that he asked him to come out without the gun and the solicitor would meet him outside. John Carthy's reply to this was "No way, don't bother".

Sergeant Jackson told the Tribunal that he reassured Mr. Carthy that he was not there to hurt him and that if he came out no one would hurt him. The negotiator said he believed that the subject may not trust the gardaí and he stated to him that he would get a solicitor, friend, priest or anyone he wanted, to meet him outside. John Carthy's reply to this was "I am not coming out, no way". Sergeant Jackson then instructed Garda Sullivan to contact Superintendent Shelly to see whether the scene commander had any knowledge in relation to John Carthy's solicitor.

At approximately 11:40 p.m., Garda Sullivan informed Superintendent Shelly that John Carthy had looked for a solicitor. No particular solicitor was mentioned. Superintendent Shelly stated that he requested Garda Sullivan to explore with the subject the identity of the solicitor. Superintendent Shelly agreed that this was the first occasion that he had become aware that there was a verbal response from John Carthy since he first attended at the scene at 7:00 p.m. He may have spoken in the interim to others, but that was the first "request" that he was aware of.

Inquiries of the family regarding solicitors

Superintendent Byrne was questioned on whether, when he came on duty at 12:00 a.m. as scene commander, any direct inquiries were made of the immediate family regarding the identity of John Carthy's solicitor. He was aware of the conversation between Inspector Maguire and Thomas Walsh when he had been asked who the family solicitor was, and that he, Thomas Walsh, had stated that he did not think that there was one. He confirmed that no such inquiries were made because he was satisfied that Thomas Walsh, who had been described as John Carthy's best friend and as someone who "knew everything about him", would have known if John Carthy had a solicitor, and would have told the gardaí willingly. John Carthy had not requested a solicitor prior to the first two occasions on which Superintendent Byrne had met Ms Carthy. He was aware of the request, however, when he met her at 2:15 a.m. (which incident is recounted below). He did not ask her about the solicitor at that time. On further questioning, he accepted that the people most likely to know who a particular person's solicitor is, are the immediate family, something which did not strike him at the time. He stated that while he had considered obtaining a solicitor from the locality, he ruled this out on account of the way that John Carthy had treated his friends and family who had attempted to speak with him. He felt that "an anonymous solicitor would be a total waste of time." He did not consider whether it might have been beneficial to the process to indicate to the subject that there was a solicitor present, even though that solicitor may not have been the one that John Carthy wanted. He acknowledged that it had not occurred to him that John Carthy, or his mother, or both of them, were then possibly in negotiation with a solicitor in connection with the new house provided by the local authority. Superintendent Byrne stated that he was surprised to learn that the subject had done business with

Mr. Gearty and Mr. Connellan. Superintendent Byrne and the gardaí were familiar with those gentlemen on a daily basis, because they were *“the most prominent solicitors in Longford”*.

Ms Carthy said that when she and Martin Shelly were being interviewed, Thomas Walsh, who was outside the jeep in which she was seated, opened the door and inquired as to who was their family solicitor, to which she replied *“Gearty’s”*. She said that Garda Sullivan was sitting in the jeep when this request was made. Thomas Walsh thought that this occurred when they had returned to the Abbeylara side of the Carthy home, but accepted that he was open to correction on this. He stated that he was approached by a member of the Garda Síochána, whom he thought may have been Superintendent Shelly, inquiring who John Carthy’s solicitor was. Thomas Walsh said that he would ask Marie Carthy. He stated that he approached the jeep and confirmed with her that Gearty’s were the family solicitors.

In evidence to the Tribunal, Superintendent Shelly said that he did not discuss the request for a solicitor with any civilian person at that time. The statement of Mr. Thomas Walsh in this regard was put to Superintendent Shelly to which he responded:

“The issue and the identity of a solicitor did not arise at that time, I did not say that to Thomas Walsh. I was aware that earlier that night Inspector Maguire had spoken to Mr. Walsh when he came to the scene and he was talking to Mr. Walsh and he was trying to get as much information as he could about John Carthy and his background and his connection with him and I know that Inspector Maguire asked Mr. Walsh had John Carthy a solicitor and he said he didn’t know or know anything about a solicitor”.

He stated that he had no conversation with Mr. Walsh regarding a solicitor. Garda Sullivan was unsure whether it was in this conversation with Superintendent Shelly, or in a later one, before Superintendent Shelly went off duty, that he was told by him that John Carthy had no known solicitor.

Ms Ann Walsh, whom Thomas Walsh met later, stated that her brother required confirmation that Gearty’s were the family solicitor because he told her that he had *“asked Marie but he just wanted to confirm it with somebody else as well”*. Ms Walsh did not at that time remember that Mr. Connellan had acted for John Carthy.

Garda Sullivan returned to the scene and Sergeant Jackson continued the attempt to establish the identity of John Carthy’s solicitor with him. There was no reply to these requests.

Superintendent Byrne stated that no decision was made by the gardaí at the scene not to involve a solicitor. He stated that there were *“no rules established”* that the family were not to be told anything and there was *“no prohibition on anybody telling the family”*. He did not agree with counsel for the family that it had been an error not to contact the family in this regard.

- Q. *The question I was asking was, how is it the family weren't told that he was asking for a solicitor?*
- A. *Because I suppose we believed he didn't have a named solicitor, wrongly, as it turns out I would have been so glad of anybody that could connect with John. We offered a solicitor, we offered a parish priest, we offered any friend and the people that he accepted were brought to him."*

It was contended that there was no particular reason why the family were not told that John Carthy was looking for a solicitor. The gardaí who acted as liaison officers were not aware of this request. Superintendent Byrne agreed that no solicitor was brought to the scene. However, he did not believe that it would be beneficial – “*though it would be better for me here today*”, he told the Tribunal. He did not agree with the “Culligan point” that it would have been beneficial to bring a solicitor to the scene and that from the way that John Carthy treated people considered to be his friends and family, he (Superintendent Byrne) did not believe that he would have related to an anonymous person. He agreed, however, that if a solicitor had been brought down to the scene, John Carthy would either accept or reject such solicitor. Superintendent Byrne said that he had considered bringing a solicitor down but rejected it. He did not specifically recall discussing this with others.

Marie Carthy goes to Devine's house

Ms Marie Carthy and Martin Shelly were brought back to Abbeylara, via Granard. They went to Devine's house which is situated directly opposite the church. The Devines are close family friends of the Carthys. Marie Carthy stated that she informed the gardaí that they would be staying in Devine's house that night, if they were required. Thomas Walsh was also with them in Devine's at this stage. Mrs. Devine, she stated, made them one hot whiskey each and some tea. A garda was not detailed to accompany Mr. Shelly and Ms Carthy after they had left the scene. Their whereabouts was not logged.

Further attempts to negotiate between 11:30 p.m. and midnight

Sergeant Jackson then spoke to John Carthy again by megaphone and asked him why he was doing this. He reassured him that no one outside the house wanted to harm him; that his mother, sister, friends and neighbours were worried about him; all they wanted was for him to leave the gun behind and come out. Sergeant Jackson thought the subject appeared to laugh and smirk. He told the Tribunal that he then said to him that “*no one has been injured in this, nothing has happened that can't be sorted out, so don't worry about coming out*”. He received no reply to this.

In evidence, Sergeant Jackson stated that he tried to factor in John Carthy's main worries, such as the fact that he lost his job, that he was worried about being committed to St. Loman's hospital and that he was worried about the consequences of his present action. He also said that he was aware from the subject's perspective that he had extra worries about coming out because of his perceived unjust treatment by local gardaí on a previous occasion. He told the subject that he knew

that he was a good plasterer and that everyone said that he was a hard worker. This meant that people were willing to employ him in the future. He reassured him that when he came out he would be treated fairly by everyone and that things were not as bad as they appeared and that what was important was that no one had been hurt, including himself. He told him that his family and friends cared for him and that he, Sergeant Jackson, also cared. He told him that everyone outside would help him when he came out. He assured him that the best way out of the situation was to leave the gun in the house and come out. There was no specific reply to this from the subject but Sergeant Jackson thought he saw him mumbling to himself.

Detective Sergeant Russell's observations

Sergeant Russell observed some of the attempted negotiations at this time. He told the Tribunal that when Sergeant Jackson commenced negotiations from the new location he heard some initial responses in the form of mumbling and later responses such as *"who are you? Fuck off and get out of here"*. He overheard Sergeant Jackson informing John Carthy of who he was; the reason why he was there; that he wanted to bring the matter to a peaceful conclusion; that no one had been injured; that he, Sergeant Jackson, wished to reassure the subject that whatever had happened, the situation was not as bad as it might appear to him, and that it was important that no one had been hurt, including himself. According to Sergeant Russell, the negotiator reassured John Carthy that he would be treated fairly if he came out and left his weapon behind. As one of the panes of glass at the gable-end window was broken, Sergeant Russell felt that John Carthy could have communicated with them if he wished to do so. When asked whether he had given consideration to placing a telephone or two-way radiophone into the house, he stated that that would be a consideration if there was no means of communication in the house. It would take time for that to develop, he stated. It was a tactic that they might employ in such a situation. They did not have that apparatus with them. In any event, he stated, that before considering placing such equipment in the house, they would have to concern themselves with its safe introduction.

Further shot is discharged – 11:45 p.m.

At approximately 11:45 p.m., a shot was discharged directly at the negotiation pillar. Sergeant Russell was positioned behind that pillar with Sergeant Jackson and he regarded this as being an aimed shot. Sergeant Jackson stated that he then asked John Carthy to put the gun down and stop shooting. He replied, *"no way, no way, no way, come in and get me"*. Sergeant Jackson said in saying this he was not asking the subject to surrender the gun. He stated that he then said to John Carthy, that they didn't want to hurt anyone, especially him, and that they did not want him to hurt anyone, and asked him to stop shooting and put the gun down. There was no reply to this. At this point Sergeant Jackson thought that implicit in the subject's remarks was the suggestion that gardaí should come in and shoot him. This caused the witness to consider the question of whether suicide, in its broadest sense, was an issue. Arising from this he asked the subject whether he was thinking of hurting himself. He received no reply.

John Carthy agrees to speak to Mr. Shelly (“Pepper”)

After the discharge of the shot at 11:45 p.m., Sergeant Jackson stated that he said to John Carthy *“please put the gun down and let us talk”*. John Carthy was observed holding the gun and sometimes banging the table with the butt. Sergeant Jackson thought that he appeared angry and upset and then saw him drink from a cup and eat some bread. He sent Garda Sullivan to inform Superintendent Shelly that he was requesting authorisation to use Mr. Shelly (“Pepper”) as a third party intermediary. Superintendent Shelly agreed that this would be a good idea. Garda Sullivan relayed this back to Sergeant Jackson. The latter then told John Carthy that “Pepper” was there and he was willing to speak to him if he wanted to. He replied *“get Pepper”*. Garda Sullivan was made aware that Mr. Shelly and Ms Carthy had left the scene, and he requested Superintendent Shelly to locate him and bring him back. In evidence Superintendent Shelly stated that before he went off duty at 12:00 a.m., he became aware that *“Martin Shelly, the man known as “Pepper”, was anxious to talk to John Carthy. I know that was mentioned and that was about it at that time.”* Superintendent Shelly finished duty at 12:00 a.m. He had no further discussions with Marie Carthy or Martin Shelly of a substantive nature that night. Superintendent Shelly was asked whether Marie Carthy had expressed a wish at that stage to contact her brother. He replied *“no, Mr. Chairman, at that stage as far as I can recall, it was Mr. Shelly that was anxious and willing to talk to him. Ms Carthy – I don’t think that was suggested at that stage.”*

Mr. Shelly was in Devine’s house and had been there since shortly after he and Ms Marie Carthy had arrived in Abbeylara from Galway. He was not located, or contacted, until shortly before 2:00 a.m.

SECTION E: The Night of 19th/20th April

Superintendent Byrne as scene commander

Superintendent Byrne assumed duties as scene commander at midnight on 19th April. Superintendent Shelly took over from him at 9:00 a.m. on the following morning.

Tactics at the scene – Superintendent Byrne’s knowledge

At approximately 10:15 p.m., after arriving at the scene, he met Chief Superintendent Tansey, Superintendent Shelly and Inspector Maguire. He was briefed in relation to the ongoing events. All were aware of the fact that the subject had depression. Superintendent Byrne believed that he heard the words manic-depressive being used and also that John Carthy had been treated for manic depression in the past; although when he arrived he was not specifically aware that the subject was still under treatment. Also he became aware from that discussion that Dr. Cullen was the subject’s general practitioner and that he had been present at the scene at an earlier time. He was aware, he stated, of the policy/procedures that had been put in place in terms of isolation, containment and negotiation. He was familiar with cordons, their nature and their purpose, and was aware that the ERU were now effectively

manning the inner cordon, whereas the armed gardaí who had originally done so were being used as a “back-up” to the inner cordon, or as a support for the ERU. He was also aware that there were uniformed gardaí near the scene and stated that this was because it was considered best practice that a person such as John Carthy would see that *“we were gardaí rather than to face only plain clothes people and to either be confused and to think that maybe they are not the police”*. Uniformed gardaí were there for reassurance to the subject should he come out of the house unarmed. And they would only become visible to him once he exited the house.

His knowledge of the role of local officers

Superintendent Byrne did not personally inspect the position of the inner cordon but he was told where the people were. He was made aware of the instructions given to the local armed gardaí in the event of the subject emerging from the house. Superintendent Shelly told him that the local armed people knew what they had to do and that he had informed them, the local gardaí, to *“leave it to the ERU, they are there in support of them, as short as that.”* His understanding was that basically they were to leave the ERU to deal with the matter and just fall back in support of the ERU if necessary. He was also familiar with the concept of moving containment, saying that *“if the scene moved”* the ERU *“would deal with whatever situation developed”*. There was no discussion as to whether local gardaí should move back from the jeep should circumstances dictate. Superintendent Byrne stated that he did not specifically discuss the matter with Detective Sergeant Foley as to what his instructions were, or provide any directions for them at that time. He accepted that he was effectively relying on what Superintendent Shelly had told him.

Superintendent Byrne’s information and inquiries concerning Dr. Cullen

It was not until later in the evening, Superintendent Byrne stated, that he was informed that Garda Gibbons had spoken to Dr. Cullen. He told the Tribunal that the information he received was that Dr. Cullen was John Carthy’s general practitioner and that he had known him for a long number of years. He learned also that either Detective Garda Campbell or Garda Gibbons had made the offer to John Carthy to speak with Dr. Cullen and that in response he fired a shot and damaged the patrol car. Questioned on whether he had been informed that Dr. Cullen had stated to Garda Gibbons that John Carthy might not be pleased to see the gardaí, he stated:

“I certainly heard that at some stage now, but I took that in the balance of the whole situation where John wasn’t pleased to see anybody at that particular time, including the doctor”.

He was asked if, having received the above information, further inquiries should have been made to establish the reason for John Carthy’s displeasure. Superintendent Byrne replied that his primary concern was the security of the scene. He said that by 10:30 p.m. he was as content as he could be that the area was secure and was then asked whether further consideration was given to making inquiries on the

question of the subject's displeasure and the reasons why he was doing what he was doing. Superintendent Byrne told the Tribunal that:

“certainly consideration was given to trying to discover why John was doing this and we – that is why we looked for family and friends and I was aware that his sister was coming from Galway. I was aware, Mr. Thomas Walsh, his first cousin, and I was told his very best friend was present, had arrived from Cork, so I think we focused in on hoping to gain knowledge from those people with the hope of reassuring John, whatever his problems were, that they could be resolved”.

When asked whether he attached any significance to the fact that the information that John Carthy would not be pleased to see the gardaí was a warning coming from his long-time general practitioner – he stated:

“not particularly, Chairman, no. I could understand anybody in a siege situation would not be pleased to see the police in any shape or form; they some way become antagonists or protagonists in a situation like that”.

He did not take this as a particular warning because he was surprised *“that the doctor himself wasn't getting on better”* with his patient. He accepted that it had not crossed his mind to inquire into the reason why Dr. Cullen had given the warning. He told the Tribunal, that having spoken to the gardaí involved, he was satisfied that Dr. Cullen was most helpful, was giving full cooperation and was anxious to assist. He said that he assumed that Dr. Cullen had given all the information that was available to him at that time. However, they had, at that stage, no information about Dr. Shanley. Further, Detective Sergeant Jackson was unaware, at this stage, of the allegation John Carthy had made in relation to his detention. Superintendent Byrne was not aware of this allegation at 10:30 p.m. and he stated that he understood from his discussion with Thomas Walsh *“that John had many difficulties in his life, I didn't consider that the garda incident was a particular problem; it was a problem”*. Superintendent Byrne did not investigate what Dr. Cullen had on his mind at that time, or throughout the remainder of the incident.

Superintendent Byrne was further queried on whether it was a coincidence that no senior officer or member of the ERU, who had known about the warning that had been given by Dr. Cullen, questioned him about it to find out what really did he mean. He stated that there was certainly no reluctance on his part and *“I know on Superintendent Shelly's part or anyone else's”*, to inquire into it if they felt that it merited that strong inquiry. The seriousness of the matter as suggested to him had not occurred to him at that particular time. When asked whether he had considered interviewing Dr. Cullen he stated that he had been aware that Dr. Cullen had been present at 6:00 p.m. and he reiterated that he was satisfied that Dr. Cullen had given full information to the gardaí and that if he had any more, it would be forthcoming. It was put to him that *“you just rely on what a junior officer tells you and you don't think it is necessary to make, on this important matter, any investigation yourself. Nor did any other senior officer.”* He replied that Dr. Cullen had spoken with Garda Gibbons at 6:00 p.m. He did not accept or believe that it would have been an

embarrassing matter for the gardaí for the allegation of assault to emerge and that this may have been a reason for the failure to contact the doctor and inquire further.

Both scene commanders denied that there was any deliberate decision or reason, such as any potential embarrassment associated with an allegation of mistreatment becoming public, for not interviewing Dr. Cullen.

Superintendent Byrne was unsure as to when he became aware of John Carthy's allegation to Dr. Cullen. Initially he told the Tribunal that he may have learnt of it during the course of the incident, but later he stated that he was unsure of when this was. He was questioned by his own counsel as follows:

"Q. When you say you are not sure, did it come to your knowledge during the course of 19th or 20th or in the period afterwards when the matter was given some publicity?"

A. No, it would have come to my notice during the 19th/20th, some time during the night.

Q. The suggestion has been raised by the Chairman that you or the senior Gardaí didn't want that unhappy situation brought in any way into the forefront of what was going on . . . What have you got to say about that suggestion?"

A. There was no consideration given to that, we had no problem with discussing anything with Dr. Cullen or anybody else

Q. The suggestion is that effectively you were afraid to inquire from Dr. Cullen into what he had said, because this would bring it all tumbling out, is there any truth or substance or fact in that?"

A. None whatsoever."

Later, referring to the time at which he became aware of the allegation of mistreatment, he stated:

"I am not absolutely certain on that Chairman. I concede I may have even agreed that this morning, but on reflection I am not sure of that, I am aware that he was unhappy that he was arrested and unhappy about a number of things, but whether I was aware of any ill-treatment or allegation of ill-treatment, I am just not completely clear on that now, because when you heard what now has become an issue because the thing has been gone through so many times."

In answer to his counsel's question as to the extent of his knowledge about the subject's arrest and detention or any grievance that he may have had about it, he stated that he understood that John Carthy was annoyed that he had been arrested and that he had said that he had not "done it" and that he was blamed in the wrong. He further stated that had he known of the allegation of John Carthy's mistreatment in custody, it is something that he would have brought to the attention of the negotiator. He reaffirmed that he had no specific recollection as to when he heard about the allegation of mistreatment, and he remained unclear on this point. He also stated that he had spoken to Marie Carthy on several occasions, and also to Thomas

Walsh and that she or he would have been in a position to tell him of such alleged ill-treatment if they had been aware of it. He also stated in answer to his counsel:

“Q. The Chairman has characterised what Dr. Cullen had said as a warning to the gardaí, at the point in time when you came on duty, did you see it or assess it as a warning or was it something that to your mind was reflected in what John had actually done?”

A. I took it as a warning that John was dangerous with the gun, not for any other purpose. I didn't see any extra warning in the remark the doctor made.

Q. Had you any fear arising out of this, of consulting Dr. Cullen in any respect?

A. Not at all. Dr. Cullen was very cooperative and we spoke to him many times and would have spoken to him – absolutely no fear at all and no reason to have fear.”

Superintendent Byrne's contact with Marie Carthy and Martin Shelly

While Superintendent Byrne formally assumed the role of scene commander at 12:00 a.m., he had been in the area from 10:15 p.m. onwards. He was present when Marie Carthy and Martin Shelly arrived. He spoke to Ms Carthy, Mr. Shelly and Mr. Walsh shortly after 11:00 p.m. He spoke with her outside Walsh's house. He stated that he asked her whether she had any knowledge, or could assist as to what was upsetting her brother, or why he was doing this. He stated that: *“I asked the same question four, five or six different ways and her answer at all times was I don't know, I don't know”*. Mr. Walsh, he stated, was very forthcoming, most articulate and helpful. He talked about his cousin's life being in trouble in several ways in the last couple of months. He had lost his job in Galway, his girlfriend had left him and he was upset by this. He had been drinking heavily and Mr. Shelly told the Tribunal that he was concerned for him. Superintendent Byrne felt that Mr. Walsh was giving them full information, as he knew it at that time. Mr. Shelly was quieter, he stated. The only words he could remember Mr. Shelly stating was that he felt that John Carthy would be a bit stubborn.

Attempts to locate Martin Shelly

Sometime shortly before 12:00 a.m. Superintendent Shelly became aware of a discussion between Sergeant Jackson and John Carthy about a reference to “Pepper”. He stated that it took a little time to locate Mr. Shelly because whichever garda had dropped Martin Shelly at a house had gone for refreshments and, *“the generality”* of those present *“didn't know where Martin Shelly was for a period of time”*. In the log kept by the scene commanders, Martin Shelly and Marie Carthy's *“whereabouts”* were described as being *“unknown”*. Superintendent Byrne agreed that given the fact that these were friends and family of John Carthy, that it would have been a good idea to make sure that there was no doubt as to where they might be and that they should have been requested to indicate where they would be during the course of the night if required, and a note made of this. This, he said, was

something that was done later. It was, he said: *“a surprise to us, Superintendent Shelly and I were going back around the Abbeylara side of the scene and he had a few issues to complete in his log and we were aware that we were anxious to get Martin Shelly”*. He accepted that there was a delay in getting Martin Shelly to the scene and that he would have preferred to have had him there earlier. Questioned by counsel for the Carthy family, he stated that he was unaware of whether anyone at the negotiation post, in the two and a half hours that it took for Mr. Shelly to arrive, had inquired whether there was a problem with locating Mr. Shelly. He had requested gardaí on checkpoints to ascertain where “Pepper” was. He accepted that the garda who would most likely have been able to assist was the driver who had brought them away from the scene. This garda was not located and questioned. Superintendent Byrne did not accept that it seemed like no serious effort had been made to locate him. He did not have a satisfactory explanation as to how it might take such a length of time to locate the garda who had driven Mr. Shelly away. He accepted that it was important to comply with this request from John Carthy which might have had a beneficial result and that it was important to comply with it as soon as possible. He stated that the gardaí who brought “Pepper” to the scene had not been the ones who brought him away, although he did not know why this was so. It was thought that it would have taken approximately half an hour to have several gardaí go to the few houses in the area to ascertain the location of Mr. Shelly and others. He assumed that mobile phones were being used to contact Thomas Walsh or Marie Carthy but told the Tribunal that *“I was at the command post so I wasn’t personally doing it”*. Did this not subvert the trust that was sought to be established between John Carthy and the negotiator, counsel for the family queried? Superintendent Byrne did not accept that he had subverted such trust and that the gardaí were *“most anxious to deliver Mr. Shelly”*. By approximately 1:00 a.m., he was most anxious about the situation, but was unaware of whether any members of the family had been contacted. He stated that he was in touch with Sergeant Nally at least twice to inquire of the position. He was not pleased that Martin Shelly could not be found for a period because:

“I would have expected that we would have knowledge of where particularly Marie Carthy was and Martin Shelly . . . I would have expected that we would have known where Marie Carthy in particular was”.

Further attempts at contact after midnight – a further shot is discharged at 12:51 a.m.

Between midnight and 2:00 a.m., Detective Sergeant Russell observed John Carthy occasionally drinking a beverage. He appeared to be agitated and anxious and from time to time peered out the window pointing his weapon. While observing him during this period, Sergeant Russell stated that the subject never let the weapon out of his hand.

Sergeant Jackson told the Tribunal that in the period after midnight, he repeatedly telephoned the subject on his mobile telephone, but received no reply. He then renewed contact through the loudhailer by requesting him to answer his telephone. His response was one of incoherent mumbling. Then at approximately 12:51 a.m. a

shot was discharged within the house and immediately after the subject said “*Fuck off*”. The evidence suggests that with this shot John Carthy struck and damaged the landline telephone receiver in the kitchen.

The negotiator stated that he continued to ask the subject to stop shooting, and to answer the telephone. He stated that he attempted to keep reassuring him that he was there to help and that the best way out for him was to leave the gun down and come out. He mentioned again how worried his mother, sister, friends and neighbours were about him and that they cared for him. John Carthy replied “*bullshit*”. Sergeant Jackson stated that he reassured him that they did care and that he cared; that all he wanted was for him to come out safely. John Carthy, he stated, laughed at this. Sergeant Jackson then said he had told him that he (Sergeant Jackson) felt his anger and resentment, but he needed to know what happened to make him feel so bad. The subject replied that Sergeant Jackson didn’t care, as he was a guard. The negotiator said that he told the subject that his only reason for being there was to help and that no matter how badly he felt he had been treated previously, he promised that when he came out he would be treated fairly and would not be harmed. He told him his family and friends were worried about him and as an indication of that, Mr. Shelly, he stated, had travelled a long distance to see him and this showed that he was willing and able to help him out of his difficulties. He asked John Carthy to put the gun down and talk to him, and that he (Sergeant Jackson) would sort out the problem. There was no reply. Between 1:30 a.m. and 2:00 a.m., Sergeant Jackson stated that he continued his attempts to contact the subject by telephone, but without reply.

Arrival of Martin Shelly and Marie Carthy at the scene for the second time

The evidence of Superintendent Byrne

At approximately 2:15 a.m. Marie Carthy and Martin Shelly arrived at the scene. They stated that they were informed that Martin Shelly would be permitted to attempt to communicate with John Carthy. They walked to the scene and were met outside Walsh’s house. Ms Patricia Leavy, a friend of the Carthy family, accompanied them.

In his evidence, Superintendent Byrne stated that he introduced Martin Shelly to Detective Sergeant Jackson and then went back to talk to Marie Carthy and Ms Patricia Leavy. As Martin Shelly was being prepared to go down to the scene, Marie Carthy said to him; “*I want to go down too and talk to my brother*”. Superintendent Byrne said “*No, not at the moment Marie.*” He referred to her by her first name as they were, he said, quite friendly at that stage. This was the third time that he met her on that night. He told the Tribunal that Marie Carthy attempted to go by him and that he prevented her from so doing:

“I put out my arm and I blocked her passage and she went to go to the other side of me, she made two attempts and I prevented her from going down because I said it wasn’t right at the time. Martin Shelly, he wanted Martin and we wanted to bring Martin down to him to resolve the situation.”

He confirmed that Sergeant Jackson and he had a discussion some moments before Mr. Shelly and Marie Carthy arrived to the effect that only Martin Shelly would be allowed down. Therefore, prior to the arrival of either Mr. Shelly or Ms Carthy, the only person that the officers had considered letting down to the scene was Mr. Shelly, because Superintendent Shelly said that *“John had been told we were getting Martin for him and we weren’t going to bring any surprises to John like. We wanted him to trust us and that was the whole tenor through our entire negotiation”*. Superintendent Byrne said: *“I wasn’t anticipating that Marie was going to make an issue of it”*. Although he was of the opinion that she was drunk, it had been predetermined, alcohol or no alcohol, that Marie Carthy was not going to be permitted to talk to her brother at that time.

Superintendent Byrne in his evidence stated that he felt that Marie Carthy was under the influence of alcohol; that she was drunk. He formed this opinion from his observation that she was swaying and her speech was *“quite slurred”*. In answer to counsel for the family, Superintendent Byrne stated that Marie Carthy could stand up but that she was socially drunk; she was swaying and her speech was not clear. However, in answer to the Chairman, he stated that he did not smell alcohol and that she did not have to be supported by Ms Leavy. He had spoken to her twice previously and she was not drunk when he spoke to her at 11:00 p.m. and at sometime around 11:30 p.m. This was now 2:15 a.m. He accepted that he did not indicate Marie Carthy’s insobriety to any member of the family, *“even in the most discreet way”*. He did not suggest that she could go off and have a cup of coffee, which according to counsel for the family, would have been a very discreet way of dealing with the situation. Superintendent Byrne stated that he had no wish to upset the family any more than they were already. He did not agree that he had to justify why Marie Carthy did not speak to her brother. Superintendent Byrne stated that there was no decision made not to let Marie Carthy down to the scene:

“Q. One final question in relation to the issue of Marie Carthy being let down to the scene: Mr. Gageby [counsel for the Carthy Family] was asking you when it was decided that Marie wouldn’t be allowed to visit; was it on the occasion when she first came to the scene or was it simply on the occasion when she tried to get past you, that you made a decision as to whether she would actually be allowed down?”

A. There was no decision made to prevent Marie Carthy at any stage, except when she wanted to go down with Martin Shelly at that time. There was no other decision to that effect. I was hoping Marie Carthy would go down and talk to John at some stage but it never happened”.

Superintendent Byrne was asked to explain why, in his log, he had made no reference to the sobriety or insobriety or giddiness in respect of Ms Leavy or Marie Carthy. He accepted that he had not done so and told the Tribunal that when he was making his original statement to the Culligan Inquiry he had described Ms Carthy to them as being distressed. Superintendent Callaghan who had questioned him asked him *“what do you mean by distressed?”* Superintendent Byrne said that he replied that

“she was drunk”. He said that Superintendent Callaghan told him *“that is what you had better put down”*.

In evidence, Superintendent Byrne considered that Marie Carthy had a serious family problem that evening and he had no wish to add to the burden.

Superintendent Byrne also told the Tribunal that Ms Leavy was not under the influence of alcohol, but she was giddy. *“She was laughing and chirpy”* he said, and:

“she seemed to make light of the whole situation and when I asked her her name, because I didn’t know her – I knew the other two people – she said, ‘I’m not going to give you my name’. It was quite an unusual response in the circumstances we found ourselves”.

He stated that subsequently she explained that her name was Leavy and that she had come from Australia that day. Ms Leavy did not recollect having been reluctant to give Superintendent Byrne her name. She stated that she did give him her surname.

When Marie Carthy indicated that she was anxious to speak to her brother, did he rethink the matter of her going down? He replied no; again for the previously stated reason that John Carthy

“...was expecting Martin Shelly and it was Martin Shelly we were going to produce for him at that time or at least, if we were going to change things, we would have gone down and told him and see could we get acceptance for somebody else”.

Superintendent Byrne confirmed that Martin Shelly went down to the scene at approximately 2:30 a.m. and arrived back shortly before 3:00 a.m. When Mr. Shelly left, Superintendent Byrne discussed the matter with Sergeant Jackson. He inquired as to how Martin Shelly got on and he was told *“no good at all”*. John Carthy did not respond and they could not get dialogue going with him.

The evidence of Ms Marie Carthy

Ms Carthy told the Tribunal that she was informed that it was too dangerous for her to go to the negotiation point. She stated that she was anxious to speak with her brother and felt that he would listen to her if she had the opportunity to speak with him. She also told the Tribunal that she attempted to get past members of the gardaí so that she could speak with her brother, but was prevented from going down to the negotiation point. She refuted the evidence that she was drunk, saying that, she had only one hot whiskey in the Devine house because they had previously been outside in the cold for several hours. That she had only one hot whiskey when in Devine’s was confirmed in evidence by Mr. Devine, who told the Tribunal that Thomas Walsh, Mrs. Devine and the Devine’s daughter-in-law also had one hot whiskey. His son, who came in later had another one, and the remainder of the bottle, which was not full at the outset, was offered to Martin Shelly, who accepted it. He thought that the group was in his house for two hours, or more, talking. Mr. Devine said that when Ms Carthy and Mr. Shelly arrived initially, they had *“definitely no drink”* taken. Marie

Carthy also told the Tribunal that she had not taken any alcohol before arriving in Abbeylara at approximately 11:00 p.m. She stated that she made several attempts during the night to call her brother on his mobile telephone and on the home phone but she did not make contact with him.

Detective Garda Campbell's evidence

Garda Campbell told the Tribunal that he was standing on the road near the jeep when Marie Carthy, Ms Leavy and Mr. Shelly arrived. He thought that Marie Carthy was agitated and upset and wished to go down to speak to her brother. He stated that she was persuaded not to, that she then sat into the jeep and he sat in beside her.

Garda Campbell was questioned as follows:

“Q. Did you form any view as to whether she was anything more than agitated, which we can all understand, and upset I presume?”

A. No.”

On further questioning, however, his evidence changed and he stated that he got a smell of alcohol from her and that she was fidgety. He formed the view that she was *“under the influence of alcohol”* and formed the impression that she was a bit annoyed about not being let down to speak to John Carthy. He said that he was *“100% sure”* of the fact that Ms Carthy was under the influence of drink on that occasion. This contradicts his original evidence about her state at the time he met her.

The evidence of Patricia Leavy

By way of background, it is to be noted that Ms Patricia Leavy is originally from Abbeylara and worked in Dublin since 1995. Her contact with Abbeylara from then, she stated, was at holiday times and at weekends. However, her family continued to live in Abbeylara. She went to school with Marie Carthy and knew her for most of her life. She knew all the members of the Carthy family. She was aware of John Carthy's illness from its onset when he was 18 or 19 years of age. She told the Tribunal that Marie Carthy was somebody to whom John Carthy looked when he became ill. She recalled being in the house when Dr. Cullen called to see him. She knew that he was treated in St. Loman's hospital and she visited him in St. Loman's on occasions. She visited him in Galway also and was aware that he had manic depression. She knew, too, that John Carthy did not like St. Loman's because *“he told me that himself”*.

Ms Leavy had been on holidays in Australia in April, 2000. She arrived back in Ireland on 19th April and returned to Abbeylara between 6:00 p.m. and 6:30 p.m. She became aware of the incident and telephoned the Carthy house between 8:00 p.m. and 8:30 p.m. She wished to speak with Mrs. Carthy. The phone was answered but she did not know by whom. No one spoke. In evidence she stated that she thought that she asked whether it was the Carthy household, *“knowing that it was”*. She introduced herself, and stated that she was Patricia Leavy and wished to speak to Rose *“I suppose, in a sense, I didn't want to alarm the fact that it could possibly be John”*. However, she formed the impression that she was being listened to and that

the phone had not just been left aside because she could hear what she described as *“heavy breathing”*. She remained on the phone for a while and then whoever was on the line *“just hung up”*. She said that John Carthy would have known her voice. She rang again a second time. Once again the phone was answered but there was no response. She asked for Mrs. Carthy and inquired as to whom she was speaking. Once again she stated that she got no reply. The phone was put down again. These calls occurred in quick succession, she said. She thereafter rang Marie Carthy on her mobile phone at around 9:00 p.m. and was informed that the gardaí had called to see her in Galway and that she was on her way from there with the guards in a garda car. She arranged to meet her in the village. She thought that Marie Carthy telephoned her five or six times between 9:00 p.m. and 11:00 p.m. She met her at approximately 11:00 p.m. Ms Carthy informed her that both she and Martin Shelly were going to the scene. Ms Leavy knew that shots had been fired from the house. She stated that she then went to Devine’s, opposite the church. In the house at that time were Mrs. Devine and other members of the Devine family. According to Ms Leavy, Marie Carthy phoned her:

“to tell me mainly the same thing, that the guards weren’t allowing her to speak to John and that she wanted to, she wished to speak to John at that stage”.

She stated in evidence that Mr. Shelly and Ms Carthy came back down from the scene shortly before midnight and that they went into Devine’s house. She did recall Marie Carthy telling her that John Carthy had asked his mother to leave the house.

Mrs. Devine made a hot whiskey for anyone who wanted one. It was a cold night. Marie Carthy had one hot whiskey. Mr. Shelly also had one. Ms Leavy did not have a hot whiskey. Ms Leavy said that Marie Carthy was not under the influence of alcohol and that when she had arrived from Galway she had no drink taken. She observed Marie Carthy having one hot whiskey only and stated that she was in her company at all times. She stated in evidence that there were no other hot whiskeys made after that.

Ms Leavy stated that the gardaí called to the house at approximately 1:45 a.m. She told the Tribunal that they were looking for Martin Shelly only and that they wanted him to go down to the scene because John Carthy had requested or agreed to speak to him. Martin Shelly, Marie Carthy and she, went up to a position just beside Burke’s. According to Ms Leavy, the gardaí were proposing that Mr. Shelly would go down and speak with John Carthy. She understood from a conversation between Martin Shelly, Marie Carthy and her, that he had requested to speak with Mr. Shelly and that is why the gardaí had asked Mr. Shelly to go down to the scene. She also told the Tribunal that she could get the *“gist”* of what was being said between Mr. Shelly and John Carthy. He spoke to the subject about all the good times and was using a megaphone. He tried to remain positive and *“asked John repeatedly to come out of the house”*. Ms Leavy did not believe that there was a response.

Ms Leavy told the Tribunal that Marie Carthy:

“would have been very anxious to speak to John and requested permission to go down. She asked a few times to speak with her brother. They were reluctant

to let her down and they explained to Marie as to why she wasn't allowed to go down".

She said that it was explained that she could not go down because of a concern ". . .around having too many people at the scene at any one time and that she would get a chance to speak to John later". Marie Carthy was not happy with that explanation and, Ms Leavy stated, attempted to walk down the road herself. Ms Leavy then observed a garda standing in front of her and blocking her way. She said that she returned to Devine's house with Marie Carthy and Mr. Shelly, following his attempts to negotiate, and stayed there for the remainder of the night. She stated that the gardaí gave them an indication that Marie Carthy would get to speak with her brother.

She stated that the garda stood in front of Ms Carthy but she did not recall him pushing her. Superintendent Byrne held his arms out, she stated, but he never pushed Marie Carthy at any stage. She did not agree that Marie Carthy was agitated whilst on the roadway. She stated:

"obviously, she was very anxious and very upset that her brother was in the house and she was concerned for his safety, but to go and say that she was agitated, where she was at the point that she was getting extremely annoyed or not listening to what the guards were saying, that did not occur".

Ms Leavy suggested to the Tribunal that Marie Carthy was distressed rather than being under the influence of alcohol. She was clear that Ms Carthy did not have any other drink, apart from one hot whiskey. She was in her company at all times. She further agreed that it would be "fair to say" that there was no blanket decision by the gardaí that Marie Carthy was not to see her brother.

She told the Tribunal that when Ms Carthy sat back in the command jeep she became calm after approximately one minute. According to Superintendent Byrne, she was calm and fine for the rest of that half hour, when Mr. Shelly was down at the negotiation point.

Martin Shelly attempts to make contact with John Carthy

Detective Garda Sullivan met Mr. Shelly on the road outside Walsh's house and informed him that he was going to bring him down to speak to John Carthy and that he had mentioned his name and requested to speak with him. He was told that he would be brought to the negotiation point and that he would be speaking through a loudhailer. He was also brought up to date on the general progress of the negotiations and was informed that John Carthy had been firing shots. Garda Sullivan escorted Mr. Shelly to the negotiation point, crouching down to take cover behind the wall. Mr. Shelly gave evidence that no protective or ballistic shield was used; nor was he offered the use of any protective clothing. This is denied by members of the ERU who were present and who stated that a ballistic shield was used at all times when bringing members of the public to the negotiation point. Mr. Shelly was introduced to Sergeant Jackson and was informed by him that he would tell him

what to say. He told him to ask John Carthy what was wrong; to tell him that they all cared about him and loved him; that his mother and sister loved him and that everyone wanted to help him and did not want him to come to any harm.

Mr. Shelly was crouched behind the wall at the negotiation point with part of his head over the wall; the loudhailer was on the wall. He had a clear view of the gable-end of the Carthy house and could see the kitchen window. Mr. Shelly said what he had been instructed to say, but received no response. John Carthy came to the window once or twice while he was speaking. Mr. Shelly repeated himself several times. Sergeant Jackson was beside him, prompting him what to say and encouraging him by saying that he was doing a good job. Martin Shelly was happy to take the guidance of Sergeant Jackson and was permitted to use "*his own words*" in attempting to engage John Carthy in dialogue. They waited at the negotiation point for a little time to see if there was any response. Mr. Shelly was then given a ten-minute break where he sat in a car to rest. There appears to be some dispute as to the length of time in total that Martin Shelly spent at the negotiation point. Mr. Shelly is of the view that he was there for about one and a half hours and at the scene for a total of approximately two hours on that occasion. Mr. Shelly was then brought back to the entrance of Walsh's. Again he stated that no protective barriers were used. He returned to Devine's house where Ms Carthy and Ms Leavy were waiting for him.

Dr. Cullen is contacted

Detective Sergeant Jackson's request

Sergeant Jackson told the Tribunal that sometime between 3:00 a.m. and 3:30 a.m., he directed that further inquiries be made of Dr. Cullen. He stated that his inquiries were twofold; first, specifically in relation to John Carthy's medication and the effects that could be expected from this; and, second, an open-ended request to Dr. Cullen for any background, or other information, that might help in the negotiations.

Dr. Cullen's evidence

Dr. Cullen told the Tribunal that at approximately 4:00 a.m., he received a telephone call from the gardaí stating that they wanted to come to his house. Two gardaí arrived. These were Garda Campbell and Sergeant Nally, whom Dr. Cullen knew. They were seeking "*medical records or information which might be of help to them in the conduct of the negotiation between the negotiator and John*". Dr. Cullen retrieved and photocopied certain medical reports and records which were on his file. These were the reports concerning John Carthy's first admission to St. Loman's from Dr. McGeown dated 10th April, 1992, a copy of the report from Dr. Shanley, dated 12th April, 1995 and a copy of the admission note from University College Hospital Galway, dated 15th January, 1999, relating to John Carthy's first admission to that hospital on 26th December, 1998. He believed that these records were being sought because the negotiator thought that "*they might be of help to him in resolving the situation*". He thought that the garda who called to his surgery informed him of this. This was the first time that he had become aware of the presence of the

negotiator. He stated that he had no recollection of asking the gardaí whether he could be of further assistance to them at that stage. He was sure that he “*had some conversation*” with the gardaí about the nature of his patient’s difficulties, but could not recollect the detail thereof. He agreed with counsel for the Carthy family that he did not seem to have been asked “*in any particular way*” to share his expertise with the negotiating team or other gardaí, apart from the provision of reports.

Detective Garda Campbell’s evidence

Garda Campbell stated that in the early hours of the morning he was requested by Sergeant Jackson to attempt to make contact with Dr. Cullen. He went out to the doctor’s home with Sergeant Nally. He asked Dr. Cullen whether he had any information that could assist the gardaí in dealing with John Carthy. He said that the doctor went into his surgery and took out his file and went through it. He saw that Dr. Cullen had some reports on file and he asked whether he could bring them away with him. Dr. Cullen gave him photocopies. He also stated that he had a general discussion about the subject’s illness and remembered Dr. Cullen mentioning “*lithium*”, and that his patient had “*highs and lows*”. He stated that he did not hear the words “*manic depression*” mentioned at all. Garda Campbell had never come across an incident involving manic depression in his experience as a garda. Nor had he ever come across an incident involving someone who was depressed and who was in possession of a shotgun. Garda Campbell learned from Dr. Cullen that when his patient was high he would be agitated. He did not inquire from him as to the severity of the depression. He did not read the reports that were given to him by Dr. Cullen, nor did he seek information as to how long he had been treating John Carthy. He did not inquire from the doctor as to whether his patient had been in receipt of specialist medical attention. He believed that he subsequently read the reports and he learned of the involvement of Dr. Shanley. When Garda Campbell returned to the scene at Abbeylara he gave the documents to Sergeant Jackson who was then at the command post. He informed the negotiator of what had taken place at Dr. Cullen’s surgery and told him that John Carthy was on lithium and was suffering from highs and lows. It was suggested to Garda Campbell by counsel for Dr. Cullen that on receipt of the three reports the Garda Síochána had all the information they could conceivably need on this subject in relation to John Carthy, to deal with the situation that had arisen. Garda Campbell stated that if all the information in Dr. Cullen’s possession was in the three medical reports, then he was satisfied that that is what he had got. He agreed that had Dr. Cullen any other information that might have been of interest he would have given it to Garda Campbell.

Superintendent Byrne’s evidence

Superintendent Byrne stated that there were two elements to the inquiry sought by Sergeant Jackson; namely, the effect that the medication would have on John Carthy and, any other matter upon which Dr. Cullen could assist. While Garda Campbell was in the vicinity, Superintendent Byrne was unsure whether he was present when he, Superintendent Byrne, spoke to Sergeant Jackson on this point. He stated in evidence that he went to Garda Campbell and instructed him to go to Dr. Cullen. Superintendent Byrne told him:

"I said will you go around and see what effect the medication could be having on him and whatever else, what I meant by whatever else, is a mute point".

Superintendent Byrne confirmed that it had not occurred to him up to then that the subject may be under special psychiatric care or that a person who had manic depression may have been in receipt of ongoing care from a psychiatrist. It was not a matter that was specifically requested to be taken up with Dr. Cullen:

"in relation to a query as to whether one of the matters which may have been taken up with Dr. Cullen is the question of a specialist psychiatrist . . . not specifically, no. No more than the issue about the warning, as you say that the doctor gave us earlier. I didn't address those issues specifically".

Superintendent Byrne confirmed that he had no special medical knowledge, and thought, without giving it deep consideration, that manic depression was a more serious form of depression. He stated that Garda Campbell was gone for approximately one hour and that on his return he spoke directly to Sergeant Jackson and not to him.

Superintendent Byrne stated that the specific information that he had asked Garda Campbell "to find out", was discovered. He said:

"I asked him to know what effect the medication would be having on John and he asked that question and he responded to me by saying that Dr. Cullen had answered that he didn't know because he didn't know whether John was taking his medication or not."

When asked what further information he had gleaned from Dr. Cullen, Superintendent Byrne confirmed that Garda Campbell brought back notes from Dr. Cullen which Sergeant Jackson read. He (Superintendent Byrne) also read the reports.

"I did. I noticed the last sentence, when I was concerned that now we have a psychiatrist, Dr. Shanley, who seemingly got on well with John. That was the first intimation that I had that he had a particular psychiatrist."

This information was contained in the letter dated 12th April, 1995 from Dr. Shanley to Dr. Cullen. He told the Tribunal that what he found progressive, or helpful about this inquiry, is that they had now discovered Dr. Shanley and in fact "we discussed that at the time, Detective Sergeant Jackson and I, and we said we will see will we try and get him in the morning; can he help us". He was asked had he known the subject had an appointment for 2:00 p.m. the following afternoon if that would have been important information, and he stated that "I assume it would" as it would confirm to him that Dr. Shanley was still in touch with his patient. The document he saw was five years old at the time and he did not know if Dr. Shanley had subsequently met his patient. He intended to ask him or to have him asked that question in the morning. He did not consider getting back to Dr. Cullen at that time to ask him if Dr. Shanley was continuing to see John Carthy. He stated that "I didn't consider that. I now was relieved that we had a psychiatrist that may be dealing with John, but it was only a "may" at that stage".

Superintendent Byrne did not personally visit Dr. Cullen. He told the Tribunal that Chief Superintendent Tansey had given instructions that the superintendent was to remain at the scene *“but that in itself wasn’t necessarily the reason that I didn’t go around to Dr. Cullen”*. He contended that he did not see any merit in bringing Dr. Cullen to the scene. He had sent Garda Campbell to Dr. Cullen at his home. In a further answer to a question as to whether he thought it would have been helpful to inquire of Dr. Cullen the gravity and severity of John Carthy’s mental illness, he stated, however, *“it possibly would, Chairman. I didn’t – I accepted that John had been ill”*.

While he understood that there were psychological services available to the Garda Síochána, he did not at that time consider consulting the psychologist, who may have been available that night.

Concern is expressed about intermediaries coming to the scene

At approximately 3:25 a.m. a further shot was fired. It hit the wall at the negotiation point. Sergeant Jackson called on John Carthy to stop shooting and put the gun down but received no reply. At approximately 3:30 a.m. a further shot was fired at the negotiation point, hitting the wall. Sergeant Jackson again attempted to speak but the subject’s response was, according to Sergeant Jackson, to smile or smirk and shake his gun out the window in what Sergeant Jackson described as a *“defiant and challenging fashion”*. As a result of the shots, Detective Sergeant Russell expressed a concern to Sergeant Jackson that they may have *“to suspend any intermediaries coming to the scene”* at that time. He was more worried about John Carthy’s behaviour then than he had been before. He communicated this view to Superintendent Byrne. The subject was then seen by Sergeant Jackson *“clearing some stuff off the floor and waving a blanket in preparation for rest”*. Superintendent Byrne stated, *“I said that if he rests now, we could be lucky that in the morning when he comes to again, he will be in much better form”*.

Consideration of the relocation of the negotiation post

Superintendent Byrne told the Tribunal that he was conscious of, and accepted the risk associated with, the location of the negotiation post. However he also knew that Sergeant Jackson felt that it was beneficial to be at that point trying to develop rapport. The decision to locate the negotiation post was made before he went on duty as scene commander but it was not a decision which he reviewed at this time because John Carthy rested until 8:00 a.m.

Sergeant Russell said that he did not at that time discuss with Sergeant Jackson the question of withdrawing the negotiation post from its then position. It was considered important, he said, to keep the negotiations going. Sergeant Russell made the point that if the subject had indicated at any stage that he did not want to have them in that location, he could have gone to another part of the house and *“ignored us completely”*. He told the Tribunal that he thought that the *“curious thing”* about the whole incident was that on the occasions when the subject did not engage actively with Sergeant Jackson, he mostly remained near the kitchen window. He agreed,

however, that there might be a possible explanation. If he had moved to some other part of the house; he would not be able to see what was going on and he might consider that he was leaving himself open to invasion.

Issues relating to the location of the negotiation point are considered in Chapter 6.

John Carthy requests cigarettes

This request which was made shortly before 3:25 a.m., and the Garda response to it are examined in detail in Chapter 6.

The delivery plan

On being informed of the request, Superintendent Byrne spoke with Sergeant Russell and requested him to advise how they were going to get the cigarettes in to John Carthy. Sergeant Russell said that there was no problem and that he had a plan in his head, which he had possibly used on a previous occasion. That plan effectively was that the subject would stand in full view at the window from which he had been firing, without the gun in his possession. Another member of the ERU under Sergeant Russell's command would deliver the item to the step at the hall door and thereafter move away. The cigarettes would be placed on the hall doorstep and *"our person could get away in safety"*. If John Carthy moved, the plan was to be aborted.

Sergeant Russell stated that he explained to the Superintendent the danger not only to gardaí but to John Carthy of the initiation of action if, for example, they went to deliver cigarettes and were compromised. That might result in the taking of action which might lead to a serious confrontation. He also stated that he expressed concern that a safe method of delivery would have to be agreed. He requested Sergeant Jackson, in the event that he was going to offer the cigarettes, to get John Carthy to agree to *"just put the gun out of harm's way until he got them"*.

According to Sergeant Russell, Sergeant Jackson took on board his concerns and explained them to John Carthy. He stated that he heard the negotiator saying to the subject that he wanted to give him cigarettes:

"but John we have to agree a safe method of delivery and we want you to put the gun out of harm's way until we get them into to you and. . .we would like to get you cigarettes but we are concerned about the gun, we are concerned about the shots being fired".

The prospect of throwing cigarettes over the wall for collection by the subject, near the house, was not something that commended itself to Sergeant Russell, because he stated that he was not convinced that John Carthy would leave the gun in the house and he did not want him coming out into the garden with the gun. It was obvious from very early on, he said, that John Carthy was not going to throw out the weapon and he was happier when he remained in the house. He also told the Tribunal that in so far as Superintendent Byrne's evidence suggested that he, Sergeant Russell, had stated that delivery would not be a problem, it was not *"as simple as*

that". He accepted that tactically, it would not have been a problem if the subject understood the implications and agreed to comply. He accepted that a layperson might find it difficult to understand why the cigarettes were not delivered but he was aware that there were reasons from a negotiation perspective. He also accepted that if he had been asked to deliver a bottle of milk or a packet of cigarettes in the course of reconnaissance, he would have had no problem "*none whatsoever Mr. Chairman, but I wouldn't necessarily involve myself with the merits or whatever of the issue*". It was never canvassed with him whether he would be in a position to deliver an item without reference to, or without agreement by, John Carthy as to the means of delivery. Nevertheless, he contended that it was a matter of negotiation strategy and that there was a risk involved.

Covert Delivery

Superintendent Byrne stated that the safe delivery of "*any item*" was discussed at 4:00 a.m. He discussed with the negotiator whether they might consider leaving the cigarettes at the door but he told him that it would not be beneficial to leave them without consent or cooperation.

The three requests – combined effect of delay? Superintendent Byrne's opinion

The effect of potential perception of delay from John Carthy's perspective concerning the three issues (the cigarettes, the solicitor and Mr. Shelly) was canvassed with Superintendent Byrne. To isolate these issues, he stated, was to pick three negatives and to fail to appreciate all the positives that had taken place. Sergeant Jackson, he stated, had reassured and attempted to build up John Carthy's confidence.

Removal of car ignition keys, reconnaissance and consideration of entry

At approximately 4:00 a.m. Sergeant Russell learned from Superintendent Byrne that the key of the unmarked garda car which had been abandoned in the driveway had been left in the ignition. There was concern that if the subject left the house he could make use of the car and it was decided that the keys should be removed. At this time, he was out of sight and Sergeant Russell established, through his colleagues, that he had not presented himself at any window or other room within the house. In fact, as it transpired, John Carthy did not appear again at the kitchen window until approximately 8:00 a.m. However, the light remained on in the kitchen.

"When all was quiet," Sergeant Russell instructed Detective Garda Flaherty to afford him cover while he attempted to remove the car keys. He decided to use this opportunity to "*learn as much intelligence about the actual site and the area . . . information that could be useful to us at a later stage*". He had discussed this with Superintendent Byrne who had agreed that if the appropriate opportunity presented itself to obtain intelligence, that he should do so. While there was no particular discussion with the superintendent as to how far he would go, he stated that he was

relying on Sergeant Russell's experience as to the extent of the reconnaissance he would undertake.

At 4:30 a.m. Sergeant Russell began his reconnaissance of the house spending approximately 15 minutes in doing so. He approached the car and removed the keys. He then moved along the house in a covert manner, checking whether the windows were locked. He arrived at the front door, where he:

"I paused for a moment and again, I am looking at the possibility that at some stage there would be a request for us, I know it might seem remote but nevertheless there could be a time when I might be asked to go tactical or to make an intervention, and I saw this as an ideal opportunity to actually prepare for that".

The front door was locked. This was important information for Detective Garda Ryan, the breacher. He paused at the window on the right side of the front door. There was a hole in the frame of that window, probably the size of an old two-shilling piece. He peered through the hole and saw the subject lying on a couch on the far side of the kitchen, with a blanket up to his mid-chest area. Sergeant Russell could not see the gun, however. He observed John Carthy moving, shuffling from side to side and Sergeant Russell was concerned that he may not have been totally asleep. He observed the physical layout of the premises and became concerned that not only did it have an outer or main door, but there was also a secondary door inside the porch. The porch/hall area was quite narrow and he was concerned that if they did enter, they might be caught in what is described as "a choke point" – i.e., a narrow area between the two doors. Therefore, because he was not satisfied that the subject was asleep, that he did not know where the gun was and that he was concerned about the internal layout of the building, he stated that to attempt an entry at that time would have been highly dangerous:

"If at any stage during our entry he was alerted and attempted to arm himself with a gun we would have had no option but to discharge firearms".

In the circumstances, Superintendent Byrne ruled out covert entry as being too dangerous.

Negotiation effort between 4:00 a.m. and 8:00 a.m.

Garda Campbell and Sergeant Nally, who had been earlier sent to Dr. Cullen, returned to the scene and were spoken to by Sergeant Jackson who read the documents given to them by Dr. Cullen. The negotiator and Superintendent Byrne discussed Dr. Shanley's involvement and it was decided that the psychiatrist would be contacted in the morning, at "normal hours", if John Carthy's condition had not improved and if the situation was not resolved at that stage. Detective Garda Sullivan went for a rest period at approximately 4:30 a.m. Sergeant Jackson tried to contact John Carthy through the loudhailer but he did not appear at the window. The reason for this was to assist Sergeant Russell's reconnaissance of the scene, in that he was anxious to establish whether John Carthy was asleep, and if not, that he may show himself to the gardaí, which would affect any reconnaissance. Between 5:00 a.m.

and 8:00 a.m. John Carthy continued to rest. The scene commander and the negotiator were hoping that the subject would be in better form in the morning. Garda Sullivan returned to the negotiation point and Sergeant Jackson went for a rest break at 5:30 a.m. Between 5:30 a.m. and 8:00 a.m., Garda Sullivan stated that he made three or four requests of John Carthy, by both loudhailer and by shouting over the wall in the following terms: *“John, are you awake?”* Sergeant Jackson said in his statement to the Tribunal that he instructed Garda Sullivan *“to continue to attempt to have dialogue with John, with instructions to contact me if John began talking”*. Garda Sullivan said in evidence that his requests to John Carthy were motivated by *“safety issues.”* Between 7:30 a.m. and 8:00 a.m. Garda Sullivan placed two concrete blocks on either side of the pillar at the negotiation point so as to provide the negotiation team with some protection and to enable them to get a view of the subject’s position through a narrow gap between the block and the pillar. Sergeant Jackson returned to the negotiation point at approximately 8:30 a.m.

The television cable is severed

The negotiator became concerned about the fact that John Carthy had television and by the manner in which he had been turning the volume up and down during the evening. In Sergeant Jackson’s view this was hampering his efforts to make contact with the subject. He was also concerned about media coverage. He stated that he spoke to Superintendent Byrne and Sergeant Russell and that it was agreed that the television cable should be severed.

Superintendent Byrne stated in evidence that the *“idea”* of severing the television cable to the house came during the course of discussions with one of the two detective sergeants. He was concerned about the feasibility of severing the television cable. Indeed, he stated that he was even considering a covert entry into the house at that time. These matters were discussed with Sergeant Russell. The last thing that he wished to do was to *“escalate the situation”*. They were trying to keep things calm. It was calm at that time of the morning and he had no wish to *“up the ante”* .

At approximately 6:00 a.m. Sergeant Russell once again approached the house in a manner similar to his earlier approach. At this stage it was starting to get bright but *“there wasn’t too much light”*. He approached the house and having satisfied himself that John Carthy was still resting, he cut the television cable which was in the area of the front gable wall.

Detective Sergeant Russell rests

Following the cutting of the television cable, Sergeant Russell told Superintendent Byrne that he wished to rest as he was satisfied that the subject was still resting. In evidence, he said that he made arrangements for members of the ERU under his control to avail of rest periods. He was not replaced by another detective sergeant during the incident, though he stated that later in the siege it became a consideration that he should be replaced when they were heading in to a second night. This did not occur because the incident ended at approximately 6:00 p.m. Sergeant Russell

had no discussion with the scene commanders as to what time they had commenced duty on the previous day. During the course of 20th April, Sergeant Russell spoke to Detective Inspector Hogan regarding his own relief, but he did not discuss that of Sergeant Jackson.

Detective Sergeant Jackson rests

The negotiator rested from approximately 5:30 a.m. until 8:00 a.m. Sometime between 4:00 a.m. and 5:00 a.m. Superintendent Byrne asked Sergeant Jackson how he was *“holding up”*. He recounted that the latter told him that *“he felt that he was beginning to get to John and he hoped to use the situation relating to the cigarettes in a positive manner later on”*.

Detective Sergeant Russell’s contact with Garda Headquarters regarding relief personnel

During the course of the night, Sergeant Russell made contact with Garda Headquarters and kept Inspector Hogan informed of developments. At approximately 7:15 a.m. he spoke to Detective Sergeant Commiskey and requested that three additional detective gardaí attend at the scene to relieve persons on the inner cordon who he felt needed rest. Three additional ERU officers arrived at lunchtime, i.e., Detective Gardaí McCabe, Finnegan and Sisk.

SECTION F: — The Morning’s Events

Family Liaison

Garda Frank Reynolds is requested to visit the family

Garda Reynolds who was stationed at Granard took up duty at 6:00 a.m. on 20th April. He had no previous dealings with John Carthy and was informed by Superintendent Byrne about the incident. At about 8:00 a.m. Garda Reynolds met Superintendent Byrne and they were joined by members of the ERU. The superintendent instructed him to go to the Mahon house to see how Mrs. Carthy was and to ascertain whether there was any new information. Garda Reynolds said that Superintendent Byrne instructed him to find out if there was anything in recent time that would *“put John in good form”*. Interestingly, he did not recollect ever having been told that John Carthy had a mental illness history. Garda Reynolds accompanied by Garda Carthy went to the Mahon house and was met by Mrs. Patricia Mahon. Mrs. Carthy was sleeping when he arrived. He waited and shortly thereafter spoke to her for approximately fifteen to twenty minutes. Two of her nieces were present during the interview. She appeared upset but agreed to answer questions. Garda Reynolds asked her whether there was anything that might put her son in good humour or which might be of assistance to the negotiator. Her response was that her son was anxious to return to Galway but that she believed that there

was something preventing him from returning. He appeared to have been happy in Galway, she stated. She also informed Garda Reynolds that her son had been in great form, that he had a relationship with a girlfriend, that it had broken up, and she thought that recently he had not been himself since the break-up. Garda Reynolds was told that as the new Carthy house was nearing completion, there had been discussions about moving into it and that Mrs. Carthy had found that her son was very reluctant to move from the old house. Garda Reynolds wrote in his notebook to the following effect – *“Marie came up to bring him down to Galway”*. He stated that he got the impression from Mrs. Carthy that Marie Carthy intended to bring her brother back to Galway but that there had been a reluctance on his part to go on a previous occasion.

Garda Reynolds inquired about the arrest of John Carthy in 1998. Mrs. Carthy introduced the topic by saying that after her son had been released that he was getting some *“slagging”* in the area about the arrest and that he had taken it to heart. Garda Reynolds told the Tribunal that Mrs. Carthy felt that moving house; the goat incident and the breakdown of the relationship were events that had contributed to that situation. Garda Reynolds had been aware of the goat incident prior to this conversation and he understood it to be common knowledge in the locality. He was aware that John Carthy had been exonerated from any involvement in the incident. He had not heard of any allegation of assault until after 20th April, 2000.

Mrs. Patricia Mahon recollected telling the gardaí about Dr. Shanley and that John Carthy had been due to go for a check-up on that day. The gardaí who called to the house had no recollection of being so informed. Garda Reynolds said that the first time he heard of Dr. Shanley, or was aware of his relevance or involvement, was when Superintendent Shelly asked him to meet the doctor in Edgeworthstown on the afternoon of 20th April.

In her evidence to the Tribunal, Ms Ann Walsh stated that she had enquired from the gardaí how things had been during the night and was informed that her cousin had slept from 4:00 a.m. She confirmed that the gardaí *“wanted to know if there was anything he would like to hear when he would wake up”*. Ms Walsh replied *“he was looking forward to going back to Galway after his mother moved into the new house”*. She also said that she told the gardaí of his liking for handball.

Garda Reynolds returned to the scene about 9:00 a.m. where he met Superintendent Byrne.

The superintendent confirmed that his officer had come back from Mrs. Carthy with *“three issues”*. These were that John Carthy was very upset about losing his girlfriend; that Mrs. Carthy felt that the girl had let him down; that he was reluctant to go back to Galway, although Superintendent Byrne stated that he found this reason difficult to understand; and that the subject did not want to leave the old house.

Garda Reynolds returned to Mahon's for a second visit to make inquiries of Marie Carthy

About 10:30 a.m. Garda Reynolds returned to the Mahon house hoping to speak to Marie Carthy. Superintendent Byrne had requested him to make general inquiries of her. Garda Carthy accompanied him to the house. When they got there Mr. Shelly ("Pepper") was there. Garda Reynolds allowed Garda Cunniffe, a probationer garda, to take over at that stage and he returned to Superintendent Byrne. She identified herself to Marie Carthy and said in evidence that she had no real conversation with her. Garda Cunniffe said that she had been at the Mahon house since 8:30 a.m. and that at 10:30 a.m. Marie Carthy arrived escorted by Garda Reynolds and Garda Carthy. The evidence would seem to indicate that Garda Cunniffe was not made aware by anyone of Superintendent Byrne's instruction to Garda Reynolds. Garda Cunniffe left the Mahon house at about 11:00 a.m. and went off duty.

Detective Sergeant Jackson resumes duty

At approximately 8:30 a.m. Detective Sergeant Jackson returned to the negotiation point. On his return he noted that John Carthy was alert and aggressive.

At approximately 8:00 a.m., Detective Sergeant Russell observed the subject banging the barrel of the shotgun against the vertical wooden bars of the kitchen window. Sergeant Russell said that during the course of the following two hours more of the window was broken out. He expressed concern to Superintendent Shelly that the subject might attempt to emerge through the window.

Detective Sergeant Jackson contacts Colm Regan

At approximately 8:30 a.m. Sergeant Jackson contacted Mr. Colm Regan, a clinical psychologist attached to the Prison Section of the Department of Justice, Equality and Law Reform. He had already attempted to contact Mr. Regan on his way to Abbeylara on the previous night. The purpose of the consultation was for Sergeant Jackson to obtain professional advice about dealing with depressive people such as John Carthy. The negotiator saw Mr. Regan's role as a dual one of assessing the subject's behaviour in the stronghold and also advising on negotiation strategy, which could include the performance of the negotiator. It was on that basis that he contacted Mr. Regan.

The role of the psychologist and of psychiatric or psychological support is set out and analysed in Chapter 6.

Detective Sergeant Jackson resumes the negotiation effort

Shortly after contacting Mr. Regan, Sergeant Jackson resumed efforts to negotiate with John Carthy. He attempted to reassure him that he had a lot to look forward to in his life; that he was a respected worker and had friends who cared about him. The best thing for the future was to come out. He told him what he had done yesterday was an angry reaction and that he, Sergeant Jackson, understood this but that the

main thing was that no one was hurt. The subject, he said, reacted to this by holding out his chest and saying “*come on shoot me, come on*”. Sergeant Jackson then said to him: “*John, we don’t want to shoot you. Are you thinking of hurting yourself? Are you thinking about suicide?*” Sergeant Jackson said that he told John Carthy:

“Think about what will happen if you are dead. Think about your family and friends and how they will feel. Think about Marie, your mother and “Pepper”. Think about how they would feel if you got hurt or you hurt yourself. Think about how badly they are feeling at the moment because of what you are doing”.

Sergeant Jackson received no reply. He continued:

“Think about how good you would make them feel if you put the gun down and talk. If you won’t come out for yourself John, then come out for them. Come on John, come on out”.

John Carthy reacted to this by putting his head in his hands; he looked confused and anxious. Sergeant Jackson told the Tribunal that he put his hand over the wall and asked the subject to come out, saying to him that he would meet him in the garden if he left the gun down. he reacted to this by saying “*No, No*”. Sergeant Jackson then went on to discuss the subject’s sister Marie, his mother and his friends in the context of his coming out of the house. He received no reply to any of these efforts.

Superintendent Shelly resumes duty

Superintendent Shelly returned to duty at approximately 8:20 a.m. He met with Superintendent Byrne, Sergeant Russell and Sergeant Jackson. Superintendent Byrne went through the log which he had maintained throughout the course of the night. Superintendent Shelly was informed of the request for cigarettes, the cutting of the television cable and the visit of Mr. Shelly and Ms Carthy to the scene. He was informed that Mr. Shelly had spoken to John Carthy and that there was no response. He was told that the television cable had been severed because it was felt by the negotiator that John Carthy might hear or see media reports on television which might distract or possibly upset him. This was not something that he had discussed before going off duty. He was also informed by Sergeant Russell that covert entry was considered too dangerous and had been ruled out at that time.

He was also informed that Sergeant Jackson had made a request at approximately 3:15 a.m. that information be obtained from Dr. Cullen as to the effect that his medication might be having on John Carthy. He was told that Garda Campbell had gone to Dr. Cullen to obtain that information and that the doctor had supplied a number of reports which were brought back to the negotiator. Superintendent Shelly did not see these reports at any stage during the course of the day. He did not inquire into the contents of the reports or the authors thereof. He knew that these reports were then with Sergeant Jackson. It was at this time that he first became aware of the fact that John Carthy’s psychiatrist was Dr. Shanley.

Superintendent Shelly stated that when he had received this information he concluded that little progress had been made in the negotiations.

Assistant Commissioner Hickey arrives at the scene and is briefed on the night's events

Shortly before 9:00 a.m. Assistant Commissioner Hickey arrived at the scene. He had been in contact with Chief Superintendent Tansey from 8:00 a.m. as he travelled to Abbeylara. On his arrival he spoke to the scene commanders. He was given a detailed account of what had happened during that time and he learned about the request for a solicitor and for cigarettes. He discussed questions of safety and particularly the location of the negotiation post.

Superintendent Byrne informs Assistant Commissioner Hickey of the request for cigarettes

Although Superintendent Byrne officially went off duty as scene commander at 9:00 a.m., he remained at the scene until approximately 1:30 p.m. He spoke with Inspector Maguire and Assistant Commissioner Hickey between 8:00 a.m. and 9:00 a.m. He informed Assistant Commissioner Hickey of John Carthy's request for cigarettes. He explained it in what he described as positive tones and stated to Assistant Commissioner Hickey that they were hopeful that they could develop it. Assistant Commissioner Hickey asked him *"why didn't you throw them into him?"* to which Superintendent Byrne replied that he *"felt we could use the cigarettes and I discussed it with Sergeant Jackson, as a vehicle to get a rapport with John, and I felt it would be a waste of that opportunity if we didn't do that."* Superintendent Byrne recounted to Assistant Commissioner Hickey that Sergeant Jackson was trying to interact with John Carthy in relation to the cigarettes and that if they were delivered without arrangement that he might regard it as an intrusion: *"that the gardaí had been snooping around his house and encroaching on his space"*.

Assistant Commissioner Hickey told the Tribunal that he discussed the question of the delivery of cigarettes with Sergeant Russell, Sergeant Jackson and Superintendent Byrne. His initial view was that it was *"a pity"* that Sergeant Russell had not delivered cigarettes at the time of his reconnaissance of the house but, he said, having listened to Superintendent Byrne he could see why they were not delivered during the night. Superintendent Byrne also believed that during the reconnaissance Sergeant Russell had *"probably gone a bit further than he had wished him to"*. However, Assistant Commissioner Hickey was of the view that this was not a *"big issue"* for Superintendent Byrne.

Assistant Commissioner Hickey said that his impression from Sergeant Jackson, when he discussed this issue with him on his arrival at the scene in the morning of 20th April was that for Sergeant Jackson *"bargaining with the gun"* was not the main issue. Assistant Commissioner Hickey went on to say *"that, of course would be ideal, but it was to get John Carthy to focus on some issue and to try and engage with him"*.

Assistant Commissioner Hickey stressed that Sergeant Jackson emphasised to him that his (Sergeant Jackson's) objective was to try to engage John Carthy. Assistant Commissioner Hickey told the Tribunal that:

“For instance . . . if he threw out a cartridge, that would be a step in the right direction. If he broke the gun, but that in the early stages, that was still down the road. It was to try and engage with him and, as has been said, I didn't particularly ask Detective Sergeant Jackson why he didn't throw a packet of cigarettes at the window. I would have thought, and indeed it crossed my mind, that if cigarettes were left outside the window at any stage, that would disimprove the situation, because, as it was, John Carthy was being contained in the house. I didn't think that we should do anything to encourage him to come out in that respect. For instance, if he came out with the gun, the situation would have disimproved.”

Superintendent Shelly stated in evidence that he discussed the ongoing situation, the overnight events and the plan which had been developed, with the Assistant Commissioner.

Further shots are discharged

At 9:06 a.m. and again at 9:42 a.m. further shots were discharged. They were directed towards the front boundary wall.

Shortly before the first shot, John Carthy broke glass from the frames in the window. Sergeant Jackson went to the command post and discussed the events that had occurred since 8:00 a.m. with Superintendent Byrne and Superintendent Shelly and recommended that the strategy that had been originally set in place be continued. As part of this strategy Sergeant Jackson recommended that he would continue to try to engage with the subject and to attempt to develop the issue of the solicitor and the cigarettes. Sergeant Jackson also discussed his own position *vis-à-vis* the length of time he had been on duty. The negotiator then returned to the negotiation post and tried to engage John Carthy in conversation. He was at the window with the gun in his hand which he levelled, forcing Sergeant Jackson to duck down. A shot was then discharged with some of the pellets hitting the pillar at the negotiation point. Sergeant Jackson telephoned the subject who answered the phone but did not speak. Sergeant Jackson then spoke to him on the loudhailer and asked him to stop shooting. He told the Tribunal that John Carthy's response was to level the gun again, forcing Sergeant Jackson to once more duck down behind the wall.

Superintendent Shelly's actions and observations in relation to the request for cigarettes

When Superintendent Shelly was informed of John Carthy's request for cigarettes, he stated, *“I discussed that with Detective Sergeant Russell and I was anxious that the cigarettes would be delivered to John Carthy.”* However, he stated that a plan had to be devised, a safe plan, or method to ensure that the cigarettes could be delivered in safety. Superintendent Shelly was not on duty at the time the request for cigarettes

was made but he understood that the negotiator had not reached a stage where the safe delivery of the cigarettes could have been achieved and he agreed with the approach adopted by Superintendent Byrne at the time.

Cigarettes are obtained

In anticipation of delivery, Superintendent Shelly told the Tribunal that at 10:00 a.m. he arranged for Garda Michael Carthy to go to the village to purchase cigarettes. He had been informed that John Carthy had looked for "Major" cigarettes. He asked Garda Carthy to purchase 60 cigarettes and some matches. Garda Carthy returned some time later and informed him that the local shopkeeper, who knew John Carthy, had stated that "Benson & Hedges" was his brand and he was given 60 "Benson & Hedges". The local shopkeeper, Mr. Farrell, did not charge for the cigarettes.

Second request for cigarettes

At approximately 10:00 a.m. John Carthy again asked Sergeant Jackson for cigarettes. This request and the Garda response to it are set out and analysed in Chapter 6. The request was as a result of an inquiry by Sergeant Jackson as follows "*you mentioned cigarettes the night before, we want to get you the cigarettes*" and "*is there anything else or is there anybody else we can get for you?*" John Carthy's reply to this was "*fags*". Sergeant Jackson said to him that he wanted to get him the cigarettes but was worried about the gun that he was firing and went on to say "*can we agree a safe way of getting them into you?*" He explained to John Carthy the exact method that delivery would entail and what he was to do about putting the gun on the floor. Sergeant Jackson received no reply to this. Garda Sullivan relayed that information to the scene commander. This request was not recorded in Garda Sullivan's log. Sometime later Garda Sullivan collected the cigarettes at the command post and brought them to the negotiation point. When the cigarettes were brought there Sergeant Jackson physically showed them across the wall.

The negotiator had, Superintendent Shelly said, done everything in his power to try and create a situation where the cigarettes could be delivered: "*we had them on site and we wanted to give him the cigarettes. It was a question of trying to negotiate with him to get a safe method of delivery*". Superintendent Shelly confirmed, however, on more than one occasion, that the gun would have to be out of commission, otherwise the danger involved would be far too great.

Inspector Maguire returns to the scene and makes contact with Dr. Shanley

Inspector Maguire resumed duty at about 8:30 a.m. He observed what he described as a change of atmosphere at approximately 9:00 a.m. He was standing in the middle of the road opposite Burke's. He heard glass breaking and heard banging noises from within the house "*as if somebody was banging furniture*" with what he presumed to be the butt of the gun. Following this a decision was taken by Superintendent Shelly to have an ambulance called and for Dr. Cullen to be contacted and brought back

to the scene. Inspector Maguire spoke to Assistant Commissioner Hickey who requested him to make contact with Dr. Shanley to see if he could give an opinion as to John Carthy's likely frame of mind. He telephoned St. Patrick's hospital in Dublin and was put through to the psychiatrist's secretary. He learned that John Carthy had an appointment at 2:00 p.m. with Dr. Shanley on that day. Inspector Maguire asked the secretary to request Dr. Shanley to contact him. He subsequently relayed this information to Superintendent Shelly and to Assistant Commissioner Hickey.

At approximately 10:00 a.m., Inspector Maguire received a telephone call from Dr. Shanley who informed him that John Carthy was a manic-depressive and he told him that he could be either elated or low and either manifestation of the illness could account for his aggression. Dr. Shanley also informed him that he was unable to give an opinion as he had not seen John Carthy for some time. Dr. Shanley enquired as to whether the subject had been taking his medication. Inspector Maguire replied that he did not know. The doctor informed Inspector Maguire that an appointment had been made for him to see John Carthy by a member of his family for later that day. The inspector further learned that the subject did not like St. Loman's hospital and that he should be advised that Dr. Shanley would get him into St. Patrick's hospital for in-patient treatment. This information was relayed by Inspector Maguire to Superintendent Shelly. He further advised the inspector that he was going to the west of Ireland and agreed that he could contact him at 3:30 p.m. when he was on the road and that he, Dr. Shanley, would make himself available at the scene.

Assistant Commissioner Hickey reviews the gun restoration file at Granard garda station

At approximately 10:00 a.m. Superintendent Byrne attended Granard garda station with Assistant Commissioner Hickey who was anxious to read the file in relation to the firearm. Superintendent Byrne had become aware of the issue concerning the return to John Carthy of his gun in 1998 *"fairly early after arriving at the scene."* While he assumed that there should be a file about that in Granard garda station, he had not sought it out before his visit to the station with the Assistant Commissioner. Superintendent Byrne stated that they did not find anything on the file which was considered to be of assistance at that time. It should be noted, however, that this file contained the letter of support from Dr. Shanley thereby revealing his name to the reader.

Marie Carthy visits her mother

Between 9:00 a.m. and 10:00 a.m. Marie Carthy and Martin Shelly visited Mrs. Carthy at Mrs. Patricia Mahon's house on the Coole Road. During this time Ms Carthy spoke briefly with Garda Cunniffe, and exchanged pleasantries with her. Ms Carthy and Mr. Shelly remained there for several hours until just after lunchtime. They then returned to Devine's house in the afternoon.

Thomas Walsh returns to the scene and attempts further contact

Superintendent Shelly became aware that Thomas Walsh had come back to the scene and that Assistant Commissioner Hickey had spoken to him. It was suggested (probably by Superintendent Shelly) that, if he was willing, he might talk to his cousin again. Thomas Walsh was agreeable and arrangements were put in place with the ERU. The request did not emanate from John Carthy. The senior officers observed Thomas Walsh being brought down to the negotiation position, protected by a ballistic shield.

Thomas Walsh's evidence

In his evidence, Thomas Walsh said that he returned to the scene and asked if he could attempt to speak to John Carthy once more. Garda Sullivan escorted him to the negotiation point using a ballistic shield. Mr. Walsh then met Sergeant Jackson for the first time and was informed by him that John Carthy was not engaging in dialogue but was firing shots. He asked Mr. Walsh to try and convince his cousin that the picture *"wasn't all black looking"*. The witness stated that Sergeant Jackson also asked him to try to get John Carthy to put down the gun or throw it out. He asked the negotiator if cigarettes could be given to him and was told that they could be but that there was no safe means of delivery. Mr. Walsh said that he informed Sergeant Jackson that the subject was a heavy smoker and that he would become more agitated if he did not have any cigarettes. The witness stated that he did not recall Sergeant Jackson telling him that the subject had asked for cigarettes. He was told by the negotiator that *"it was a negotiation practice to look for a few cigarettes in return to build rapport."* Mr. Walsh stated that he told him that John Carthy would not throw out cartridges in return for cigarettes, *"or words to that effect"*.

Sergeant Jackson however denied that there was any conversation with Mr. Walsh in relation to cigarettes at any stage during the incident; nor did he discuss negotiation practice. Inspector Maguire did not recall any conversation with Thomas Walsh during the course of the morning concerning the benefits of delivering cigarettes to John Carthy. Specifically, Inspector Maguire refuted the suggestion that he told Mr. Walsh that *"no, he's acting the bollocks, he's not getting his own way now"*.

Mr. Walsh told the Tribunal that before he tried to engage with the subject again he questioned Sergeant Jackson about *"resting"* John Carthy and *"using the same dialogue over and over again"*, which he thought would just aggravate him more. He also stated that Sergeant Jackson explained to him that it was a technique that eventually gets through to people in this sort of situation.

Mr. Walsh attempted to communicate with his cousin with the aid of a loudhailer. He informed the subject that he was trying to get through to him on the landline but that he, John Carthy, kept picking up the landline phone and dropping it again. He stated that he had been given a mobile phone and continually tried to redial the landline. Thomas Walsh stated that he could hear music coming from the house through the phone. He spoke to John Carthy on the loudhailer and told him that things were not as bad as they seemed:

"I started telling him about an uncle of mine and his grandfather, all of whom were tough men but who would have known when to give up, that he had won and that he should throw out the gun".

He stated that he then had a brief discussion with Sergeant Jackson regarding the fact that he did not *"sound like himself"* when he was using the loudhailer. It was agreed, he stated, that he should put his head up over the wall and ask his cousin to come to the window and that he would tell him that he did not like him holding the gun. John Carthy then came to the window holding the gun across his waist, between his chest and his stomach. Mr. Walsh stated that he was shocked by his appearance:

"I was shocked when I saw him. His eyes looked very black to me and his skin looked very yellow. His mouth looked very tight and his cheeks looked pulled in. He did not look to me like the John Carthy that I knew."

Thomas Walsh told his cousin that because of the fact that he had previously been admitted to St. Loman's psychiatric hospital that he would not be held accountable for this incident and that he was intelligent enough to know that. He tried to say things that would encourage his cousin to put the gun down and come out of the house. Mr. Walsh then described him *"clicking his head backwards"* in a dismissive manner.

The detective sergeants observed John Carthy levelling his weapon at Mr. Walsh and they pulled him down behind the wall. Mr. Walsh was, at this stage, emotional and upset. He did not see his cousin levelling or pointing the gun at him but recalled hearing Sergeant Jackson chiding the subject, saying that *"Tom is only down here to help. Freezing his balls off and levelling the gun isn't helping the situation"*. This was denied by Sergeant Jackson. He said that he did not use this expression.

Mr. Walsh also said that he told Sergeant Jackson that John Carthy might shoot at the loudhailer.

He sat with the negotiator for a few minutes and suggested to him that Sean Farrell would be a good person to speak with Mr. Carthy and that he was someone he respected and looked up to. He agreed that Mr. Farrell should be contacted but said that there had been enough dialogue *"for now"*. Mr. Walsh then returned to the brow of the hill near his own home. He stated that he spoke with Superintendent Shelly and suggested that John Carthy be left alone for a little while and that the gardaí *"bobbing their heads up and down was not helping the situation"*. He explained that he did not wish to see the gardaí withdrawing completely but wished that they would not be visible. He stated in evidence that he told Superintendent Shelly that *"if John had time and rest to think things through, that it might calm the situation."* In his evidence, Superintendent Shelly denied that this was said to him.

Detective Sergeant Jackson's evidence

At 9:42 a.m. John Carthy fired a further shot at the negotiation post from the gable window. Garda Sullivan told Sergeant Jackson that Thomas Walsh was at the

command post and was willing to speak to John Carthy. The negotiator agreed to this. Garda Sullivan spoke to Mr. Walsh at the command post. He gave him a brief outline of the subject's behaviour and the approach that he, Mr. Walsh, should take to reassure him. Sergeant Jackson asked John Carthy whether he was willing to speak to his cousin. At first he received no reply but eventually John Carthy "*mumbled*" agreement. Mr. Walsh was then brought down to the negotiation point where he spoke to Sergeant Jackson who "*introduced him*" to his cousin.

Using the loudhailer, Thomas Walsh asked John Carthy to answer his telephone. There was no reply. He began to speak to him through the loudhailer. He spoke of his cousin's uncles and grandfather, saying they were all tough men but that they knew when to give up; and that he had won. He told him he had not hurt anybody and asked him to answer the phone. John Carthy came to the window and Thomas Walsh asked him to put the gun down. Mr. Walsh told the Tribunal that he tried to engage the subject and told him that he and the family were very worried about him and that they did not want anything bad to happen. He reassured him that if he came out he was not going to be hurt and that if he wished he, Mr. Walsh, would meet him outside; in case he did not trust the gardaí. He told him that he knew that he may be worried about what happened but that matters were not that bad, no one had been hurt. He spoke about Sean Farrell, and said he was a tough man but would know when to put the gun down and come out. Sergeant Jackson also recounted hearing Thomas Walsh saying that John Carthy could trust him; that he could receive treatment from his own doctor and that they would be "*having a pint and a fag and laughing at this in a few weeks*". He also heard Mr. Walsh saying that if John Carthy came out he would not be hurt and if anybody tried to do so that they would have to hurt him, Mr. Walsh, also. At this stage Sergeant Jackson observed John Carthy levelling the gun at Mr. Walsh forcing him to take cover behind the wall and causing him to become distressed. Garda Sullivan then escorted Mr. Walsh back to the command post.

Detective Sergeant Russell's observations

According to Sergeant Russell, events took a serious turn at that time. Up to that point, John Carthy had only pointed and fired a weapon at or in the direction of the gardaí. This time he had pointed the weapon at a person who Sergeant Russell knew to be a friend or a relation and therefore "*I knew we were in a very difficult position then*".

John Carthy's weapon was not discharged at that time.

Request for an ambulance

After John Carthy fired the shot timed at 9:42 a.m., Superintendent Shelly was told by the officers near the negotiation point that they thought that the subject was "*particularly agitated*" at that stage. This caused him to request that an ambulance be brought to the scene. This was done and the ambulance remained on standby at Granard garda station.

Further inquiries of Thomas Walsh

At approximately 11:00 a.m. Superintendent Shelly, Assistant Commissioner Hickey and two other members of the Garda Síochána approached Thomas Walsh. They inquired as to whether he was aware of how many cartridges John Carthy had. Mr. Walsh suggested that they telephone the local gun shops that sold ammunition to see if his cousin had purchased any recently. If he had not then, he stated, he would probably only have one or two boxes of cartridges. Mr. Walsh also stated that he had a general discussion with Assistant Commissioner Hickey in relation to what may have triggered the incident. He did not remember the conversation in detail but accepted Assistant Commissioner Hickey's recollection in this regard. Assistant Commissioner Hickey and Superintendent Byrne spoke to Mr. Walsh and were told by him that John Carthy had been accused in the wrong of burning the goat mascot; that he had been slagged about it and that what really annoyed him was that the people who slagged him knew that he did not do it and they also knew who actually did. Also, Mr. Walsh told Assistant Commissioner Hickey and Superintendent Byrne that his cousin had lost his job in Galway and had "*gone on the tear*". Assistant Commissioner Hickey was also told by Mr. Walsh that John Carthy's father and grandfather had died on a Holy Thursday. Mr. Walsh also believed that he told him about the break-up of his cousin's relationship.

Subsequently, Assistant Commissioner Hickey was informed by local members about the fact that the subject had been arrested in connection with the goat incident and he believed that John Carthy was claiming that he had been arrested in the wrong.

Dr. Cullen to the scene after 11:00 a.m.

Dr. Cullen told the Tribunal that at approximately 11:00 a.m. on 20th April he received a further call from the gardaí in Granard, requesting him to attend the scene. He did not know particularly why his attendance was required, save that they "*thought John might be coming out*". He went to the scene where he waited for 15 minutes. He spoke to some gardaí who he could not identify. He thought that things were going to develop, and that his patient was "*going to come out*." He was then informed that he was not required and he was free to leave. No one sought specific advice or assistance from him and he then left the scene. He thought that he might be contacted again "*given the ongoing situation*". While at the scene he believed that he was informed that Dr. Shanley would be attending in the afternoon.

Superintendent Shelly confirmed that the purpose of requesting Dr. Cullen to attend the scene was to assist in the event of someone being injured rather than to seek advice in relation to dealing with the subject. As far as he recalled, he brought Dr. Cullen up to date and informed him that they were finding the negotiation slow and difficult, and that they weren't making much progress. "*Dr. Cullen told me that he would be available all day if we needed him, which I accepted and appreciated and I let him go from the scene*". This was the last time that Dr. Cullen was at the scene before the siege ended.

Attempts at negotiations from 10:00 a.m. to 1:00 p.m.

During this period there was a greater level of communication and response than there had been previously. This communication is now recounted.

John Carthy is informed of Dr. Shanley's offer of a place in St. Patrick's hospital

Sergeant Jackson continued to speak to the subject by way of the loudhailer and asked him (and repeated) whether he was worried about what would happen when he came out. John Carthy said, *"I will have to go back to the hospital"*. Sergeant Jackson thought this to be a significant development in that it was the first time the subject had told him about his fears of the hospital. Sergeant Jackson then told him that *"Dr. Shanley was willing to come and help and if he had to go to hospital, if that was a possibility, certainly we may be able to arrange St. Patrick's."* John Carthy's reaction to this, he said, was to smirk or grimace. Sergeant Jackson then told John Carthy that this showed that everyone was willing to help him when he came out. He continued:

"John the right decision and the best way out for you is not to hurt yourself or anyone else but to put the gun down and come out, the right decision now makes up for all the bad things that happened yesterday and all the bad things that happened in your life. The right decision now is what is important, it can change everything. Come on John, come out. It's the right thing to do. It's the best way out".

John Carthy did not reply to this but put his head in his hands as if he was contemplating and thinking about what had been said. Sergeant Jackson then said:

"John everyone out here is on your side, your family, friends and me. Come on out and I'll meet you half way. Come on John it's the right thing to do; it's the only thing to do."

He stated that at this stage, the subject had an anguished look and put his head in his hands. The subject then suddenly broke from that expression and with what Sergeant Jackson described as an aggressive look shouted *"you won't break me"*, following which he levelled the gun forcing him to duck behind the wall.

Sergeant Jackson then said: *"John I'm not trying to break you. I just want you to come out safely, come on, don't worry about yesterday. Come on out and we can work this out together."*

John Carthy is shown the cigarettes

The negotiator told the Tribunal that he then showed the cigarettes over the wall to John Carthy and told him that he wanted to give him cigarettes but that it was essential that a safe way to deliver them be agreed, because he was worried about the gun and the fact that the weapon was being fired. The reply to this, he said, was *"bring them into me, come on"* and the subject beckoned to him. He stated in

evidence that he believed that this was said in a *“sarcastic tone”*. Sergeant Jackson reiterated that he wanted to give him the cigarettes but was worried about the gun that he was firing and sought to agree a safe way of getting the cigarettes to him. He also asked the subject to suggest a safe way of getting them to him. His reply to both these issues was, he said, *“Fuck off and don’t bother”*. Sergeant Jackson then told him that all he wanted was for him to come out without the gun and the reply he received to this was *“Why?”* This was then followed by Sergeant Jackson saying, *“because I want you and everyone else to be safe”* to which he received the response *“Why?”* Sergeant Jackson stated that he then said, *“because your family, friends and everybody, including myself care about you and want you to come out”*. The response to this was again *“Why?”* He replied *“I know you are doing this because you are angry and not because you are a bad guy”*. And again the reply to this was *“Why?”*, in what Sergeant Jackson described as an *“agitated manner”*. He then telephoned John Carthy twice. The call was answered and the subject said *“fuck off”*, and hung up.

Offer of other persons to talk to John Carthy

Sergeant Jackson stated that at 11:18 a.m. he said to the subject that while he did not seem to trust him (Sergeant Jackson), the gardaí could get anyone he wanted, *“a solicitor, a priest, his family, friends, Dr. Shanley or anybody else”*. The reply he received to this was *“No, there is nobody. I am not coming out. No way; you come in and get me”* followed by *“shoot me, come on”*.

The issue of suicide is raised

Sergeant Jackson told the Tribunal that at this point he said:

“John, we don’t want to shoot you, we want to help you. John, are you thinking of hurting yourself, are you thinking of suicide? John, think about what will happen if you are dead, that is not the best way out. The best way out is to put the gun down and come on out and we can talk. The right thing to do is to leave the gun in the house and come on out. Come on out, John, please.”

Again, there was no reply. At this point, Sergeant Jackson held out his left hand and beckoned John Carthy out saying *“Come on out, John. This is the right thing to do. I know it’s the right thing to do and I think you know it too.”* The reply that he received to that was *“No, it’s not the right thing to do”* – and with the shotgun held in his left hand around the barrel and his right forefinger pointing at the trigger area said – *“this is the right thing to do”*. Sergeant Jackson said, *“No, it is not the right thing to do . . . it only hurts people, doing something like that. The right thing to do is to leave the gun behind you and come out. That is the important thing.”* He received no reply to this but continued addressing John Carthy as follows:

“it doesn’t matter how all this started; what is important is that you leave the gun behind you and come out to meet me. Come on, John, I’ll meet you halfway if you meet me halfway. Come on, John, just you and me. The right decision here changes everything”.

There was, he stated, no reply. He told John Carthy that “everyone out here – your mother, Marie, Pepper, Tom and all your friends – that’s what they want you to do, so come on out and leave that gun behind.” His reply to this was “no way”. The subject then levelled the gun at Sergeant Jackson forcing him to duck behind the wall.

Cigarettes issue raised once more; and further offers to bring other persons to the scene to speak with the subject

The negotiator again raised the question of the cigarettes and said that he wanted to get them in to him, but that it was essential that they agreed a safe way of doing this. The reply received was “No way, bring them in here” and he beckoned with his hand. Sergeant Jackson replied that he wanted him to have the cigarettes but that they would have to talk about how they were going to be got in to him. The reply to this was “fuck off”. Sergeant Jackson stated that he once more emphasised his willingness to get a solicitor, priest, family or friends, or anyone John Carthy trusted, to come down to the scene and to be there when he came out. There was no response to this. He stated that he told the subject that his mother was very worried about him and that she cared for him a lot. John Carthy laughed at this and said “you haven’t lived with her for ten fucking years”. Sergeant Jackson then said to him that while it may seem to him that people did not care, they did, and that while it may seem a very bad situation for him there was a way out. He received no reply. He told the Tribunal that he continued as follows:

“think about this, John; think about everyone out here wanting you to put the gun down and come out. Think about how you are going to do this. Think about putting that gun on the floor, walking out of the room, opening the front door and coming out to meet me; please think about it”.

Once again he stated that he received no reply. The witness gave evidence of repeated further attempts to open dialogue without success.

The issue of the solicitor is addressed

Sergeant Jackson stated that between 12:00 p.m. and 1:00 p.m. he continued to attempt to obtain details from John Carthy about his solicitor, his identity and how he might be contacted. In his evidence Sergeant Russell stated that shortly after midday while at the negotiation point he heard John Carthy asking “where’s my solicitor?” The former stated that the subject was immediately asked if he wanted any particular one but declined to name any. He was assured that a solicitor would be got for him and brought to the scene but, he said, John Carthy stated that he wanted one in the house with him. Sergeant Jackson, he said, explained to him that it wasn’t possible to allow a solicitor into the house when he had a gun available to him; and that he, Sergeant Jackson, also told the subject that he was willing to bring the solicitor to the negotiation point to which John Carthy replied: “fuck off. Don’t bother”.

Media to the scene at 11:00 a.m.

While the negotiation effort was continuing, Superintendent Shelly became aware from speaking to Superintendent Farrelly that there was significant media interest in the incident. He believed that at that time John Carthy had access to the radio but not to television. He did not at any stage hear the radio playing although there is evidence from other officers that they heard music and radio news reports. Superintendent Farrelly received authorisation from Superintendent Shelly to bring members of the media closer to the scene. This followed a discussion Superintendent Farrelly had with Mr. Paul Reynolds, the RTÉ Crime Correspondent. Mr. Reynolds stated that he believed that it was possible that in the absence of an organised photo shoot near the scene, members of the media who wished to get closer might attempt to get their own shots, even to the point of hiring a helicopter. Mr. Reynolds accepted that he informed Superintendent Farrelly *“that it was not beyond the bounds of possibility that some newspaper or television station might hire a helicopter to fly over the scene to take a picture”*. Superintendent Farrelly did not query Mr. Reynolds as to where the information concerning the helicopter might have come from. He observed:

“I don’t think he was saying it from information that he had in relation to particular information that somebody was going to hire it. He was putting it across as a proposition that perhaps somebody may consider getting a helicopter . . . The helicopter was an issue that he raised, but I would be aware of that anyway.”

Superintendent Farrelly accepted that he did not have knowledge upon which to base a belief that a helicopter had in fact been hired or might go to the scene. He had never been involved in any previous incident in this country where members of the media had hired a helicopter to go to a scene, though this had happened in other countries. He confirmed that in this jurisdiction the gardaí are not empowered to enforce a no-fly zone. Superintendent Farrelly agreed that the information concerning the helicopter was conveyed to the people at the scene. He accepted that the issue of the helicopter may have formed part of the consideration leading to a decision to permit the media being brought to the scene. He accepted that in the context of a live operation, as at Abbeylara, bringing the media to the scene and filming members of the ERU was unique in the context of an armed operation.

Members of the media are brought closer to the house

Superintendent Farrelly stated that after obtaining permission from Superintendent Shelly to bring members of the media to the scene, he returned to the village where he gathered around him the media personnel who were then present. He estimated that there were 25 present, including cameramen, photographers, radio journalists, and print journalists. He knew most of them by name. He arranged for five cars, including his own, to be made available for transportation to the scene area. Superintendent Farrelly led the media, in convoy, to a point short of the command vehicle. They could not see the Carthy house from that point. Superintendent Farrelly briefed them and told them that he would bring them down in relays to take camera shots of the scene. The area in which Superintendent Shelly had given permission to

take the shots was on the left-hand side of the road, as one travels towards the Carthy house. This point was close to the ditch approximately three or four feet onto the roadway itself. This was, Superintendent Farrelly stated, the safest proximate point for taking pictures. Photo shots had to be taken at an angle. He brought camera crews first, followed by photographers and then journalists. He permitted each group to remain at the location for approximately three minutes then called them back and brought the next group forward. In total, he stated, that the media remained there for approximately 25 minutes. They then returned in convoy to the village. Superintendent Farrelly confirmed that this was the only time that the media were allowed access to the vicinity of the house during the course of the incident.

Safety plan, should John Carthy emerge when the media were present

Superintendent Farrelly stated that he was unaware of a plan or tactic should the subject have emerged from the house at that time. He had no discussion with the scene commander in that regard. He had no concerns about his own safety or the safety of the media. He did not, he stated, give consideration as to what might have occurred if John Carthy emerged from the house at that time or, as to where the media would go in that event.

Detective Sergeant Russell's observations

Sergeant Russell stated that he was "*consulted*" in relation to the media being brought to the scene. Superintendent Shelly informed him that he was concerned that members of the media might go into the field and inquired whether it was possible to permit them to be brought closer to the scene in a controlled fashion. Sergeant Russell "*certainly wasn't happy about that*", but he was informed by Superintendent Shelly that there was concern that members of the media may be about to try to attempt to get closer to the scene, or that they may do something inadvertently which may cause difficulty for the Garda operation. Sergeant Russell stated: "*I wouldn't have been happy being photographed trying to do a particular thing like this at that time. I wasn't entirely happy about it; that is being perfectly honest*".

He was also concerned that it might upset his members as they had, he said, a difficult task and he was concerned that the media presence might take from the members' focus or that they might get unnerved by it. Nevertheless, he told the Tribunal that he had to weigh such concerns against the interests of all. In the circumstances he felt that it was correct to agree to them being allowed closer. While he could recollect the ERU being filmed on such duties in the past he had no recollection of this being done where there was a threat. He could not recall any reference to a helicopter at that time but heard it afterwards. His immediate concern, he stated, was people in the field and possible crossfire and that if a journalist came up to a hedge he or she may not have been aware of the direction of John Carthy's fire. He had, he said, enough to deal with on the inner cordon at that time. However, Superintendent Shelly had made a good case for bringing the media down and he was happy that it was being made in the interest of everyone's safety. To that end,

he felt that the reasons for bringing them outweighed his particular concerns. He was advised in advance by Superintendent Shelly as to when they were coming into the area. He did not pay particular attention to the members of the media when they were present but he was aware that they were on the roadway near the command vehicle. While John Carthy was visible to the ERU, Sergeant Russell believed that it would have been impossible for him to see the cameramen or the cameras.

A public relations exercise?

Superintendent Farrelly believed that bringing the media down in a controlled fashion would also help to ensure that they continued to exercise restraint. He disagreed with a suggestion made by counsel for the family when examining Superintendent Shelly that the filming of members of the ERU might place the gardaí in a positive light. In his evidence Superintendent Shelly stated that promoting a positive view of the gardaí had not been an issue and that media access was permitted to *“facilitate them and to ensure in so doing that no media person would act in an unsafe manner in or around the scene.”* Superintendent Farrelly also denied that there was any such attempt to paint a positive picture of the gardaí, or that it was good public relations.

He accepted, however, that a situation might arise that it might be construed as such.

Ann Walsh speaks to Superintendent Farrelly

At approximately 12:00 p.m., Ms Ann Walsh went to the garda checkpoint at the church where she spoke to a uniformed garda. She asked to speak to someone in charge and to be brought up to date on what had occurred. The uniformed garda informed Superintendent Farrelly of this. Ms Walsh was in a car in the vicinity of the checkpoint and stated that the area was *“full of press”*. She said that Superintendent Farrelly told her that the situation had got more serious.

Ms Walsh stated that the media coverage was very bad for her cousin’s situation and requested Superintendent Farrelly to *“call a media blackout”*. He informed her that they could not do so and that it was better to feed the media a little information. This would help to keep them more at bay. She stated that she asked him *“about John getting the cigarettes”*, and he informed her that they were *“working on that”*. He informed her that the television cable had been cut by the gardaí and that her cousin had no television at that stage. He told her that the subject had requested cigarettes. She thought that she *“would have said”* that cigarettes would have been a help and that they would have a calming effect on him. According to her, John Carthy was a chain smoker. There was, she stated, no reference by Superintendent Farrelly to a request for a solicitor. Superintendent Farrelly was the only senior officer that she met at that stage. It is to be noted that Superintendent Farrelly was himself unaware of the request for a solicitor at that time.

SECTION G – John Carthy makes Contact with Kevin Ireland

John Carthy’s telephone call to Kevin Ireland

John Carthy telephoned Mr. Kevin Ireland, a friend and former workmate, on his mobile telephone at 12:24 p.m. This call lasted for one minute 52 seconds. Mr. Ireland was at work in Galway driving a truck at that time. A work colleague, Mr. Richard O’Connor, was present in the truck for the duration of the call. John Carthy sounded calm and relaxed and he told Mr. Ireland that he was in the house with a gun and that there were loads of guards, about sixty, outside with *“guns and everything”*. John Carthy, he stated, said that he had nearly every window *“broke out of the house”*. In response to a request from Kevin Ireland not to do anything stupid like shooting himself or anyone else, John Carthy said that he *“hadn’t a notion”* and that he was *“just trying to keep them away from the house or something”*. Mr. Ireland commented that he was firing shots and John Carthy replied that he was *“just keeping them away from the house”*. In response to a request to give himself up, John Carthy replied that he would give himself up if he got a solicitor. He asked Mr. Ireland to get him a solicitor by the name of *“Mick Finucane”*. John Carthy said that his own family *“wouldn’t even get him a solicitor”*. Mr. Ireland told him that he would get him a solicitor. John Carthy ended the phone call abruptly by hanging up. Kevin Ireland tried to phone him back but his call was not answered. He said that he tried again throughout the day.

Richard O’Connor’s evidence

Mr. O’Connor could only hear what Kevin Ireland said. He thought the tone of the conversation was calm and relaxed. He overheard Mr. Ireland saying to John Carthy not to hurt anyone, not to hurt himself, not do anything stupid and to give himself up. He confirmed that Kevin Ireland told him that John Carthy was *“kind of laughing about the 60 cowardly guards outside”*, that he had sent them for cigarettes and that he wanted a named solicitor from Dublin; though Mr. O’Connor could not recall the solicitor’s name. Mr. Ireland denied that John Carthy mentioned anything about fags and stated that the first he, Kevin Ireland, heard about the cigarettes was through the media.

Subsequent events regarding the subject’s phone call to Kevin Ireland

It appears that soon after the event Mr. Ireland informed his mother that he had had a phone call from John Carthy. She is a part-time worker with Shannonside Radio and she contacted one of their reporters, Ms Noeleen Leddy who was then at Abbeylara. She was told that Mr. Ireland had been asked by his friend to contact a Dublin solicitor called Mick or John Finucane on his behalf. Ms Leddy was not told that Mr. Carthy had said he would give himself up if he got a solicitor. She informed Superintendents Farrelly and Shelly about the phone call and of Mr. Carthy’s request to his friend to contact a particular solicitor for him. She gave them Mr. Ireland’s mobile number. Neither superintendent or any other garda officer contacted him but he called to report the matter to the gardaí in Galway and through them had a phone call with Sergeant Monahan at Granard garda station.

Kevin Ireland contacts Sergeant Monahan

Mr. Ireland went to Mill Street garda station in Galway at about 2:00 p.m. on 20th April to report the phone call from John Carthy having been advised by friends and family to do that. Telephone records maintained by the Garda confirm that a call from Mill Street garda station to Granard took place at 2:21 p.m. Mr. Ireland spoke to Sergeant Daniel Monahan in Granard who made a note of the contents of the conversation as follows:

“12:00 midday received a call from John Carthy on his mobile. Appeared calm and relaxed; advised to give himself up. Mentioned a solicitor by the name of Mick or John Finucane from Dublin. His mobile phone went dead. Worked on a building site with him in Galway. Worked as a labourer. Does not know the mobile number for John Carthy. Not to inform the gardaí that he had rang. Not to inform John Carthy that he had rang gardaí”.

The note also included details of Kevin Ireland’s mobile number. During the course of his evidence, the contents of this note were put to Kevin Ireland who agreed that it reflected what he told Sergeant Monahan. He stated, however, that he had John Carthy’s phone number in his mobile phone but did not have his phone with him at that time. He did not know John Carthy’s number “*off the top of his head*”, and did not recall being asked for that number. He further stated that he was “*nearly 100% sure*” that he told Sergeant Monahan that the solicitor could have “*republican links or something like that*”. When questioned as to whether he made any request of Sergeant Monahan, he stated that he thought that he may have asked that the gardaí tell John Carthy that they were getting him a solicitor. Initially in his evidence Mr. Ireland said that he had no discussion with Sergeant Monahan as to why John Carthy wanted a solicitor but later said that he was “*nearly 100% sure*” that he did mention to Sergeant Monahan that John Carthy had said that he would give himself up if he got a solicitor.

Save for the conversation outlined above which he had with Sergeant Monahan, Mr. Ireland was not questioned by any other member of the gardaí about the phone call, during the incident.

Sergeant Monahan’s evidence

Sergeant Monahan told the Tribunal that shortly after 2:00 p.m. he received a telephone call from Mill Street garda station. He spoke to a person who identified himself as Kevin Ireland. Mr. Ireland told him that he had received a call from John Carthy on his mobile phone at 12:00 p.m. Sergeant Monahan learned that the subject had mentioned a solicitor by the name of “*Mick or John Finucane*” from Dublin. He also learned that he appeared relaxed, calm, was talking freely to Kevin Ireland and that at some stage in the conversation his mobile phone went dead. Mr. Ireland, he said, made no request of him. Sergeant Monahan made a note of the conversation which has been outlined above. This entry also recorded:

“Garda Oliver Cassidy checked Golden Pages and myself checked Directory Enquiries and John Cunningham, district clerk checked 01 Directory...

Sergeant J. Folan was present at that time. I could find no name of a solicitor by the name Finucane. Informed Superintendent Joe Shelly who was at the scene and passed on all details."

Sergeant Monahan believed that he was on the telephone for approximately six to eight minutes. He did not accept Kevin Ireland's statement and evidence to the effect that he was informed that John Carthy had indicated to him in the telephone conversation that he would give himself up if he got a solicitor. Sergeant Monahan said that Kevin Ireland had not told him that the solicitor "*could have republican links*".

Following the phone call Sergeant Monahan directed that inquiries be made in the station to try and identify the solicitor mentioned. The witness made no contact with any local solicitor nor did he contact the Law Society or the State Solicitor. He continued making his inquiries for a further half an hour and then passed on the information to Superintendent Shelly at the scene and told him that he couldn't find a solicitor by the name of "*Mick or John Finucane*" from Dublin. He spoke to Superintendent Shelly at approximately 2:45 p.m. or 2:50 p.m. Superintendent Shelly directed him to try to find the solicitor. After that Sergeant Monahan continued checking the 01 telephone directory, but without success. He confirmed that in the course of their inquiries the gardaí did not make direct contact with the Carthy family.

Superintendent Shelly's evidence

Superintendent Shelly told the Tribunal that he had received information about John Carthy's phone call to Mr. Ireland from two sources, from Ms Leddy and from Sergeant Monahan.

Information from Noeleen Leddy

Superintendent Shelly told the Tribunal that he was informed by Ms Leddy, that:

- i. she had been contacted by Mrs. Mary Ireland who worked in Shannonside radio station and whom she knew;
- ii. she was told that Kevin Ireland knew John Carthy as they had worked together on building sites in Galway;
- iii. Mrs. Ireland informed her that her son Kevin telephoned her that morning and told her that he had received a phone call from John Carthy and that he had mentioned that he wanted a solicitor; the name of the solicitor was not mentioned at that stage; and,
- iv. Kevin Ireland had told his mother that John Carthy had indicated that he was able to make the guards "*duck up and down*" and that he had mentioned something about "*watching this space*".

Superintendent Shelly said Ms Leddy gave him Mr. Ireland's mobile phone number.

Information from Sergeant Monahan

Superintendent Shelly told the Tribunal that at approximately 2:30 p.m. he received a call from Sergeant Monahan who informed him that he had received a phone call from Kevin Ireland from Mill Street garda station in Galway; and that Mr. Ireland had mentioned a solicitor named "*Mick or John Finucane*".

Detective Garda Sullivan's evidence

Garda Sullivan told the Tribunal that he joined Superintendent Shelly, Superintendent Farrelly and Ms Leddy at 1:15 p.m. The superintendents had already been speaking to Ms Leddy and he understood that he was being requested to speak to her "*to get the information first-hand to bring to Detective Sergeant Jackson*". He stated that he did not take any notes of the conversation with her nor did he have sight of her note. In what he described as a brief conversation, he learned from her that:

- i. she had received a telephone call from Kevin Ireland's mother to the effect that Kevin Ireland had received a telephone call from John Carthy at 11:30 that morning;
- ii. John Carthy had discussed the situation with Kevin Ireland and that he, the subject, had supposedly spoken to friends some two weeks previously about "*doing something big*", because life was tough;
- iii. when Kevin Ireland asked him what he was going to do he replied, "*watch this space*";
- iv. John Carthy appeared to be boasting about being able to make the guards duck; and,
- v. he had mentioned seeking a solicitor from Dublin.

Garda Sullivan stated that he particularly remembered the phrase "*watch this space*" as it "*seemed significant*" to him, and that it was the "*most pertinent point*" that he took from the discussion. On further questioning, he stated that he was not told that the subject had said that he was going to do something big "*that day*". However to him, the phrase "*watch this space*" indicated that John Carthy was going to do something "*now*"; i.e. in the course of the siege – that something was going to happen that day. Garda Sullivan stated that he distinguished this phrase from the reference to the conversation the subject allegedly had with his friends in relation to "*doing something big*".

Garda Sullivan stated that he did not receive Mr. Ireland's phone number from Ms Leddy, nor did he ask for it. Mrs. Mary Ireland's phone number was not sought. He also gave evidence that he did not hear any reference to "*Mollaghans*".

After the conversation he returned to the negotiation post and relayed the information to Sergeant Jackson. He did not recollect informing Sergeant Jackson that John Carthy had said that "*he hadn't a notion of doing anything dangerous*" nor did he recall obtaining such information from Ms Leddy. He stated that the information he conveyed was quite the opposite; that is, "*watch this space*",

indicating to him that something was going to happen. He told the Tribunal that these words, that is, *“watch this space”*, were specifically relayed to Sergeant Jackson. It was put to Garda Sullivan that Sergeant Jackson appeared to have acquired more information from him on this point than that set out by him. Garda Sullivan re-emphasized that this was all that was relayed to him from the command post, though he thought that Superintendent Shelly may have spoken to Sergeant Jackson.

Shortly after 3:00 p.m. Garda Sullivan stated that he was called to the command post and was told by Superintendent Shelly that he had obtained information that *“John”* or *“Mick Finucane”* might be the solicitor John Carthy was looking for. While Garda Sullivan did not recall the full extent of how that information had been received he brought it to Sergeant Jackson. He also advised the negotiator that Superintendent Shelly wished him to attempt to inquire from John Carthy who Mr. Finucane was and where he could be contacted.

Detective Sergeant Jackson’s evidence

Sergeant Jackson told the Tribunal that Garda Sullivan returned to the negotiation post with information from Ms Leddy, that:

- i. Kevin Ireland had told his mother that John Carthy had telephoned him at approximately 11:30 a.m.;
- ii. John Carthy was boasting about making all the gardaí outside duck up and down to avoid being shot;
- iii. John Carthy had mentioned to Mr. Ireland that he wanted a solicitor;
- iv. Mr. Ireland said that John Carthy had been calm during the call; and,
- v. the subject was going to do something big that day and he said that Garda Sullivan may have used the phrase *“watch this space”* and that he interpreted this as *“something was going to happen here today that John had said that – that he was going to embark on some action; that is the general gist of it”*.

When asked if the foregoing represented the information he received from Garda Sullivan, Sergeant Jackson replied that it was, as far as he could recollect, but then went on to say *“sorry, there may have been information in relation to, I am just trying to recollect, just basically John was messing with us, wasn’t serious in what he was doing. That was the tone of it, really, in general terms and that he hadn’t a notion of doing anything dangerous on this day. That was the general tone of it”*.

Failure to debrief Kevin Ireland

It is evident that Mr. Ireland was not adequately interrogated about Mr. Carthy’s phone call. If that had happened the scene commander and the negotiator would have learned that the subject had assured his friend that he had no intention of shooting himself or anyone else and that his purpose in firing shots was to keep the gardaí away from his house. (See Kevin Ireland’s account of it, referred to herein).

They also would have ascertained the crucial information that Mr. Carthy's motivation for requiring a solicitor at the scene appears to have been in the context of negotiating his surrender to the gardaí. This was a major development which, if it had been realised by the police, appears to have opened the door to an ending of the impasse.

Further information on the Kevin Ireland phone call given to the negotiator

At approximately 3:00 p.m. Sergeant Jackson was told by Garda Sullivan that Mr. Ireland had spoken to the gardaí in Granard. From this contact he understood that he had said to Mr. Ireland that he wanted a solicitor named "*John or Mick Finucane*". He believed that efforts were being made by Superintendent Shelly to identify who this person was. He was told that Superintendent Shelly wished him to inquire from John Carthy who Mr. Finucane was and where he could be contacted. He was also informed by Garda Sullivan that Mr. Ireland had told Sergeant Monahan that John Carthy had appeared calm on the phone and that Mr. Ireland was concerned that the fact that he had contacted the gardaí was something which was not to be mentioned to the subject.

Information received by the Tactical Team leader

Sergeant Russell was not provided with any information regarding the phone call from John Carthy to Mr. Ireland. He was questioned on whether this was important information for him to assess, concerning the subject's state of mind at that time. He stated that any information, including this information, which might come from the subject himself, would be helpful. It would help him form an opinion "*or just to help me*".

Contact with the family following receipt of the information from Noeleen Leddy and Kevin Ireland

John Carthy's family was not informed of his request to Kevin Ireland to get him a solicitor. It was denied by the senior officers that a decision was taken not to inform the family of this request.

Contact with John Carthy following the call to Kevin Ireland

On receipt of the information Sergeant Jackson spoke again to John Carthy and focused on the request relating to a solicitor. He told the subject that he would get a solicitor; that the gardaí would bring him down if he identified him but that they would need to know who he was. Sergeant Jackson told the Tribunal that John Carthy replied that he wanted "*a republican one*". Sergeant Jackson asked him "*what is his number or where can we contact him*" and that "*we will ensure you are ok when you come out*". John Carthy replied "*no fucking way, I want him in here*". Sergeant Jackson went on to say:

“John, we are worried about letting a solicitor in there with you because of the gun you have, but we will get him to meet you outside if that is what you want. John please tell me who he is and where he can be contacted”.

John Carthy’s reply to this was, *“don’t bother, don’t bother”*. Sergeant Jackson thereafter repeated this request to identify a solicitor but received no reply. The negotiator did not seek any information as to who the family solicitor might be.

SECTION H – The Events of the Afternoon at the Scene

Continued attempts at dialogue

At about 1:00 p.m. during the course of Detective Sergeant Jackson’s attempts at dialogue, John Carthy began to interrupt his efforts; these interruptions being described in evidence as an effort to shout him down *“with slogans such as ‘Free State bastard, you are just like the Black and Tans’ ”*. This comment by the subject was repeated during the course of the afternoon and the frequency increased.

The loudhailer is shot from the wall

At 1:06 p.m., while the negotiator was speaking to John Carthy, the loudhailer, which had been placed between the concrete blocks on top of the wall at the negotiation post, was shot from the wall.

The location of negotiation post is reconsidered

In the course of the evidence of relevant garda officers an issue arose as to whether there was consideration given to the relocation of the negotiation post when shots were fired by the subject in that direction, thus exposing garda officers to danger. This issue is considered in Chapter 6. For the reasons referred to there the negotiation post was not relocated.

Numbers of visible gardaí – John Carthy’s space

Detective Sergeant Russell was asked for his opinion on the number of members of the gardaí that he thought John Carthy may have been able to see from the window. He believed that the number was minimal. These might have included Detective Garda Carey, Sergeant Jackson, Detective Garda Sullivan and himself. Other persons on the cordon were kept out of sight, he stated. Sergeant Russell spoke with Sergeant Jackson and it was agreed that when relief personnel came to that area, they were instructed to go into the new house. The reason behind this, he said, was that they did not want to *“crowd John Carthy out”*. They wished to give him space. Relief personnel were told to remain in the house out of sight. He believed that from the subject’s position, he could see probably no more than three or four armed members of the Garda Síochána at any one time.

Arrival of ERU relief personnel

Three ERU relief personnel arrived at the scene shortly before 1:00 p.m. These were Detective Garda William Sisk, Detective Garda Joseph Finnegan and Detective Garda Aidan McCabe. Sergeant Russell stated that he spoke briefly to Superintendent Shelly and explained that he would be standing down personnel then deployed at cordon points.

Instructions to relief personnel

The tactical commander stated that he fully briefed the new personnel on John Carthy's background and brought them up to date on what was happening, and where garda personnel had been deployed. He informed them of the policy decision which had been taken by the scene commander of containment and negotiation. That would continue. He confirmed that he instructed the three new members in the same way as he had instructed the other members on the previous evening. He explained to them that:

“if the subject exited the building unarmed we would conduct a controlled exit and enable his arrest to be conducted in a safe manner when he would be handed over to local gardaí. If he exited the house in an uncontrolled manner with a firearm, their objective would be to disarm him and to use whatever reasonable means at their disposal to achieve this purpose – to enable them to make an arrest”.

However, he informed them that if all means of persuasion failed and if the situation arose where any person present was in imminent danger of losing their life or at risk of serious injury, then (and only then) could they use as much force as was necessary, including the discharge of firearms, *“to achieve a legal purpose and to prevent this happening”*. He went on to say that he:

“wanted them to have the option – firearms were only to be used here as a last resort; that every other avenue should be exhausted; that it was incumbent on them to offer any other possible tactical initiative before they would resort to firearms and in that, as I said, you are relying on the initiative of the particular members who are in the situation. I can only set the scene and the plan, it is up to them to actually deal with the situation as they found it at that particular time themselves. It is impossible to legislate for his demeanour at the time. We can describe the possible scenarios, but it is up to them to make an assessment themselves of the situation, the likelihood of being successful in disarming him”.

Sergeant Russell could not recall whether he went into the specifics of the gun being broken or unbroken but he believed:

“it would be a consideration in the response of any member as part of their training, that they would know the difference between a broken gun or an unbroken gun, these are assessments they would have to make. They were put through this in their training, to make an assessment”.

Shortly after the relief personnel arrived, the shot timed at 1.06 p.m. was discharged at the negotiation point and Sergeant Russell remembered saying to those officers:

“you understand now what we are dealing with here, you have to be aware of your own safety, don’t take any chances or do anything reckless that will cause you to be injured, one, or cause him to actually respond in a fashion that would compromise his own safety”.

He stated that he wished to ensure that they understood that they were not to do anything to precipitate actions resulting in *“officer creating jeopardy”*. He told them not to do anything that might be reckless or which might precipitate action on the part of John Carthy. *“That was a consideration from the very beginning”*, he stated. (Surprisingly, Sergeant Russell’s concept of *“officer created jeopardy”* did not include local armed and uniformed officers exposed on and about the road near the command vehicle and who constituted a target for John Carthy as he walked towards Abbeylara holding his gun in an apparently aggressive way.)

Sergeant Russell also confirmed that he discussed the Firearms Regulations with the relief officers and reminded them of their obligations concerning the rules of engagement. He checked their personal kit, allocated weapons and deployed them to their positions around the house.

Deployment of relief personnel

Garda Finnegan, armed with an Uzi sub-machine gun, took up a position at the back of the house, relieving Detective Garda Ryan. Garda Sisk took possession of the Heckler & Koch rifle and relieved Garda Carey who was at the pillar on the roadway between Farrell’s house and Carthy’s house. Garda McCabe took up position at the negotiation point. He was given the Uzi sub-machine gun which Sergeant Russell had been carrying up to that point.

Assistant Commissioner Hickey leaves the scene

At some point prior to 2:00 p.m. Assistant Commissioner Hickey left the scene and returned to his office in Mullingar.

Attempted contact with John Carthy continues into the afternoon

The negotiator continued to try to telephone the subject but there was no answer. As the loudhailer which had been shot from the wall was damaged, these calls took place from the ERU jeep which was at the boundary of the Farrell and Carthy dwellings. At 1:38 p.m. John Carthy answered Sergeant Jackson’s call and asked him *“what’s with the hundred guards outside and only one of me”*. Sergeant Jackson replied:

“John there’s only a few guards here and the only reason that they are here is that you have that gun and you are firing at us. If you put the gun down and come out the guards will go away. I am out here to help you to come out of the house”.

John Carthy's reply to this was *"you are not going to come in and take the gun off me again"*. The subject hung up after this. (It is evident that the latter observation related to the occasion in 1998 when Garda Cassidy caused Mr. Carthy to hand over his gun by subterfuge. See Chapter 8.) Sergeant Jackson phoned the subject on a number of occasions again following this and eventually he answered the phone. The negotiator said to him: *"John, please tell me what has happened to make you do all this, tell me what it is and I can help"*. His reply to this was *"I am going to get ten years for all of this, ten fucking years."* Sergeant Jackson saw this as a statement of huge significance. It indicated to him that the subject was *"beginning, hopefully, to think with some degree of rationality. He was worried about the consequences of his actions which is obviously what a rational person may do"*. It also indicated to Sergeant Jackson that perhaps he was thinking about coming out of the house; and that, on the issue of suicide, because he was *"considering issues to the future"*, it may have indicated that *"he may not be contemplating harming himself . . . at that stage"*. Sergeant Jackson saw this as a positive development. He told the Tribunal that he tried to reassure him and said to him:

"John you won't get ten years, nobody is hurt and that is good. We understand what happened yesterday was because you were angry so come out now and it will be ok".

The subject's reply to this was *"Fuck off"* and he hung up. Sergeant Jackson stated that he told him that he *"should not be worried about getting ten years and things are not as serious as he thinks, especially as no one has been hurt"*.

At approximately 1:45 p.m. John Carthy telephoned the negotiator. He did not talk but raised the volume of loud music playing in the background.

A replacement loudhailer was brought to the negotiation post and Sergeant Jackson returned to continue negotiations from that position. He revisited the question of the *"10 years"* as he wished to *"capitalise as best I could on John's comments."* He reassured him that nobody had been hurt; that there was no question of prison; and that it was understood that what he needed was help in his difficulties and that everybody was there and willing to help him. The subject's response was to raise up and level the shotgun at the negotiation post forcing the ERU members present to take cover behind the wall. The negotiator stated in evidence that the subject continued to bang the table in the kitchen with the butt of the shotgun and that he moved between the back of the room and the window.

Sean Farrell is brought to the scene

Thomas Walsh made contact with Mr. Sean Farrell, a friend of John Carthy's, as he believed that he would be the best person to speak with him. Mr. Walsh introduced Mr. Farrell to the gardaí saying that he was someone the subject looked up to. Superintendent Shelly told Garda Sullivan that John Carthy regarded Mr. Farrell as a *"role model"* and that he, Mr. Farrell, was willing to speak with him. Garda Sullivan relayed this information to Sergeant Jackson. The latter then spoke to Superintendent Shelly and it was agreed that Mr. Farrell should be utilised. During this conversation

Superintendent Shelly and Sergeant Jackson also spoke about the progress of the negotiations and decided to continue in the same manner, even with the slow, limited progress that had occurred. (In fact no progress had been made up to then.)

Sergeant Jackson spoke to the subject by loudhailer and told him that Mr. Farrell was there and wanted to speak to him. The subject replied *“bring him down”*. Garda Sullivan briefed Mr. Farrell on the process before bringing him to the negotiation post. The negotiator told Mr. Farrell that he would like him to attempt to capitalise on his close relationship with John Carthy. He stated in evidence that *“attempting to work on the slipstream of Mr. Carthy’s comments about being worried about what was going to happen when he came out”*, he told Mr. Farrell that he wanted him to focus on the consequences of John Carthy’s actions and to offer him reassurances as to what had happened in relation to the incident; get him to look to the future; that there was a good future for him, and assure him that he would be willing to employ him in the plastering trade.

Mr. Farrell was at the negotiating point from approximately 2:05 p.m. to 2:50 p.m. He spoke to John Carthy for approximately 20 to 25 minutes. He asked him what had happened to cause all this and asked him to talk to him. He offered reassurance that everybody including the gardaí were there to help, saying that he would wait outside and meet him when he came out if that is what he was worried about. He made it clear to John Carthy that he could always have work from him, and that when he came out there was a job for him – *“that was guaranteed”*. He did not receive any reply to any of these requests. He then said to the subject that he was hurt and disappointed that he would not talk to him, and made repeated efforts to open dialogue, but to no avail. During this period, the subject had the gun levelled at the negotiation position, but appeared to be listening to what Mr. Farrell was saying. Mr. Farrell told him that he would ring him on his mobile phone and this he tried up to six times. The phone was answered but John Carthy said nothing.

Mr. Farrell was then brought back to the command post.

Increased agitation – vigilance, glass-breaking and watch-looking

Sometime after Mr. Farrell left, John Carthy became quite agitated and, according to those observing him, his movements became accelerated. He was constantly checking the window. He appeared to Sergeant Jackson to be in a *“state of hyper-vigilance”*. The negotiator recommenced attempts to negotiate on the loudhailer to try once more to address the subject’s worries regarding the consequences of his actions. He stated that he *“felt it may be fruitful to follow up on that and offer reassurance on that basis and certainly that is what I did in the hour or the minutes and hours after that and right throughout . . . in an attempt to indicate to John about his future and trying to focus in on the fact that he was thinking about the future”*. Therefore he spoke to John Carthy about Sean Farrell’s offer of employment; Dr. Shanley and his willingness to help; and, in general terms, about everybody – family, friends and the gardaí – being willing to offer help. He described this as a *“general, broad range reassurance of Mr. Carthy at that stage.”*

The subject's reply to all this was: *"Free State bastards. No way am I coming out. Come on in and get me"*. In response Sergeant Jackson told him that the gardaí did not want to hurt him and that all they wanted to do was to get him out safely. He thought that the responses he had received were given in *"a somewhat overtly agitated and boastful way."* On this occasion, as on other occasions when he received responses that he interpreted as *"bravado"*, he addressed the issue of suicide, asking the subject if he was thinking of hurting himself or thinking of suicide.

At about this time, the remaining sections in the glass of the gable window were broken out by John Carthy. Further, Sergeant Jackson said that the subject began to check his watch repeatedly in a deliberate way *"and nearly, in one sense, as if he wanted to show us he was looking at his watch."* The negotiator asked him why he was checking his watch. He did not receive a verbal reply but he gave, what Sergeant Jackson described as, a *"wry or a sarcastic"* smile or smirk.

At this time the negotiator received information from the command post that John Carthy, in his phone call to Kevin Ireland, had mentioned a solicitor by name. He therefore told the subject that he was aware that the solicitor he wanted to talk to was *"Mick or John Finucane"*. He asked him to help identify him, and where he could be contacted. He stated that he assured him that they would get Mr. Finucane for him, and that he, the solicitor, would be here for him if he wanted to talk to him. There was no reply to this request which, he stated, was reiterated on a number of occasions. During the course of Sergeant Jackson's requests to the subject to answer the telephone, he threw the house telephone into the garden. The time was then just after 3:00 p.m.

Sergeant Russell told the Tribunal that he overheard the subject stating to Sergeant Jackson that he was not coming out of the house and that *"if we wanted him, to come in and get him"*. According to the negotiator, John Carthy was gesturing at them to shoot him and shouted *"shoot me, shoot me"*. At that, he would suddenly pick up the firearm and point it at them in what Sergeant Russell described as a threatening manner. He stated that the subject had the gun in his right hand, and was pointing towards his chest with his left hand, saying *"shoot me"*.

Detective Sergeant Russell rests

At approximately 3:00 p.m. Sergeant Russell informed Superintendent Shelly that he was going to rest in the Carthy's new house. He instructed Garda Flaherty, who was the next most senior member, to cover for him. He left Garda Flaherty in control of the inner cordon but said that he was still in overall charge and did not relinquish responsibility in any form. He requested his junior to summon him if there were any developments.

Kieran Lennon

Mr. Lennon, a friend and workmate of John Carthy, telephoned him on his mobile phone at approximately 3:00 p.m. The subject answered the phone and Mr. Lennon

said *“any craic”*. He said no, and asked Mr. Lennon what he wanted. Mr. Lennon told him that he was just ringing to see how he was, to which the subject said he was busy, that he had to go and hung up. Mr. Lennon said that John Carthy sounded *“all right”* and *“calm”*.

Mr. Lennon had previously attempted to call John Carthy before midday on that day but there was no answer. Mr. Lennon said that about an hour later he called again and the phone was engaged, and five minutes after this he called for the third time and the subject answered the phone but did not say anything. Mr. Lennon heard the radio playing in the background.

Detective Sergeant Jackson rests

At approximately 3:20 p.m. Sergeant Jackson wished to take some rest. He informed John Carthy of this and told him that Garda Sullivan would be there during his absence, and that he would talk to him. At that stage Sergeant Jackson believed that he was still in a position to continue as negotiator, but that if the incident went into a second night, he would need to be replaced. Sergeant Jackson then went to rest in the official jeep.

Detective Garda Sullivan attempts to contact John Carthy

Garda Sullivan tried to contact John Carthy; introduced himself and attempted to reassure him. These attempts continued on an intermittent basis until approximately 4:30 p.m. Garda Sullivan thought that the subject was calm. However, during the period of his attempts to negotiate, Mr. Carthy regularly levelled the gun at him which forced him to duck. He thought that he enjoyed this, in that he would smile in what Garda Sullivan described as a *“knowing way, that he was in control”*. He told the Tribunal that he said to him that *“I can’t hear you if you keep making me duck”*. At some point during this period, John Carthy, as a result of a prompt by Garda Sullivan, mentioned the name *“Finucane”* in relation to the solicitor request and asked why the gardaí had not got him. The witness pressed the subject on the first name of the solicitor, but did not get a reply. According to Garda Sullivan, he then started saying things to him such as *“Free State bastards”* and *“shoot me, shoot me”*. On one occasion, John Carthy came to the window with his arms outstretched. He had the gun in one hand, in a pose that Garda Sullivan took to be a taunt to the gardaí, inviting them to shoot him. Garda Sullivan said to the subject that the gardaí were just doing their job and the only problem was the gun which he had in his hands. He told him that the situation could easily be resolved by him; by putting the gun down, and coming out, and that he would be treated well. Garda Sullivan said he received no response, although he formed the impression that the subject was still listening to him. He continued to attempt to communicate with him until 4:30 p.m.

Chief Superintendent Tansey attends at Granard garda station; speaks with Assistant Commissioner Hickey and returns to the scene

At approximately 3:15 p.m. Chief Superintendent Tansey travelled from his office in Mullingar to Granard garda station. He read the file in connection with the confiscation of the shotgun and the subsequent events leading to its return and the renewal of John Carthy's firearm certificate. While in Granard garda station, Chief Superintendent Tansey spoke with Assistant Commissioner Hickey about the current position and discussed the overall review that they proposed to carry out at around "tea time". Assistant Commissioner Hickey said that such review would be very much guided by the advice they might receive from Dr. Shanley. At 4:20 p.m. he returned to the scene and spoke to Superintendent Shelly and Inspector Maguire at the back of the jeep "in the vicinity of the command post". Inspector Maguire informed him that Dr. Shanley was on his way to the scene and Superintendent Shelly brought him up to date on developments. Chief Superintendent Tansey stated that he thought that very little progress had been made. He was also informed of the developments in connection with the solicitor issue.

John Carthy's arrest is discussed

Assistant Commissioner Hickey and Chief Superintendent Tansey discussed what steps they should take if John Carthy came out of the house, from the point of view of his arrest, that is to say, whether they should proceed under the Mental Treatment Act, 1945 or the Firearms Acts. During the course of this conversation it was decided that the Office of the Director of Public Prosecutions should be telephoned for advice. Superintendent Shelly made this telephone call at approximately 5:30 p.m.

Dr. Shanley arrives in Abbeylara and visits Rose Carthy

Dr. Shanley, who was travelling to the west of Ireland that afternoon with his family for the Easter holiday, stated that he got delayed in bank holiday traffic. He was met by Garda Reynolds and Garda Carthy in Edgeworthstown at approximately 4:15 p.m. and taken to Abbeylara where he met Superintendent Shelly. He recalled that Inspector Maguire was present and that Chief Superintendent Tansey may also have been there. Dr. Shanley was informed that the siege was continuing and that John Carthy had fired a number of shots. When asked in evidence whether Superintendent Shelly, at this stage, outlined to him what role it was anticipated he might play, Dr. Shanley replied that he did not, but that from his point of view he "went to Abbeylara with the hope and expectation that I might be able to talk to John. I am not saying that there would have been any different outcome, but I would have liked to have had the opportunity to try and talk to John, to have been able to offer him, if you like, sanctuary, in St. Patrick's hospital. That, I felt, was my major role".

Dr. Shanley was anxious to speak with the family. Garda Reynolds and Detective Sergeant Foley took him to the Mahon house to meet Mrs. Carthy. Dr. Shanley told the Tribunal that at that time, Mrs. Carthy was "clearly upset" and he thought that she was sedated. Dr. Shanley thought, but was not "entirely sure" that Mrs. Carthy "may have indicated that John had been taking some alcohol in the lead up in the days

before." Dr. Shanley learned very little else from Mrs. Carthy other than that her son was in the house and firing his shotgun. He was then informed by another member of the family (he thought that it was Mrs. Patricia Mahon) that in the days leading up to the incident John Carthy had become more irritable; was not sleeping well, and had been drinking. Dr. Shanley asked Mrs. Mahon did the family think that he was depressed, and she replied that they "were not entirely sure." Dr. Shanley said that they also told him that he had been "talking a lot". On foot of all of this information the doctor found it difficult to make an assessment of his patient's condition.

Dr. Shanley spent between 25 to 30 minutes in the house before being brought back to Abbeylara shortly after 5:00 p.m.

Detective Sergeant Jackson returns to duty

At approximately 4:30 p.m. Sergeant Jackson returned to the negotiation post, where he was briefed by Garda Sullivan on events which had taken place in his absence. He was informed that the subject had levelled the shotgun forcing Garda Sullivan to take cover behind the wall. The negotiator learned that Dr. Shanley had arrived at the scene and was anxious to speak to the family. He was also informed that Ms Carthy was at the scene and wished to speak with her brother. Sergeant Jackson noted that John Carthy was levelling his shotgun at the negotiation post on a regular basis. He stated that both he and Superintendent Shelly agreed that Ms Carthy should be brought to the negotiation post to talk to her brother.

Evidence of John Carthy's increased agitation between 4:30 p.m. and 5:30 p.m.

Detective Sergeant Jackson tells John Carthy that Marie Carthy and Dr. Shanley are at the scene

At approximately 5:00 p.m., the negotiator using the loudhailer called to John Carthy to tell him that his sister and Dr. Shanley were present and that they were very anxious to speak with him. He could see him at this stage at the window with the gun in his right hand. He saw him smirk, level his shotgun, and then discharge the weapon. The shot struck a block which fell and struck Sergeant Jackson who had taken cover behind the wall. The latter told the Tribunal that he asked the subject to stop shooting, and told him that it was causing a difficulty and a problem for the gardaí. At this stage he became concerned in relation to bringing Marie Carthy to the negotiation post and spoke with Superintendent Shelly about this. It was agreed that he would try to persuade the subject on the telephone to "try and engage Marie Carthy on the phone with her brother inside".

Sergeant Jackson observed John Carthy moving from room to room in what was described as a very agitated and restless manner. He learned that other gardaí had heard furniture being broken in the house at that particular time. Sergeant Jackson himself only heard him banging the table, he believed with the butt of the gun, and constantly saying "why?, why?" to any question posed by him.

Sergeant Jackson was asked whether he thought that the subject's agitation at this stage was on a different level to that which he had seen earlier in the day. He replied, *"certainly it was more constant at that stage, it was a longer period. There were intermittent periods of agitation previously but this was a reasonably long period of agitation from in and around 5:10 up until this point. Probably for that period, maybe, 15 to 20 minutes, [there] was an ongoing period of agitation and a lot of noise coming from the house"*.

Detective Garda Sisk's observations

Between 4:30 p.m. and 5:00 p.m. Garda Sisk, who was on the roadway at the boundary of the Farrell and Carthy properties, observed John Carthy banging the butt of his gun against furniture and shouting *"why?, why?"* in response to Sergeant Jackson's attempts at contact. After approximately 20 minutes, the subject closed the curtains on the gable window. Thereafter, he was intermittently observed pointing the shotgun through the holes in the net curtains. On these occasions, Garda Sisk stated that he feared for his life and took cover behind the wall. Five minutes later John Carthy opened the curtains. After firing his weapon at 5:06 p.m., he took a fresh cartridge from his gun belt, which he was wearing, and reloaded the gun. He again pointed the weapon out the window. Garda Sisk observed him looking at his watch. He was doing this more frequently than he had been earlier in the day. Shortly before 5:45 p.m. he observed him point his shotgun at the negotiation post; again Garda Sisk took cover.

Detective Garda McCabe's observations

Garda McCabe noted that John Carthy had become more agitated since Sergeant Jackson's return at 4:30 p.m. He was aware that Dr. Shanley and Ms Carthy had arrived at the scene. Garda McCabe observed John Carthy pacing around the room and levelling the shotgun out the window. He also observed him knocking the television set to the floor.

Detective Sergeant Russell is contacted

Having heard the shot fired at 5:06 p.m., Sergeant Russell discussed the matter with Superintendent Shelly. He told him that he was back on duty. He returned to the new house at 5:20 p.m and was told that the subject was breaking furniture.

Dr. Cullen contacts the Garda at 5:00 p.m.

Dr. Cullen stated in evidence that, on his own initiative, he contacted the gardaí in Granard at 5:00 p.m. and told them that he would be available at 6.30 p.m., after evening surgery.

Superintendent Shelly contacts the Director of Public Prosecutions

As the Easter bank holiday weekend was approaching, Superintendent Shelly contacted the DPP's office to seek advice as to what charges should be preferred against John Carthy in the event of an arrest being made. He spoke to Mr. David

Gormally, a professional officer. Mr. Gormally informed the Tribunal that he discussed the powers of arrest that the gardaí would have, and the effect that John Carthy's mental condition may have on how he would be dealt with. No suggestion was made to Mr. Gormally by Superintendent Shelly that, as Mr. Carthy was not motivated by criminal ideation but by an outbreak of severe mental illness that, in the interest of ending the impasse, the director might agree to postponement of arrest and charging of Mr. Carthy provided that he left his house without his gun and proceeded immediately to St. Patrick's hospital with Dr. Shanley for in-patient treatment there under his direction.

During the course of his conversation with Mr. Gormally, Superintendent Shelly told him that the subject had requested a solicitor by the name of "*Finucane*" and that he (Superintendent Shelly) was unable to establish the identity of such a person. Mr. Gormally told the superintendent that he was aware that there was an individual by that name in the offices of Garrett Sheehan (Solicitor) in Dublin, who he believed to be a solicitor's apprentice there. Mr. Michael Finucane, who was in April, 2000 an apprentice solicitor in that office, informed the Tribunal that he had never met, acted for, or had any dealings with John Carthy.

Dr. Shanley, Marie Carthy, Thomas Walsh and Martin Shelly are brought to the scene

Superintendent Farrelly stated in evidence that some short time after 5:20 p.m. he drove Dr. Shanley and Ms Carthy from the area of the church to a location outside Walsh's house. Garda Sullivan went to speak to Dr. Shanley. He sat into the car with the doctor. Marie Carthy, Thomas Walsh and Martin Shelly were also in the car. Ms Carthy told him that she was anxious to talk to her brother. In the light of this, Garda Sullivan said that he decided to try and accommodate her request, saying in evidence, "*I dealt with Marie then*". Dr. Shanley understood that the gardaí had decided that Marie Carthy would speak to his patient first and that he would speak to him afterwards.

Marie Carthy attempts telephone contact with John Carthy

Detective Garda Sullivan explained to Ms Carthy that her brother had become particularly agitated at this point, that he had fired more shots and that it would be unsafe for her to go down. He suggested that she try to contact him by telephone. Garda Sullivan gave her Sergeant Jackson's mobile phone. She rang her brother's mobile phone number several times but he did not answer.

Arrangements are made for Dr. Shanley to speak with John Carthy

Garda Sullivan returned to the negotiation post and informed Sergeant Jackson of what had transpired and the failed attempts to make telephone contact with John Carthy. The negotiator requested Garda Sullivan to return to the car, to collect Dr. Shanley and to bring him to the negotiation post. Shortly after 5:45 p.m., Garda

Sullivan was on his way back to collect Dr. Shanley when he heard a shout “He’s out, he’s out”.

The sequence of events that followed is set out in Chapter 5.

SECTION I – The Subject’s Mental State During the Siege

Expert opinion on the subject’s mental state at that time

Introduction

John Carthy had a history of bipolar affective disorder, which had been diagnosed and for which he was receiving treatment. From the evidence of his medical history it is clear that notwithstanding his treatment he had experienced episodes of mental illness, in the form of bouts of depression and/or elation, for which on occasions he required to be hospitalised.

In early 2000, the evidence has been that John Carthy was going through a major period of crisis as a result of the effects of a number of significant adverse life events. As previously outlined, the subject had had a traumatic relationship break up; had recently lost his job, was the butt of local slagging (in relation to the goat mascot episode arising out of his wrongful arrest) and was concerned about moving to the new house. There is also evidence that he had consumed alcohol in the days before the incident. Further, Holy Thursday was a day which had particular significance for him in that his father and grandfather, both of whom had been intimately connected with the old home which was about to be demolished by the local authority had died on a Holy Thursday. His father died on 12th April, 1990 – a Holy Thursday. The second day of the siege, 20th April, 2000 was a Holy Thursday. His father had featured in some earlier episodes of bipolar disturbance as a person close to the subject whom he believed he had failed and let down. It is noted that opinions were expressed in evidence by Dr. Sheehan, Dr. Turkington, Professor Fahy and Dr. Kennedy on the connection between the major relapse suffered by Mr. Carthy in his bipolar illness and the anniversary of his father’s death at this time. The following observations were made by Dr. Sheehan:

“The pattern was that when Mr. Carthy experienced depression, a feature of that was a sense of guilt that he had failed his father, so I would see the symptoms in relation to his father as being part of his depression as opposed to long-standing what we call morbid grief”.

“I think certainly the father’s death and the anniversary is very relevant. . . . we know that anniversaries are particularly relevant in a normal sense first of all, but also they can have particular resonance or implications for individuals predisposed to mental health problems, so we know that Holy Thursday would have been of special significance for him”.

In his evidence Dr. Turkington stated:

“It is just worthwhile mentioning that the onset of Mr. Carthy’s bipolar disorder, that his manic depression, is actually caused by his father’s death . . . that is the event that triggers him into manic depression and this is so because of his genetic vulnerability through the family line and also because of his personality. He was actually unable to grieve and get over the death. I don’t think that he ever does properly grieve over the father’s death and this sets him up with a propensity to an anniversary depression, at the anniversary of the death each year. That is really where his bipolar disorder all starts”.

It seems reasonable to conclude that the tenth anniversary of his father’s death coinciding with the imminent demolition of the old home, which was intimately connected with him in Mr. Carthy’s mind, would underline the significance of both events in a particular way and escalate his violent response to them.

It is commonly agreed by all of the psychiatrists who gave evidence to the Tribunal that in the period leading up to 19th/20th April, 2000 John Carthy had a relapse in his illness and that during the course of the stand-off at Abbeylara he was seriously mentally ill.

The psychiatrists agree that the form of illness experienced by John Carthy was likely to have caused him to have symptoms of both depression and elation during the incident. His behaviour was likely to have been influenced by a combination of mental illness, his personality, and the adverse effects of life events.

What follows are the views expressed in evidence by the psychiatrists in relation to the subject’s mental state over the period 19th/20th April 2000. The evidence of Dr. Shanley in this regard is also recorded, although he was not called to give evidence to the Tribunal in the capacity of an expert witness but rather as a witness to fact. It is appropriate to bear in mind that none of the psychiatrists (other than Dr. Shanley) who gave evidence ever met John Carthy or had any connection with him during his life. They were reliant on the evidence of others and on medical records for their assessment of him. Dr. Shanley had known the subject and had treated him as a patient for psychiatric illness over a period of about five years.

Dr. Sheehan

John Carthy’s mental history

Dr. Sheehan’s diagnosis of John Carthy’s mental condition was that prior to the events of 19th/20th April, 2000 he had bipolar disorder. From time to time he endured a mixed affective state wherein he experienced symptoms of both depression and elation contemporaneously.

John Carthy’s mental state during the incident

Dr. Sheehan believed that during the course of the siege in April, 2000 the subject was probably manic and delusional. The event he felt was spontaneous and

unplanned. He noted that John Carthy was behaving in an aggressive manner before and during the stand-off. The subject was verbally aggressive, irritable; he laughed inappropriately; his speech was rapid, almost incoherent at times, and he was noted to be hyperactive. Had he been depressed his speech would have been slower as would his actions.

Dr. Sheehan felt that the subject had also become paranoid, and was feeling persecuted, particularly in relation to the gardaí. Paranoia is often associated with mania. He was, he stated, elated and paranoid at the time of the siege:

"... he was elated and paranoid. Suicide by and large is associated with depression and hopelessness, so the exact opposite to what we were seeing. When you look at assessing risk, the patient who is depressed, hopeless, sees no way out, no future for themselves, in the context of depressive illness, that is the risk factor. Whereas Mr. Carthy's mental state was that he was elated and paranoid".

Insight

Insight refers to the extent the patient is aware that he is ill, recognises the nature of his illness and recognises that his behaviour may be a product of his illness.

John Carthy had lost insight into his condition in the past when he became hypomanic. It is therefore likely according to Dr. Sheehan that he lost insight into his condition at the time of the stand-off. This loss of insight remained in all probability for the duration of the incident. (It appears that that opinion does not take fully into account John Carthy's phone call to Kevin Ireland on the second day (20th April) which suggests that he had significant awareness and understanding of what he was doing and that he had no intention of shooting himself or anyone else. His explanation regarding use of his gun at the scene seems credible and does not appear to indicate a loss of insight. It is reasonable to conclude that the subject had understandable grounds for his antagonism towards and distrust of the police arising out of past experiences, i.e., wrongful arrest and physical abuse under interrogation and also the obtaining possession of his gun by deception without investigation of alleged complaints and fears (see Chapter 8). The evidence appears to indicate a probability that his antagonism was accentuated by the renewed manifestation of his bipolar affective disorder; one indication of the aggravation being a vehement determination that he would not surrender to the gardaí and, in particular, that he would not again hand over his gun to them. He was surrounded by armed gardaí, including a negotiator who was seeking his surrender. In these circumstances it does not seem to be surprising that he would use his gun to keep the ERU at bay, but not to shoot them, and that is what he did. It is also significant that Mr. Ireland described Mr. Carthy as being "calm" and not distressed when speaking to him on the phone. He was similarly described as such by Mr. Kieran Lennon who spoke to him by phone at about 3:00 p.m. on 20th April, i.e., less than three hours before his fatal shooting. Furthermore, it seems that the subject's objective in asking his friend, Kevin Ireland, to contact a named solicitor to attend the scene was in the context of a possible negotiated surrender. This is consistent with the reality of the situation facing

Mr. Carthy at that time: that is, that he was near the end of his tether — having exhausted almost all of his ammunition — and in practical terms he may have realised that it was not possible to continue the stand-off for much longer).

Because of loss of insight, Dr. Sheehan felt that it was unlikely that Dr. Shanley would have been able to talk John Carthy down. The subject was too ill, he had failed to respond to the presence of his sister, and in those circumstances he felt that it was unlikely that he would respond to his psychiatrist. It was unlikely that the offer of a bed and treatment in St. Patrick's was going to be of any tangible value because of John Carthy's paranoid ideas and his disturbed mental state and his consequent complete lack of insight. (The statement that John Carthy had failed to respond to the presence of his sister is not factually correct. After the Kevin Ireland phone call, he tried to contact his sister by mobile phone but to no avail as inadvertently he used a number which had been recently changed).

Delusions

Delusions are associated with mania and not hypomania. A person in a hypomanic state will not suffer from delusions.

Dr. Sheehan felt that John Carthy had a delusional belief that he was engaged in defending the family homestead from attack. The motivating force for his abnormal behaviour was the delusional belief. The difficulty for the negotiator was that John Carthy wouldn't have believed any concession that was made to him — such as an offer to stay the demolition of the house. The negotiator wouldn't have been in a position to debate the issue and present evidence because the abnormal belief was so powerful.

Rationality

Dr. Sheehan noted that a person in a similar mental state to that of John Carthy had a reduced ability to reason and the more agitated and disturbed the person was the more difficult they were to reason with. John Carthy's behaviour over the course of the event was erratic and irrational. (This assessment does not seem to take cognisance of the fact, which also emerged in the Kevin Ireland phone call, that Mr. Carthy's object in requiring a solicitor at the scene was the possibility of negotiating surrender. As already stated, that seems to indicate that he was capable of a realistic assessment of his difficulties in the context of continuing the stand-off at that time.)

John Carthy's mental state on leaving the house

Dr. Sheehan believed that John Carthy had a motive for leaving the house. However, like the other medical experts, he agrees that it is a matter of pure speculation as to what the motivating factor was. The subject's behaviour was consistent with his elated and paranoid state. He had displayed unpredictability, impulsiveness and invincibility after he left the house. Dr. Sheehan's opinion was that the subject's behaviour at that time can be best understood in the context of his mental illness (mania). He acted impulsively, in an unpredictable manner either oblivious to, or with a disregard for, the dangers which surrounded him.

Dr. Sheehan's view was that on leaving the house John Carthy's behaviour was unpredictable, impulsive and that, in all the circumstances, he posed a real risk to the gardaí. Having already discharged his firearm on many occasions, it was reasonable to conclude that he was likely to discharge it again after leaving the house. Having taken the safety catch off the gun outside the house there was a high risk that he was going to use the weapon, and in his paranoid state he was likely to misinterpret somebody's actions as being threatening, which would actually result in him using his weapon.

Dr. Harry Kennedy

John Carthy's mental history

Dr. Kennedy diagnosed John Carthy as having a bipolar affective disorder with a schizo-affective element to it.

Schizo-affective disorder

Dr. Kennedy explained that there was little difference between bipolar affective disorder and bipolar disorder with a schizo-affective element to it. The schizo-affective element to the illness reflected the prominence of an oversensitivity or paranoia in John Carthy's presentation.

Paranoia

Paranoia causes an oversensitivity to real or imagined slights and causes a further tendency to view interactions with others as being more persecutory in nature than they are intended to be.

John Carthy's mental state during the incident

Dr. Kennedy believed that in the lead up to 19th/20th April, 2000 John Carthy suffered a relapse of his illness and became hypomanic or manic. This relapse may have been caused as a result of him adhering to his antidepressant medication (which may have precipitated an elevation of mood) but at the same time failing to take his stelazine, a prescribed anti-psychotic drug, which would have helped to control his elation, irritability and associated delusions.

Dr. Kennedy's view was that anger was the dominant feature of John Carthy's presentation, an anger derived from an abnormal mental state. As time went on he became more angry and more irritable. He was disturbed and likely to have been suffering from delusions.

Dr. Kennedy in his evidence discussed the process by which natural inhibitions to violence may be overcome leading a normally non-violent person to do a violent act. There were three stages to the process; fantasy, rehearsal and then escalation. Fantasy is imagining what one would do; rehearsal is thinking of some way of testing out that plan, i.e., breaking something, throwing a plate, breaking a window, and

then escalation is raising the level of violence in preparation for the act contemplated. Examples would be John Carthy breaking out the glass in the kitchen in the early stages of the incident and prior to leaving the house he was seen to act in an agitated fashion beating the butt of the gun against the table and smashing windows. Dr. Kennedy was of the view that these acts represented rehearsals and escalations in preparation for further acts of violence.

In his conclusions Dr. Kennedy noted that at the time of his death John Carthy was aroused, angry and exhibiting escalating threatening behaviour. (This opinion does not seem to take into account the evidence that the subject did not threaten or take any action against the armed ERU officers who were in his immediate vicinity shouting at him to drop his gun (i.e. to surrender) from the time when he left his house and headed up the road in the Abbeylara direction. It seems clear that his conduct bore out his calm assurance to Kevin Ireland a few hours earlier that he had no intention of shooting himself or anyone else.)

Rationality

Dr. Kennedy's opinion was that John Carthy was mentally intact in relation to his capacities – he could perceive his surroundings; he was able to reason, based on those perceptions, and was able to form intentions based on his reasoning. However, his capacity to perceive and to correctly interpret his social interactions and his capacity to reason and make rational decisions were all profoundly impaired. (This assessment does not seem to accord with the factual evidence – particularly the content of the Kevin Ireland phone call and Mr. Carthy's conduct on leaving the house which are already referred to herein. Dr. Kennedy did not address these facts. He also did not refer to the subject's apparent rationality in requiring a solicitor at the scene in the context of a negotiated surrender.)

Dr. Kennedy further concluded that more than likely John Carthy was deluded and may well have been experiencing hallucinations. As a result of the foregoing the subject was likely to be reasoning in a deluded confused way, which gave rise to difficulties in interpreting his behaviour. An overt act when committed by a rational person may have a very obvious motivation; however, the same act committed by a person reasoning in a confused, deluded and psychotic manner may be the product of an entirely different motivation. Dr. Kennedy's view is that it is impossible to interpret John Carthy's behaviour in a rational way. (For the reasons already stated, that conclusion does not appear to be well founded.)

The effect of the Garda presence

Dr. Kennedy felt that whereas it might have been helpful from a psychiatric perspective for the gardaí to pull back and hope that John Carthy would calm down (undoubtedly the correct strategy when dealing with an angry aroused normal person whose anger in time would recede), one had to bear in mind the fact that for a person with mental illness the anger may not abate.

“... it is on a natural history of its own, often relatively unrelated to external events and he may simply continue getting more and more manic and angry and disturbed because of the nature of the illness.”

The likelihood is that if everyone had just withdrawn it wouldn't have made any difference to his mental state; he would still have been angry, aroused, suspicious, grandiose and armed.

It was suggested that a de-escalation of the situation could be viewed by John Carthy as a triumph such as would lead to the dissipation of his anger. Dr. Kennedy explained that the concept of triumph was already present as part of the grandiosity associated with the manic mental state. John Carthy already had this sense of triumph – he had the gardaí ducking up and down in response to his gun.

A normal person who takes exception to something done or said by somebody else will claim that his or her angry irritable state was provoked by the other person. Much the same response may be expected in mania except that the ill person already has anger present inside him or her and the exceptional event is used as an explanation for internal anger "... *I feel angry, it must have been because you provoked me ...*". Thus the ill person may attribute all of his or her internal anger in a disproportionate manner to a real or imagined slight. This often leads to the onset of delusions.

It was suggested to Dr. Kennedy that in addition to the withdrawal of the gardaí, something ought to have been done to alleviate John Carthy's fear about the destruction of the family home, to which he responded that in the early stages of the relapse of an illness such as John Carthy had, reasonable problems can be dealt with reasonably – the problem is the relapse will carry on anyway and offering him whatever he wanted in relation to the house would not necessarily have relieved the situation and would certainly not have relieved his mental state:

"It might not have relieved the situation because of the circularity I was mentioning before, that the theme is seized on as if it was the cause of the problem when actually it is not the cause".

John Carthy's mental state on leaving the house

Dr. Kennedy was of the view that at the time John Carthy left the house his thinking was dominated by delusions and hallucinations and that in those circumstances any act by him might have no significance or might have some delusional symbolic significance only he would understand, saying that:

"Mr. Carthy may also have been acting in an impulsive, unpremeditated way which lacked any premeditated plan or purpose other than the expression of some strong emotion, though the precise emotion may have been anger, fear, despair or elation, or any combination. If this was so, anger seems the most likely".

It was suggested to Dr. Kennedy that Dr. Sheehan found no particular evidence of hallucinations. Dr. Kennedy advanced as evidence for the presence of hallucinations the fact that John Carthy had been mumbling to himself, wandering around preoccupied, which Dr. Kennedy felt was a common external sign that somebody was responding to hallucinations; the other evidence being John Carthy's turning up

of the radio which he felt may have been an attempt to drown out hallucinations. Dr. Kennedy's possible evidence of hallucinations is tenuous. I prefer Dr. Sheehan's assessment.

Dr. Kennedy expressed the view that however disturbed and deluded John Carthy was, nevertheless he remained a potent threat in that all the indicators are that he was angry and hostile in mood and disposition, with angry and hostile intentions and that he remained capable of the accurate use of his gun. (That assessment appears to be contrary to the subject's conduct in not shooting at or threatening any of the armed ERU officers who were close by and shouting at him to surrender after he left the house; his calm assurance to Mr. Ireland a few hours before his death that he had no intention of shooting anyone; and, his apparent rationality in requiring a solicitor at the scene in the context of a negotiated surrender to end the impasse.)

Professor Fahy

John Carthy's mental history

Professor Fahy diagnosed John Carthy as having bipolar affective disorder. His view was that the relapse experienced by him in the early months of 2000 was predominantly hypomanic in type although he accepted that during acute periods of his illness that he was affected by a mixed pattern of symptoms including, arousal, irritability, elation, and depressive elements, all of which were exacerbated by his adverse life experience.

His mental state during the incident

Professor Fahy felt that at the time of the incident the subject was in a predominately hypomanic state with some depressive themes interwoven, consistent with a mixed affective disorder. In such a state the symptoms of elation and depression can alternate or co-exist. In John Carthy's case the mixed state was a combination of elation, anger, irritability with some depressive features. He stated:

"My own simplest interpretation of what has happened in this man's case is that it is the coalition really of his bipolar disorder, his personality and a series of life events coming together, that culminated in this remarkable outcome".

Mixed affective state

A mixed affective state is a mix of different themes and emotions. The simplistic notion of hypomania is that while affected by that state a person feels good. Rather it is often the case that a person affected in that way may feel angry, unhappy, deeply distressed, giving rise to the mixed affective state. John Carthy was predominately in a hypomanic state deteriorating over the course of the event.

Insight and rationality

Professor Fahy expressed the opinion that the subject had diminished insight into his illness over the course of the event. He made the point that insight is a dynamic

variable and that the more severe the disturbance the greater the loss of insight. John Carthy had probably never been so unwell in all his life.

Professor Fahy agreed that Kevin Ireland was the only person that John Carthy communicated with in any meaningful way. However, he found the subject's conversation with him to be quite striking and said that:

"it seems almost out of place when one looks at the rest of those communications".

He stated that it was surprising that Mr. Carthy appeared as calm as he was reported to have been in that conversation, but it was not incompatible with the diagnosis of a hypomanic episode. Professor Fahy went on to say:

"So it is not necessarily a state that affects the individual every minute of every hour of every day that they are in it, there is going to be an element of fluctuation and an ability to engage in sensible conversations at times."

Professor Fahy thought that the fact that John Carthy was shooting the megaphone off the wall approximately half an hour following the phone call was the type of fluctuation that one would expect to find in a person in John Carthy's condition. (It appears that it could be interpreted also as an act of amusement.)

Professor Fahy was asked how he saw the conversation between John Carthy and Kevin Ireland fitting into the pattern of his illness, as exemplified on that particular day. The witness described the conversation as being one that:

"fits into a pattern perhaps of energised, possibly grandiose thinking. As I have said earlier, it seems to be an island of sort of coherence when all around, it seemed to be very chaotic".

Professor Fahy was then asked whether it was unusual to have an "island of rationality" in circumstances where mania was the "primary thing being exhibited", and replied:

"No, it is not and I think that it is an important point, that the patient's mental state can fluctuate, again depending on external stressors, whether they are being provoked, whether they feel they are getting their own way or not, so in that sense, it is interesting, but it certainly does not undermine the suggestion that he was entering into a more severe state of mental illness during the course of the siege".

Professor Fahy said that the more one enters a hypo-manic or manic state the more inaccessible and perhaps less insightful the person is.

This does not seem to take into account that the Kevin Ireland conversation did not take place until midway through the second day of the event, i.e., just six hours before John Carthy was shot. More particularly, it does not take account of the subject's purpose in making the phone call to his friend, i.e., asking him to contact a solicitor on his behalf to come to the scene and engage in negotiating with the police

an end to the siege. This does not appear to be indicative of a worsening of the illness or of the “inaccessibility” referred to by Professor Fahy.

Professor Fahy agreed that it was unlikely that John Carthy would have surrendered the gun to the gardaí as he would have viewed this course of action as a defeat. He may have surrendered it to someone whom he knew well and trusted, provided that he retained the capacity to think things through clearly and strategically; but the witness felt it was unlikely that he retained this ability towards the end. Professor Fahy felt that John Carthy was unlikely to respond to Dr. Shanley in relation to an offer of a bed in St. Patrick’s hospital because his behaviour was so irrational. He considered it unlikely that such an approach would meet with success when dealing with someone who was agitated, manic and irritable. In these circumstances one was not dealing with a rational man and it was unlikely that there would be a voluntary committal. He noted that in this episode, unlike in previous episodes, there had not been the same demonstration of insight. This assessment does not appear to be borne out by the facts. The purpose of the Kevin Ireland phone call (as already stated) would appear to have been a cogent demonstration of insight by the subject within hours of being shot.

Professor Fahy thought that, because of his illness, by the time John Carthy left the house, he was no longer capable of being reasoned with in a rational manner. His opinion is difficult to understand in the light of the subject’s assurance to his friend, Kevin Ireland, that he had no intention of shooting himself or anyone else – a course of conduct specifically borne out by the fact that he did not threaten any of the armed ERU officers he encountered at close range on leaving his house. He was also well aware that he needed mental treatment and, ironically, he had had an appointment to consult Dr. Shanley in St. Patrick’s hospital on the day of his death.

Alcohol

Professor Fahy said that if John Carthy had been drinking on the morning of 19th April then the contribution of alcohol to his subsequent behaviour may have been through behavioural disinhibition, rather than the effects of alcohol withdrawal. However, given the lack of information on John Carthy’s alcohol consumption prior to and during the incident it was difficult to gauge the effects of it, if any, on his overall condition.

Indifference

Professor Fahy expressed the view that during the latter stages of 20th April, John Carthy was becoming manic. He was angry and irritable and had a combination of different emotions including, very possibly, some self-destructive ideas. During the latter stages of the siege he, John Carthy, didn’t value his life very highly. He was also extremely reckless in his behaviour and in his comments. Professor Fahy agreed that it might be more accurate to state that John Carthy was indifferent rather than reckless as to his welfare. He stated that towards the end of the incident he seemed to have reached the point of indifference about his own welfare and his own life.

John Carthy's mental state on leaving the house

By the time the subject exited the house his mental state had deteriorated to such an extent that he only had a limited awareness of what he was doing. Professor Fahy regarded the watch-looking prior to his emergence as indicative of a degree of agitation and impatience on the part of John Carthy rather than an indicator that he was about to undertake something specific. His behaviour during the latter stages of the siege particularly on leaving the house were driven, in Professor Fahy's view, by his mental illness. He was in an acute state of mania, with incoherent thought processes. In Professor Fahy's view John Carthy was unlikely to have been working to a coherent plan and was unlikely to be capable of formulating such a clear definite plan. Instead his mental illness was causing him to act through impatience and a disregard for his own safety. He explained that when someone was in an advanced state of disturbance he or she may no longer be able to assess risk because of confusion.

Dr. Turkington

John Carthy's mental history

Dr. Turkington observed that John Carthy's bipolar illness was initially predominately depressive, involving repeated depressive episodes interspersed with a lesser number of manic episodes. He noted that at times he experienced mixed affective states (i.e., episodes with mania and depression present at the same time).

The subject, in addition to being psychotic during his illness, also had to contend with a paranoid trait to his personality. This trait led him to have paranoid ideas and ideas of reference as part of his personality.

Paranoid personality

It is clear that John Carthy had a paranoid trait within his personality. He was certainly sensitive to any real or imagined teasing or taunting and there was evidence that he tended to take things personally. He tended to respond to such taunting in a combative manner. The paranoid personality, according to Dr. Turkington, will typically be stubborn, brooding and argumentative. Such an individual is likely to be resentful, brooding and angry over teasing and taunting, and to react to slights in an argumentative and threatening manner. John Carthy had a paranoid trait as part of his normal personality.

Ideas of reference

These are psychotic symptoms, which include the idea that comments on television or radio refer to the individual in question. Casual remarks made within earshot of the individual by others can be understood to relate to him or her and may be interpreted as being critical, accusatory or insulting.

Dr. Turkington distinguished between paranoia and psychosis and explained that a person with a paranoid personality has paranoid ideas and ideas of reference as part

of their personality but these ideas are only thoughts and not beliefs. A psychotic, on the other hand, who becomes delusional, actually harbours false beliefs.

John Carthy's mental state during the incident

At the time of the siege John Carthy, was suffering from a mixture of hypomania, irritability, intermingled lowering of mood and anger with some suicidal ideation expressed. (The subject told Mr. Ireland in his phone-call on 20th April that he had no intention of injuring himself. This does not appear to have been taken into account by Dr. Turkington.) John Carthy was disinhibited, overactive and with pressure of speech. The witness also expressed the opinion that the subject appears to have had intermingled paranoid ideas concerning the gardaí.

The break-up of his relationship, according to Dr Turkington, was a major life event for John Carthy and was probably part of the reason that he went into a form of mixed affective state with episodes of depression and slight elation during the week of the stand-off.

Dr. Turkington believes that the subject did not appear to have had an endogenous rhythm to his illness. In some people affected by bipolar disorder, the trigger for their illness are chemical imbalances that affect the brain. These triggers are caused from within or are endogenous. In others, the triggers for illness may be as a result of external negative life events known as exogenous factors. In John Carthy's case it was more likely that exogenous factors tipped him into illness.

He expressed the opinion that during the siege there was evidence of emerging hypomania in John Carthy, but he was not severely manic. He had no flights of ideas, no grandiose delusions, no hallucinations. The subject was a bit overactive but there was a coexistence of some depressive symptoms. He was in a mixed affective state, which was more hypomanic than depressed. He started to become elated as the siege began and by the end of it he was hypomanic, but had not become manic, which is a very disturbed state.

Rationality

Dr. Turkington believed that whereas John Carthy was angry, abusive, irritable with impaired sleep, he was not laughing inappropriately and all of his comments were understandable and rational. The content of his speech was not typical of mania – it was typical of a paranoid personality. In mania the speech can become so pressured and with such accelerated tempo that even the subject cannot follow it and nor can anyone else. John Carthy's comments were flavoured by a belief that he had been wronged by the gardaí, but he was not incoherent. In addition, he was able to have a normal calm rational phone call with Kevin Ireland, as well as appearing at the window and having suicidal ideation.

The life events, including the "slagging", the loss of his girlfriend, the perceived ill-treatment by the gardaí, the barring from the pub etc., were not only the triggers for his mental illness relapse, but were also perpetuating and aggravating factors feeding his anger and irritability.

Dr. Turkington stated that John Carthy's suicidal intent was personality driven and did not arise from his depression. Had it arisen from his depression he would, more than likely, have just shot himself as soon as he possibly could. Dr. Turkington stated:

“...on balance, I think the lead up to this, I would take it as seventy per cent personality and only thirty per cent the emergence of this mixed affective picture. So, I think a lot of what happened here was driven by his personality, life events, the slagging, all the various things which were accumulating at that point in time”.

Dr Turkington felt, that the request by John Carthy for the gardaí to shoot him, was a typical development in a “suicide by cop” stand-off situation of a “disturbed type” (see Chapter 14 Victim Provoked Police Shooting – “Suicide by cop”). In the “disturbed type” a moderate level of suicidal intent is present together with a degree of ambivalence. The outcome, he said, depended on how the situation was handled, i.e., whether steps were taken to diffuse the situation or whether matters were allowed to escalate. Unfortunately the situation did escalate and over the course of the siege John Carthy's illness worsened and on the day of his death he was becoming more hypomanic. A hypomanic person is rational, knows what he or she is thinking, doing, and saying.

John Carthy's mental state on leaving the house

By the time of his exit John Carthy was in a mixed affective state; he was not delusional, in fact Dr. Turkington believed he was highly rational. He was asked if the actions of John Carthy on leaving the house were those of a rational being doing what an experienced gunman would do or those of somebody trying to get himself killed. He replied:

“I think it could well be the act of somebody who is trying to get themselves killed, but not the actions of somebody with severe psychotic mania. These acts are purposeful, they are organised. He communicates a very clear message, he looks at the gardaí quite clearly as he goes out there. He either thinks that he can just walk out of there and have no problem, but then again he is cradling the gun and his finger is on the trigger mechanism, so he knows that he is giving out all the information, that he is going to be a danger to other people. The only conclusion I can make is that he is doing this to be shot”.

He thought that John Carthy was quite rational in what he was doing at this time; rational enough to know that he was about to be shot. He enjoyed having control over the gardaí during the siege. He enjoyed making them jump about and duck and he made eye contact on the way out, staying in control until he was shot dead.

Dr. Turkington's assessment of the situation presented by John Carthy is of particular interest. However, I have difficulty in accepting his conclusion regarding the subject's motivation in leaving the house, i.e., that his conduct indicated an intention to bring about a situation whereby he would be shot by the police. If that had been his object, he could have achieved it readily by turning his gun on one of the armed ERU men who were within feet of him. If he did so, an officer would have to respond

immediately by shooting him dead. It also seems to be significant that while walking on rough ground near his house, he did what an experienced, careful shooter should do, i.e., he broke open his gun until he reached the road at his gateway. I have no difficulty in understanding that in his advanced state of mental distress at that time, Mr. Carthy was probably reckless for his own safety and that he did not realise the gravity of the risk he was taking; but I am not convinced he appreciated that he was about to be shot or that he had any intention of bringing that situation about.

Dr. Shanley

John Carthy's mental history

Dr. Shanley had diagnosed John Carthy as having a bipolar disorder as discussed elsewhere in this report (see Chapter 3).

John Carthy's mental state during the incident

Dr. Shanley gave evidence to the Tribunal in April, 2003. He felt unable to say whether his patient was suffering from a mood disorder at the time of the incident. His intuition was that he was probably more high than low.

In response to a question concerning the gravity of John Carthy's mental condition on 19th/20th April Dr. Shanley responded as follows:

"... however based upon the events of the 19th and 20th April 2000, and the accounts of close relatives and members of the Garda Síochána, John Carthy appears to have been very disturbed on the 19th and 20th April 2000. Those events suggest that John was probably clinically depressed".

When Dr. Shanley returned to the Tribunal to give further evidence in October, 2003 he confirmed that there was a reasonable likelihood that the subject was in fact depressed during the incident. All of the life events affecting him would have aggravated the depression.

Finally, in response to questions put to Dr. Shanley in cross-examination, while reiterating that any retrospective diagnosis was speculative, he conceded that there was evidence to suggest the presence of both poles in John Carthy's behaviour, i.e., mania and depression, known as a mixed affective state.

Insight and rational thought

Dr. Shanley's view was that one would not have any insight into one's own condition during periods of elation or depression.

He thought that during 19th/20th April, John Carthy was unlikely to have anything like the same degree of insight that he would ordinarily have and that his ability to reason would be compromised; the extent of such compromise depending on the severity of the bout of elation or depression.

The subject may not have realised that he needed help and may not have contacted Dr. Shanley in circumstances where he was clearly elated or severely depressed. He would have liked to have had an opportunity to talk to the subject but stressed that, even if he had had such an opportunity, the outcome might not have been any different.

CHAPTER 5

The Final Minutes – John Carthy’s Exit from the House and Subsequent Fatal Shooting

SECTION A: – Introduction and Summary

At approximately 5:55 p.m. John Carthy, without prior warning, exited his house through the front door. He was in possession of his shotgun, which he had in the broken-open position. He immediately turned to his left, walked down by the side of the house, rounded the corner, passed the gable-end, paused momentarily at the next corner and proceeded down the driveway. As he passed through the gateway he closed the gun. Having moved on to the road he then opened the weapon, discarded one of two cartridges from it and closed it once more. He then turned up the roadway and proceeded to walk in the direction of Abbeylara with his shotgun closed, loaded with one cartridge and pointed in the direction of the command post, near which non-ERU members, armed and unarmed, were on the road. Moments later he lay fatally injured, having been shot four times by two members of the Emergency Response Unit. What occurred during those fateful few moments is now considered.

On his exit, the manner of John Carthy’s walk was described by Detective Garda Finnegan, who was observing the house door from a mound at the rear of the building, as a “very set walk”, “a very determined set” and a “mid-march” pace. He issued a radio message to all ERU officers that John Carthy had exited his house. According to the witness the subject, on exit, did not stop or look right and he seemed unaware of anything that was around him. He was carrying his gun which was broken open and he followed the path by the gable end of the house. When he exited, Detective Sergeant Jackson was down behind the front wall of the house at the negotiation post. He had been in a crouched position because, prior to his exit, the subject had been constantly raising and levelling the shotgun in his direction but without firing. Detective Garda McCabe was on one side of Sergeant Jackson and Detective Garda Sisk on the other. All three were close together. Immediately on hearing the radio message the negotiator stood up and looked over the wall. He saw the subject on the front pathway near a small gravelled area, walking by the gable window. Sergeant Jackson observed that he had the shotgun on his right side, the butt was tucked under his right elbow and his right hand was in the area of the trigger mechanism. The shotgun was broken open “similar to a hunting stance, a safety stance”. His left hand was under the front portion of the barrel and he was then walking at a reasonably brisk pace past the gable window towards the driveway. According to Sergeant Jackson:

“Obviously this was a serious development, Mr. Chairman. John had exited the house. It was an uncontrolled exit. His exit was sudden, but not unexpected,

and certainly a dangerous situation prevailed at that stage, so I drew my Sig pistol at that stage, but he had the gun in his possession so I felt he may be going to do harm to somebody. That was my initial assessment. I also made the assessment certainly he was a threat but not an immediate threat; the gun was broken, which was obviously something we took cognizance of. Certainly I perceived him as a threat but not an immediate threat at that particular stage...".

When Garda McCabe heard the radio call, "he is out, he is out", he too was crouched behind the wall at the negotiation point near Sergeant Jackson. He stood up from behind the wall and cocked his Uzi sub-machine gun by pulling back the cocking lever and selecting the repetition mode. He brought it to his shoulder, to the ready position, and looked over the wall. All of this was done in one motion. There are three selectors on the Uzi. These are "safe", "repetition" and "automatic"; repetition meaning that discharges from the weapon will be shot by shot, and that as the trigger is squeezed, one bullet only will be fired. The trigger must be released and squeezed again for a second discharge. An automatic selection will produce a burst of fire in one action.

Detective Garda Carey had come out of the new house on hearing the radio message of the exit. He proceeded quickly to an area between the abandoned patrol car and the sheds at the side of the old house. John Carthy entered the driveway and momentarily paused when he saw Garda Carey, who pointed his weapon at him and called on him to put down the gun. The subject proceeded down his driveway and at some point as he was passing through the gateway on to the road he closed the gun. Members of the ERU were at this time calling on him to drop the gun and informing him that they were armed gardaí.

As he moved on to the roadway John Carthy looked to his right in the direction of Sergeant Jackson, Gardaí McCabe and Sisk. He momentarily paused. The look on his face was described in evidence as a "blank stare". Nevertheless, they thought that he was aware of their presence. At this stage the gun was closed and pointing straight across the roadway to the field opposite. John Carthy's left hand was under the barrel, his right hand was in the trigger area and the butt of the gun was tucked under his elbow. Sergeant Jackson has described the subject's gun, at this stage, as being in a firing position. As he reached the middle of the road he paused and broke open the gun with his right hand. He removed a cartridge from the right barrel and threw it to the ground in the area of a ditch, on his right, and slightly in front of him. This was described by Sergeant Jackson as "a very quick movement". Immediately on closing the gun, he turned towards Abbeylara. He was now at the far side of the road, that is, the side furthest from Carthy's house and no more than three feet from the grass verge on that side. The gun was held as before, left hand under the barrel, right hand in the trigger area and the butt of the gun tucked under his elbow. He proceeded to walk up the road in the Abbeylara direction.

Detective Sergeant Russell was in the new house, having been on a rest break, when he heard of the exit. He proceeded through the front door. The first time that he saw

the subject was when he, John Carthy, was heading through the pillars at the gateway. He, the witness, ran diagonally across the garden in the general direction of Burke's hedge, halfway between the hedge and the pillar. He ran towards the roadside boundary wall and jumped onto it. John Carthy was to his right and was still walking. Sergeant Russell stated in evidence that the subject was not, at that stage, "far away" and that he was on the far side of the roadway. He did not see him progress through the gateway, nor did he see him remove the cartridge from the barrel of the gun. The witness had accelerated a short distance and it took him a while to compose himself. He was standing on top of the wall. He remembered trying to keep John Carthy in view "but at the same time he heard [the] panic of people" to his left. He knew that there were people in positions around the command vehicle. He heard some panic and in the corner of his eye observed movement of people fleeing to his left, up towards the Abbeylara side. While on the wall he had his pistol drawn and trained on the subject.

Detective Garda Sullivan, who had gone up the road to fetch Dr. Shanley, drew his pistol and went back towards the scene. He went to a position on the road just past the hedge dividing Burke's and Carthy's. He saw John Carthy emerging onto his driveway heading towards the road. He heard colleagues shouting to him, "armed gardaí, drop your gun", and pleading with him, "drop your gun, John". He could see the shotgun in his hands and he, Garda Sullivan, took a number of steps backwards. He was concerned for his own safety and the safety of other people, some of whom were gardaí in uniform and were "gathered in this area". He turned and formed the impression that there was a hesitation in that people may have been initially making their way towards the scene when the crisis happened. "There was a hesitation there. I just decided to shout to alert them". He shouted at everybody generally to "get back and get into cover". He turned around and jumped the wall into Burke's garden. Immediately before this, he heard Sergeant Jackson appealing to the subject and using his first name, saying, "John, please drop the gun".

At this time there were people, armed and unarmed gardaí, on the roadway in the vicinity of the command vehicle. There were also civilians in a car further up the road in the vicinity of the Walsh house. Sergeant Jackson, fearing that the subject was about to discharge his weapon at people in the area of the command post, decided that he was left with no option but to discharge his weapon. He fired a shot from his Sig Sauer pistol into John Carthy's left leg. This bullet struck him and the material of his jeans was seen to "flicker". The shot was described as having no effect on his demeanour or on the manner in which he held his gun, and he continued to walk. Sergeant Jackson, continuing to fear for those on the road, discharged a further shot to the left leg area. He was unaware of whether this shot struck the leg. Again no effect was noted. Garda McCabe, also fearing that John Carthy was about to discharge his weapon at people in the vicinity of the command vehicle or further up the road, fired a shot, the third in all, and his first, which struck the subject in the lower torso. Garda McCabe saw no reaction and thought that he may have missed. The subject was described by the ERU members as continuing to walk with the gun pointed at the command vehicle. Garda McCabe discharged his second shot, the fourth in all, which struck slightly higher on the lower torso. John Carthy immediately

fell to the ground. The evidence of witnesses at the scene indicates that the entire incident from the time the subject exited his house to the time he was shot dead was brief, perhaps no more than one minute. The time-lag between the first and fourth shots was also very short; the evidence being that there were no more than seconds between these shots. Witnesses close to the scene gave varying accounts of the number of shots that they heard. All four shots struck John Carthy, the first two in the left upper leg and the last two in the torso area. The shots to the leg caused soft tissue injuries and did not damage any bone.

Having been struck by the fourth and fatal bullet, he turned, faced Sergeant Russell, who at that stage was still standing on the boundary wall of the Carthy house almost opposite him, and fell backwards and "*somewhat to his right*". Having fallen to the ground on his back, he attempted to roll over on to his right side. His head was towards the grass verge and his legs were diagonally across the road. Garda Finnegan was the first to reach him and in carrying out what he described as the "*standard procedure*" of "*cover and contact*", he placed his foot on the subject's foot and trained his gun on him. He immediately saw that he was badly injured. First aid was administered by Detective Gardaí Flaherty and Sullivan (who rolled John Carthy onto his back) with the assistance of Detective Garda Ryan. Resuscitation was attempted by means of an air vent and by cardiac massage. An ambulance, which had been based at Granard garda station, was summoned. Dr. Donohue was also called to the scene. He administered adrenalin. All attempts at resuscitation failed and at 6:11 p.m. John Carthy was pronounced dead.

The core of the evidence from the relevant gardaí is that the subject was perceived to be a threat, and continued to be so when he turned and walked in the direction of Abbeylara. ERU witnesses felt that, earlier, when he had been shooting at them from inside the house he was displaying threatening behaviour and therefore would not agree that Mr. Carthy had not threatened them at any stage. After his emergence from the house, however, he did not point his weapon in the direction of any member of the ERU before he was shot. The evidence suggests that while all members of the ERU were concerned in a general way for their safety, in that John Carthy could have turned the weapon on them in a "*split second*", their primary concern was for the safety of the people on the road in the vicinity of the command vehicle and further up the road. The area within range of John Carthy's weapon was, at that stage, populated with armed and unarmed local officers, including Superintendent Shelly, the scene commander; and, somewhat further back, civilians who had been brought to the scene to attempt to assist in negotiations or to speak to John Carthy, including Ms Marie Carthy and Dr. Shanley who were in a police car on the road at Walsh's house, a short distance away. The statements, evidence and actions of many of the garda witnesses on the road at that time establish that they were caught entirely unawares and unprepared for what had happened and feared for their own safety.

The evidence of Professor Jack Phillips, a consultant neurosurgeon, indicates that the subject was capable of forward motion between the final two shots, as his central nervous system was not compromised by any of the first three bullets. The first two

shots struck John Carthy in the upper left leg and comprised soft tissue injuries only. This was unfortunate as the medical evidence suggests that had a bullet struck a bone, he probably would have fallen. The third bullet struck the deceased's pelvis and deviated at an angle in a downward direction, entering and exiting his right calf. While the evidence of a fifth wound raised the prospect of a fifth bullet, the Tribunal has previously ruled that it is satisfied that John Carthy was struck by four bullets only, notwithstanding the pathologists' original doubts in that regard.

SECTION B: – Eyewitness Accounts

When John Carthy emerged from his house, more than 20 gardaí and other personnel were present in the vicinity of the house or on the roadway nearby.

1. ERU members at the scene

Nine members of the ERU were in the vicinity of the house: one at a mound behind the old house (Detective Garda Finnegan); four in the new house (Detective Sergeant Russell and Detective Gardaí Flaherty, Ryan and Carey); three on the road in the vicinity of the negotiation post (Detective Sergeant Jackson, Detective Gardaí McCabe and Sisk); and one (Detective Garda Sullivan) further up on the roadway near Burke's boundary.

Garda Finnegan was behind a mound at the back of the old house, from which position he had a side view of, and was covering, the front door. He neither saw nor heard the door open. He first observed John Carthy, from side on, stepping through the door area and emerging from the porch. The subject did not announce the fact that he intended to exit before so doing. Garda Finnegan relayed the fact of the exit by radio, to other ERU members. He had no means of communication with the scene commander or any of the local officers at the scene. On exiting, John Carthy promptly turned left. At no time did he look in Garda Finnegan's direction. He was in "*mid-march*" and had a very determined set about him, meaning, according to the witness, that as he emerged from the house, he did not stop, and "*was unaware of anything that was around him*". He had the shotgun in his left hand, holding it at the point where it breaks open. It was broken, but Garda Finnegan could not, at that stage, see if it was loaded. He, and each of the other ERU officers in the general vicinity, described in evidence what they saw and what they did when the subject vacated his house. On reaching the gate piers he closed his gun; walked to the middle of the road or thereabouts; then opened the gun again and removed one cartridge which he threw into the ditch on the far side of the road. He closed the weapon again with one cartridge remaining in it and commenced walking in the Abbeylara direction towards the gardaí who were on the road in the vicinity of the command vehicle (which was between Burke's gate and the ESB pole). He was then about three feet out from the grass margin on his right side. As he walked he held the gun across his chest and his right hand was close to the trigger mechanism. He was described as being in a position to fire the gun instantly. It was perceived by witnesses that he was a danger to the lives of gardaí on the road in the vicinity of the

command vehicle. From the time when he left the house ERU officers had shouted at John Carthy on numerous occasions that they were armed gardaí and called upon him to drop the gun. He ignored them and did not respond in any way. Inner cordon officers and others who had been in the Carthy new house followed the subject and took up positions along the Carthy boundary wall. There was insufficient time for a strategy of moving containment to be put into effect as the subject had taken only a few paces in the direction of the command vehicle when he was fatally shot. (The concept of moving containment is discussed in Chapter 6.) He was still in line with his own boundary wall when he fell. As already stated, the time-lag from when he left his house until he was shot appears to have been no more than one minute.

The evidence of four ERU officers is of particular significance in the context of John Carthy's final movements, i.e., Sergeants Russell and Jackson and Gardaí Sullivan and McCabe.

Detective Sergeant Gerard Russell

At the time of John Carthy's exit, the team leader, Sergeant Russell, was in the new house having completed a rest break. Shortly after a shot was discharged by the subject at 5:06 p.m., he (Sergeant Russell) went down to Superintendent Shelly to discuss the situation and to let him know that he was "back on duty". He returned to the new house at 5:20 p.m. and was informed by Garda Flaherty that the subject had been seen breaking furniture which signified to him that he was frustrated or angry with something. Sergeant Russell had a brief telephone conversation with Detective Inspector Hogan and reported that there were no breakthroughs and that everyone was safe. Shortly after this he heard the radio message from Garda Finnegan that John Carthy "was out".

While Sergeant Russell accepted that the exit was unexpected at that particular time, he stated that it was not unexpected in the overall context. He also stated that he was not disadvantaged by being in the house at that time because he was in radio communication.

Sergeant Russell followed his colleagues, Gardaí Carey, Flaherty and Ryan, out of the house. When he got to the front door of the new house he could see John Carthy walking down the centre of the driveway, "just going through the gate". From his position he could not see whether he had a weapon in his hands, but he heard shouts directed at him to "put the gun down". He heard Sergeant Jackson "deliver the command" to the subject in what he described as a calm, non-threatening manner:

"There were a number of shouts to put the gun down but I heard, in particular, Detective Sergeant Jackson speaking . . . he is not an excitable individual and on this particular occasion I was amazed, he was so calm, his voice, it was just 'put the gun down John'. That was the fashion that struck me that he was still adopting the same attitude he adopted right through the negotiation and it was very clear. It wasn't in a threatening manner or it was very – like some people would put it more forcefully, and I put it more forcefully, but I remember his voice being distinguished from all the other shouts and calls, but

Detective Sergeant Jackson was very calm and was very levelled, the actual way he delivered the command''.

Sergeant Russell ran diagonally across the front garden to head in what he described as the general direction of the *''outer cordon position''*. He drew his pistol from its holster. He accelerated towards and jumped onto the boundary wall. It took him a while *''to compose''*. He tried to keep John Carthy in view. He heard the panic of people to his left:

''I knew that there were people in position around the command vehicle. I heard some panic and, in the corner of my eye now, I observed movement of people fleeing to my left or up towards the Abbeylara side''.

He had not seen, nor was he aware of the actions of John Carthy on the roadway.

When he got onto the wall he saw the subject to his right, walking on the other side of the roadway. He could now see the shotgun under John Carthy's arm; with the butt tucked under his right arm, the right hand in the trigger area and the barrel being supported by his left hand. It was pointed in the direction of Abbeylara. He agreed with counsel for the Carthy family that John Carthy never held the shotgun at shoulder height. At no stage did he see him point his weapon at any member of the ERU.

John Carthy was now moving at a brisk walk. There was *''purpose''* to the walk, according to Sergeant Russell. He did not at that stage see the subject's face. He was looking at the gun and at his profile. The first occasion that he saw his face was when he was struck by the last bullet. The witness was aware of the presence of his colleagues behind the subject, because he could hear their voices, though he could not at that stage, say for definite, who was there. He was concerned that *''maybe people had left it to the critical point''*. He stated that he was aware of the danger and felt that they had now reached that point. He stated that he was in no doubt that *''some person there [on the roadway] was in immediate danger''* and that he *''feared for the safety of people on the roadway''*. From the corner of his eye he could see people *''fleeing''*. He stated that he knew, at that time, that John Carthy had pointed his gun in the direction of those people. That is what he meant by using the word *''critical''*. He was concerned not only for the safety of those who were fleeing, but also for *''anyone''* in that area, including people at the command post, whom he knew were armed, and also the members of the ERU. He continued:

''... I suppose there is a certain onus on us, we were the people tasked with providing security ... without sounding bravado about it, the onus was on us to deal with the danger and there is a certain inherent danger in the job and one is more concerned about other persons at that stage''.

The moment John Carthy emerged from the house, he observed: *''the safety of everyone was compromised''*.

Sergeant Russell had his mind made up that he was going to have to take action but was, at the same time, *''somewhat puzzled''* that John Carthy had walked past people

in the area. He did not know at that time that he had walked past some of his men without evidently *“taking any interest”* in them. The subject was holding the gun in a dangerous manner, but Sergeant Russell knew he was a sick man and was trying to assess all of these considerations. He proceeded to take aim. He steadied himself, trained his pistol on John Carthy and aimed at the lower portion of his body. He was hopeful that if he had to take action it would be the minimum amount. He wondered why someone had not taken action earlier and whether he was reading the situation correctly. He was in the process of *“taking a squeeze on the trigger”* when he heard the first shot being discharged. The subject continued to walk, *“maybe two steps”*. He was not sure whether the first shot had struck. He then heard a second shot. The time between the first and second shot was *“about a second”*. He did not see any reaction to the second shot. John Carthy continued moving and Sergeant Russell did not notice any change in the pace of his walk. When he heard the shots, he was expecting the firearm to be dropped but that did not happen. He heard a third shot, but the weapon was still in John Carthy’s hands and he continued to move. He then heard a fourth shot. While he could not be certain of the time-lag it seemed *“a second or two seconds”*. He did not see or notice the subject’s upper body position move between the second and third, or the third and fourth shots. He did not *“even know whether he had been hit”*. His recollection was that the subject was walking in an upright position between the shots and he did not notice any movement in terms of crouching or falling between those shots. He was focusing on the shotgun and was expecting it to be discharged at *“any minute”*. He observed that John Carthy walked a pace or two between the third and fourth shots. He was then approximately fifteen feet from him and he still had the gun in his hand:

“... at the fourth shot he almost paused and turned around in my direction, almost opposite, in my general direction, and that is the first time I got a look at his face. I remember him groaning as if that had caused a pain. I had no knowledge at that stage but I knew that he was hit, I knew that that shot had hit him, I had no knowledge that he had been struck by shots up to that”.

There was a *“short space”* of time between the first and the last shots. He heard a number of his colleagues call out warnings to John Carthy but could not say whether such warnings were called out between the shots. However, he himself had shouted such a warning between the first and the last shot.

John Carthy then fell backwards, *“almost facing me as if I was the last person he had eye contact with”*. He fell with his head to the ditch and his feet out across the road. The gun fell from his grip. The witness knew at that stage that he was badly injured. He saw the colour draining from his face. He shouted for an ambulance.

After Dr. Donohue arrived, Sergeant Russell spoke to Superintendent Shelly and told him that they had *“no other option”*.

Detective Sergeant Michael Jackson

According to the evidence of Sergeant Jackson, John Carthy had been constantly raising and lowering his weapon prior to his exit. For this reason, he was down behind the wall at the negotiation point when the subject emerged. He received a

radio message from Garda Carey. He stood up and looked over the wall, at which stage John Carthy had reached the gable window. He observed that he had the butt of the shotgun tucked under his right elbow, with his right hand in the area of the trigger mechanism. The gun was broken open, *“similar to a hunting”* or *“safety”* stance. His left hand was under the barrel. He was walking at a *“reasonably brisk pace”* towards the driveway. Sergeant Jackson regarded this as a *“serious development”*. The exit was sudden, but *“not unexpected”*, according to the witness. The situation was now dangerous. The exit was uncontrolled. He drew his pistol. His initial reaction and assessment of the situation was that John Carthy had the shotgun in his possession and may be going to do harm to somebody, albeit that the gun was broken open. He was a threat, but because the gun was broken, he was not an immediate threat. He heard other members calling to him. He initially shouted *“John, we are armed guards, drop the gun”*. The subject continued walking and as they *“came to a closer degree of contact and communication”*, he said *“John, this is Mick, please, please drop the gun”*. He had been present for 19 hours and had been assessing John Carthy’s condition:

“His actions now were not of a rational man . . . going through my mind was . . . if the possibility did arise that we were able to confront John and disarm him in an unarmed fashion, that was certainly going through my mind also at that stage, that the opportunity may arise when he exits, that we may get an opportunity to disarm him at some point as he was exiting . . .”

Sergeant Jackson thought that there was still some prospect that he might be able to negotiate and to get him to drop the gun at that stage. Garda McCabe, who had an Uzi sub-machine gun, was to his right, slightly behind him; with Garda Sisk, who was in possession of a high velocity weapon, also behind him.

Sergeant Jackson was now three to four feet out from the front boundary wall. He moved towards the gateway. Garda McCabe was three or four feet to his right, walking in tandem with him. The shotgun remained open as John Carthy crossed the path onto the driveway. When he emerged onto the roadway, the gun was closed. Sergeant Jackson did not, however, see him close the gun. His left hand was under the barrel; right hand in the trigger area and the butt was tucked under his elbow. The gun was pointed straight across the road in the direction of the field opposite, in the direction John Carthy was facing. Sergeant Jackson moved slightly up to *“engage”* with the subject, constantly calling on him to drop his weapon and saying: *“John, this is Mick, it is over, please drop the gun”*. He was very concerned about John Carthy’s action of closing the gun. The level of threat was now heightened substantially as the gun was in a firing position. However, the direction in which the gun was pointed, across the road, gave him some limited leeway to *“attempt to try and induce John to drop the weapon”*.

When the subject reached the middle of the roadway, Sergeant Jackson was between 10 and 13 feet from him and approximately three feet out from the wall. Sergeant Jackson had his pistol pointed at him. While John Carthy did not point the shotgun at the witness, he still feared for his own safety, but was prepared to maintain communication with him to attempt to *“implore him”* to drop his gun.

The subject did not respond, nor did he appear to be reacting to anything that was said. He stopped on the roadway and looked in the direction of Sergeant Jackson and his colleagues:

"...he certainly was looking in our direction, I won't say with any discerning indication that he was aware of what we were doing or what we were asking him to do, but certainly he did appear to be aware of our presence and that presence appeared to impact on him, but I can't say he was responding to what we were saying. His behaviour appeared to take into account the position we were in".

Sergeant Jackson observed that as John Carthy turned his head "ever so slightly" to his right that he could:

"... see behind John, people at the command post, there was a group of members at the command post. I knew some of them were uniformed members. I was obviously taking them into consideration there, I was just aware of them and I could see them behind John at that stage. . . . John, as I have described, had the gun facing towards the field on the far side of the road. We had our guns trained on John. I knew it was a critical point in this particular situation. We were still calling on John to drop the weapon, but it was going through my mind at that stage that John may turn to fire the weapon at us and we may be forced to discharge our weapons at him at that point. That is how I perceived the situation at that stage".

The gardaí on the road were slightly out from and to the rear of the command vehicle. Sergeant Jackson was concerned for their safety.

John Carthy then broke open his weapon and in a "quick movement" removed the right hand cartridge with his right hand, and threw it on the ground to his right. He then closed the shotgun.

On the closing of the gun the subject immediately turned towards the command vehicle. He crossed from the centre of the road to the side opposite his house. The butt of the weapon was under his right elbow. His right hand was under the area of the trigger mechanism. His left hand was under the barrel. The gun was now "pointed at" the group of people at the command vehicle and he marched "towards them at a brisk pace" and in a "determined and purposeful fashion". Sergeant Jackson observed quick movement from people, in the vicinity of the command post, going for cover. There was, he said, concern but not panic. He was 10 to 12 feet from John Carthy, still on Farrell's side of the gateway, and about three feet out from the wall. John Carthy gained some ground and Sergeant Jackson moved with him, attempting to maintain his position on the road, calling on him to drop his weapon. At that stage he was aware that Garda McCabe, who was slightly to the rear, to his right, also moved with him as they walked up the hill in the Abbeylara direction.

The shotgun was, at this stage, pointed slightly diagonally across the road at the people at the command post.

Sergeant Jackson feared and believed that John Carthy was in the *“final act of firing the shotgun”*. He was aware that people on the road were moving for cover. He was also aware of the capabilities of the shotgun and of the damage that a round of shot could do. The shotgun, he said, is an indiscriminate weapon. The people moving for cover *“obviously perceived the same danger I did”*. He felt that he had no option but to discharge his weapon at John Carthy.

“I followed John up the road as he was advancing on the command post. I know I called on him once, maybe twice, but I know one last time to try and get him to drop the weapon because it was a critically dangerous stage at that point in time and John wasn’t responding to any of our exhortations to him to drop the weapon. So, because of the danger I perceived, John in my mind was going to fire his weapon at the people at the command post, I called on him to drop the weapon and he wasn’t responding. I felt I had no other option at that point in time other than to discharge a round from my firearm in order to prevent and stop John from killing or maiming one of the people at the command post. That is what was going through my mind at that point in time. I discharged a shot, Mr. Chairman, from my Sig pistol. I aimed at John’s higher left leg area of his body. As I’ve described, I discharged a shot to prevent John from killing or injuring one of the people at the command post. I aimed at this particular part of John’s body in an attempt to achieve that objective of stopping John killing or maiming one of the people at the command post. I aimed at this particular part of John’s body to try and minimise the risk to John’s life and minimise the harm done to John, while at the same time preventing him, or stopping him, from killing or maiming one of the people he had his gun pointed at, Mr. Chairman.”

The bullet struck the subject in the left leg. He knew this because he could see a *“slight flicker”* in the material of the jeans. The shot did not, however, have the effect of stopping him. He continued to move in a similar, determined and *“purposeful”* fashion, according to the evidence of the witness, advancing on people at the command post. John Carthy maintained his position, two to three feet out from the grass margin on the far side of the road, and he did not cross diagonally towards people at the command post. According to Sergeant Jackson the route he was taking was potentially more dangerous than if he had walked directly at the command vehicle. It offered him a greater view of individuals there because the angle was closing. The threat Sergeant Jackson perceived was immediate and *“the further Mr. Carthy walked up on that side of the road the more people that were exposed to the barrel of his gun”*.

John Carthy was still being called upon to drop his weapon. Sergeant Jackson felt that he had no option but to discharge his weapon for a second time.

“As I have described, I had fired a shot, the same situation prevailed; John was advancing on the right-hand side of the road, he had the gun in a firing position pointed at the people at the command post, his right arm was in the trigger area, as I described before, his left arm was under the barrel and from John’s movements, he appeared determined, as I have described previously, to use

the weapon. I came to the conclusion at that stage, Mr. Chairman, that I had no option other than to discharge another round at Mr. Carthy because of the danger he posed to the people at the command vehicle. I decided to fire a second round at Mr. Carthy, to aim it in a similar area as I fired my first shot. I decided to fire that second round because I believed John was about to fire his weapon."

While remaining in the conventional shooting position, Sergeant Jackson fired at the same, higher left leg area. He was approximately 25 feet away from John Carthy when he discharged that round. Sergeant Jackson thought that the subject took one, "possibly two", paces between these two shots. There was no change "in the status of the weapon or indeed in Mr. Carthy's demeanour from the time I fired my first and second shot". The gun was maintained in the same direction. He did not see that shot strike the victim.

"The possibility that I had missed him obviously entered my mind, so I just didn't know whether I had hit him or not. There was no change in Mr. Carthy's demeanour at that stage, he was still advancing towards – up the road on that side of the road, as I have described, up the hill and still maintaining his position of pointing the firearm at the individuals at the command post . . ."

Sergeant Jackson felt that the same immediate threat posed by John Carthy was maintained after he had discharged the second shot. He took a decision to fire again – which he was about to do when he heard a shot coming from his right-hand side. He assumed Garda McCabe had fired that shot. Of this third shot, he stated:

"I heard the shot, Mr. Chairman. I didn't see it hit, it didn't have an effect on Mr. Carthy whatsoever. Mr. Carthy continued after the third shot, he continued to advance in the fashion as I have outlined to you. The weapon was still in the same position pointed at the individual at the command post and John was still advancing up the hill at that particular stage after the third shot was fired".

The same situation prevailed after the third shot. The witness continued to believe that there was an immediate threat to the people at the command post. He felt that he would have to discharge his weapon once more. He was now about 30 to 35 feet away from John Carthy. Having decided to discharge his weapon, he heard another shot, again from his right.

When the fourth shot rang out, he observed that the subject appeared to swivel, by turning towards the wall of the Carthy house, and then immediately fell on his back. He did not see any stumble, falling forward or crouching motion by the subject after the third shot, and before the fourth and fatal shot.

Sergeant Jackson stated that he did not discharge his weapon because of panic. He did not detect panic by the ERU members or local members. He was questioned as follows:

"Q. Did you shoot at John Carthy by virtue of any panic that was then prevailing?"

A. *No, Chairman. I think, as I have described at length in my evidence, to some degree it was a relatively long period of time with which we had to react with Mr. Carthy. Certainly, it was only as a last option when Mr. Carthy became an immediate threat to the lives of people at the Command Post and I was left with no other option, after all the various processes of calling on him to put down the weapon, pleading with him, had failed that I discharged the weapon. So, on no other basis did I discharge my weapon."*

Could it be that John Carthy had no intention of discharging his weapon, given the fact that he did not do so after having been shot at and struck? Sergeant Jackson did not believe this to be the case.

"Mr. Chairman, I firmly believe that but for our action, Mr. Carthy would have fired the weapon. I am not saying that in any subjective way, I am basing it and trying to be as objective as I can. I know I am one of the individuals involved in the incident, but I think I have outlined the pattern of behaviour. . .it is those factors that were taken into consideration, that the only action which I believe Mr. Carthy was about to take was to fire the weapon, and that the only thing that prevented him from doing it was action taken by myself and Detective Garda McCabe. That is what I believe, Mr. Chairman."

Detective Garda Aidan McCabe

Garda McCabe was behind the wall at the negotiation position when he heard that the subject was out of the house. He stood up and cocked his Uzi sub-machine gun, selecting the repetition mode which discharges one shot per action. He observed him walking along the gable wall from the corner, moving in the direction of the gable window and carrying the shotgun which was broken open. The butt of the gun was underneath his right arm and he had his hand in the trigger area. His left hand was underneath the barrel and he was walking "quite fast" at that stage. After walking along the remainder of the gable, he came to the driveway. As he passed the kitchen window, Garda McCabe called upon him to put his gun down, but got no response. John Carthy then paused at the driveway and looked around, though the witness did not feel that he was specifically looking at him. The subject then proceeded down the driveway.

He considered that the emergence of John Carthy with the broken open shotgun constituted an uncontrolled exit. He was a threat, though not an immediate threat. In view of the fact that the gun was broken, the witness was hopeful that maybe he was "giving up".

Garda McCabe lost sight of John Carthy momentarily when he passed by the pillar of the gate, which obstructed his view somewhat. Other than that, he had a clear view of him at all times. As he emerged through the gateway Garda McCabe could see that the shotgun was now closed, though he did not see him closing it. With the closing of the weapon, the witness considered that the level of threat had increased.

After the subject had gone through the gateway, Garda McCabe once again called upon him to drop his gun, saying *“armed gardaí, put the gun down”*. He could hear Sergeant Jackson also call on him: *“John, John, put the gun down”*. While on the roadway and approximately 10 to 12 feet away from the three ERU gardaí there, the subject momentarily paused and looked in their direction. It did not appear to Garda McCabe that he was looking or staring at any one of them, though he thought that he *“was possibly looking at me . . . we would be the first thing that he would see and that is what I imagine he saw”*. When John Carthy was about a *“step or two”* away from the centre of the roadway, he looked in their direction, opened the shotgun, and withdrew the cartridge from the right-hand barrel and threw it away to the witness’s right. He knew that it was a live cartridge. He saw the brass of the cartridge in the left-hand chamber of the shotgun. The subject then closed the gun, walked towards the other side of the roadway and began walking up the road towards Abbeylara.

Garda McCabe had his weapon at his shoulder in the ready position and pointed at John Carthy. While fearful that the subject would turn the shotgun in their direction, it was, at that stage, pointed towards the field opposite the house.

Garda McCabe moved a few paces from the wall and in the Abbeylara direction. He again called on John Carthy, saying, *“armed gardaí put the gun down”*. He had, he said, no doubt that the subject could hear him, but he got no response. John Carthy then turned and commenced walking up the hill. Garda McCabe had his weapon trained on him. Sergeant Jackson and he continued to call on the subject to put the gun down. He was now standing behind John Carthy and to one side of him. He began moving after him, and the distance between them increased. He could not see his face but he saw him holding the gun with the butt under his right arm and the top end of the butt under *“his oxter”*. His left hand was under the barrel of the gun and it was pointed at, or in the direction of, people at the command vehicle. He could see people running and moving in different directions, seeking cover. John Carthy moved approximately 10 paces on the right-hand side of the roadway, close to the grass margin. As he walked along the road he was equidistant from the margin. He walked along *“quite purposefully”* – by which the witness meant the manner in which the gun was being held and the manner in which it was pointed at people. He described the position in which it was held as menacing.

Garda McCabe did not at any stage observe Sergeant Russell standing on the Carthy boundary wall. He did not walk up the roadway directly behind John Carthy but was behind and to the subject’s left, approximately five to six feet from the margin, at the gate opposite the Carthy dwelling. It was at that stage that he saw people *“running in different directions”* scattering on the road ahead. The subject, stated Garda McCabe, was pointing his gun in the direction of the people at the command vehicle. The gun was not aimed from the shoulder, but it could be fired from that position. He did not see the gun tracking any particular individuals. John Carthy was now getting closer to the people at the command vehicle and Garda McCabe believed that he was about to pull the trigger and possibly kill or injure some of those people. He decided that in order to achieve his *“legal objective”* in saving the lives of those

officers that he should prepare to discharge his own weapon. He believed that all other means of stopping the subject had been exhausted. He was about to discharge his weapon when he heard a shot coming from his left-hand side. He could see the movement or “flicker” of material on the left thigh of John Carthy’s jeans and therefore “saw” the shot hit his left thigh. He was not aware, however, that this was where Sergeant Jackson had aimed. From the time he closed the shotgun and turned in the direction of Abbeylara before the first shot was discharged, the subject had walked approximately ten paces on the right-hand side of the road, close to the grass margin.

John Carthy continued to walk a number of steps. The shot did not seem to have any effect. The subject may have taken three, four or five steps – though in later evidence he stated that this may have been two or three paces. He stated that he wasn’t counting the number of steps and he also accepted that other witnesses gave varying accounts of the number of steps taken. He decided that he was going to discharge a shot in order to save the lives of “those gardaí that were at the command post”. As he prepared to discharge his weapon, he heard a second shot being discharged from his left. He could not see, nor was he aware whether the second shot impacted on the subject. He saw no reaction to this shot. He stated that the subject continued walking in the manner described with the gun pointed at the people at the command post. He believed that he was about to discharge his weapon and kill or seriously injure those people. The witness took an “aimed shot” through the sights of the weapon and discharged it at the lower torso area.

On firing the shot, he thought that he had hit John Carthy’s torso but when he lowered the sight line of the gun, to look over the top of the weapon to see the effect of the discharge of the shot, he saw no reaction to it. This surprised him. He thought he may have missed.

The subject continued to walk and had the gun pointed at the people at the command post. His upper body position may have moved slightly more forward, but he ascribed that to the fact that the subject was walking up the hill further away from him. He continued to fear for people at the command vehicle.

“I believed that John Carthy only had to pull the trigger on the shotgun and because the shotgun was pointed at the members at the command post, I felt that in order to save their lives and achieve my legal objective of preventing John Carthy killing those people, a shot had been fired at his leg, another shot had been fired, I had discharged a shot, the danger was still, the imminent danger was still what I had described previously.”

The shotgun was still pointed at the people at the command vehicle and Garda McCabe believed that they continued to be in imminent danger. He believed that he had a duty to save the lives of those people and therefore discharged his weapon for the second time. He took “the same sight line” but, on this occasion, aimed the shot higher in the general area of the lower torso.

Before he discharged his weapon for the second time, he did not notice any movement or difference in the angle of the subject's upper body or any falling action on his part, apart from the fact that his body was slightly more forward, as he was walking up the hill. He *"certainly was not stooping or crouching"*. Further, he was looking from behind, not from the side. He did not count the number of steps taken by John Carthy between the two shots. He disagreed with counsel for the Carthy family that the subject was falling over when the fourth shot was discharged and further disagreed with counsel who suggested that *"tragically the decision was unnecessarily taken to discharge that fourth shot"*.

He then saw John Carthy fall to his right, went to him and moved the shotgun away from his body.

Detective Garda Michael Sullivan

Shortly after 5:20 p.m. Garda Sullivan went to the police car on the road outside Walsh's house and had a discussion with the occupants, Dr. Shanley, Thomas Walsh, Marie Carthy and Martin Shelly. He returned to the negotiation point to Sergeant Jackson, who requested him to bring Dr. Shanley to the scene. At approximately 5:40 p.m. he commenced making his way back up to the car, having passed the command vehicle on the road near Burke's house, when he heard shouts of *"he's out, he's out"* over his radio. He drew his pistol and headed back towards the Carthy house and got into a position on the roadway near the hedge that divides Burke's and Carthy's, in the vicinity of the ESB pole. He heard a number of his colleagues call on John Carthy to drop his gun. He saw him coming down the driveway. The gun was in his hand and was broken open and when he saw this he took a number of steps backwards and turned. He was concerned for his own safety and that of the people on the road, some of whom were uniformed gardaí *"who were gathered"* in that area. He shouted at everyone to *"get back and get into cover"*. As he turned around he noticed that there appeared to be some slight hesitation among the gardaí and people may have been *"initially making their way towards the scene"*. However, he disagreed with counsel for the family's description of the scene as being one of chaos.

When he turned back he could see John Carthy emerging on the roadway. Three members of the ERU, who were behind him, spread out on the road. He noticed that the gun was now closed. He did not see the discarding of a cartridge or the closing of the weapon. However, when he was a *"couple of feet"* from the grass margin on the far side of the road, he saw him turn. The barrels of the gun were now facing in his direction. He did not make eye contact with John Carthy, and therefore he could not say if the barrels were pointed at him; but they were in his direction. The subject's left hand was under the barrel and the butt of the gun was *"up near his shoulder"*, but under the shoulder area. His right hand was in the trigger area. The moment he turned in his direction, Garda Sullivan felt that he was in danger: *"having regard to what I had seen John doing earlier. . .his dexterity and what I perceived to be his willingness to shoot"*. He could see some of his colleagues behind the subject. He considered that if he were to confront him from where he was and were to open fire, the possibility of a *"stray bullet hitting my colleagues was in my*

mind”; because of their proximity “*there could be a crossfire situation*”. Considering that his colleagues had the situation under control, and fearing for his own safety, he immediately jumped over Burke’s boundary wall and into Burke’s garden. He heard his colleagues shout at John Carthy to drop his weapon, stating they were “*armed gardaí*”. He then lost sight of the subject. He did not see anything further until the shooting had ceased. It happened “*pretty quickly*”. He was unaware of the position of his colleagues who had been around the house, and while he could hear movement, his attention had been focused on the subject. He found it difficult to recall how many shots he heard, though he thought he heard “*three or four*”. The first shot may have been discharged as he was jumping the wall, the other three afterwards, but he was unsure of this. They all seemed evenly spaced, with a small break between each. He peered over the wall and saw John Carthy lying on the road. He approached him. He saw the gun being moved away by one of his colleagues. John Carthy was lying on his right side. He was then rolled onto his back. Garda Sullivan, a trained first aider, administered first aid, in the form of cardiac massage, but to no avail. Garda Flaherty gave mouth-to-mouth resuscitation, again to no avail.

2. The evidence of non-ERU members concerning the exit of John Carthy from his home.

At the time of the exit of John Carthy from his home, apart from and in addition to the members of the ERU, there were a number of plain-clothes and uniformed members of the Garda Síochána present on the roadway at the ESB pole at the Carthy/Burke boundary or nearby in the vicinity of the command vehicle. Some were armed and a number were unarmed uniformed officers. The armed members included Detective Sergeant Aidan Foley and Garda Eugene Boland, whose evidence is referred to hereunder.

There were two armed officers on the road at the Ballywillin, or Cavan, side near Farrell’s house: Detective Garda Joseph Faughnan and Detective Garda Shane Nolan. There were also a number of officers in the vicinity of Burke’s and Walsh’s houses. These were Garda Christy Connolly, Garda Frank Bohan, both armed; and Garda Maeve Gorman and Garda Colin White who were unarmed.

A number of senior officers were also present, primarily on the roadway at the Abbeylara side of the Carthy house and beyond the command vehicle. These included Superintendent Joseph Shelly, Inspector Martin Maguire and Chief Superintendent Patrick Tansey. Other gardaí who were present included Garda Michael Carthy, Garda Gerard Newton, Garda Eugene Waters, Garda P.J. Diffley, Garda Thomas Farrell and Garda Frank Reynolds.

It is to be noted that during the course of his evidence to the Tribunal, Garda Sisk stated that some of the uniformed members, who were on the road beyond the command vehicle, actually came down towards the area as they “*had heard commotion*”. The impression that he formed was that some of these people were coming down to see what was happening. The evidence of Garda Sullivan already

considered would tend to support this assessment. According to Garda Sisk they began to run for their lives. A number of them ran in the direction of Burke's. The evidence of these officers, particularly those who were unarmed, concerning the events which occurred when John Carthy emerged from his house lends substance to Garda Sisk's observations.

Detective Sergeant Aidan Foley

Sergeant Foley, Athlone, was at the ESB pole approximately 25 feet forward from the location of the command vehicle on the Carthy side. Some time prior to the emergence of John Carthy, he had heard him shouting "*Why? Why? Why?*" He formed the opinion that he was becoming more agitated. At 5:46 p.m. he was speaking to Sergeant Alan Murray in connection with reliefs. Garda Boland was standing beside him while Garda Quinn was seated in the command vehicle. "*An ERU man*" (presumably a reference to Garda Sullivan) walked by him, while he was speaking to Sergeant Murray, and headed towards the negotiation post. Sergeant Foley then heard a shout to the effect of "*get back, take cover*". His attention was immediately drawn to the Carthy household. He saw Mr. Carthy coming out his gateway between the two pillars. Members of the ERU were also on the roadway at that stage. He saw an ERU member coming across the garden from the new house. As he looked down the road, past members of the ERU who were on the road, he could see Garda Nolan and Garda Faughnan, both of whom were armed. The ERU members were now situated between him and those gardaí.

Sergeant Foley moved backwards and sideways at a brisk pace, but he said, not running, from the ESB pole to the command vehicle, a distance of some 25 feet. He kept John Carthy under observation while he was doing this. When he observed him exiting through the gateway, he drew his firearm. He proceeded down by the side of the jeep. Garda Boland was to his right and moved back with him. He had "*a full view down the road*" before he took up position behind the jeep. He was aware of other ERU members coming across the grass towards the front boundary wall. He was also conscious of other persons behind him moving away from the vicinity of the command post. Sergeant Foley and Sergeant Murray, who was unarmed and in uniform, had been standing at the ESB pole beside the wall and Sergeant Murray "*just hopped over the wall*" of Burke's house.

Sergeant Foley could not recollect seeing John Carthy stop when he opened the gun. He saw the cartridge enter the ditch. When John Carthy got to the far side of the road, he closed the gun and he then "*veered in my direction*". He was holding the gun waist-high. His left hand was on the barrel and his right hand was on the trigger mechanism and he appeared to be walking within a step of the grass verge. John Carthy veered and turned and faced in his direction causing him to move further in behind the jeep. He appeared to be coming straight up the hill walking at what Sergeant Foley described as "*a normal pace*". There was nothing in his walk which he observed to be strange. Members of the ERU continued to call on him to leave down his gun saying that they were "*armed gardaí*". When he started coming up the hill he was followed by members of the ERU. When the subject turned in his direction, he, Sergeant Foley stated that he was "*solely focused on John Carthy*".

Sergeant Foley was now at the back of the vehicle on the outer side, and when the subject *“was coming towards”* him with *“the gun pointed”* at him, he moved in and told Garda Boland to move in. Garda Boland had to move in to make room for him. The two of them were now behind the jeep and, according to Sergeant Foley, they had *“cover from the jeep”*. The witness could see John Carthy’s face:

“He was an unusual yellow colour. That is the only way I can describe his face, and he was fixated . . . He had a stare, a dead stare, Mr. Chairman”.

It was his opinion at that time that John Carthy was staring in his direction, but not necessarily directly at him. Whilst he had taken cover behind the vehicle, he could see John Carthy and the latter could see him. He was crouched behind the jeep but out to one side, *“peeping out”*, and had John Carthy under surveillance. He continued to walk up the roadway. ERU personnel were still calling on him to drop the gun but without any reaction.

John Carthy appeared to be quite close, a number of yards away. Sergeant Foley stated: *“I felt I was going to be shot, Mr. Chairman, that was my belief”*.

After he had asked Garda Boland to *“move over and to take cover”*, when John Carthy proceeded to walk towards them Sergeant Foley decided that he would have to discharge his weapon. He said to Garda Boland *“move in Eugene, we are going to have to do it”*. This was, he said, to make Garda Boland aware of his intention that he intended to discharge his firearm. He clarified that there was a slight pause between the comment *“move in Eugene”* (which took place when John Carthy turned towards him) and *“we are going to have to do it”* (which took place when the subject commenced walking towards him).

Questioned on his belief that he was going to be shot, in view of the fact that John Carthy had passed other armed gardaí and paid no attention to them, Sergeant Foley stated that *“what was going through my mind was the fact that John Carthy was walking towards me with what I believed to be an armed gun”*.

“Q. Have you any idea why he would select you to shoot at and not the other officers that he had passed by.

A. I didn’t give that thought at that stage.”

He believed he was in immediate danger. At this time he was, he stated, concerned for his own life and those of his colleagues. His gun was aimed at John Carthy, he had his finger on the trigger and there was no further action for him to take other than to pull the trigger.

Sergeant Foley disagreed with counsel for the Carthy family’s description of events as dramatic, but rather described them as being tense. He agreed with his own counsel that the implication of his remark to his colleague Garda Boland was that he might have to take some action himself. He confirmed that his remark was to make him, Garda Boland, aware of what he was thinking namely, that he was going to have to shoot the subject. His assessment was that he would have to shoot him to

disable him. He had, he said, observed John Carthy firing shots at gardaí. He was now on the roadway, a short distance away, with a loaded firearm pointed in his direction and walking towards him. He felt his life was in danger. He felt he was going to be shot by the subject and there was no other action open to him. It was not an option for him to do as Sergeant Murray had done, to avoid the danger by *“sprinting and jumping, vaulting the wall and lying down behind the wall”*. When John Carthy came out on the roadway, Sergeant Foley stated, he posed a danger and it was his duty to observe him, to *“cover John Carthy”*. That was the *“job”* he was given by Superintendent Shelly, to *“provide back-up”*. Had the subject passed him by without being disabled, people behind, including Dr. Shanley, Marie Carthy and Thomas Walsh would have been in immediate danger. He was aware that they were waiting in a car located further up the road.

He was within a *“split second”* of discharging his weapon when he heard a shot, followed by two or possibly three shots. When he heard the first shot he could not see any reaction from John Carthy. Following the last one, John Carthy fell to the ground.

A specific written query was put to Sergeant Foley by the Tribunal as to whether the remark *“we will have to do it ourselves”* was intended as a criticism of the ERU, and, if so, to clarify the nature of that criticism. In answer to the Tribunal he stated that his remark was not intended as a criticism. In his original statement to the Tribunal, Sergeant Foley stated that he was *“concerned as to when the ERU unit would respond”*. He was asked to explain what he meant by this statement, to which he replied:

“What I meant by that, Mr. Chairman, that it was the ERU’s responsibility to deal with John Carthy. At that stage, John Carthy was approaching me with a firearm pointed in my direction and I feared for my life, Mr. Chairman”.

When asked whether he was worried that the ERU unit was not going to respond, he stated that he was *“just concerned”* as to when they would respond.

The thought had come into his mind that the response of the ERU unit might be too late, insofar as he was concerned. Sergeant Foley confirmed in evidence that he did not at any stage during the course of the incident at Abbeylara discharge his firearm. Furthermore, he confirmed that no local officer discharged his firearm after John Carthy left his house on 20th April.

Garda Eugene Boland

Garda Boland, Athlone, armed with an Uzi sub-machine gun, was located at the ESB pole, in the company of Sergeant Foley. He became aware that efforts were being made to bring Dr. Shanley and Ms Carthy to the scene. He observed a concrete block being shot off the wall shortly after 5:00 p.m. He noticed that John Carthy became more agitated in the minutes that followed. He could hear shouts coming from the house. He heard the sound of breaking glass. He also heard furniture being moved and the only words which he could discern were *“Why? Why? Why?”*, which

were said by John Carthy in a loud voice. He could see the barrel of the shotgun protruding through the window, causing the negotiator to duck down.

Whilst at the ESB pole, at approximately 5:45 p.m., he saw a member of the ERU coming back down to the scene from the Abbeylara direction. He then heard him say *“get back, get back”*. He saw John Carthy emerging from the gable-end of the house, walking *“normally”* along by the gable-end window and carrying a firearm, though he could not state whether it was opened or closed.

On hearing the warning to get back, he retreated, walking backwards, to the command vehicle, at which stage the subject was somewhere in the driveway of the house. He observed:

“I was walking backwards and when I reached the back of the jeep, I turned around and saw a big rush of members going up the road running for their lives”.

He saw an officer, Sergeant Murray, jumping over the wall and others going back up the road at pace. He did not, however, see any armed people running on the road. He stated that he did not observe panic. There was no panic at the command post at any stage during the incident, he said.

Garda Boland did not have the subject under full observation for the entire period. He thought that he appeared to be walking *“just above normal pace”*. Having taken cover behind the jeep he next observed the subject exiting through the gateway; and when in the vicinity of the gate he closed the shotgun. John Carthy then walked across the road and because he was behind the jeep, Garda Boland momentarily lost sight of him. Sergeant Foley and Garda Quinn were behind the jeep at that time, with him; Sergeant Foley to his left, Garda Quinn to his right. He looked around the left-hand corner of the rear of the vehicle and he could see John Carthy. Sergeant Foley was slightly to his left at that stage, having moved a small bit further out. Garda Boland thought that Sergeant Foley was there, slightly beyond the cover of the jeep.

Garda Boland next observed John Carthy when he turned left and started walking up the hill *“walking in my position”* with his gun carried waist-high. He stated in evidence that *“I saw that it was pointed in my direction”*, that is, in the direction of *“myself and Detective Sergeant Foley”*. His focus was now on the subject:

“He had his right hand on the trigger section of the gun with his left arm under the barrel. Mr. Chairman, this gun was pointed in my direction. I noticed a fixed stare on Mr. Carthy’s face and also I remember his face was a yellow colour”.

When questioned on the meaning of a fixed stare, he stated: *“I took it that he was looking in my direction”*. Counsel for the Carthy family put it to Garda Boland that at all times John Carthy was heading towards Abbeylara rather than heading towards the vehicle behind which they say they were taking cover. Garda Boland disagreed; he stated that John Carthy was *“heading towards me”*. He was asked:

“Q. Isn’t that because in taking a view of him, yourself and your colleague, Sergeant Foley, you both stepped out from the cover of the vehicle where you had initially taken cover?”

A. I would not agree with that Mr. Chairman, no”.

He disagreed with the suggestion that he and non-uniformed armed members of the gardaí stepped out from behind the command vehicle and confronted John Carthy. It was put to him that this was done in circumstances where he had neither announced himself to John Carthy, nor warned him that he was armed, nor invited him to put the gun down. In response, Garda Boland stated that he had heard members of the ERU on numerous occasions saying to John Carthy *“armed gardaí, lay down your weapon”*. He agreed that he did not *“announce his status to John Carthy”* and that neither he nor Sergeant Foley addressed John Carthy at all, or at any time. He denied he *“confronted”* the subject.

As the subject got closer, he stated: *“I was waiting for something to happen”*, which he later clarified as his hope that John Carthy would put down the firearm. Then *“I thought that I would have to be the one to shoot him”*. He continued:

“John Carthy was walking towards me with a shotgun held waist-high pointed in my direction. I genuinely feared for my own life. I had watched John Carthy during this incident and I had seen him discharge shots at gardaí. I had seen him shoot the loudhailer off the wall. I had seen him knock a concrete block off the wall, Mr. Chairman. This man was now facing me with a firearm pointed in my direction. I genuinely feared for my own life and that of my colleagues, especially Detective Sergeant Aidan Foley”.

He agreed with the Chairman that John Carthy had paid no attention to members of the ERU when he came out on the roadway.

When at the back of and to the side of the jeep Sergeant Foley said to him: *“ ‘move in Eugene, we are going to have to do it ourselves’, or words to that effect”*. The tone used by Sergeant Foley was one of concern, an *“urgent”* tone. He took it that Sergeant Foley was referring to the fact they would have to shoot John Carthy themselves. At that stage Sergeant Foley had moved in somewhat to the right. He was in a crouched position. Garda Boland feared for his life and that of Sergeant Foley but, he said, was not concerned that no action had been taken up to that point by the ERU. He denied that he had lost confidence in the ERU’s ability to deal with the threat posed at that stage by John Carthy. He feared for the uniformed members of the gardaí further up the road.

At this time, members of the ERU appeared to have been to John Carthy’s right according to Garda Boland. He did not see their exact position as he was concentrating solely on the subject. He heard them shouting to him *“armed gardaí, lay down your weapon – down your gun”* or words to that effect. He put his hand on the cocking mechanism of the Uzi sub-machine gun but did not release the safety catch. His gun was not prepared for firing and he did not raise it to his shoulder. He did not discharge his weapon. He agreed that what he had described to the Tribunal

was a mental state of consideration as to how grave the situation was but that he had not yet got to the point of making a deliberate decision to discharge his weapon.

3. Other local officers (armed and unarmed)

Seventeen local officers (6 armed and 11 unarmed, including 10 in uniform) who were at the scene on and about the road in the vicinity of the command vehicle; also near the Carthy entrance on the Farrell side and in the curtilage of the Burke and Walsh properties, gave evidence about what they saw and heard when John Carthy vacated his house and walked in the direction of the command jeep. In the main, their testimony broadly accords with the evidence already described in this chapter. When the subject emerged onto the road they took cover or ran away from the scene. Most stated that they were put in fear by his conduct. All of the armed local officers denied having fired their weapons at the scene and the only shots which any witness heard appear to have been those fired by Sergeant Jackson and Garda McCabe. There is no evidence that any other ERU officer fired his weapon.

4. Senior officers at the scene

A number of senior officers, Chief Superintendent Tansey, Superintendent Shelly and Inspector Maguire were on or about the road on the Abbeylara side of the command vehicle. Their evidence is summarised as follows:

Superintendent Shelly

Superintendent Shelly had been in the area with Dr. Shanley. Garda Sullivan had gone down to arrange to have Dr. Shanley brought to the negotiation point. As he was coming back, events unfolded. Superintendent Shelly was standing on the road near the entrance to Burke's house on the Abbeylara side of the command vehicle waiting for Garda Sullivan to come back from the negotiation point. He saw "*some commotion and people moving about down at the – around the area of the front of Carthy's house*". He saw John Carthy cross the road. "*Unconsciously*", he took a step or two forward. He then realized that the subject was armed and he turned to take cover. He did not see John Carthy take the cartridge out. He observed him in a somewhat stooped position, walking up in his general direction. He turned to take cover. Chief Superintendent Tansey who was with him did likewise. It all happened very quickly. He did not have time to take cover behind Burke's wall. He got to the area of the pillar. He then heard a number of shots followed by silence. He could see gardaí moving towards an area at the ditch. He knew then that John Carthy had been wounded. He went down the road and saw ERU personnel rendering assistance. Superintendent Shelly heard "*a number of shots being fired. I can't put a definite figure on it*".

Chief Superintendent Tansey

Chief Superintendent Tansey was at the gate of Walsh's house, when he heard shouts directed at John Carthy to drop the gun. He noticed that people in the area of the ESB pole were "*coming back, scattering back with a great sense of urgency*", and

thought that they were coming from the ESB pole to take cover behind the jeep. According to Chief Superintendent Tansey, there was a great sense of urgency and also a sense of fear. He became alarmed for his own safety and felt that his own life might be in danger. He went into the gateway of Walsh's house and took cover behind the hedge. He did not see John Carthy. He heard a number of shots but could not give precise details. He thought that there were a number of seconds between the shots.

Inspector Maguire

Inspector Maguire was walking down towards the scene when he heard ERU members shouting at John Carthy. Examined as to whether there was any degree of panic or surprise demonstrated by the shouting he said:

"... the shouting was in a very loud controlled voice, they were shouting at John, they weren't shouting in an uncontrolled or panicky voice, it was controlled and measured and they were actually emphasising the words for John".

He was in the middle of the road by the entrance to Burke's house and could see that the men at the negotiation point were now in a different mode, no longer crouched along the wall and that they were extremely alert. He saw John Carthy walking past the kitchen window at the gable-end of the house and he could see the gun broken open. He then made his way to the back of the command vehicle for cover so as not to make himself a *"presentable target"*. He took one more fleeting glance from behind the command vehicle and could see that the subject had moved out onto the road. The ERU were fanning out behind him. At that stage the witness ran up along the gravel by the wall to the entrance of Burke's house and *"flung myself into the entrance of Burke's"*, as close as possible to the pier, hugging the wall. He then heard shots. He heard four shots being fired. The shots were not in quick succession; they were distinguishable sounds.

5. Civilians in the police car at Walsh's House

There were four civilians in a car on the road at Walsh's house when John Carthy emerged. They were his sister, Ms Marie Carthy, his psychiatrist Dr. David Shanley, his cousin Mr. Thomas Walsh, and his friend Mr. Martin Shelly. The following is a synopsis of their evidence.

Dr. David Shanley

Dr. Shanley was sitting in the front seat of the car when John Carthy emerged from his house. He saw people running and then heard shots. These were very rapid – within seconds. He did not see John Carthy walking on the roadway. His view was obscured by the command vehicle and by police personnel on the road.

Ms Marie Carthy

Ms Carthy was also in the car, sitting on the back seat:

“Then there were a load of shots, they were in very quick succession, straight after each other and just all the gardaí started running and getting out of the way because there were a lot of unarmed gardaí there. . .”.

Mr. Martin Shelly

Mr. Shelly stated that from his position in the middle of the car outside Walsh’s house he was able to look down through the back window of the command jeep. He could see people running and he could see John Carthy’s legs. He saw him coming out but he couldn’t see him after that. He then heard a body of shots; about four or five shots.

Mr. Thomas Walsh

On noticing a lot of commotion Mr. Walsh jumped from the car and told Martin Shelly, to keep Ms Carthy in the car. *“I heard what I thought were two shots but I could be wrong.”* He ran towards Carthy’s house. His attention was focused on the right-hand side of the road because a lot of people were running towards that wall and one person jumped over it. He saw John Carthy falling to the ground.

SECTION C: – Relevant Training

Preparation for the taking of fundamental decisions, including the discharging of weapons, is grounded in both experience and training. At Abbeylara, there was very little experience, and none of a similar incident involving a mentally ill man who emerged armed from a stronghold. The training and instruction received by officers is, therefore, of major importance.

1. Legal obligations

The use of a firearm by a garda officer in course of duty is regulated by Chapter 25.42 (4) of the Garda Code, which is in the following terms:

“In order that the discharge of firearms may be justified in any particular case, it must be shown that the intention of the member firing was to achieve a legal purpose and that all other means of achieving this purpose had been exhausted before firing”.

The law requires the armed officer to assess the risk presented by the subject; to decide whether his or her own life or safety or that of another person or persons is endangered thereby; whether all other available means of lawfully achieving that purpose have been exhausted before firing and that the officer, in the interest of saving life, has no other reasonable alternative but to use his or her firearm to remove the risk presented by the subject. The officer is obliged to assess the situation created by the subject and to decide whether in all the circumstances he or she has a justification, or obligation in law, to shoot him or her in order to protect himself, herself or another from the risk of death. The decision whether or not to use a firearm is that of the armed officer and no one else.

2. Where to fire – the central body mass

Ireland

In Ireland gardaí are trained to shoot at the central body mass.

Gardaí must achieve proficiency in the use of firearms before they are permitted to carry and use such weapons. The standard required of members of the ERU is higher than that of local armed officers. The scoring system used to assess the proficiency of a trainee in firearms consists of a target in the shape of an upper torso. Higher marks are awarded for shots closest to the centre of the torso. Members of the ERU must achieve an 80% mark; other gardaí, 65%. Detective Superintendent Hogan stated in evidence:

“The centre mass provides the most likely area where you will more or less disrupt or effectively stop any threat posed by a person by firing into that centre of mass. It is taught throughout firearms training in most of the countries I have visited that that is the generic form of training where you shoot at the central mass because you shoot for effect and you will achieve the most efficient effect from the shot by hitting that particular area and that is where you are trained to shoot at”.

Gardaí were not trained to discharge shots “at limbs” He said:

“No, it is not taught, no . . . You may practise, you may practise. As I have said to you, there may be situations where people are in cars and point a firearm at you or people during a hostage rescue scene where you have people blocking your view, that in those situations it would be only correct that officers, sent out to deal with those situations, would have some understanding that the availability of the target area, on the opponent posing the threat, may not always be in the very favourable silhouette that is presented here this afternoon for training”.

Superintendent Hogan stated, by way of further explanation:

“As a matter of understanding the complicated nature of this process, there is a study in England . . . in 1993 . . . in relation to the discharge of shots by police in England, Scotland and Wales and out of the number of shots there fired in, say, the range of 10 to 15 metres away from the opponent. There were 10 shots fired in that particular study that was undertaken and out of them only one shot hit the target. So my point here is that it is very necessary for us to teach people to shoot at a place where they will more than likely hit the target, when you introduce the likes of threat, risk, . . . the officers’ safety, fear of being shot yourself”.

Superintendent Hogan emphasised the necessity of “neutralising the threat”:

“. . . people are trained to shoot at the central mass. That is the most likely area where you will neutralise the threat, thereby maybe negating the necessity to fire a second round”.

On further query as to whether this should be done in every circumstance, he replied:

“Mr. Chairman, people are taught to fire at the central mass. The individual officer has to assess a justifiable circumstance that he is going to fire his or her gun and they must assess individually the particular situation but they are taught on the basis that if you are firing your gun, you shoot at the central mass”.

International practice

The training in the UK, at the time of evidence to the Tribunal, was to shoot at the central body mass. Mr. Bailey, the firearms expert engaged by the Tribunal, stated:

“The usual point of aim that an officer in the UK would be trained to take when confronted with an individual whom they believe is about to fire would be the head or the central part of the chest. This is because when shots are fired as a last resort there is a need to achieve immediate incapacitation which only comes from a shot that hits the central nervous system. It is my understanding that, in common with most democratic countries, this is the training in Ireland also”.

The position is the same in New Zealand, and Victoria, Australia. Mr. Lanceley, the negotiation expert engaged by the Tribunal, noted that in the United States, once a decision has been made to shoot, an individual must be stopped with certainty. It is a life-changing event for all concerned: *“there is no way to make that situation nice”*. It is always a *“nasty situation”*. To his knowledge, no US law enforcement agency permits or trains officers to shoot to wound.

3. When to shoot, not shoot or withdraw – judgmental shooting

In addition to training where to shoot and the ability to shoot, in addition, training is intended to assist a member, in an operational capacity, about *“when he should shoot . . .”*. In this regard, Superintendent Hogan outlined the concept of judgmental shooting, the assessment of whether to shoot or not, which forms part of the training of ERU officers:

“Judgmental shooting is where you instruct the people who are going to be armed and placed out in the operational scene; is a question of basing their assessment of the threat presented to them in a particular situation It is a shoot, or no shoot, situation training You must base your judgment on whether the threat is sufficient enough that you are legally entitled to use lethal force and you are complying with the Garda code and regulations in relation to the use of firearms. So basically it is a shoot/no shoot instruction on that particular skill”.

Judgmental shooting training is not confined to *“shoot or no shoot”* but also encompasses situations of whether, *“I should withdraw from [the area] and not present a firearm at all”*. He noted that, as an instructor, one could not possibly envisage and lecture on all combinations and permutations that an officer might find himself in at a future date. For this reason there is both an *“academic and operational”* content to the training, with operational personnel being rotated onto

the training courses. It is part of the training that *“each individual shot is assessed prior and after, before any further action is taken”*.

4. An individual decision – the role of the senior officer

Superintendent Hogan emphasised the fact that, in training, officers are taught that the decision to fire is an individual one and is based on the officer’s assessment of the situation. He was directly questioned on whether, in training or otherwise, one armed officer should seek advice from another as to whether to fire. He stated that individual officers *“must take responsibility for the discharge of firearms on an individual basis”*. This, he said, was regardless of what his senior officer, who may be close by, might do. There was nothing in training, or in his experience, which would indicate or dictate that the senior officer has authority over how, where and when, the junior officer might shoot.

A senior officer cannot order a junior officer to discharge his weapon. In certain situations, he can order a junior officer to withdraw from the area. However, even if a senior officer perceived that it was not necessary to shoot a potentially fatal shot, he would not be entitled to instruct his junior officer, not to shoot at the torso.

Even if there were available *“seconds”* as opposed to *“milliseconds”* to make such a decision, it was still down to the individual officer making the assessment. Continual assessment of a threat is part of the firearms training process.

5. The actions of Detective Sergeant Jackson, in the context of training received, in shooting at John Carthy’s leg

In his evidence, Sergeant Jackson stated that he aimed at the subject’s leg and that the sole purpose of his action was:

“to try and minimise the risk to John’s life and minimise the harm done to John, while at the same time preventing him, or stopping him, from killing or maiming one of the people he had his gun pointed at”.

As already stated, the evidence adduced in relation to training, indicates that police officers are trained to aim at the central body mass. Sergeant Jackson was questioned about his actions in this regard.

He accepted that the actions he took were not, strictly speaking, in accordance with his training, but he had attempted to stop John Carthy and at the same time minimise whatever damage might be done. He informed the Tribunal:

“Certainly, you take cognisance of your training; you take cognisance of your experience and obviously your own individual perception on the day. I think it is important to bear in mind there may be environmental factors that affect how your own training is implemented on the ground and, certainly, in An Garda Síochána we are trained to use our own initiative to some degree. So accepting the point, the rigid training in relation to the use of firearms is the central mass, as we have discussed, would cause the best chance of immediate

incapacitation, and also offers the best option in relation to a target, notwithstanding that, in this particular situation, I think, I brought to bear my own training, as you have set out there My own experience in relation to police work generally, but also in relation to this specific incident, and I think bearing in mind my option was to use the weapon but to minimise the harm to Mr. Carthy, whilst at the same time achieving my objective. So number one, my objective was to prevent Mr. Carthy from discharging his weapon. I believe the best way to do that and, at the same time attempting to ensure that the risk to the subject was minimised, was to fire at his upper left leg area. Factored into that also was the fact that Mr. Carthy was actually moving at the time he was posing a threat, which was an additional aspect that may have helped me achieve the objective of stopping him. So there were various considerations. Primarily was the risk Mr. Carthy posed to other members, but also, I would have to concede that I certainly wanted to minimise whatever damage was done to Mr. Carthy. On that basis the action I took is strictly speaking not in accordance with training, but these are the peripheral issues in relation to training that may or may not be applied on the day in a particular action, Mr. Chairman”.

His training, he said, did not prevent “individual initiative”:

“I suppose ‘rigid’ is probably a bad word, to those areas in relation to stopping a potential threat, but I think that does not stop an individual member of the gardaí, if he is firing a weapon, to use his own individual initiative and to try and achieve the same objective. It is the ultimate objective of stopping the individual, at the same time taking cognisance of the risk to Mr. Carthy himself”.

He stated:

“I think, in the sense that it is the individual member who makes the decision to fire; it is the individual member who will be held accountable for firing his weapon. It is in that context, and certainly the training in relation to firearms is not to the extent where we aim for extremities or anything like that. I think that goes back to experiential learning in relation to firearms that in situations of high stress, there is a high miss rate But I suppose what I am saying there is that there are other environmental issues that may impact on the member firing. If he feels he has a capability of neutralising the threat, whilst at the same time preventing or attempting to prevent serious injury to the individual that is what you are trying to achieve. Ultimately, I suppose, the raison d’etre for An Garda Síochána is to save life where possible, and I don’t think the imposition rigidly of a particular regulation in relation to the use of firearms would supercede that, whilst it is not specifically in the training”.

And further:

“In my estimation at the time, Mr. Carthy was a moving target, with respect, so my assessment was if I fired at his legs it would minimise the harm done to Mr. Carthy and at the same time would knock him to the ground and neutralise the threat without the need to seriously injure him”.

Mr. Bailey considered the actions of Sergeant Jackson in discharging his weapon at John Carthy's left leg. Armed police, he said, are usually taught to fire at the centre of the body mass presented to them. They aim for the biggest target area which increases the likelihood of them hitting what they are aiming at. Mr. Bailey felt that if Sergeant Jackson believed that a second shot to the leg would remove the threat posed, that he was right to try it. He observed, however, that it could be argued that having seen the first shot fail to remove what Sergeant Jackson believed was an immediate threat to life, then it would have been logical if he fired into the central nervous system in order to achieve instant incapacitation. He was not, however, critical of Sergeant Jackson's actions in this regard.

6. The actions of Detective Garda McCabe in light of training received

Garda McCabe confirmed that his training was that he should aim at the central body mass. He stated that he discharged his weapon in accordance with his training. This, in common with the training of all officers, was based on an objective assessment of the threat. What might motivate a person in carrying out certain actions was not a factor in training. He was questioned about the fact that Sergeant Jackson did not discharge his weapon at the central body mass or torso, and the evidence of Sergeant Jackson's explanation in this regard was put to him for his observations and comment. He was also questioned on whether his decision to fire at the torso area was influenced by Sergeant Jackson's aiming at the leg of John Carthy. He stated that while he was aware that Sergeant Jackson struck John Carthy's leg, he was not aware that that was where he aimed.

Where the entirety of the body is presented to him, it was his understanding of his training that, in order to achieve the objective of stopping the individual, he should shoot at the central body mass.

He did not consider shooting at the legs:

"... because of the fact that he had already been shot, two shots had been fired, one I had seen hitting him in the leg and that had not stopped John Carthy. So therefore the threat had increased but I felt that I had no choice but to fire at the central body mass. I didn't reckon on firing at a limb".

He stated that the decision to fire is an individual decision, and that it was not part of his training or instruction to receive any guidance from any particular officer in a situation like this. His consideration was the perception of an immediate threat to life from John Carthy and that received *"my greatest consideration and consequently governed my actions"*. That was his assessment of the situation.

In answer to the Chairman he stated that a shot to the leg could be fatal, though he also accepted that it was unlikely to be so. If he discharged his gun at the limb which was required to hold the weapon, he agreed that it might cause the limb to cease to function as a gun holding mechanism, but he felt that John Carthy would still possibly be in a position to discharge the firearm. It would only take a second to pull the trigger. However, the subject was moving, and he needed to have an *"assured shot"*.

An arm or a limb is a smaller target and when it is moving the chances of missing are greater. It was suggested to him that one would not expect to miss at short range, but he stated that in a lot of scenarios in police shootings it is at short range that a lot of shots are missed. He restated that his training was to shoot at the torso, and that there was a high incidence of missing targets at close range.

Garda McCabe was questioned on why he considered that John Carthy might fire at someone in the vicinity of the command post, when he had not responded to the first three shots. He stated that it was because of the way he was holding the shotgun: *“If he pulls the trigger then at that moment, even after I fired the third shot, if he had pulled the trigger then, those gardaí could have been killed or seriously injured”*. It was hard, he said, to put into words how dangerous that situation was for those members who were there.

That was what he was *“fathoming”* into his thinking at that time. He was questioned on why John Carthy might be intent on doing injury to someone in the area of the command post and not, it seemed, to ERU officers who were nearer to him. He replied that while he could speculate on what John Carthy was thinking, he could only deal with the immediate threat to life as he saw it. His intention was to *“stop”* John Carthy from killing those persons at the command post.

7. The warning

Detective Sergeant Russell, when questioned as to why John Carthy was not informed what would happen to him if he did not put down his weapon, stated that it was not the practice of, or in the instructions to, the gardaí to do so. The gardaí are not encouraged to threaten persons that they will shoot them. The Garda Code does not require that such a warning be given. Sergeant Russell felt that such a warning as *“put down your weapon or you will be shot”* could be perceived by the subject to be a threat by the person giving the warning.

Superintendent Hogan in relaying to the Tribunal evidence in relation to Garda training stated that officers are trained to give a warning to the subject prior to opening fire. The training is expressed in this form: *“Armed gardaí, put down your gun”* or a requirement to comply with some other request. The training does not include an instruction to inform the subject that if he does not comply he will be shot. To do so would indicate that a pre-emptive decision had been taken by the officer involved. He stated that the giving of the warning advised in training leaves open the possibility of issuing a second, third or fourth warning allowing a continuous reassessment of the situation. There is also a danger, that if an officer says words to the effect of *“stop or I will shoot you”*, that the subject may react by shooting first as an instinctive survival response.

International experience

Mr. Lanceley told the Tribunal that in the US a *“line would have been drawn in the sand”*. He said that in the US a person in John Carthy's position would be told not

to come out of the house with the gun in his hand, and that if he did so he would present an imminent threat to police officers and his safety could not be guaranteed.

In Victoria, Australia and New Zealand, police practice is to give a warning that informs the subject that the police are armed and may involve an instruction of some type, depending on the circumstances of the incident, such as to leave down a weapon. At no stage would the subject be warned that failure to comply with an instruction may result in their being shot. However, Mr. Shuey, former Assistant Commissioner of the Victoria Police, said that the practice in Victoria is such that *“the intonation in what is being given would leave the offender or suspect in no doubt that there would be some dramatic consequences for failure to comply with the action”*.

It is interesting to note that both Mr. Bailey and Mr. Burdis, a retired Chief Superintendent proposed as a witness by the Carthy Family, were aware of incidents in England and Wales where a variety of warnings were given depending on the specific circumstances involved. Neither criticised the warnings given by members of the ERU at Abbeylara.

SECTION D: — John Carthy’s Body Position when the Fourth Shot was Fired

1. Eyewitnesses’ accounts

None of the ERU witnesses who observed John Carthy between the third and fourth shots noticed any, or any obvious, crouching or falling motion on his part, nor indeed did they see any change in his upper body position, between those shots. Their evidence in this regard has been recounted in detail.

2. Evidence of opinion of Professor Jack Phillips

From a medical perspective, was John Carthy capable of forward motion following the discharge of the third shot?

Professor Phillips, consultant neurosurgeon, who gave evidence to the Tribunal, noted that one bullet, which evidentially coincided with the third bullet, entered the lower lumbar area, traversed the abdominal cavity and exited the genitalia. On his review of the evidence available, particularly the radiographic evidence, he concluded that this bullet did not transect the spinal cord. It did not shatter the spinal column. He did not believe that it damaged the sacral plexus.

The spinal cord emits various nerves at multiple levels called the sacral plexus. From the autopsy photographs, he was of the opinion that the sacral plexus appeared to be intact. The motor function which was transmitted from John Carthy’s *“brain to his spinal cord, through the sacral plexus to his legs, was intact, allowing him, so to speak,*

to send messages from his brain to his spinal cord to his legs, to propel himself forward”.

The fourth bullet entered the lumbar area, went forward at a trajectory or an angle and lacerated the left ventricle of the heart, this being the fatal injury.

Professor Philips stated that neuroscience teaching is that a person with an altered state of mind is capable, to varying degrees, of ignoring outside stimuli, even painful stimuli. He noted that there were clinical situations, in emergency practice, where people came into hospitals in psychotic states having withstood *“amazing tissue injuries”* and not complaining of the pain, walking around in an agitated state, oblivious to significant soft tissue injuries. That is a phenomenon which he personally had observed in practice.

With regard to the first two injuries to his leg, if a person, not in an agitated state, were to receive a very painful stimulus to the flesh of a limb, his immediate reaction would be reflex, to reach for the wound. As it was his leg, he would be caused to stumble. The third bullet must have been a *“severely noxious or painful stimulus”* inducing pain of a very severe nature. The third wound, in a normal person, not in an agitated state, would have felled that person instantly.

However, the position in relation to someone who is in a heightened state as a result of mental illness is somewhat different. He stated that *“it would be reasonable to interpret that John Carthy was in an altered state of mind”*, while he ignored two initial stimuli and then a third stimulus of a severe nature. On the basis of witness evidence that he remained upright, he would have to conclude, in a layman’s words; John Carthy must have been in a *“frenzy”*. John Carthy’s agitated brain overrode the painful stimulus which he felt. He ignored the pain because of his state of mind. He did not do what an ordinary person would have done which would have been, with regard to the first two wounds, to stop and hold his leg. He just marched on. It would be reasonable for a person to conclude that if John Carthy proceeded to move after having been shot, that he was not reacting to painful stimuli in the way a normal person would. The evidence suggested that John Carthy’s nervous system was intact, so the stimulus from the first two bullets which went to his brain was overridden by him, using his frontal brain to suppress it, and to allow him to keep going forward.

That John Carthy was capable of voluntary movement after the third shot was because he had full nervous spinal system control.

Thus, he concluded that, from a medical perspective, John Carthy had an intact peripheral nervous system which allowed him to maintain motor function in his lower limbs, thus enabling him to propel himself forward or to be capable of forward locomotion. He was capable of voluntary, or intentional, forward locomotion after the third shot.

3. Evidence of opinion of Professor John Harbison

In his report, Professor Harbison, who performed the post-mortem examination on John Carthy, described the track of the fourth bullet as entering to the right of the midline of the back at the level of the first lumbar vertebra, passing upwards into the abdominal cavity, passing through the left psoas muscle and then lacerating the left kidney. It penetrated the fullness of the stomach posteriorly and anteriorly and then penetrated the diaphragm into the left ventricle of the heart. The bullet then passed through the left lingular of the lung exiting through the front of the chest. This was 2.5 cm to the left of the nipple. The wound was 12.5 cm, from the midline and 134 cm from John Carthy's heel. Anatomically, this wound passed forward from right to left approximately 6 inches and upwards approximately 9.5 inches. This was the fatal wound to the heart. Professor Harbison expressed the opinion, that John Carthy was either falling forwards or stooping when this wound was inflicted. The angle was in the order of 45 degrees, so he would have had his body angled forward for the bullet wound track to occur. As the bullet travelled from right to left, John Carthy's body must have rotated; his left shoulder moving forwards and/or his right shoulder backwards. These findings were consistent with his crouching, or falling away to his right and forwards as the last shot was fired. He commented that *"as far as I can deduce, therefore, Mr. Carthy was therefore crouching somewhat when struck by this, the immediately fatal bullet"*. He stated:

"Because the first bullet rose from where it entered the back and rose to a much higher position on the front of the body, nevertheless the injury in the back was a proper entry wound, fairly neat and circular. The exit was a bit more irregular because it would have struck soft tissue and probably some bone on the way. As the bullet must have been travelling more or less parallel with the ground, the implication is that the deceased was leaning forward so that the entry and the exit were roughly on the same level".

The extent of such movement, however, could be affected somewhat by the hill, the manner in which the shotgun was held by the deceased, and the fact that John Carthy's right leg was shorter than his left. Professor Harbison also stated: *"perhaps he was stooping at the time, I am not sure"*. He felt that John Carthy was 40 degrees out of the vertical leaning forward for the fatal shot on his heart. He also agreed that blood staining on his shirt might be indicative of standing following the fourth shot. Professor Milroy did not accept that significance attached to such blood staining.

Professor Harbison also accepted the possibility that there could have been some deflection in the flight path of that bullet. He thought that the track through the body seemed to be straight but advised that there may be confusion between the track of the bullet and the orientation of the bullet: *"Of course the bullet could, and did from the appearance of the exit wound, deviate, not going straight nose first, come out sideways"*, though his recollection was that the trajectory was straight. Counsel for the Commissioner reminded Professor Harbison that the evidence suggested that John Carthy had his left hand under the barrel of the shotgun and his right hand in the trigger area. Professor Harbison described that as being the normal way for a right-handed person and that this would be what is often called *"the ready position"*. He accepted that this could also result in a degree of rotation of the body from the

hips and that rotation and movement of his body from the hip was consistent with the manner in which he held the shotgun.

He was also asked whether the upward nature of the trajectory, in his opinion, was consistent with a combination of the upward nature of the terrain and some leaning into the gun or over the gun. He stated: *“Yes, in other words, it wasn’t just the terrain, that he must have leaned forward to get the upward trajectory inside the body”*.

4. Evidence of opinion of Professor Christopher Milroy

Professor Milroy, in his original report to the Tribunal, expressed the view that John Carthy was falling away from an upright position when struck by the fourth and fatal bullet, and that this accounted for the trajectory of the bullet which passed through his body. None of the bullets lodged in his body, which Professor Milroy thought typical of *“full metal jacket bullets”*. He agreed with the analysis of Professor Philips that John Carthy was capable of forward ambulation, of voluntary movement, following the infliction of the third wound.

On his analysis, the trajectory of the third bullet, as noted at post-mortem examination, suggested that John Carthy was standing upright and that the person who was discharging the gun was at approximately the same level. The bullet wounds were consistent with the officer being behind John Carthy and on the road with him. Professor Milroy stated that as the fatal bullet *“went upwards 9 inches”* and thus, *“it has got to come down 9 inches for it to be horizontal and in doing that that would mean the body leaning forwards”*. He thought that the angle of leaning was approximately 45 degrees. It therefore followed that there was some movement of his upper body position between the third and fourth shot. He also expressed the view that there was some rotational movement of the upper body at this time. In order for the bullet to travel from right to left required rotation of the hips. When he prepared his opinion, his state of knowledge was that John Carthy had been holding the gun across his body. He was questioned whether, if he had been holding the gun with his left hand outstretched under the barrel and the right hand in the trigger area, with the right shoulder being back and the left shoulder being more forward, that that would involve rotation from the hips. While it depended on how John Carthy was holding the weapon, he accepted that if he had been holding the weapon with his left hand towards the top end of the barrel, right hand in the trigger area and the weapon pointing forward; that his body position would be slightly rotated. He further accepted that in walking up the hill, there possibly could be forward movement of the limbs and arms. When one leg is shorter than the other, a person’s gait can be affected. John Carthy had a slightly *“short right leg syndrome”*. This also could in fact cause a slight tilt in the pelvis and he may have had an abnormal gait as a consequence of the short leg syndrome.

John Carthy may have been further away from the *“firer”* for the fourth shot, and further up the hill. If the evidence established that the weapon was pointed in front, he accepted that rotation could occur. When questioned as to whether this would form a reasonable basis for attributing the movement of a bullet from right to left across the body, he stated:

“anatomically that will change the pathway so that it appears to be going from right to left when it is apparently going – you know, the bullet is discharged straight, yes”.

He accepted that in walking up the hill, it was possible that there could be forward movement of the limbs and arms. Movement and rotation could be accounted for if John Carthy was turned sideways. However, he reiterated that a simple leaning forward or crouching, without any upper body rotation, such as the turning of the shoulder, would not account for the lateral anatomical movement or direction of the track of the fourth bullet as observed at post-mortem examination.

There was no evidence of a deflection of the bullet occurring after the bullet entered John Carthy’s body from the rear and there was no obvious bony damage to indicate that it struck any bone at that point. He did not agree with Professor Harbison, that the point of entry was to the right of midline. If it was to the right of midline, it would have hit and shattered bone and there would have been an obvious injury. It may have appeared to have been on the right but was in fact on the left.

Questioned whether a bullet going into the right of the midline made sense in the context of a bullet moving from right to left, he disagreed. For the bullet to thus move *“would have taken an extraordinary deviation and it would have smashed to pieces the spinal cord, the spinal column. It has done no such thing and it can clearly be seen entering to the left of the spinal column. It must have had its entrance wound to the left of the midline of the back”*. He thought that the bullet must have entered to the left. It *“may fit in with the short right leg syndrome”* of having a slightly curved spinal column and, therefore, he thought the bullet must have entered to the left of it.

Would the position be altered and his opinion change if the person discharging the shots had changed position between the shots? He agreed that if either the person firing the weapon, or the subject changed positions or moved to the left or right, then the position would be *“clearly altered”*. However, in this case the bullet exited through the upper part of the torso and therefore, *“we must have the person falling forwards or stooping forwards unless the officer has . . . ducked down or gone into a crouching position, when that would give you an upward shot”*. Detective Garda McCabe had discharged both bullets in the direction of the lower part of the torso, the second one being aimed somewhat higher on the lower torso. Garda McCabe had given evidence that *“the aim was different, so I raised the gun slightly in that regard”*. Professor Milroy felt that it could not just be the *“re-sighting of the gun”* by Garda McCabe on the body; there must have been *“movement of the victim”* as well. He agreed that it was reasonable to take into account at least two other factors, namely the possibility of body movement by John Carthy, in that he could have gone up the hill *“a bit more”*, or the fact that he may have either taken a pace or was stooping. This was, however, a *“significantly upward movement”*, or as Professor Harbison had described the bullet as having taken *“an altogether different pathway”*. It was not just a *“simple case”* of a slightly raised gun; that would still give a *“fairly horizontal track”*. The subject must have changed his position as well, *“by bending over or falling”*. He could, of course, have moved forwards, but *“he must have flexed*

forward on his hips”, for whatever reason, either because he was stooping or he was falling. It was also, in his opinion, entirely reasonable that John Carthy started to fall after being struck in the pelvis by the third bullet and as he fell, another bullet was discharged; one with a similar trajectory to the third but because he is falling forwards, and away to the right, this fourth bullet had a different track through the body.

What of the external bleeding patterns as noted on the garment? Would these provide assistance? Professor Milroy thought not. It was suggested to him that the absence of blood above the entry and exit wound and the preponderance of the great majority of blood below the wound would suggest that he was in an upright position after he was shot. He did not believe that John Carthy falling after the fourth shot would have altered the external bleeding pattern on the T-shirt. Most of the bleeding was internal and *“one must be careful about interpreting blood patterns of clothing because blood can leak into them afterwards”*. He would not have expected to find bleeding all around the wound, or any difference in bleeding whether John Carthy was upright or whether he was falling. When a person is being resuscitated, blood can leak *“all over the place”*. One could not say from the blood patterns that he was vertically upright or leaning forwards when he was shot. Blood pattern analysis, which emerges from small wounds do not distinguish between those two propositions, he stated.

The wound inflicted by the third bullet must have been excruciatingly painful, he observed. Several parts of the body were affected by the bullet: the pelvis, the rectal passage, the testicle and penis. One such wound would have been very painful. Adding them together meant that the whole area would have generated substantial pain, though it didn’t necessarily mean that there was an increment in pain. Nevertheless, he accepted that such pain would become the *“principal conscious priority”*. Mechanical movements are related to conscious decision making and, as a basic proposition, *“if your conscious decision making is concentrated entirely on pain, what you can do mechanically is relegated”*. He echoed Professor Phillips’s sentiments, however, in relation to pain in persons who are in an agitated state. Professor Milroy referred, additionally, to the phenomenon of *“temporary cavitation”*, which he concluded, did not apply in this case. This phenomenon is connected, *inter alia*, with the velocity of the bullets used. Professor Milroy thought that there was *“no evidence from the nature of the bullets used that . . . [John Carthy] . . . would have suffered incapacitation in respect of the spinal cord”*.

5. Reconciliation of eyewitness evidence and the pathologist’s evidence

Professor Milroy’s observations

Gardaí at the scene stated in evidence that they did not notice any falling or crouching motion between the third and fourth shots. Was there an explanation, in Professor Milroy’s opinion, for the fact that no garda observed movement between the third and fourth shots?

Professor Milroy thought it likely (but not certain) that the third bullet, inflicting the pelvic wound, would have caused John Carthy to fall to the ground. People do not always collapse immediately from gunshot wounds. Depending on what part of the anatomy is struck, they can carry on moving. When struck in the chest, a person would collapse very quickly. It was possible, he said, that when struck in the pelvis, as John Carthy was, that one could move a step or two, and then collapse. He could have had voluntary movement after the infliction of that wound, enabling him to walk forward or to move his own body position, despite the gravity of the pain described. As has been observed, Professor Milroy echoed what Professor Phillips had noted in relation to pain in persons who are psychiatrically agitated. A person in a very agitated state does not always respond in the same way as “a normal person”. He stated:

“ . . . some psychiatric patients, if they are in a high state of agitation, may have a higher pain threshold and a higher ability to cope with pain, or not respond as normally as you would expect”.

This adds to their physical capacity and they carry on in a way that you might not expect, he observed. The fitter, younger and healthier one is, the more one is capable of activity such as “fight or flight”.

“But certainly John Carthy could, in my opinion, have continued his activity. I think the likelihood is that he would collapse but I cannot exclude him being able to take voluntary movements.”

This was due to a combination of a higher pain threshold and a delayed reaction to pain. His action may be so “pumped up” by psychiatric disorder that he may not observe or appreciate the effect of the pain; he may carry on, not for very long, but for a significant length of time. Another piece of evidence, which in Professor Milroy’s opinion supported this, was his failure to respond when shot twice in the thigh.

As the person is falling another shot is discharged. This sequence of events occurs very quickly and would account for the failure to observe the falling, or crouching, between shots. Witnesses may not have realised where the subject had been hit – or that he had been hit in the pelvis and would collapse. Accordingly Professor Milroy stated that he was “not surprised that people don’t see a change in the movement”. If the officer discharged two bullets “relatively quickly, he wouldn’t necessarily realise that the person was falling”. Counsel for the family further queried Professor Milroy as follows:

“Q. Put another way, had there been a slight delay between those shots, even of a couple of seconds, the last shot might well have been redundant because it would have already been on the ground?”

A. If it was a long gap and the person was falling from the third, then, yes, the person would then be on the ground. But if the shots are relatively close together or if the shot delivered as the person starts to fall, that is the point, then the person may not realise that they are falling as they discharge the gun”.

If the sacrum injury had caused the person to fall, then had there been a delay on the fourth shot, it may well have been “*hitting air*”. Garda McCabe stated that following his first shot, he could still see that John Carthy was taking steps and that the gun was pointed at the people at the rear of the command post. The position of the shotgun had not changed. He was aware that if John Carthy pulled the trigger there was an immediate threat to their lives “*at that stage*”. Those were the factors that he had in mind between his first and second shots. When asked to comment on Professor Milroy’s evidence that had there been a further delay between the third and fourth shots, that the fourth shot might not have been necessary he stated:

“I think Professor Milroy mightn’t necessarily be thinking about the fact that the shotgun is still pointed at the people and there is still an immediate threat to life. I am sure that when Professor Milroy said that, he may not have been factoring that into his answer”.

He stated that his overriding consideration was the continuing immediate threat. That was the reason why he did not delay or why there was no further delay on his part in taking action.

Mr. Bailey’s observations

Commenting on Garda McCabe’s evidence that he was surprised that he did not see any reaction to his first shot; to the extent that he thought that he may have missed, Mr. Bailey observed that other police officers involved in incidents, where they had discharged their weapons at people, have also expressed similar surprise. Believing that they have missed, many police officers in such situations have proceeded to fire another shot. In order to aim a weapon using the sight, which Garda McCabe did, one must focus one’s eye on the front sight. The eye can only hold focus on one point at a time. The back sight of the weapon is slightly out of focus and the target more out of focus because it is further away from the point in focus, being the front sight. This, he said, is the normal sight picture that armed officers are taught to use:

“it is a biological fact that the human eye focuses in this way. Once on aim, a shot could be actually fired in less than a second, and at such a short distance, the bullet strike would be almost instantaneous. It is therefore possible for the target to move while the firer aims and fires a shot, but because the target remains out of focus and every detail is not registered by the eye, the firer could be unaware. I have been involved in other cases of shootings by police, where the subject of the operation was moving and the officer believed that he had fired at a man facing them, but the shots hit the suspect in the back or side”.

The padded, blue jacket that John Carthy was wearing, if anything, would render movement less distinct and more difficult to notice when the focus of his, Garda McCabe’s eye, was on the front sight. Mr. Bailey thought this consistent with Garda McCabe’s reply when asked if there was any change in the upper body position after his first shot. In evidence, in answer to the question of whether this position had changed, Garda McCabe had stated that the body position may have changed slightly and that it may have been slightly more forward. He put that down to the

fact that John Carthy was walking up the hill further away from him. Mr. Bailey commented that the significance of the slight adjustment and the position of John Carthy were not appreciated by Garda McCabe and that this was consistent with the level of physical and mental activity required in making a judgment to fire, and the need to focus his eye on the front sight of the weapon. That Garda McCabe attributed this "*slight adjustment*" to the subject moving up the hill was understandable, according to Mr. Bailey, because in his view, the brain rapidly fills any gaps in knowledge to make sense of the situation. He also felt that it was possible to reconcile the evidence of Garda McCabe, that he was not aware of John Carthy falling when discharging the fourth shot, with the opinion of the forensic pathologists. In order to aim the weapon for a second time using the sights, he would have to focus on the front sight. This would place the subject out of focus, allowing his body to move into a position consistent with the opinions expressed by the pathologists, before the bullet struck. As he previously observed, the padded jacket worn by John Carthy would make it more likely that this movement could pass unnoticed.

CHAPTER 6

The Management of the Incident at Abbeylara – Siege Management Principles

Introduction

The objective of the Garda Síochána in relation to crisis incidents, such as that at Abbeylara, is to achieve a peaceful resolution of the incident in as safe a manner as possible, where the risk to the subject, the police, and the public is minimised. The strategy adopted to achieve this end is one of **isolation, evacuation, containment and negotiation**. This strategy has been adopted in many countries and was used at Abbeylara. However, it has been observed by expert witnesses that there is no “*perfect system*” for the resolution of incidents such as that under review.

Tactical measures to achieve isolation, evacuation and containment include the formation and implementation of a cordon system, strategically placed and appropriately staffed by trained, experienced officers who are properly instructed and adequately resourced. During the evidence to the Tribunal it became clear that the negotiation leg of this strategy is a crucial one. The isolation and containment of the subject, while in the first place being for the purposes of public safety, after that aim has been achieved, is to provide an appropriate environment for the peaceful resolution of an incident through negotiation.

Tactical measures adopted internationally and in Ireland are considered in this chapter.

In **section A** the principles of isolation, evacuation and containment are discussed. Section A.1 sets out the observations of international policing experts in relation to cordons and containment. The training of the Garda Síochána in relation to siege management is considered in section A.2. In section A.3 the application of these principles to the incident at Abbeylara is addressed. Section A.4 considers the role of local officers and the potential for police cross-fire, a “blue on blue” shooting. The response of officers to issues raised is dealt with in section A.5.

An important aid to the negotiation process is the gathering of information and its analysis and assessment for the purpose of providing intelligence to the officers involved. **Section B** deals with this matter, and includes the training received by members of the Garda Síochána, the experts’ views and observations, and the responses thereto from the appropriate officers.

Section C deals with the principles of negotiation, their application at Abbeylara; the training received by the relevant officers in these principles; the implementation of

the principles and training at Abbeylara; the experts' views and observations; and, the relevant officers' responses thereto.

The Tribunal also considered the previous operational experience of the Garda Síochána in responding to crisis incidents similar to that at Abbeylara. Evidence was received in connection with an incident at Bawnboy, Co. Cavan in January 1997. The features of the operational response to this incident are set out in **section D**.

SECTION A: – Isolation, Evacuation and Containment

SECTION A.1 – Cordons and Containment – Observations of International Policing Experts

1. Containment

Mr. Bailey noted that the definition of containment is *“the action of keeping something harmful under control or within limits”*. He referred to international consensus, that where an armed individual poses a threat to life, armed police physically restrict such individuals' movements and isolate them from the public. This process is called containment. It is a well-accepted principle of siege management and requires the establishment of a number of cordons, which consist of an inner cordon of armed officers, whose focus is the individual at the centre of the incident (and who will also obtain intelligence on the subject's movements); and an outer cordon, whose function and focus is to exclude members of the public from the area. The outer cordon provides the inner cordon with a sterile area within which to operate. Members of the public and unauthorised police officers should be excluded from the sterile area. Mr. Bailey said that access for police personnel should be restricted to armed officers going to and from the stronghold for specific operational tasks, or unarmed specialist personnel escorted by armed officers. The scene commander dictates who is allowed to enter the scene. In the United Kingdom, it is the practice to maintain written records of persons allowed through the outer cordon to the scene. The purpose of the visit is also recorded. This prevents officers congregating near the stronghold as bystanders.

Containment – a solution?

Containment is not a solution to an incident. Mr. Bailey explained that it provides police with the *“control”* necessary to ensure public safety; *“time”* to work towards a negotiated solution, to consider tactical options and to prepare detailed plans. The area contained by police will vary with the location and circumstances of the incident. Containment may be overt or covert. Overt containment ensures that the subject is aware that police are present. This may result in an immediate surrender or a change in behaviour thereby reducing the threat posed by his or her actions. When the subject does not surrender, the presence of police restricts movement and often assists in stabilising the situation. Covert containment allows for the organisation of personnel and the preparation of tactical plans before the subject is

made aware of police presence. Such containment usually provides greater safety for the first police responders. Mr. Bailey considered that, at Abbeylara, John Carthy was aware of police presence, but could not have seen the sort of numbers that he mentioned in his phone call to Kevin Ireland. As far as he could determine, the containment was effective but visually discreet. None of the evidence, of which he was aware, indicated that John Carthy could have seen gardaí, other than those at the negotiation point.

Personnel at inner cordon

Mr. Bailey explained that no one should be allowed at or inside the inner cordon, other than armed officers putting into effect a tactical option. Exceptions to this rule include police dog handlers who are normally unarmed. Other specialists may also be permitted. These are people who require access to fulfil their specific role, such as personnel from a technical support unit who may be charged with putting into place appropriate specialist equipment. He reported that when such persons are unarmed each dog handler or specialist will require a dedicated armed officer to provide for his protection.

Containment – an illusion?

Mr. Lanceley, whose primary expertise is as a negotiator in crisis negotiation and not as a tactical scene manager, commented that when tactical personnel devised the concept of inner cordons or perimeters, what was really in mind was a combat or a hostage type situation. He observed that, in reality, what keeps a person contained is the fear of coming out. If he does not have such fear, he is not contained. Only persons who perceive a threat outside will stay inside, and thereby be contained. He commented that containment at Abbeylara was largely an illusion. Short of nailing the doors and windows closed, he queried how containment was possible to achieve. He felt that John Carthy was contained for as long as he chose to be so contained. When he chose not to be contained he walked out of the residence with a shotgun in his hand. He was not contained, he was *“merely surrounded”*; containment prevents an escape. Mr. Lanceley believed that in the absence of proper containment the police would have to resort to tactical options, something which he had advised against on many occasions before. Reassurance to the subject that there would not be police encroachment is standard practice in the United States; something which he observed Detective Sergeant Jackson did *“on almost every communication”*.

Mr. Bailey agreed with the psychology of the concept of containment. He did not agree, however, that containment at Abbeylara was largely an illusion. The containment at Abbeylara was similar to almost every firearms situation worldwide. Effective containment is achieved when police maintain their position, do not advance and the subject remains where he is. He had no criticism of the deployment of the ERU officers at Abbeylara, but highlighted what is considered good practice in the United Kingdom of deploying officers in pairs. This, he said, was for a variety of reasons including the requirement of continuing observation. He expressed the opinion that containment was effective at Abbeylara.

Containment – spontaneous incidents and planning

Pre-planned operation – Garda Code

The Garda Code makes specific provision for what are known as pre-planned operations. The evidence to the Tribunal suggests that the provisions of the Code, in this regard, are designed to deal with situations which are planned in advance. Personnel involved in pre-planned operations will have adequate time to make plans in advance of their participation in that operation. Generally speaking, such plans will be operation specific. Non pre-planned operations or spontaneous incidents include emergency situations which require immediate response, such as the incident at Abbeylara.

Initial response – planning – generic response plan

The evidence of Mr. Bailey is that in the initial stages of a spontaneous firearms incident, the police operation will be based primarily on a generic response plan. Such planning is normally limited to the selection of pre-learned tactics that provide the most likely solution to known events. He stressed the desirability and necessity of making plans, and of writing those plans down. Once a spontaneous incident stabilises, plans are made and written down to assist in the resolution of the incident. Contingencies are identified and plans are prepared to address them. These contingencies are sometimes known as the “*what ifs*”, and involve thinking through what could happen in the particular incident. As the incident develops, the plans will be reassessed and may be amended, if required. They are also used to brief new personnel and enable senior officers to be informed of ongoing developments. He was of the view that, at some stage, an ongoing incident which commences spontaneously becomes a planned operation.

Tactical response defined by strategy

The response, tactical and otherwise, to any incident is defined by the strategy which has been set for the operation. The strategy which was adopted at Abbeylara was to evacuate, isolate, contain and negotiate. Such a strategy requires planning. It may be that there are standard plans that will be required at any siege. It is likely that these will be prepared in advance by the tactical team. According to Mr. Bailey, this will afford the team the opportunity, in training, to put plans into effect and to ensure that they have the necessary equipment available when responding to an incident. Such plans may also be generic and may include delivery plans, exit plans, break-out plans and a surrender plan. However, they should be adapted for use at the particular incident. In respect of any novel contingency which emerges, a specific plan should be prepared.

Planning – exit plan

One such plan, being an exit or break-out plan, has been described by Mr. Bailey in evidence as a moving containment plan. It is noted that during the course of the evidence at the Tribunal, this plan has been referred to as “moving containment”, or “flexible or moving cordon” plan. It is a plan which allows a cordon of officers to move with the subject. It does not of itself provide a solution to the incident. It

provides more time to resolve the situation before there is a requirement to resort to lethal force, if necessary. The scene commander develops the plan in conjunction with the tactical team leader and the negotiator, if appropriate. The plan may include such things as how the person will surrender, a consideration of how he or she may come out, taking into account whether the subject is to be allowed come out with a firearm, and the instructions that are to be given to the subject in such circumstances.

2. Moving containment – the appropriateness of the tactic

Moving containment as a tactic – diverging views

Considerable evidence was adduced at the tribunal in relation to the moving containment, or flexible cordon plan, as a tactic which was purported to be employed at Abbeylara. Different views were expressed by various overseas policing experts as to whether it is an appropriate tactic to be adopted or employed in circumstances such as those that prevailed at Abbeylara. Some regard this tactic as being too dangerous, resulting in the transfer of the problem to a different location. It is a plan which is not favoured in certain jurisdictions, such as the United States and Victoria, Australia. Mr. Lanceley was particularly critical of the use of moving containment as a tactic, stating in his view, that a moving cordon is close to being an oxymoron: *“if law-enforcement is moving the cordon with the subject, then he has already breached the inner cordon. There is no containment. There is no perimeter”*. However, Mr. Bailey was of the view that if the cordon is moving around an individual, he is still within the cordon. He has not breached the inner cordon. He remains contained. It may not be as satisfactory as if he were static in a building. There is still a perimeter, that perimeter is the outer cordon. It is providing a sterile area in *“permitting the movement that the moving cordon creates”*.

Moving containment – a spreading of the threat? – sterile area

Mr. Lanceley in his report and evidence observed that containment and perimeters serve several purposes and functions. These include preventing the spread of the threat. A moving cordon does not accomplish this objective. If the subject is moving, the threat is moving with him to new areas. Another objective of the cordon is to prevent the escape of the subject. The experience in the United States is that subjects have escaped when moving cordons were attempted. Mr. Lanceley also expressed the view that, as the subject moves to new areas, the threat moves. Mr. Bailey agreed, but for him the real issue was whether those new areas were sterile. If the area is sterile, the threat is not increasing or changing; there is no one who might be subject to that threat. A sterile area is required so that the likelihood of confrontation between the subject and other police personnel is reduced. Mr. Bailey emphasised that if you have a sterile area with no one in it, this allows movement. The exclusion of the public from this area is of greater importance than the exclusion of police personnel. However, police personnel who are present should:

“only be those that need to be there to provide the armed containment of the individual and those same individuals that would be providing the moving containment. If you have additional police personnel, the likelihood is that they

get in the way, they become potential targets themselves and reduce the distance that somebody can be allowed to move”.

He accepted that it was more difficult to plan and allow a moving containment in an urban environment. However, it has occurred. The greater the distance the subject of the siege can be allowed to travel, the more time police have to deploy another tactic or to succeed in negotiation. To be most effective, alternative tactics, particularly less lethal ones, should be available to resolve the incident, before the subject reaches a point where the threat he poses to others requires police to use lethal force. Thus, in the United Kingdom, police dogs are an essential part of the cordon system.

Mr. Lanceley also observed that another function of containment and perimeters, namely the prevention of the entry of unauthorised persons to the operational area, is compromised when moving containment takes effect. Because the operational area moves, it becomes much more difficult for the authorities to prevent the entry of unauthorised persons into that area, particularly if the authorities do not know where the subject of the incident is going. Further, the subject effectively controls and determines the direction of travel. Mr. Bailey was in general agreement with these sentiments. Nevertheless, his view was that this also comes back to the question of a sterile area. If the area is sterile there is no problem. If it is not sterile, there is a problem:

“It comes back to my point in relation to the location of the outer cordon ,i.e. the point at which no innocent parties could pass or get into it. Providing you have a sufficiently large sterile area, it is still safe and controlled by police because no one can get into it, there is no one there and you can allow the movement. If you were unable to make the area sterile, you wouldn’t be able to operate the containment system, hence you wouldn’t be able to operate a moving containment.”

It is to be observed that in those circumstances the necessity to shoot an armed subject might be unavoidable.

Moving containment – isolation

Mr. Lanceley stated that a further purpose of the cordon was to isolate the subject from the outside world. When moving containment takes place, Mr. Lanceley expressed the view that the subject is no longer isolated. Mr. Bailey agreed but thought that this point was more significant from the negotiator’s perspective. In a moving containment, the subject is still isolated from the outside world in terms of posing a threat, which is the tactical firearms officers’ consideration. Psychologically, the subject may not be isolated from the outside world and this could be significant to the negotiator. It does not, however, create a reason for not adopting a moving containment, if it is safe to adopt, Mr. Bailey told the Tribunal.

Moving containment – pressure on the subject

Mr. Lanceley further noted that a purpose of moving containment is that it puts pressure on a subject and that while putting pressure on a hostage taker may be advantageous, putting additional pressure on someone such as John Carthy is not advantageous: *“He is already under a lot of pressure”*. Mr. Bailey agreed, but stated that when one considers the alternative (being the use of lethal force to prevent him from leaving the curtilage of his house), the option of not shooting and attempting to peacefully resolve the situation has to be the option to be selected.

Moving containment – shape of cordon

Containment enables a disciplined controlled response of emergency resources by facilitating the establishment and placement of staging areas, command post, perimeters, and checkpoints. With moving containment or moving cordon, Mr. Lanceley was of the view that all of those advantages were lost. Further, he did not know what an ideal moving cordon looked like; thus, in his view an L-shaped cordon is extremely dangerous if anyone discharges a weapon. There was risk of crossfire. Many situations in the United States that ended tragically were moving situations. In other situations the subject escaped.

Moving containment – cover

A moving cordon requires personnel to leave cover and move to the next position of cover, if there is any. Mr. Lanceley visited the scene at Abbeylara and, from what he observed, there was no cover for gardaí to use in a moving incident. Mr. Lanceley queried how a moving cordon was to be safely achieved, with an obvious requirement for officers to maintain cover. The concept of moving containment achieves two things, Mr. Lanceley concluded – it leaves the decision to a lower ranking individual, and endangers lives. While a *“lovely idea”*, the concept *“horried”* him. He had never seen a single incident in his career where the concept worked.

While he understood why the gardaí wanted to perform a moving containment, he did not agree with counsel for the Commissioner’s suggestion that *“on his own analysis”*, it was appropriate to try to have a form of moving containment, instead of an earlier and more potentially lethal option. The risk was too high. Gardaí put their own lives at risk:

“once he came out the door with his shotgun, . . . any likelihood of a peaceful resolution had just evaporated”.

He accepted that what had occurred was an ongoing deferral of the use of lethal force. The big difference between Ireland and the United States, he surmised, was *“who makes the decision”*. In the United States the senior man makes the decision as to where to draw the line in the sand. In both the United States and Ireland, the use of lethal force is a last resort, but this is where the situations differed – when do you arrive at the point of last resort? He felt that the law and culture in Ireland was expecting a *“whole lot from police officers”*. He agreed with counsel for the 36 named gardaí that the difference in culture and law (i.e. the taking or non-taking of advanced decisions whether to shoot or not) may provide a possible explanation

why moving containment is an option preferred in this jurisdiction. Perhaps it was a question of experience. Perhaps, he queried, the culture here will evolve but gardaí may die before such an approach is changed.

It was not entirely clear to Mr. Bailey how the ERU intended to safely achieve a moving cordon. From a training perspective people are trained to make as much use of cover as possible. Where you cannot make use of cover, officers are taught tactics to make themselves smaller targets. He noted that local officers and ERU officers demonstrated this when they moved into and out of the containment area during the course of the incident. The evidence demonstrated that they understood that buildings and objects provided them with cover. He expected that their training would have taught them to move from cover to cover.

Moving containment – planning for cover

Thus, in planning for moving containment one must consider the availability of cover and provide for cover if it is sparse or if none exists. For example it is possible to go to the opposite side of a wall as the subject moves to the other side. It is also possible to plan in advance by pre-positioning cover such as police vehicles. Generally speaking, the engine compartment, the wheels and the back axles of motor vehicles provide cover from bullets, but not necessarily cartridges. However, ballistic protection and cover can be provided by placing a ballistic or “Kevlar” blanket on a vehicle. A Kevlar blanket is made of the same material as body armour and would stop a shot from a shotgun. Therefore, with additional planning it would have been possible to position cover for officers, even in the absence of having a specialist armoured vehicle at the scene. In planning, if the point at which officers have no cover is identified, a risk assessment should be carried out and attempts made to reduce the risk. This is done by providing some cover. There is, however, a downside to providing cover in the middle of the road in that the subject may make use of this cover for himself. However, that, at least, would mean that the subject had stopped and had created a more static situation. In either eventuality, therefore, Mr. Bailey expressed the opinion that the provision of cover can only lead to an improved situation.

Mr. Burdis spoke about putting bulky obstacles in the way such as large bales of straw, sandbags etc., which might not only provide cover for officers but would also make life more difficult for John Carthy to walk along a straight path. However, he agreed with the Chairman’s observations that you would need an awful lot of obstacles in order to confine John Carthy, who was a fit young man, to the curtilage of the house or even within the garden. He agreed that he could not say you should put obstacles in every particular place. He saw benefit in putting an obstacle across the front gateway. Ultimately, Mr. Burdis was not critical of the fact that obstacles were not put in the way. *“One must apply common sense in the circumstances”*. Essentially it came to a question of giving proper consideration and analysis as to whether obstacles could be of benefit.

Moving containment – a line in the sand

In his evidence to the Tribunal, Sergeant Jackson stated that the gardaí did not operate a policy of drawing a line in the sand; or that such a line could not be crossed regardless of the level of threat posed by the individual. In the United States, Mr. Lanceley stated that *“a line would have been drawn in the sand”*. Mr. Carthy would have been told not to step over that line because *“it would be just too dangerous for everyone”*. In the United States, he would have been told not to come out of the house with the shotgun, that if he came out of the house with the shotgun in his hand, he would be considered as presenting an imminent threat to officers. He would have been told that *“you are going to get yourself hurt, Mr. Carthy. Do not do that”*.

Mr. Bailey commented that what was proposed in moving containment is to move a *“bubble”* around the subject maintaining the sterile area. No member of the public is present, there is no threat, and the police can keep a degree of control over the individual. He further agreed that it would be unreasonable and impossible to have a situation where the subject is permitted to *“walk miles”*. There are few circumstances where that could be sustained and still maintain public safety. Most circumstances, in which moving containment operates, are measured in yards not miles, but is determined by the point at which the subject poses a threat to the lives of others. That becomes the point beyond which the subject cannot be permitted to pass. Thus, the immediacy of a threat may become apparent where a person is still in the building and in certain circumstances he may be justifiably shot. Similarly, such a *“line”* may be near the outer cordon, but, Mr. Bailey said:

“it has to be drawn effectively where the outer cordon becomes part of the risk unless you can move your outer cordon, and that is considerably more difficult to do than moving your inner cordon or adjusting the deployment of your inner cordon”.

Such a point is one that the scene commander identifies as being one where the subject is likely to confront unarmed personnel or endanger the public. He agreed however, that in placing containment on an individual who poses a potential threat to the public and others that you must identify where the line in the sand is. What permits a moving containment is when you can place the *“line in the sand”* next to, or extremely near, the outer cordon, and not the inner cordon.

Stopping John Carthy without risk to others

Mr. Lanceley observed that *“unfortunately there is no technology, device, tactic or procedure that could have stopped Mr. Carthy without further risk to innocent parties”*. Mr. Bailey did not agree with this. He was *“totally convinced”* that a police dog would have been an option had the incident occurred in the UK. However, no such option, including the police dog option, could give any guarantees. The use of dogs in the potential resolution of incidents, such as at Abbeylara, is considered in Chapter 11.

Moving containment – inner cordon – specialist intervention

Mr. Burdis essentially agreed with Mr. Bailey's observations on moving containment. Mr. Burdis accepted that it was a tactic which was difficult to deploy depending largely on topography and cover. In the circumstance that obtained at Abbeylara, he believed that it could have been used to good effect. There has got to be "*quite a lot of space*" in the sterile area especially if one is contemplating any form of moving containment. It was, at least, a means of securing more time and changing the circumstances and opportunities for a peaceful resolution.

Mr. Burdis also expressed the opinion, that where there is time to prepare for such eventuality, it was good practice to rehearse or at least to try out some of the thoughts and plans pertaining to the situation. Every officer concerned with the moving containment plan requires careful briefing and each needs to know precisely what the other is intending to do. He stated that it was not usual to use officers from the inner cordon to perform this function. He observed that it can be too difficult for them to move from their post quickly enough to maintain control over the subject, and to do so with proper regard for their own safety. Thus, if the entire inner cordon was in a fixed place they are not easily able to respond to a particular moving containment, especially in a breakout situation. Some of them will not be in positions where they are able to respond quickly:

"having to run very quickly down the garden, for instance, is not really the best way of being able to respond to an incident. Whereas had the officers been located in very close quarters, but not responsible for actually manning the inner cordon, they would have been much better able to move – and much more quickly – and freer to move than they were in this instance".

However, he described that as a "*luxury*" which did not often apply.

Mr. Bailey agreed that in certain circumstances such a difficulty may arise. However, he remained of the view that it was possible for officers on the inner cordon to involve themselves in moving containment. He made the point that if one was to deploy officers to be available to do a moving containment, four separate teams of officers might be required to cover each side of the house. That could create a "*logistical nightmare*". It may well be that there is a requirement for additional officers but Mr. Bailey did not think that it should be said, as a matter of policy, that officers on the inner cordon should not be allowed to move. Further, it was appropriate to re-deploy officers who are no longer achieving their objective. Mr. Bailey's comments in this regard were put to Mr. Burdis, who noted that certain officers arrived and were put in place at approximately 10:15 p.m. on the first night, and did not have an opportunity of talking together about how they might, as a unit, deliver moving containment if it was ever required:

"they may well have talked on the radio to each other, but very much a face to face conversation and being part of a properly devised plan was never an option that they were able to take part in".

He felt that in this case it could be argued that there was sufficient time and resources for such an exercise to take place especially if the ERU had not been engaged almost

from the moment they arrived in the manning of the inner cordon. The ERU should have spent its time planning to manage the eventuality of an uncontrolled armed exit. He commented as follows:

“... once the subject moves up the lane, then you have to think about how you get from that property into the next door’s property and whether you allow him to go to the next door property or go beyond that. What action you are going to do and where you draw the lines at that are going to prevent him moving any further.”

Mr. Burdis also thought that officers engaged on both cordons require a briefing because the subject could easily approach their position. The officers also require to be briefed as to the limit of territorial boundaries and their legal duties in such circumstances where those boundaries might be breached.

SECTION A.2 — Training of Members of the Garda Síochána in Relation to Siege Management

1. Evidence of Chief Superintendent Ludlow, Detective Superintendent Hogan

Evidence relating to the relevant training of gardaí was given to the Tribunal by a number of officers, including Chief Superintendent Kevin Ludlow, the director of training and development at the Garda College in Templemore, and Superintendent Patrick Hogan, who has overall responsibility for the ERU. The evidence of Chief Superintendent Ludlow and Superintendent Hogan is now considered in subsections 1 and 2.

Cordons

Officers of all ranks receive training in the operation of cordons. Chief Superintendent Ludlow stated in evidence that a *“building block system”* is utilised in training for a number of issues — cordons being a specific example of one of them. Insofar as student/probationer gardaí are concerned, they are first introduced to the concept of cordons by way of general discussions when considering issues involving major emergency planning. While there are no specific lectures on cordons, Chief Superintendent Ludlow stated that as they touch upon many areas of day-to-day garda activity, training is interwoven in those areas. Training in cordons is considerably more specific in the sergeants’ development programme. Furthermore, detailed training is given to inspectors and superintendents in their promotion courses which is directly related to the additional responsibilities that those officers have. The evidence proffered to the Tribunal indicates that in an incident of the type that occurred at Abbeylara, the system, as taught to officers envisages two cordons, an inner cordon looking inward, and an outer cordon looking outward. The former directs its attention to the stronghold; the latter ensures that unauthorised persons and vehicles do not trespass upon the scene. This is accepted by the gardaí as reflecting good international practice, and is reflected in the training received by

garda officers of different ranks. Chief Superintendent Ludlow also stated that the purpose of the outer cordon is to keep the area between the two cordons sterile. The concept of a sterile area is explained in training to the student/probationer gardaí in the context of the requirements of a response to a major emergency.

Flexibility within cordons

With regard to the concept of moving containment as referred to by various experts at the Tribunal, Chief Superintendent Ludlow stated in evidence that he was unaware of the term “moving containment”. Flexibility within cordons arises from the concept that cordon plans should be sufficiently flexible to provide for changing circumstances. This was echoed in the evidence of Superintendent Hogan who stated that the concept of moving containment is not taught in the Garda Síochána. What is taught is movement/cover within the training on the concept of cordons. The concept in general is based on issues of movement, cover and flexibility as to where cordons are placed. He confirmed that local detectives are aware of the concept of having to move during the placement of a cordon, and they receive training in connection with this. Members of an inner cordon, he stated, should not allow breakout from that cordon, because it lessens police control. Flexibility in the cordon system prohibits such an occurrence.

Back-up cordons and sterile areas

Superintendent Hogan was also questioned on the concept of a back-up cordon, as dealt with in training. This, he said, was addressed in the context of allocation of available resources and was dealt with in the practical aspect of the Superintendents Development Course. He observed that the training in the practical aspect of the Detectives Training Course is that such officers are taught and know that “*they are resources*” and will be allocated to such duties as the scene commander sees fit. He explained in evidence that while the sterile area required the exclusion of certain people, it did not prevent the reallocation or movement of personnel between the inner cordon and the outer cordon. That is a police operational area. It was important, he said, that officers understood the concept of the outer cordon, providing an area where policing can operate. In firearms incident training emphasis is placed on danger within the sterile area. Gardaí are aware, through training, of the need to keep cordons intact; and of the necessity to maintain the credibility of the cordon. However, he stated that the flexibility required to manage a scene must take cognisance of the fact that you may need to move resources in or out – or “*whatever you decide on*”.

2. Training – siege management

Senior officers – Operational Commanders Course

Chief Superintendent Ludlow provided evidence of the training received on the Operational Commanders Course, which is part of the Superintendents Development Course. It includes information and training on such issues as cordons and armed operations which are carried out on a theoretical and practical basis. In relation to the formulation of plans, preparation for contingencies, the keeping of logs, and the

gathering of information, contributions to the courses are made by officers who have expertise in specific operational areas or who have had training expertise in those areas. Training in relation to the interaction between the local commander and the ERU was done by way of table-top exercises. Log keeping was addressed in training connected with armed operations. The advice on the recording of logistical information such as duty times, entry and exit times from the cordons etc., he noted, was delivered in the lectures on "Siege Theory" and in the "Siege Practical" lecture. In his experience, the importance of intelligence and information gathering is explored in practical exercises. Teaching in relation to the location of the command and negotiation posts, and the safety of officers was also addressed in the context of the practical scenarios. Assessment of risk in connection with officer safety was taught in a number of different modules on the Superintendents Development Course.

The Chief Superintendents Development Course contains a lecture on "Principles of on-Scene Command, Including Hostage Negotiation and Management Development Programme". This lecture is given by a Detective Inspector from the ERU. As is appropriate to the role of Chief Superintendents, the training and discussion here is at a more strategic level.

In evidence Superintendent Hogan outlined the input of the ERU to the training of senior officers on scene management techniques. As a detective garda and a detective sergeant within the ERU, he was involved "*on the ground*" during practical exercises forming part of the Superintendents Development Course, though not in delivering lectures. As a detective inspector in charge of the ERU, he delivered lectures on the Superintendents Development Course from 1996 onwards. His involvement was in the theoretical aspects of siege management; what the ERU could bring to a siege; and in the broader assistance the ERU could be to district officers in their general policing role. ERU members took part in the practical exercises forming part of the course. These lectures, he said, provided an opportunity for interaction between the management of the ERU and district officers, and for informing the latter as to the specialist function which the ERU could bring to incidents. Such lectures also covered the key principles of "evacuate, isolate, contain and negotiate". In connection with cordons advice was given by the ERU participants on the necessity of establishing a sterile area between the inner and outer cordons; the purpose of this area being to exclude unnecessary people from the scene for safety reasons. The establishment of this area provides a working environment for the police to perform whatever tactic is required.

It was impressed upon the new superintendents that the cordon system is a key element to any major incident.

Joint training

It is not common practice for non-ERU detectives to train with ERU personnel in relation to tactical manoeuvres such as movement and cover. However, joint training opportunities may arise during tactical training courses for local detectives, and do arise in the practical siege scenario on the Superintendents Development Course.

Superintendent Hogan stated that local detectives are aware that they may form part of an inner cordon with the ERU. Thus, they have an academic knowledge from their training together with practical applications of this knowledge in the course of their training, of such a requirement.

Role, training and involvement of the ERU

Role at scene

Superintendent Hogan outlined the role of the ERU at a siege or barricaded incident. Its first role is primary containment; an additional role is to facilitate the negotiator in whatever tactic he or she adopts. The scene, however, remains under the control of the scene commander and ERU personnel operate under his or her control. Decision making rests ultimately with the scene commander. The scene commander receives advice which he or she is free to accept or reject from the tactical unit leader. Superintendent Hogan said that the primary response of the Garda Síochána is to facilitate a peaceful resolution through negotiation. The gathering of on-scene intelligence, safe delivery of medicines and food and the implementation of release and surrender procedures are part of the overall response. He also stated:

“As the ERU provides a specialist armed response to a wide variety of incidents, the firearms training element is emphasised. From this base other skills are added, such as first-aid, rope access, special entry techniques, driving and self-defence methods. Physical fitness also forms a major part of training as the role is demanding both physically and mentally. These various elements are combined in the development of tactical and operational methodology”.

ERU training

Dealing with ERU training, Superintendent Hogan observed:

“Approximately 25% of ERU time is scheduled for training, this compares equally with similar full-time police tactical units. In addition, each of the four units must attend bi-annual training weeks at the Garda College where fitness tests and firearms qualifications are undertaken, along with general training. The specialist school Garda College supervises this training”.

He further stated in evidence that:

“Prior to allocation to ERU each applicant must complete a two week pre-selection process. Those successful undergo a six week training module consisting of; qualification in pistol and Uzi, driver training and basic tactical skills. The latter module introduces trainees to the basics of siege management and the roles played by the various elements that compose the garda response to such incidents. Applicants are then allocated to an operational unit where they must complete a two year probationary period, prior to appointment as a detective in the ERU. It takes approximately eighteen months for new members of the ERU to qualify in all basic skills courses prior to specialisation. Following this, members may train to instructor level in skills such as firearms, rope access and first aid, with selected members specialising in other skills and equipment”.

The training which members of the ERU receive is dealt with in more detail in Chapter 10.

The relationship between the ERU and the scene commander at the scene

Superintendent Hogan explained that ERU Headquarters does not interfere with what is going on at the scene of an incident, but is available to give advice to the scene commander. Headquarters' involvement is confined to being familiar with what is happening at the scene, so as *"to keep an eye"* on the logistics and the use of resources.

3. The evidence of Detective Superintendent Maher

Superintendent Timothy Maher gave evidence in private session. It is therefore not intended to deal with his evidence in detail. Superintendent Maher lectured on relevant Garda training courses.

Much of what was stated by Chief Superintendent Ludlow and Superintendent Hogan is echoed in the evidence of Superintendent Maher. He observed that it was acknowledged within the Garda Síochána that superintendents, as district officers taking over the management of a siege, would not have had substantial expertise or exposure to the management of such incidents. Therefore the primary objective of the course was to engender an understanding of the concept of siege management. In particular superintendents were made aware of the expertise that was available to them (negotiators, ERU, technical personnel etc.) and given an understanding of the format or structure of siege management. Superintendent Maher lectured on the course together with members of the ERU. The following is a brief synopsis of his evidence in relation to the training of scene commanders.

Command structure

Training emphasises that the scene commander retains overall responsibility for the incident and it deals with the skills necessary in bringing together a team of different experts or specialists and managing them in a coordinated way. He must maintain an integrated command structure so that all actions contribute to the overall objective.

Preparation – establishment of a forward control base

The superintendent of the relevant district (or someone delegated to act in his absence) should go to the scene of the incident and establish a forward control base. Forward control is located between the inner and outer cordons.

The scene commander should locate himself or herself at the forward control base from where all instructions will be issued. If the siege occurs in an isolated area the forward control may be situated in an official vehicle which has radio communication with the base station or headquarters; a steady stream of precise and accurate information should be relayed from forward control to the base station.

Assessment of required resources

Initially, the primary role of the scene commander is the development of an operational strategy for the resolution of the incident. This will involve contingency planning, the rapid evaluation of the situation, making decisions on the capability of the resources currently available to him or her and deciding whether extra expertise or resources are required. Appropriate officers should be selected to take charge of different facets of the operation (such as cordons, negotiations, firearms, etc.) together with dedicated liaison officers between these facets and the scene commander. The delegation of intelligence gathering is another important function and such intelligence should be available at forward control.

Contingency planning

This is described as asking “*what if*” and making arrangements accordingly. The “*what ifs*” common to most sieges (and suggested required measures) include:

- The possibility of injury – ambulance and medical assistance on standby.
- The possibility of a fire in the stronghold – fire brigade on standby.
- Relatives will arrive at the scene – appointment of a liaison officer.
- Arrests may be necessary – appointment of an arresting officer.
- What will happen when darkness falls – arrange for lighting at the scene.
- Arrange for ground and area photographs of the scene – may assist in planning to resolve incident by force.
- Requests may be made for food etc. – make delivery plans.
- Intermediaries may be requested – plan accordingly.
- A breakout plan should be considered which may involve considering the multiple ways in which a subject may leave the stronghold. The placement of the inner cordon is the first step in contingency planning for a breakout by the subject. A plan must be prepared in relation to surrender as soon as possible. Liaison with the firearms team in relation to the plan is critical, as well as liaison with the negotiator. The agreement of the subject should be secured in relation to the precise method of surrender.

Superintendent Maher observed that when the ERU are involved, a member of the ERU is in charge of the inner cordon which must operate at all times in a disciplined manner. They are told not to move around unduly in order to avoid “*spooking*” or intimidating the subject. There should be the least amount of visibility, from the point of view of the subject, in order that the subject is not crowded either deliberately or inadvertently. If this is happening there is a risk that it may interfere with negotiations and the negotiator may request the members to move back out of sight of the subject. The members of the inner cordon may play a role in intelligence gathering. The members of the inner cordon should liaise, through an officer, with the scene

commander, the head of the inner cordon and the negotiator (especially in relation to any movement in the stronghold). This liaison officer is part of the firearms team.

Containment

Superintendent Maher was asked to describe what would happen in the event that the ERU were brought in to participate in a siege type operation. He outlined that the ERU would ordinarily take responsibility for the inner cordon subject to the direction of the scene commander who retains ultimate control of the entire operation. It was acknowledged that in a situation of that type the scene commander normally utilises the resources of local armed officers prior to the arrival of the ERU. When the ERU arrives local armed officers may be withdrawn to fulfil some other function such as intelligence gathering. He observed that it was preferable that the ERU, who are trained as one unit, operate as a team alone; but this is subject to a decision about the redeployment of the local armed gardaí which would be made by the scene commander in conjunction with the leader of the ERU. In response to a question by counsel for the Commissioner, Superintendent Maher stated that there was nothing in training forbidding the scene commander from retaining the local armed officers in whatever capacity he or she deems appropriate and that there is nothing wrong or inconsistent with their training if a scene commander decides to deploy them as a back-up to the inner cordon.

4. Observations on training

Mr. Bailey stated that the material provided in evidence by Superintendent Maher demonstrates that the gardaí were as knowledgeable of the current thinking of siege command prior to April, 2000 as police in the UK and elsewhere. In his view it would stand the test of international benchmarking and should be considered a good practice model. The material that was provided to the Tribunal was appropriate for the command role at a firearms siege and likely to produce commanders who could be considered properly trained. However, Mr. Bailey found it difficult to reconcile the course material with some aspects of the incident at Abbeylara. He highlighted some issues of best practice that were explained in evidence by Superintendent Maher but that appeared, in Mr. Bailey's view, to have been dealt with differently at Abbeylara. Such issues are referred to in this chapter.

5. Superintendent Shelly's training

Operational Commanders Course

Superintendent Shelly underwent a three day Operational Commanders Course as part of his Superintendents Development Course at the Garda College between 7th April, 1997 and 10th October, 1997. He confirmed that the course aims dealt with a number of objectives, including:

“Operational Commanders Tactical Course Aims:

- 1. To appreciate the role/function of the operational commander.*
- 2. To have an appreciation of the effects of firearms in different situations.*

3. To understand the concept of operational planning.
4. Be able to plan and put into effect a tactical operation of any scale or size.

Objectives:

1. Be capable of assimilating information with a view towards assessing the requirements for any operation and devise an effective tactic.
2. Be capable of taking overall charge of any serious incident, such as a siege, hostage taking, a search.
3. Be competent to plan, organise, control and lead a pre-planned garda action involving firearms.
4. Be able to identify and effectively deploy the various skills and resources available at a serious incident’.

This course also included a lecture described as “the siege – practical” where issues relating to cordons, negotiations, the media, equipment, assault, debrief and discussion were considered. It also covered topics such as firearms incidents and operational planning.

Superintendent Shelly also underwent the Tactical Supervisors Course between the 12th January, 1991 and the 21st January, 1991. He told the Tribunal that he underwent basic firearms training “a good many years ago”.

Cordons

In his evidence to the Tribunal, Superintendent Shelly confirmed that he understood from his training that the inner cordon looked inwards, its function being to contain. Because it is nearer the subject and the stronghold, it also has an intelligence gathering function. The outer cordon, he stated, was to prevent unauthorised access to the scene. He also accepted that the area in between is a sterile area; or as he described it, a “buffer zone”. His understanding is that this:

“is to allow the people on the inner cordon to perform their function. As I have already referred to the command post, in whatever shape or form it would take, would be between both cordons as well and, as scene commander, I would obviously be operating in that area”.

Back-up cordons

Superintendent Shelly was queried on whether the concept of a back-up to a cordon featured in his training. He stated:

“I believe it did. I believe that it is the responsibility and it is left to the resources of the person in charge as scene commander to deploy resources at a scene, as has been described in cordons. There is certainly nothing in my training that I can recall, that would prevent me from doing what I did.”

6. Detective Sergeant Russell's training

General

Sergeant Russell received training in line with that received by other members of the ERU as outlined in Chapter 10. He was trained in the use of the Uzi sub-machine gun, the .38 Smith & Wesson revolver, the Sig Sauer 9 mm. pistol, the Heckler and Koch 33 rifle and the pump action shotgun. He attended numerous tactical training courses including a rural operations course at the Garda College, Templemore. Further, in line with other members of the ERU, he spent one week in every four undergoing tactical, physical and firearms disciplines training with his unit.

Cordons

Sergeant Russell also confirmed, in evidence, that the purpose of the inner cordon was to contain the subject within that cordon and to make sure there was no breach through it. The outer cordon was to make sure that no one entered the actual area from outside. It was also *"a back-up to the inner cordon"*. The outer cordon was also to ensure that no unauthorized personnel such as civilians, family members etc., would gain access to the area *"everything must be controlled through the scene commander and no one would enter it without knowledge of the control, which would be the scene commander"*. It was, he said, taken for granted that uniformed personnel would have occasion to come into the area. He had no difficulty with the fact that uniformed members of the garda might be located between the inner and outer cordon: *"it is just a fact of life in dealing with situations that there will be, as we are primarily a uniformed force An Garda Síochána, and that there would always be a uniform presence on any operation, particularly of a public nature like that"*.

7. Training of other senior officers

Superintendent Byrne

Superintendent Byrne underwent a three day Operational Commanders Course as part of his Superintendents Development Course in the Garda College during the period 22nd November, 1999 to 28th January, 2000. He also underwent the Tactical Supervisors Firearms Course, as a sergeant, in 1990/91. This course was similar in its contents and form to that which was undergone by Superintendent Shelly.

Assistant Commissioner Hickey

Assistant Commissioner Hickey underwent a three day Operational Commanders Course as part of the Superintendents Development Course between 21st January, 1991 and 7th June, 1991. When appointed to the rank of Assistant Commissioner, in 1993, he underwent a Chief Superintendents Development Course.

Chief Superintendent Tansey

Chief Superintendent Tansey retired from the Garda Síochána in February, 2003. In 1990, he attended the Superintendents Development Course including a 1 day Operational Commanders Course for senior officers which took place on 9th March,

1990. He also underwent the Chief Superintendents Development Course towards the end of 1996 beginning of 1997.

8. Technical support and equipment

General

The Garda Síochána has a technical support unit. Technical equipment available includes field phones where the incident is one that requires a trained negotiator. Other relevant equipment may include various visual aids such as cameras, televisions, closed-circuit television and sound devices. Cameras or closed-circuit television are important for securing sight of the stronghold. All such devices are relevant to the gathering of intelligence. Technical support unit personnel participate in training exercises. They are also involved in setting up the equipment on-site and providing ongoing technical support and upgrading of equipment as necessary.

Personnel

Inspector Michael Flynn, an inspector attached to the technical support unit of the Garda Síochána, stated in evidence that the unit, as at present constituted, was developed as a result of an amalgamation of two units in January, 2000. It is part of the Telecommunications Section at Garda Headquarters under the control of a superintendent based there. The services of the unit are available to all members of the Garda Síochána. It provides support for activities ranging from video enhancement, video processing and recording to more specialised operations.

Requests for technical support unit assistance are normally made by a scene commander to the superintendent in charge of the technical support unit.

Involvement in training

As a member of the technical support unit, Inspector Flynn has an input in relation to scene commanders training. He has contributed to both the Negotiators Training Course and the Scene Commanders Course. Such training is both theoretical and practical. He has provided presentations on the availability and capability of equipment.

Request for equipment to be brought to Abbeylara

Inspector Flynn confirmed that from January, 2000, when the unit was formed, until June, 2000, he was sergeant in charge in the technical support unit at Garda Headquarters. Specialist telephone and CCTV camera equipment was available. He did not receive any request for equipment to be taken to Abbeylara; no such request was made.

SECTION A.3 – Containment and Flexible Cordons at Abbeylara

1. Containment

Expert opinion

According to Mr. Bailey, containment at Abbeylara was successful for most of the incident until John Carthy emerged from his home. Initial containment was achieved by Detective Garda Campbell and Garda Gibbons. When Superintendent Shelly arrived, he deployed armed gardaí in a more comprehensive containment. ERU members were thereafter placed on containment duties at the inner cordon. It will be recalled that six members of the ERU were deployed to Abbeylara, with two of those being the negotiator and his assistant. Therefore, four, including the tactical commander, were initially deployed to tactical duties. Three additional tactical officers arrived at approximately 1:00 p.m. on 20th April, 2000.

Flexible Cordons – moving containment at Abbeylara – the evidence of senior officers

The evidence of senior officers and others is that an oral contingency plan was devised to the effect that in the event of John Carthy exiting the house in an uncontrolled manner, but not posing an immediate threat to life, he should be allowed to move within the inner cordon. Superintendent Shelly stated that he and Sergeant Russell discussed the principle that the inner cordon could be maintained in a flexible manner and move with John Carthy if he came out of the house; the inner cordon of ERU members would move with him in whatever direction he went. According to his evidence, some possibilities were considered for the role of the local armed members i.e., that if a member of the ERU was shot or injured, the local armed people, who were “back-up”, might become involved. They might also become involved if they “saw that the ERU people needed assistance”. What they were to do in these circumstances does not appear to have been considered.

When asked whether instructions were given to the local armed members as to what they were to do in the event of the ERU moving with John Carthy, Superintendent Shelly stated that it was conveyed to the local armed officers that they were now a back-up to the ERU. He stated that “they will understand that”:

“You expect that in the event of the cordon moving” that “all of them would take some sort of cover and in effect allow matters progress. They knew that they were back-up and for their own safety they would take cover”.

They did not receive any more detailed instructions and at least one of them (Garda Campbell) received no instructions at all.

Questioned on whether he gave instructions to local armed officers to move or to remain flexible, Superintendent Shelly stated that as soon as the ERU had taken over the inner cordon, he instructed local officers that they were back-up; and in doing that “it would have been conveyed to them that obviously they would have to move back from their positions, if that was possible”. This instruction was given to

Detective Sergeant Foley by Superintendent Shelly. It was his duty to inform other members that their role had changed somewhat in that they were now back-up and that if a situation arose where the inner cordon of the ERU people had to move in a flexible manner, that they would “*obviously react to that by taking cover and allowing it to develop along those lines*”. Superintendent Shelly stated that he discussed the question of flexibility and that the non-ERU members might have to operate in a flexible manner. He was questioned as follows:

“Q. I can understand that you may have told your own people that the ERU might move in a flexible manner, but what I am concerned about is, what instructions were they given as to actions they should take in those circumstances, where the ERU were moving in a flexible manner with John Carthy?”

A. As I said, that they would move back, allow it to progress and obviously take cover and ensure that they were safe themselves, but they would take that action anyway, but I had told Detective Sergeant Foley that once, if it was to move and that scenario was to happen, that that is what would happen. That is as far as it went”.

Containment – evidence of Detective Sergeant Russell

Sergeant Russell was questioned as to what containment meant in the context of what occurred at Abbeylara. Containment, he said, was an attempt to ensure that John Carthy did not leave the cordon area and pose a threat to other persons. Containment existed to enable negotiations to be conducted in as safe a manner as possible and to provide as secure an environment as possible considering the danger the firearm posed. He said that it would have been desirable if John Carthy had stayed in the house. The ERU could not have barricaded him into the house as that would be totally contradictory to what the negotiator was trying to achieve. They did not wish to contribute any further to any “*siege mentality*” that John Carthy may have possessed.

Exit plan – possibility and foreseeability of exit

The evidence of Sergeant Russell and Superintendent Shelly, suggests that a plan making provision for the exit of John Carthy was discussed. Sergeant Russell stated that he had an in-depth discussion with Superintendent Shelly as to what the response should be if the subject left the house and attempted to escape. A number of issues had to be considered in relation to such a plan. One was John Carthy’s possession of the firearm. The second was his ability to use that firearm (in that regard he understood that this was his own shotgun and that he was satisfied that he had expertise in its use). A further factor was the ERU’s capability as a trained firearms team.

When he learned that they were dealing with a person with a mental illness he considered it likely that John Carthy might act in an irrational manner. It was therefore a consideration that he might come out of the house. He had been informed by Superintendent Shelly, that the subject’s mother, in reply to a query as to whether he would be capable of harm, said that she didn’t know what her son would do.

He agreed with the Chairman that John Carthy had been behaving irrationally for some time.

Controlled or uncontrolled exit – the evidence

Detective Sergeant Russell explained in evidence that the two possibilities of either a controlled or uncontrolled exit were considered. An exit is controlled if the subject is compliant and responding to the instructions of the gardaí. Otherwise it is described as uncontrolled.

He stated that if John Carthy left the house he could still be contained:

“Absolutely, the cordon is designed to contain, that is the whole idea of putting a cordon in in the first place”.

Confrontation on exit

Detective Sergeant Russell stated that it was discussed that should John Carthy come out of the house with the shotgun in his hand, the ERU’s function was to confront, overpower and apprehend him, if that was possible, considering the safety of the gardaí and the safety of the subject. He stated in evidence that he explained to his men that there were a number of possible exits. The plan for John Carthy’s exit was *“generic in that respect”*. He indicated that he could not have a plan so rigid that he would suggest or even nominate any particular individual to approach or disarm him. Any member of the unit who found himself in that position:

“would know from their training that the first individual that came in contact would make an assessment and would ask for support or cover and the cover would train the weapon on an individual until the first member had a chance to overpower”.

His primary function was to bring the matter to a peaceful conclusion and to avoid confrontation if possible. They did not want to engage in anything which was reckless.

Sergeant Russell also explained that built into the exit plan was a degree of flexibility regarding moving with John Carthy should he leave the house. He stated that he discussed the concept of flexibility of the cordon with his team and with Superintendent Shelly. Only members of the ERU would be involved in such a movement. He did not discuss this with any non-ERU gardaí but he understood that Superintendent Shelly, who agreed the plan with him, was to convey it to the local members. When asked whether he would have had any concerns if it transpired that one or more members of the local gardaí at the location of the telegraph or ESB pole were not familiar with the possibility that he would have to be flexible, he stated:

“well, they were all familiar with the regulations, the same regulations covered the local members as members of the ERU, there is no more latitude built into the regulations to cover members of the ERU, you still have to operate within the same regulations. They are familiar with it themselves, any person who

would be issued with a firearm would be familiar with that or they wouldn't have one".

His evidence was that this was part of the training of the individual officer. In such a plan, there is no line drawn in the sand. It is an extremely difficult and dangerous procedure. Echoing the expressed opinions of policing experts, he stated that he understood that one purpose of moving containment was to afford the subject more time to consider his position. The greater the distance over which it could operate, the greater the time that the subject may have to consider his position. He stated, however, one could not take the view that this could go on indefinitely.

There was no discussion between Superintendent Shelly and Sergeant Russell, or indeed anyone at the scene, as to how far in geographical or territorial terms moving containment would be allowed to happen, if it arose:

"I did not indicate any distance or draw any line to suggest that beyond that point we can't achieve a flexible cordon."

How far it would be allowed to continue would depend on a number of factors, primarily safety. If at any stage the moving containment plan compromised the safety of the gardaí or of members of the public, then a different situation would arise.

2. Expert evidence on the propriety and effectiveness of the adoption of the moving containment plan at Abbeylara

An aspiration? – Mr. Bailey's opinion

Mr. Bailey expressed the opinion that the ERU and Superintendent Shelly were right to have planned for the eventuality of moving with John Carthy. It was a logical option for a rural area. Therefore, he did not criticise the "*principle*" of moving containment as a tactic. It was appropriate, he said, to allow John Carthy move onto the road; and for officers to continue to attempt to call on him to put the gun down and not to point it at anybody. To the extent that officers were still in contact with him whilst he was on the roadway, he remained contained. They were still exercising some degree of control over him. Although an appropriate tactic, Mr. Bailey observed that in his opinion, moving containment at Abbeylara was not developed beyond an "*aspiration*". He observed that a written plan should have been prepared to ensure that such persons knew precisely what to do. In his opinion, there was a lack of detailed planning for this contingency. (Thus, by way of example, Mr. Bailey quoted from the evidence of Detective Garda McCabe as effectively identifying a particular tactic that would be used, but which did not detail how it would be put into effect.) If armed officers are expected to act in concert as a team in a high-risk tactic, everyone expected to fulfil a role should know exactly what he has to do. The higher the risks involved in a tactic, the greater the level of planning and practice required. At no stage was the plan committed to writing and at no stage was an analysis done to be able to anticipate how officers would move. For him, it should have been proceeded with in a more formalised way; and "*hopefully have had a slightly different deployment of officers at or around the inner cordon*". Further a written plan would

have established beyond doubt what had been considered and discussed by the officers. Having listened to his evidence and seen his training records, he believed that Detective Sergeant Russell was a competent tactical officer and could achieve any task set by the commander. The evidence of the instructions given to ERU officers demonstrated Sergeant Russell was aware of his duty as a firearms commander, he said.

Mr. Burdis's opinion

Mr. Burdis commented that the "what if" of John Carthy coming out armed or unarmed was considered by all of the senior officers and Sergeant Russell. For him, however, the plan was generic and not specific enough. A plan would have "looked at where officers would go ahead of where John Carthy ultimately went". As far as he was concerned, no one knew "who was going to take what position" in the plan discussed. It was suggested to Mr. Burdis that the ERU officers had to go into operation straight away when they arrived, and this thereby created a predicament for Sergeant Russell. He was questioned as follows:

"how could it be possible for one to do what, I think you describe it as the "what if" dialogue and go through not a generic plan, but a plan that was specific to all of the possible contingencies that could emerge were John to emerge armed . . . isn't that the predicament Mr. Russell found himself in?"

He replied as follows:

"Absolutely, and the first thing that should have come to his mind is that, we don't have the space, we don't have the opportunity to plan correctly here, so what do we do about changing that situation? How can we achieve more time and more space to undertake that type of planning? That does not appear to have happened. I would suggest that they didn't actually need to go into operation the moment they arrived at the scene; that the premises were well enough contained, There was no immediate threat of any emergency response that was required and there were opportunities there to start the process of thinking through, what about the various plans? There was no reason why those officers that came at lunchtime on the second day, couldn't have been part of the planning process for an emergency exit. All I am saying is that they obviously, if they went through the process, that you have just gone through, they would have realised that there were various issues that they were not able to address, and they were not able to address them because they were immediately put into action. That should have rung some bells, particularly with Mr. Shelly and with Sergeant Russell".

It was suggested to Mr. Burdis, that the planning was as specific as it could be and that one could not predict exactly what John Carthy was going to do. Mr. Burdis thought that, for example, three or four officers came from the house and arrived at the wall, following John Carthy's exit. Had the incident developed beyond that, and had John Carthy moved further up the road or in a different direction "how would each of those four officers arriving at almost the same point at the same time, how would they have known who was going to move where? What would have been the

plan (a) to retain a containment of a particular part of the wall and (b) to be able to move and develop the way that John Carthy was actually moving, if he moved in a particular direction? No one seems to know and no one seems to have been told who was moving where and who was expected to move where". Mr. Burdis was of the opinion that what occurred were discussions and *"not a plan"*. He felt that they were merely *"highlighting"* the sort of problem that might arise. This was only one part of the process of planning.

A short-term option

Mr. Bailey contended that due to the lack of detailed planning, moving containment could only be a *"short-term option"*. Personnel were allowed into what should have been the sterile area between the inner and outer cordons. Inner cordon members were not briefed on specific actions and their deployment made a confrontation near the gate likely. These factors reduced the distance John Carthy could be allowed to travel to just a few feet, before he was considered to present an immediate threat to life. The officers on the road at the command post were too numerous and had a difficult route to *"move out of the way"*. Once John Carthy exited the house and turned in their direction he presented a danger to them.

A written plan would have helped to identify the potential conflict between the location of some of the local officers and the aspiration of the moving containment plan.

Mr. Lanceley commented that the plan regarding the uncontrolled exit seemed to him to be *"vague and lacking in specificity"*, but that if it did it was because *"there was not much that they could do in the event of an uncontrolled exit"*. The plan seemed more like a hope.

The command post – diminished value of moving containment/flexible cordons plan – location of command post

Mr. Bailey reiterated that the value of moving containment is to provide additional time to persuade the individual to surrender peacefully. For moving containment to be a viable proposition, there was a requirement to have a situation whereby the subject was not hemmed in and that he could proceed in one direction for a substantial space, without encountering anyone. The containing officers are behind him and are containing in that way. In Mr. Bailey's opinion, greater latitude could have been given to John Carthy had local officers and the command vehicle been located further away from the house. This is considered in more detail below.

Establishment of the command post – prior to arrival of the ERU

From the time of his arrival until the arrival of the ERU, Superintendent Shelly operated from the ESB pole at the boundary of the Carthy and Burke properties. He described this as a *"semi-official"* command post.

Establishment of the command post – subsequent to the arrival of the ERU

Superintendent Shelly gave evidence of a discussion with Detective Sergeant Russell and Detective Sergeant Jackson following the arrival of the ERU. Sergeant Russell had looked at the area and satisfied himself about its topography.

There was cover at that location in the form of a wall, a pole and a mound of earth. The ERU jeep became the command post. This was located further back from the ESB pole, on the roadway, near Burke's house. It was not possible to see the Carthy house from the jeep but *"those of us that were operating in that area were able to operate without any problem or difficulty, by leaving the jeep, and walking a short distance."* Superintendent Shelly continued:

"it was very important for me that I could see everything that was happening from that location. I was satisfied and I needed to be in a position where I could see what was happening; see the people; the ongoing negotiations. In other words, to have a visual contact and a visual overview of the whole scene and I had that from that position".

Further, communication with ERU personnel was possible from the jeep which had a radio capable of communication with ERU personnel – but not with local gardaí. Consideration was not given to establishing the command post in any other location as all were agreed that it was in the best location.

Appropriateness of jeep as command post

In his report to the Tribunal, Mr. Bailey advised that there were different views in the United Kingdom about the most appropriate command post for a firearms incident. There are specially designed and equipped command centres, in central police stations; they are used for all critical incidents. Certain city police forces have the benefit of a suite of offices in a central police station which are used for all incidents that require deployment of a silver commander (i.e. a scene commander in Ireland). In other circumstances use is made of mobile control vehicles located nearer to the scene. In rural areas, police have specific vehicles designed to fulfil that function. Such vehicles may vary in sophistication and equipment; the minimum provided being a place where notes can be taken, radios controlled, telephone calls made and logs maintained. The essential point is that effective command is made easier if the commander has a warm, dry, safe location with a seat, desk, means of communication, space for support staff and equipment to record and document events. According to Mr. Bailey, commanders must be able to communicate with all officers at the scene and with others, outside the containment area who have a role in events. Commanders should be accessible to those who need to consult or be consulted by them, particularly in a firearms incident when rapid decisions might be required. In the absence of a specially designed command vehicle, he considered that it was appropriate to use the ERU jeep at Abbeylara as a command post. This is good practice. In his experience, commanders in the United Kingdom frequently use such vehicles as an initial command post. The jeep was dry and provided radio contact with ERU personnel.

The position of the jeep/command vehicle

Mr. Bailey's main concern, however, was the positioning of this vehicle *vis à vis* the stronghold. His experience in the United Kingdom was that the overall commander would not locate the command post in a firearms incident where he can see the stronghold. It may be an appropriate position for the officer in charge of the inner cordon. He expressed the opinion that the command post should not be within sight of the stronghold and close to the scene. To do so potentially places it in line of fire. It has happened that police officers standing close to a command vehicle have been shot at, when the subject discharged his weapon in the direction of the sound of a radio message emanating from such vehicle. He accepted that the jeep at Abbeylara was out of the line of fire from the house to the extent that, short of leaving the house, to fire on the jeep, John Carthy would have to lean across the table in front of the window in the kitchen; and aim diagonally out of the window. In the United Kingdom, officers receive instructions through training courses, such as negotiators courses, siege commanders courses and firearms commanders courses. The advice given to persons who wish to use a command vehicle, such as a jeep, is that it should be located just inside the outer cordon. This prevents unwanted visitors, whether police or members of the public. It is usually sufficiently far away from the stronghold to be in a safe place. It is usually out of line of sight; and for that reason CCTV is often added to the vehicle. Many such vehicles have CCTV monitors. In protracted incidents, such as at Abbeylara, a commander in the United Kingdom would not expect to have a constant view of the house, although he would have CCTV views available to him. He would also expect to have radio contact with all members deployed at the incident and mobile phone contact with key personnel at the scene and elsewhere; all armed officers being on one channel and all other officers on a different channel. Both channels are linked into the command vehicle; and controlled from there by a dedicated operator who logs messages and events. Thus, for example, information coming from the inner cordon (which is part of the intelligence gathering operation) will be logged in order to keep the commander aware of events at the scene. At such place, meetings will be required at predetermined times, involving key personnel. Decisions are taken and recorded. In his view the ESB pole was initially a rendezvous point. While agreeing that it was an appropriate point for armed members in charge of the inner cordon to be placed, it was too close to the scene to be used as an overall command post. In the absence of a dedicated vehicle, the commander in the United Kingdom would position the jeep over the brow of the hill or perhaps in the vicinity of the church. In that location it would have been out of the line of fire and have been safe for unarmed personnel.

While Mr. Burdis accepted that Sergeant Russell might have used the jeep as a forward command post, the difference between that and the use of the vehicle as a overall command post was that where there were a number of unarmed officers at the command post, including Superintendent Shelly. If one is planning to allow an armed and uncontrolled exit by the subject to move in the direction of a command post and a location where there are people who are not properly protected, then that results in an unsafe position: "*you can't do that, you shouldn't do that*". In his view, it was not the vehicle which was the problem; it was the people that were in the area of the vehicle.

SECTION A.4 – The Role of Local Officers and the Potential for a “Blue on Blue” Shooting

1. “Blue on blue” shooting

A “blue on blue” shooting occurs when one group of police officers find themselves in a crossfire situation with their colleagues, a weapon is discharged and a colleague is struck. A matter which has been investigated by the Tribunal is whether such a situation, or the potential for such a situation, occurred at Abbeylara. This involves an investigation and analysis of the role of local armed officers following the arrival of the ERU; instructions given to them; their understanding of those instructions and functions; and their locations and the positioning of the command post at the time of the emergence of John Carthy onto the roadway. The risks associated with potential for crossfire form part of the training of armed garda officers and scene commanders. In his evidence to the Tribunal, Superintendent Shelly confirmed that he was aware that the potential for crossfire is always present in any operation involving the use of armed gardaí. The possibility of crossfire exists, regardless of the particular unit of armed gardaí that may be involved in any given operation. He stated that steps can be taken to reduce the risk of crossfire, including, the training of officers in the use and effects of their firearms. In a written reply to questions posed by the Tribunal, Superintendent Shelly stated that as the scene commander, he ensured that each group of armed gardaí present at the scene were aware of their respective positions throughout the operation. Notwithstanding any contingency that might arise, local armed gardaí were instructed to act as back-up and, if necessary, to take cover if John Carthy exited the house in an uncontrolled manner; and to allow the ERU to carry out their instructions. The distinct and separate function assigned to each group was intended to ensure, in so far as was possible, that any potential risk of crossfire was significantly reduced, he observed. On the deployment of the ERU as the inner cordon, Superintendent Shelly stated that a reassessment of the situation was carried out by him, which indicated a requirement as scene commander that local armed members should be deployed in strategic positions as a back-up cover for the inner cordon. Consequently, he stated, consideration was not given to removing the local armed members from the scene.

2. Deployment of local armed officers prior to arrival of the ERU

Prior to the arrival of the ERU, Superintendent Shelly had deployed armed officers at a number of locations around the Carthy dwelling. These local armed officers formed the inner cordon from the time of their arrival at the scene at approximately 7:15 p.m. and the arrival of the ERU a few hours later.

Mr. Bailey stated in evidence that he had no criticism of the strategic placement of local armed officers in terms of achieving the objective of providing containment. He considered that the inner cordon placed by Superintendent Shelly was well thought out, at appropriate locations, in pairs and provided effective containment. As far as he was concerned, everybody responded in an “*absolutely appropriate manner*”.

3. Numbers of officers on containment duty

Mr. Bailey observed that in the United Kingdom it is considered good practice to deploy armed officers in pairs, particularly at night and when working long hours. In certain forces in the United Kingdom, where only small numbers of tactical team members are available, they may be deployed with local first responders, to provide an appropriate number of officers for such an incident: *“A sufficient number is one that allows members to be stood down for a break from the constant concentration required of the inner cordon”*. Therefore, at Abbeylara, he suggested that eight persons should have been on inner cordon duties. This would have allowed officers to be paired, and to take rests. This, in fact, was consistent with the numbers that Superintendent Shelly was able to deploy when he placed local armed officers in position. In his experience, the usual number deployed ranged between eight and twelve. These persons could be part of a dedicated team brought together centrally, or local officers, who train and operate together and who are mustered for the incident. It could be a combination of both local and centrally deployed officers. In the latter situation, local officers receive additional training relating to team tactics. Where it is known that a combination of local and centrally based officers may be brought together to resolve incidents, forces ensure that they train together and that their equipment is compatible. They have the same radio system, the same firearms and the same protective equipment. He noted that there was a difference between Ireland and the United Kingdom in this regard. Ireland has one police force. There are 43 police forces in England and Wales. These are smaller units.

4. New role for local officers after arrival of ERU

Local armed officers at the scene became back-up to the inner cordon when the ERU took over that role. Superintendent Shelly, having discussed the matter with Sergeant Russell, informed his senior local armed officer, Sergeant Foley, at approximately 10:15 p.m. on 19th April, that the inner cordon was being taken over and manned by the ERU who had arrived at the scene, and from then, the local officers would act in a back-up role to that inner cordon. In evidence Sergeant Foley stated that following the arrival of the ERU he spoke with Superintendent Shelly who informed him that the ERU would take up positions closer to the Carthy household and that the local gardaí were *“then a back-up to the ERU”*. Sergeant Foley could not remember Superintendent Shelly’s exact words, but he recalled being informed that ERU members would take up closer positions at the front and rear of the Carthy house: *“we were then back-up to the ERU. In the event of John Carthy exiting the house, the ERU members would deal with him. We were told to move and allow the ERU room to deal with John Carthy”*. He was questioned on what he understood by the expression back-up and he stated *“back-up in the event of the ERU requiring assistance, we were there to assist them”*.

He was directed by Superintendent Shelly to convey that instruction to other local armed officers. He spoke to Garda Boland, Garda Kilroy, Garda Barrins and later Garda Nolan, Garda Dunne, Garda Faughnan, Garda Mulligan and Garda Quinn.

The two armed local officers at the rear of the Carthy house were withdrawn. ERU personnel took up position there. Other than the two armed members at the rear of the house, no one else changed their physical position. Sergeant Foley was aware that members of the ERU had gone to the rear of the house, though he was not entirely sure of their exact position. He could, however, observe the position of other members of the ERU at the front of the house.

5. Evidence of Detective Garda Campbell

During the course of his evidence, Garda Campbell stated that he had not heard anything, or received instructions, in relation to the necessity for moving cordons; he was not told that containment needed to be flexible. Superintendent Shelly agreed that it was clear that he was not told. He, Superintendent Shelly, understood that everybody had been told. He himself did not discuss the matter directly with Garda Campbell. He accepted that it was important that everyone at the scene should be aware of the position in relation to flexibility. He agreed that if he had been aware that Garda Campbell was unaware of the need to be flexible this would have caused him concern. But he stated:

“I would have thought that, by the very event happening, that flexibility would come into play anyway and I would – that nobody wouldn’t move, that once the subject moved and the ERU moved with him, that there would be movement all around and that people would move back and move into, what I would describe, as safer positions. I can’t see any situation where people would just remain static.”

6. Evidence of Detective Sergeant Russell – back-up

When questioned as to what he understood by the expression “back-up”, Sergeant Russell stated that it was:

“to cover any eventuality, but in particular if for some reason John Carthy had actually breached the cordon and for whatever reason we were not in a position to respond, that there would be some other line of defence in place to prevent him threatening any member of the public”.

7. The role of local officers to intercept John Carthy

In the context of their understanding of their back-up role, many of the local officers gave evidence that they understood that if John Carthy breached the inner cordon, they would attempt to intercept him. This appears contrary to Superintendent Shelly’s instructions that they were to stand back and the ERU would deal with the situation.

On his understanding of the use of cordons, and the cordon system in the United Kingdom, Mr. Bailey felt that this would be the role of a response team to a contingency and was the role of armed personnel. However, if it is feared that the inner cordon might be breached, the correct tactic is to reinforce that cordon with additional personnel. It is good practice to deploy to prevent a breach of a cordon rather than to respond when it has happened. In the context of the definition of

cordons, inner and outer, as previously discussed by Mr. Bailey, he noted a degree of confusion amongst both local armed officers and also members of the ERU, such as Sergeant Russell, as to the description of their (the local armed officers') role.

8. "Poorly defined role"?

Mr. Bailey indicated that from the arrival of the ERU and their takeover of the inner cordon there was a poorly defined role for the local armed gardaí which remained ill-defined for the remainder of the operation. The concept of a back-up role was not one with which he was familiar. He expressed the opinion that the role that they were required to fulfil was not clearly defined by them in their actions or their evidence. Thus, there were local armed officers on the inner cordon before the arrival of the ERU, who returned to the same positions after the arrival of that unit, and explained to the Tribunal that they were then on the outer cordon. In his experience cordons operate in "two", not "threes". When questioned as to whether there was anything wrong with having a second defensive line of armed officers, under whose control the subject may come, if either the inner cordon is breached or if moving containment commences; he stated:

" Yes, there is . . . if you have two groups of officers and put them into circles around the premises, each of them has guns and the man moves in between the two circles of armed officers, the potential for one group of armed officers to shoot the other has to be dramatically increased. That is why you have one group of officers and they are then under the same command, they are co-located and they would move to deal with any problems that occur. You may have a reserve and if the question you are asking me is, is it in order for a commander to keep a reserve of officers and to keep that reserve very near to the scene, then clearly the answer has to be, yes. The officers were the armed officers resting in the Carthy new house . . . in the latter part of the siege, that would be quite an appropriate place to have a small number of officers on constant relief, so that they are able to rest themselves and then relieve others. Those officers could be drawn down to deal with any incident, as indeed they did, in reality, when John Carthy exited the house. Tactically there are a number of potential difficulties in having more than one group of armed officers".

Mr. Burdis had experience of an armed back-up cordon operating in Yorkshire, and saw nothing wrong in principle with it – though it depended on the type of incident. However he deferred to Mr. Bailey's greater experience in this matter. His concern was the distance between the two cordons "*which I think was much too close to each other*".

9. Risk of crossfire increased

Mr. Bailey reiterated his concern that by placing two rings of officers with firearms around the premises, with the subject of their actions potentially being between them, there is a real risk of officers facing each other; and one or other of them may open fire and hit one of his colleagues. That is why there is the tactic, and one which Mr. Bailey described as a fairly standard tactic worldwide, to have one group of

officers looking in (inner cordon) and one group of officers looking out (outer cordon). If there are reserves, or if there are officers ready for contingency planning, they should be part of the same team and under the same command as those persons comprising the inner cordon. The danger exists when you have two separate groups of armed officers. According to his understanding of the situation, two groups of armed officers moving towards each other is a high-risk tactic. In order to reduce risk, all personnel should be under the same command, on the same radio channel and briefed in detail as to exactly how they would move to effect an interception. He was of the opinion that there was *“little evidence of a plan to ensure the safety of these groups of gardaí and to avoid a ‘blue on blue’ shooting”*. Evidence was given by all armed officers that they were aware of the risks associated with crossfire; that it was part of their training; and that they were conscious of this risk at Abbeylara. They denied that a crossfire situation occurred and pointed to the maps illustrating the positioning of officers on the roadway when John Carthy was shot, as demonstrating that such risk did not materialise. They did not accept that there were two groups of armed officers *“moving towards each other”*. Mr. Bailey accepted what was put by counsel for the Commissioner that training includes the tactical planning not to position oneself where you might be in a position of crossfire. To the extent that officers on the road in front of John Carthy did run away, he accepted that concerns about crossfire were taken into account. However, Mr. Bailey felt that if, in the early stages, a better definition of the role of the officers had been established, they would not have been there, or needed to have run away in the first place.

10. Deployment of armed officers – placing of local armed officers under same command as ERU members

Mr. Bailey stated in evidence that local armed personnel were more of a liability than an asset, positioned as they were near the command post. It would have been better practice, he noted, either to include some or all of these local members within the inner cordon (placing them under the command of Sergeant Russell) or to have removed them from the immediate area of the house. However, he agreed with counsel for the Commissioner that while the best trained officers should be deployed as the inner cordon, that there could be training issues or difficulties, in marrying up local officers with those best trained officers. He also agreed that the ERU personnel at Abbeylara had achieved the highest level of skill at arms in training. He accepted that there was nothing wrong, in principle, in retaining local personnel for a firearms role, but what he considered one should not do is to position them so that they are neither one thing nor the other. He thought that it may have been possible that the location of local armed personnel at and around Burke’s house and the command post occurred by default, because no instruction was given to prevent them gathering there after the arrival of the ERU. Mr. Bailey accepted that the deployment of local officers may have been dictated by the positioning of the command post, *“if their role was to be at the command post”*.

11. John Carthy's exit and the significance of the need to exclude personnel

Mr. Bailey observed that the significance of the need to exclude personnel from the area of the stronghold became "*all too obvious*" when John Carthy exited the house. He queried, whether, with hindsight, what actually happened could be attributed to the failure to exclude non-inner cordon personnel from the sterile area between the cordons? The exclusion of non-essential personnel is something that should have been understood by the commanders. It is good practice. The reason that armed officers had discharged their weapons at John Carthy was because they feared for the safety of some of the gardaí near the command post jeep. Nevertheless, Mr. Bailey pointed out, that it could not be assumed that the outcome of the incident would have been any different, because there would still have been gardaí present when he left the house and they would have been at risk. He did not agree with the suggestion put by counsel for the Commissioner that the decision by Superintendent Shelly to foresee the possibility of a breach of the inner cordon, in circumstances when John Carthy may have been non-compliant but not threatening, and to provide a second line of armed officers, was an example of thinking ahead and could be proper contingency planning for an event that might occur. The option that was selected of allowing local armed officers to remain where they were originally, as an inner cordon, did not provide for the objective that Sergeant Russell and Superintendent Shelly had identified and were trying to achieve. Mr. Bailey did not have any difficulty with a contingency plan of having a number of officers available to deal with the eventuality which had been identified, namely that should containment not be effective, John Carthy would then potentially come under the control of local armed officers. However, the manner of their deployment did not, in his view, meet that eventuality. If local armed officers had been deployed in a different way with a stated objective, particularly if it had been a written documented plan, then he would have been in a position to agree with the suggestion. That was not done, however, and Mr. Bailey maintained his opinion that there was some confusion as to the role of the local officers.

12. Significance of location of the command post at the end of the incident

Mr. Bailey expressed the opinion that the significance of the location of the command post, at the end of the Abbeylara incident, could not have been anticipated when it was chosen. However, the closeness of the command post to the house should have been recognised by commanders and tactical officers, and caused them to relocate it further away. The location of a command post at the beginning of an incident is often selected by one individual. It is appropriate, however, for the scene commander to review the position from where the incident is being commanded. This is particularly so as the incident progresses and involves more personnel. He accepted that the evidence indicated that both Superintendent Shelly and Sergeant Russell had reviewed the position of the command vehicle; and moved it forward somewhat, to enable Superintendent Shelly to have an overview of the situation. He reiterated that he disagreed with the criteria that they used in making that decision.

13. Deployment — a command issue

The establishment of a single commander to command all armed personnel at the inner cordon means that one individual deploys his officers to achieve the tactical objective. In Mr. Bailey's opinion a potential difficulty at Abbeylara was that the officer who commanded the inner cordon, Sergeant Russell, only had command of ERU personnel. There were other individuals at various times commanding local armed officers. The only true chain of command that he was able to identify was directly to either Superintendent Shelly or Superintendent Byrne, the scene commanders. It was, he observed, this command aspect that was important:

"I think that is really the kernel of what would have ensured that only those officers required to be part of the armed aspect at the scene would be deployed, it is that command aspect".

Mr. Bailey saw no confusion in terms of where the outer cordon was positioned. That cordon was positioned at an appropriate distance. It provided exclusion for everybody from the scene, other than those who were allowed through. However, in his opinion, how the officers were deployed at the inner cordon was not best practice. He was questioned as follows by counsel for the 36 named gardaí:

"Q. Addressing the overall arrangement adopted by Superintendent Shelly, which permitted and indeed was designed to allow and provide for non-garda personnel to come to the scene to participate in negotiation, and fixing John's exit, looking at John's exit coming up to 6.00 o'clock, in the context of Dr. Shanley, Marie Carthy, Mr. Shelly being in the car, adjacent to the Walsh house just up the road, wasn't it perfectly right that there should be armed personnel adjacent to the command post to ensure that should John Carthy escape, he could not get to such civilians to hurt them.

A. My answer to that question, Chairman, is that the principle that it is the responsibility of armed officers at the scene of an incident to ensure that the subject of the incident is unable to harm anyone, yes, that is quite correct. Whether in order to achieve that, there needs to be armed gardaí at the command post or whether they should have been deployed elsewhere, could be discussed, as could the point that if there is a risk to people such that they need armed police to protect them, certainly in the UK that would be flashed in big warning signs to the commander as to whether it would be an appropriate tactic for them to approve. That is what leaves me in the difficulty in providing a simple yes or no answer to the question, in that the premise on which it is asked is one that I wouldn't have anticipated occurring in an incident had I had the command function or indeed, had it occurred in the UK because I think that the decision would have been not to provide armed gardaí to take people to the scene, because it was so vulnerable but not to have taken them there at all. I accept the constraints that that would have placed on the process of negotiation.

- Q. *It was one of those hard decisions, wasn't it, Mr. Bailey, either to facilitate the negotiation by the bringing of the individuals or simply to exclude them and lose that option of persuading John, through friendly local negotiation, to come out.*
- A. *Yes, Chairman, I think that would be or that is absolutely a correct analysis, it is one of the hard decisions. I hope that any of the answers I have given haven't implied that these are easy choices, easy decisions for commanders to make because they certainly are difficult decisions to make''.*

SECTION A.5 – Observations of Garda Senior Officers and Others Regarding the Evidence of International Experts and Matters Arising from Training

In response to the observations of the experts and in the light of training received, senior officers and others were invited to respond and to provide further evidence in relation to a number of issues which had been commented upon.

1. Superintendent Shelly

Location of command post

Superintendent Shelly was trained as a tactical adviser and accepted that as part of his training he was aware of the capabilities of a shotgun. He was aware of the range of a shotgun. He accepted that a shotgun of the nature that John Carthy had, had a lethal range of about 55 yards and could cause serious injury up to a range of 200 yards. He accepted that people at the command post and the command post itself were within the lethal range of the shotgun, should John Carthy emerge on the roadway:

“They were, as were everyone else, the first people who met John Carthy were the ERU people who were dealing with him”.

He was therefore questioned as follows:

- “Q. *In the context of your knowledge of the capability of the shotgun, in the context of the plan which you had devised concerning the uncontrolled exit and in the context of moving containment as a tactical option, in all of those circumstances, Superintendent, why did you not remove the jeep and other people out of that area, outside the lethal range of the shotgun?*
- A. *It wasn't removed for the simple fact that while the operation was ongoing, as I have already described how, I hope I am very clear in this – the command post, the jeep was at a location, first of all, John Carthy couldn't see it from the house. It was safe and I felt safe there. If I didn't for one second feel safe operating there, I wouldn't have left it there. The other people who were at the scene, some of them were there by*

necessity, some of them at our request and people wanted to talk to John Carthy or whatever, they would be in that area, it was dangerous. I'm not saying it wasn't dangerous, and we took every precaution that we could to protect those people, particularly when bringing these people down to speak to him. I didn't see for one second or believe that the command post was a danger, was in a dangerous area, or causing danger, had the ability to cause danger, I didn't believe that".

He accepted that the evidence of the ERU personnel was that there was a concern for the safety of the people at the command post and on the roadway beyond the command post. In those circumstances, and in the context of contingency plans to be put into place, he was asked whether the removal of the local personnel from the area was considered. He said it was not considered because he did not consider it to be a dangerous place or to add to the danger. People who were there took cover, he said – *"In doing so they did the right thing."*

The evidence of expert witnesses, that the command post should have been located over the hill or in some other location, was put to Superintendent Shelly. He stated that he had to *"call it"* as scene commander at Abbeylara, and he believed that the command post was in the right position. He certainly did not wish to do anything in the nature of siting the command post with a view to consciously or otherwise making it a source of danger. That didn't arise, and he wouldn't do that, he stated. Safety was paramount to him.

He had discussed the location of the jeep with his superiors. *"I did tell them that I felt it was safe and it was appropriate to work from there. There wasn't any difficulty with that"*. If somebody had said to him that he should not have it there, he would have taken that view into consideration.

Plans

Superintendent Shelly stated that one of the issues considered was the *"what if"* of John Carthy coming out the gate and turning in the Abbeylara direction. When asked whether he had made a plan as to what would happen he stated that Sergeant Russell and he had agreed that the ERU members would deal with the situation and that his officers would take cover and allow the situation to develop. They would not be involved unless, perhaps, a member of the ERU got injured. He was reluctant to call the moving containment plan aspirational, as he believed that moving containment had in fact happened, but *"admittedly not for very long"*.

Deployment of local officers

Superintendent Shelly was queried on whether, following the arrival and deployment of the ERU, there was now a cordon of armed ERU officers looking inwards and then another cordon outside of them, of armed local officers also looking inwards. He stated: *"certainly, you could take that from it"*. He was also asked whether the additional *"back-up"* cordon might have had any effect on the concept of the sterile area which he understood from his training. He stated:

“No, I didn’t, because I knew from training that it is called a sterile area, but people have to operate within it and I didn’t see any contradiction with that and what I was told in training and the positioning of those people”.

While he could not say that the concept of a back-up cordon was addressed directly during the course of his training, it was however made clear at training exercises that the scene commander would take whatever steps he or she would deem necessary to deal with the situation. It wasn’t said: *“don’t ever put in a back-up cordon or that should never happen”*. It was left up to the person in charge. His understanding of his training was that he was left an element of discretion and that each situation had to be dealt with as you found it. He considered that the positioning of the local armed gardaí in the locations where they were situated was *“within my right”* and was the correct thing to do. Superintendent Shelly further noted that when ERU personnel arrived and took up their positions, they did not have a difficulty with the positioning of the cordon by him; *“and they would be a lot more highly trained than I would be, or the local people”*.

It was suggested to him, and he accepted, that discretion is exercised on the basis of either training or experience gained. He accepted that he had training but no experience. He saw no difficulty about exercising discretion as to where the back-up cordon might be located, or whether there would be a back-up cordon in circumstances where he had no experience and little training. It was a call that had to be made, he said, and he observed that many people are trained to do things in which they never have to engage in practice.

He did not agree with the comment of Mr. Bailey that local armed personnel may have found themselves at the command vehicle because no one gave an order as to where they should go or that their positioning occurred by default. They were, he said, properly deployed *“and advised as to where they were now going and doing”*.

Number of personnel

He did not have any concerns about the number of ERU personnel that arrived at the scene to take over the inner cordon. He did not have any concerns about the reduction in the numbers of personnel who were manning the inner cordon. When asked whether he had no such concerns, why it was that it was felt that there was a requirement for a back-up, he stated that he felt that it was the proper thing to do. The local armed people had a role to play in this back-up role.

Moving containment

Superintendent Shelly had a knowledge of moving containment, that it was a *“very dangerous task”*. He accepted that moving containment gave more time to people to assess the situation and more time to the subject himself to consider his own position. And that is one of the reasons that you put the moving containment plan into action *“if it is considered appropriate and safe to do so”*. He also stated that he knew, in advance, that it was a tactic that might have to be engaged.

Role of local officers in moving containment

Superintendent Shelly gave evidence that the local officers had no role to play in the moving containment plan. He was queried as to whether this meant that they, the local officers, knew that they would have no such role to play and whether it was the case that they were unaware of what any moving containment plan would entail. Superintendent Shelly stated that at approximately 7:00 p.m., or thereabouts, the local officers were aware that John Carthy might emerge in a controlled or uncontrolled fashion. They were aware that they would have to confront him and totally disarm him, if he was armed in the uncontrolled scenario:

“If not, that they would move with him as well. I think I said that as well, and tried to resolve the issue as best they could, given the training and the expertise that they had”.

Thus, before the ERU arrived, local officers were aware that they might have to take part in such a tactic.

After the arrival of the ERU, it was not envisaged that local officers would take part in moving containment. At no stage, did Sergeant Russell suggest to him that the local officers would so take part. In evidence, Sergeant Russell had stated that he did not consider involving the local officers in the moving cordon; and therefore he did not think it was necessary to explain to the local officers how they would go about moving. From the perspective of Sergeant Russell, Superintendent Shelly accepted that the local armed people were not told what the moving containment plan would entail. He stated that they were told that the ERU would deal with the issue, and that they would be back-up. When the ERU took over, the local officers were not informed of what the plan was, because the ERU were going to deal with it.

It was put to him that he should have explained that the plan would have consequences and that if moving containment commenced that the ERU would be on top of the local armed gardaí *“in quick time”*. If that had been done, it was suggested to Superintendent Shelly by counsel for the family, that it was *“cryingly obvious”* that that would have alerted them and his men that *“we are too close”*. Superintendent Shelly stated, however, that he did not think that they were too close.

Each and every officer knew the position of everyone else, he observed. They knew what they were doing. He did not specifically tell anybody how to take cover or where to take it. People act on their initiative and judgement. The officers were experienced and trained in the use and carriage of firearms. They would know what to do in the event *“of that unfolding”*. He accepted that taking cover in the context of firearms had specific meaning. When asked whether he had any specific discussion with his men as to what they should do or where they should go in the event of a moving containment commencing, he stated that he did not specifically tell them. He accepted that the local officers would be safe, from a ballistic perspective, behind the wall, unless John Carthy approached that wall. He agreed with the Chairman that they would not be safe behind the command vehicle, ultimately, because John Carthy would overtake the command post and then they would have no cover. Superintendent Shelly felt that the jeep would give some reasonable cover in the

circumstances. He accepted that nobody gave the officers any instructions as to the nature of the cover they should seek but stated that they would take that on their own initiative.

Crossfire – “blue on blue” – sterile area

Superintendent Shelly was aware of the dangers of crossfire and the potential for a “blue on blue” shooting, which ought to be avoided. He thought, however that *“the measures put in place avoided that insofar as was possible.”* Though he could not speak for the ERU, he stated in evidence that he felt sure that the ERU had positioned themselves in an “L” shaped manner to avoid that risk.

In the context of crossfire, Superintendent Shelly did not accept that when Sergeant Foley was contemplating taking action, that it involved the potential discharge of his weapon down the hill towards the Carthy house, or straight down the road:

“I don’t believe when Detective Sergeant Foley was contemplating taking that action, . . . it is my clear understanding that John Carthy was over at the ditch on the far side of the road, walking towards where they were, but nevertheless over, as you come out, I think, it would be on the right hand side of the road as you come up the road.”

With regard to Mr. Bailey’s comment that there was little evidence of a plan to ensure the safety of two groups of gardaí and to avoid a “blue on blue” shooting, Superintendent Shelly accepted that whilst none of the plans were recorded, nevertheless, he stated he had a good understanding of what he was doing. His own people clearly understood what he was doing, what was anticipated and what was planned.

When asked whether he actually considered the question of crossfire at the scene he stated that he did *“in the context of . . . every garda officer who is qualified to carry a firearm, obviously they have qualified to a high standard and they are trained . . . everyone of those people would be aware of the concept and the dangers of crossfire and if they weren’t, they shouldn’t be carrying cardholders, as we call them, and qualified to carry firearms on duty”*. He stated that the local gardaí knew exactly where the ERU people were and what they were going to do. The ERU people likewise knew where the local armed officers were and what they would do. Superintendent Shelly stated that you can never rule out crossfire or the danger of crossfire. It exists where groups of people with firearms are operating, but *“I think everything that we did at the scene helped to alleviate, insofar as is possible, the danger of crossfire”*. He believed that the crossfire situation did not exist at the scene.

In view of the fact that it was accepted that the local gardaí did not specifically know what the ERU intended, he was asked how he could say that the local gardaí were aware of what the ERU were going to do. He stated:

“from their training on how you would confront somebody in such a situation and they had been specifically told, before the arrival of the ERU: John Carthy could have come out of the house at any hour, at any minute, and from the

time that we were in position ourselves, they would be aware of that concept as well, and I believe that from their experience and training that the ERU would conduct a similar type operation''.

2. Superintendent Byrne

Location of command post

Superintendent Byrne stated that the choice of location of the command post at the outset and during the operation was and continued to be under constant review. It was not considered appropriate to move its location. He could not say that he had any continuing discussion with anyone about the command post or its review. In a written answer to the Tribunal he stated that it's position was under constant review though in oral evidence, he stated that he thought about it once or twice during the night. He did not think that the command post should be located over the brow of the hill or the back of the church. He felt that it was placed where they could best make use of the management of the scene and could bring third parties down to meet the negotiator. He did not agree with the observations of experts in relation to the positioning of the command post.

He was questioned:

- Q. *“Would you agree with this, superintendent, that had the command post been located further back as has been suggested by a number of the experts, if that had occurred, would you agree that the risk which was perceived by the two armed officers who discharged their weapons, that they may not have had that fear or risk at that time, do you understand?”*
- A. *I hear what you are saying, but it wouldn't have been there at that moment, but it was only a couple of steps away until the next issue arose if John was pointing the gun at some person and it was believed he was going to fire''.*

Plans

Superintendent Byrne accepted that one of the responsibilities of the scene commander was to approve of plans, including break-out plans. The potential for an uncontrolled exit by John Carthy was planned for at a very early stage of the operation, he stated. Inbuilt in this plan were considerations in respect of what direction John Carthy proceeded in and also how all officers should be deployed in that eventuality. He noted that no specific instructions were given to local armed gardaí as to where they should move. However, they were told to move away to allow the ERU to deal with John Carthy but there was a “but” in that had one of the ERU people been injured or worse, that they would have been expected to assist. When he arrived at the scene, at 10:00 p.m. on Wednesday, 19th April he did not have any discussion with any member of the ERU regarding the plan, though he did discuss it with Superintendent Shelly. When he was scene commander, he had a discussion with a local garda (who came on duty sometime after 1:00 a.m.) about the break-out plan. He told him that if John Carthy came out of the house, that the

ERU were to “*deal with him*” and he was to fall back, take cover and not get in the way. He was not going to be part of the moving containment plan. He was conscious that other officers had been briefed earlier because Sergeant Foley informed him of this.

Deployment of local officers

Superintendent Byrne was of the view that the most appropriate method of command for each group of officers was a “*separate supervisory process*”. He saw no difficulty, however, with highly trained personnel being in the same area as local armed officers because “*everybody knew their position, their job*”.

Superintendent Byrne stated that it was always considered best practice for the subject of a siege to see “*members of the gardaí rather than to face only plain-clothes people and to either be confused or to think maybe they are not the police*”. This is not something which was discussed with Sergeant Russell. It was something that Superintendent Byrne decided himself. He also stated that uniformed gardaí were not visible unless John Carthy vacated the house.

Number of personnel

He was satisfied that the ERU had sufficient personnel at the scene to maintain the inner cordon. He did not have any input into the relocation of local armed personnel once ERU personnel came on duty. However, he was told about it and accepted it. It made sense to him and he did not attempt to change or interfere with it. He had not previously come across the concept of a back-up to a cordon on any previous occasion, or in his training. He had not been in such a situation before but it seemed reasonable to him. It was a contingency plan that had something gone wrong – such as the shooting of an ERU officer – that there was a second phase of a back-up in order to ensure that John Carthy did not come in contact with and shoot some civilian: “*Without having back-up the question would have been why didn’t you have back-up, so the fact is we did have a back-up.*” He was also asked that if there was a third armed cordon that this would mean that some persons would be pointing inwards with their weapons. He agreed that that cordon was inward-looking but they were supporting the inner cordon.

Moving containment

Before Abbeylara, he did not have any experience of the operation of moving containment. It was mentioned as an issue in his training. He could not recollect any practical exercise. He assumed that the ERU were familiar with it because of their higher level of training. However, he was never involved in any practical training incident. He was questioned on whether it was the case that moving containment could operate for a very short space of time only given the location of the command post. Superintendent Byrne accepted this point given that John Carthy walked in the direction of Abbeylara. He stated, however, that had John Carthy gone in any other direction, there was going to be more time assuming that he did not point his gun at another person, be it a garda or otherwise. He, Superintendent Byrne, did not agree that the moving containment plan was effectively “*aspirational*”. It was

suggested that this was the case because it could not operate for any great length of time given the set up and given where people were located. He stated:

“No. Had John left his gun open, he could have walked past the command post. It was the fact that John presented a danger with the gun closed pointed at people that resulted in what we are here about today”.

He was asked whether anybody *“Really thought about it at the time? – i.e. what would happen or what should be done if John Carthy came out on the roadway”*.

According to Superintendent Byrne:

“We had to be there. In my view, we had to be there, there was no question of not being there, because I thought that was a greater evil altogether to abandon John. So we were never going to do that”.

Role of local officers in moving containment

There was no specific discussion with local officers as to where cover might or should be taken. That was left to the individual officers *“because we couldn’t tell them where to take cover because we didn’t know where the danger would be coming from.”* Superintendent Byrne did not agree that the plan could have been any more detailed from the point of view of what local officers should do in the circumstances.

Crossfire – “blue on blue” – sterile area

Superintendent Byrne acknowledged that in all firearms operations, it is recognised that risk of crossfire is present and where possible this should be minimised. In addition, individual armed members are given training in respect of this. People who carry firearms are very conscious of crossfire, he stated. He was familiar with the principle of a sterile area and he said that the evidence of Superintendent Hogan accorded with his training, that is, that the sterile area provides a working environment for police to *“perform whatever tactic is required”*.

Superintendent Byrne did not agree that the tactic of two armed groups of armed gardaí moving towards each other was employed at Abbeylara. That did not occur, he contended.

3. Detective Sergeant Russell

Location of command post

Sergeant Russell was asked to consider Mr. Bailey’s evidence that the location for the command post was something that should have been recognised both by the commander and the tactical officers. He stated that the reason for selecting that position was to afford Superintendent Shelly an overview of the situation. It would also provide him with communication to the inner cordon. Sergeant Russell could remain within the immediate area for the purpose of liaising with relevant personnel. He agreed with Superintendent Shelly that the ERU should provide the jeep. However, he did not involve himself in more detailed discussion regarding other

persons in the area. Final selection rested with Superintendent Shelly. Sergeant Russell's immediate concern was with the inner cordon.

Plans

He did not believe that it was possible to make a number of written plans for how or what exit John Carthy was going to take. Sergeant Russell stated that it may be obvious with the benefit of hindsight that he took the most obvious route. But he wouldn't necessarily agree that it was the most obvious route at that time. They had no indication that John Carthy had intended to come out. He did not state *"I am heading into Abbeylara."* He did not accept that the ERU had not made appropriate arrangements or contingencies.

He did not write down plans. While acknowledging that it might be part of the policy in the UK he stated that it was not the policy of the Garda Síochána. However, he agreed, from a transparency point of view, that this appeared wise. He told the Tribunal that he did not write down the plan and he could not put the matter any further than that.

Sergeant Russell did not believe that any plan could have been written down for what John Carthy did when he came out of the house. There was, he said a

"... dramatic change out on the roadway. I don't think that anyone in this room would believe that you could consider all those variables in your plan."

He expressed the view that he was somewhat wary that if you do write a plan and put it into place and present it to people, that in some ways they become constrained by the plan and thereby initiative is removed. He would have a concern in relation to rigidity. The Chairman stated that there was no way that the minutiae of what occurred when John Carthy came out on the roadway could have been anticipated – however, the Chairman observed:

"Mr. Bailey is saying that there should be a plan if he leaves the house and heads towards Abbeylara armed, what should happen."

Sergeant Russell stated that he catered for that:

"We talked about that in the original testimony, about the generic plan and what I had given consideration for."

He agreed that it would be useful to have a written plan in the event of people being replaced. In that regard, he stated:

"I do accept in theory what Mr. Bailey is trying to achieve there in relation to a written [plan]. I would have to defer to that. I have no difficulty with that."

He was asked, bearing in mind that there were three or four more likely scenarios on exit than others, whether he considered discussing with his officers that if he goes in a certain direction that *"this is the way we will organise ourselves."* He stated that he did not. The plan was generic in that sense. They would rely on their training and rely on their experience in that regard.

It was put to Sergeant Russell that the reality of the situation is that when John Carthy walked out of the house at 5:45 p.m. he had breached the inner cordon within 15 seconds. "However, he did not agree that the cordon was breached. He agreed that if the cordon remained *"in a static position"*, the subject would have moved out of the inner cordon but, he had briefed his officers *"a flexible cordon would prevail."*

Sergeant Russell stated that when John Carthy walked down the driveway with the gun broken open, it was a reasonable interpretation that he was indicating that he wished to bring the matter to a peaceful conclusion:

"I think if anyone had actually taken action that might have militated against that, it would have been unwise. I think the officers did the right thing. What I asked them to do was not to do anything reckless."

If John Carthy arrived at the gate and put the gun on the ground, officers would have acted in the right manner, he stated.

He accepted that it was a reality that within 15 seconds, John Carthy was on the roadway heading towards the opposite side of the road. However, in that 15 seconds John Carthy used the time to indicate another possibility, that he may be bringing the matter to a peaceful conclusion. The situation changed dramatically in a number of seconds from the gateway to the time that John Carthy was shot. That was a very short space of time. He felt it would be impossible to legislate for that scenario and to put such a plan into action. It is only fair, he stated, to recognise that people understand the difficulties that men were faced with at those cordons. The gardaí, he stated, exercised considerable restraint. He thought it was fair to accept that if John Carthy had carried out the actions in another jurisdiction, that he would have been shot immediately.

Deployment of local officers under a single command

Sergeant Russell did not give consideration to advising that local officers be deployed under his command. He did not agree with Mr. Bailey in this regard. As the member in charge of the ERU personnel, he knew what he was bringing to the scene and he knew the capabilities and training of his personnel. He was tasked with the role of providing containment at the inner cordon. It would have been unwise to include a person about whom he had no knowledge, albeit that they would have been trained to some extent and that they would have had their training in relation to firearms. He felt that they had a more useful role as back-up:

"What caused me some concern in this is that Mr. Bailey goes on at some stages to talk about moving containment and the principle of understanding and training and all this, and I cannot understand how he could suggest that they should be in place there on the inner cordon and then what happens when one has to move with moving containment? It would be very difficult to choreograph the process, so far as I am concerned".

Those local officers were under the control of Superintendent Shelly. There was never a question of any member of the ERU taking control of such individuals. He did not

recall that ever happening in the past. His task was to put in place the inner cordon. He felt that there were risks involved in any such scenario, but such risks would be heightened if local officers were included under his control in the inner cordon and had been expected to perform a duty they were not familiar with.

Number of ERU personnel

Sergeant Russell felt that he had sufficient personnel at the scene when he carried out a topographical assessment of the situation. He made an assessment of the stronghold, selected positions that he felt would afford the best opportunity to observe John Carthy and to observe the exits.

He took the view that four officers was adequate. The more people you add to the inner cordon, the more confusion one would create: *“effectively we are talking about a unit of 48 personnel. You can’t just throw infinite resources at these situations.”*

Moving containment – role of local officers

Sergeant Russell was asked whether he recognised the risk identified by Mr. Bailey; namely, that because of the different level of experience of local officers, that he may not have been in a position to ensure that moving containment could be carried out in safety, as the local officers may not know exactly what they were expected to do. He stated that that is why he was surprised that Mr. Bailey had suggested in the first place that he place them at the inner cordon. If they were at the inner cordon, they could get involved in moving containment. Local members would only become a member of the inner cordon in extreme circumstances if someone was hurt. It was never envisaged that local officers would carry out the flexible cordon after the ERU arrived. However, he felt sure that Superintendent Shelly had discussed such a role with them before the ERU arrived. The model under which the Garda Síochána operates is that they all perform under the control of a scene commander. Risk cannot be precluded. It was their function to cater for the risks and to identify with and try to plan for them.

Moving containment – shape of the cordon

With regard to the concept of an “L” shaped cordon, Sergeant Russell did not know if he graphically illustrated its shape at the scene; but, he said, the people under his control and command would be aware of it. They would not go into an area where they would inhibit a colleague from taking action. It would be impossible for him to spell out each individual eventuality and he also observed that he could only explain to his men that they have to have a consideration in their mind. It would be next to impossible to legislate for every possible scenario:

“It brings me back to the thing about the plan being generic in that respect. If one took all the exits that were available for John Carthy, the windows and the door, the areas around the house that he could have travelled to it would be impossible for me to say ‘well you have an “L” shape here if he goes in this way’. That is why it is in their training that they know how to fit into gaps and fit into the area that has to be covered.

Q. *Chairman: You really have to, as I understand your evidence, to wait and see what he does and then you apply the moving "L" shape containment in the context of the terrain, the location where you have to operate in view of what he has done. Does that sum up what you are saying to me?*

A. *That would be a fair assessment''.*

He agreed with the Chairman that there was no doubt that John Carthy did what he did without prior warning and that his officers had to tailor their response in the light of what he actually did. He agreed that this is what underlines the value of specialist training. They could only react to the situation as it was unfolding within the plan. If for some reason John Carthy escalated the situation, then they had to react to his actions. If he decided to point the weapon there was no question of the original shaped cordon continuing:

Q. *"So the fact that someone was in danger from the very point when he started walking up the road, that meant that moving containment was over, is that right?*

A. *I think in the manner in which John Carthy presented the weapon, certainly, the danger was too great, I accept that''.*

He felt that the "L" shaped cordon would have worked had John Carthy gone in the opposite direction: *"If you noticed the position that Detective Garda Carey and Detective Garda Ryan and myself took at the wall, we would have ended up going in the opposite direction''.* The other officers would have followed him.

It was suggested to Sergeant Russell that the fact of him getting on the wall *"and not following your training here"* is indicative of a fact that this wasn't consistent with a planned "L" shaped operation. He answered as follows:

"Can I just go back to what I've said about John Carthy leaving the household with the weapon open? Members actually believed, and rightly in my view, they took the view that this could become, this could be coming to a peaceful resolution, it is quite reasonable for them to assume that. I had cautioned against them actually, to be still concerned until the weapon was out of harm's way, until John Carthy was restrained or overpowered. That left us in some respects with less time because he had arrived at the gate, and you now know what happened. The weapon was closed and they knew it to be loaded, so the time to react is decreased significantly, and we didn't have the luxury of having some more time that would be helpful in that regard as a result of his action''.

He did not accept that the jumping on the wall was an instinctive reaction, rather than being indicative of the planned "L" shaped operation. It arose as a result of the dynamics of the situation. He could not legislate for every factor in a dynamic situation when a person is moving with a gun.

He was also questioned on whether his actions sat comfortably with the contention that this was a planned and carefully organised and detailed system of moving containment:

“What I can say is that the plan that I put in force, while it could cater, there is no guarantee that if one was going to achieve the ultimate of overpowering him. It is a plan you put in place to cater for the possibility, but there are no guarantees”.

The solicitor for the Carthy family made the point that the “L” shaped cordon was not expressly referred to until day 76 of the Tribunal when Detective Garda Sisk gave evidence in relation to same. Sergeant Russell stated that “L” shaped cordons have been used for many years. The “L” shaped cordon plan was generic. He did not suggest to Garda Sisk that this is a position to take or that Garda McCabe should take such and such a position *“as long as we understand that people will fall into position and have cognisance of crossfire, that is what they would be considering”*.

Crossfire – “blue on blue” – sterile area

Sergeant Russell noted that the risk of crossfire is present when firearms are used and that:

“you can’t eliminate that risk but you have to get people to address it, and by explaining it to them beforehand or endeavouring to heighten their awareness in that regard, one hopes they address it”.

Members of the Garda Síochána who carry firearms have a fundamental knowledge of the risk of crossfire. He stated:

“It is a basic principle, that you wouldn’t discharge a firearm without taking into consideration crossfire implications and the risk to other persons. That is covered in basic training”.

This is further addressed in more advanced training in which members of the ERU have participated. A person carrying a firearm always analyses his or her position. While it was true that officers may never have to discharge their weapons, he doubted that it would make them either more or less aware of the dangers of crossfire, due to their training.

He accepted and agreed with the Chairman that it is regarded as advisable not to have two groups of armed officers facing each other with a subject in the middle and he also accepted Mr. Bailey’s observations that it is desirable that one should never have a crossfire situation or “blue on blue” scenario, but he did not believe that that occurred at Abbeylara. He stated as follows:

“When Mr. Carthy was pointing his weapon at Detective Sergeant Jackson and Detective Garda McCabe, I don’t believe that we had a situation as described by Mr. Bailey. He is saying that it is desirable that you don’t have a “blue on blue”. I don’t believe it was a “blue on blue” situation, insofar as that I don’t believe that the local members advanced on our position. It is my understanding that they took cover, as agreed with Superintendent Shelly, and they remained as back-up to the ERU”.

He did not believe that there was a risk of crossfire or that crossfire was a major concern at that particular time. What if John Carthy had proceeded further up the road? *“We don’t know how it would have transpired . . . if John Carthy moved further up”*; he could only assume that people would take the necessary precautions against that.

Sergeant Russell stated that he briefed his own personnel extensively, that they wouldn’t put themselves in a position of crossfire. They understood that they should avail of cover, and that they should not put themselves in a position whereby they heightened the risk of crossfire. The issue of crossfire was addressed by him when he was placing the inner cordon personnel in their various locations.

He was also asked as follows:

Q. *“In terms of the actual scenario that you are faced with, is it your belief that what you did in positioning the members of the inner cordon and giving the instructions, and indicating the positions of the local armed gardaí that, that was in part intended to deal with not just containment but any risk of crossfire?”*

A. *That would be correct.”*

He confirmed that he was satisfied with the position in which Superintendent Shelly had stationed the local men. There was always the risk of crossfire but he was happy that the ERU and other gardaí addressed the issue and that members were cognisant of that fact and that they would make the necessary arrangements. The actions of Garda Sisk in adjusting his position, *“I think demonstrated that he acknowledged the risk and took alternative action”* and that movement by him was in accordance with his training.

Sergeant Russell stated that what he understood by sterile area was:

“that there be no movement at all between the inner and outer cordon, that the whole area would be completely excluded from personnel, any personnel . . . that if there was an exit, that we would have an area to operate in that area, without the difficulty of people involved”.

He accepted that Mr. Bailey was correct in theory in saying that a sterile area is desirable. He agreed with the concept of maintaining a sterile area, but it had to be predicated on the fact that it was Superintendent Shelly’s main concern and decision that negotiations *“should be driving this”*. That was the key to resolving the situation. He had in fact expressed concern about bringing people in, *“I think that is evident”*. He weighed up the merits of such a strategy, and he agreed that there was a risk. They would, he said, under the circumstances have to take some risk in order to resolve the situation. On that basis civilians (used as third party intermediaries in the negotiation process) were on occasions brought into the area to try to negotiate, or to have some dialogue with John Carthy.

Sergeant Russell accepted that once third parties entered the area it was no longer sterile. The difficulty which he had at the scene was trying to accommodate the process. He could not “wave a magic wand” and get a third party intermediary to appear in front of the wall. There is a risk in bringing anyone down. He accepted that:

“Mr. Bailey takes the view that it shouldn’t happen. I am merely saying is that I accommodated it. I knew that there was a risk. I felt that the taking an overview of the whole situation, that it probably was the right thing to do because it could have resolved the situation. Any of these people could have made a connection with John Carthy and we might not have this whole process now. I think that if I precluded it, if I said no, it can’t happen under any circumstances, and we had the eventual outcome, I think we would have come under severe criticism and I may have a lot of difficulty in that regard”.

He was asked whether he advised Superintendent Shelly or Superintendent Byrne as to whether it was prudent to ensure that any unarmed member who was in the sterile area, including in the command post, should be there for a specific purpose. He advised Superintendent Shelly that they should avail of cover and take appropriate action in the event of an exit:

Q. *“Yes, I think we heard evidence about that, but what I am asking you, really is, were you concerned that any unarmed local officer, uniformed or otherwise, who was present at the scene, would be there for a specific purpose and his entry into the sterile area would be specifically controlled?”*

A. *Well again, I had no control over that, but I assume that any person there had a role to play”.*

Sergeant Russell stated that people were in the sterile area for good reason. Mr. Bailey, he said, had given an ideal scenario where there would be no one there. He stated that they engaged “in a process where negotiation was the ultimate, the key to unlocking this whole situation.” He did not think it was fair that on the one hand they would be open to severe criticism if they didn’t provide third parties to try and unlock the situation and bring the matter to a peaceful resolution and on the other hand suggest that there should have been nobody there:

“While he suggested we have this sterile area, you have to take it in the overall context why these people were here. I don’t think you can isolate one.”

From the time the negotiator arrived, Sergeant Russell was aware of the dangers involved. In the overall strategy he accommodated people entering the area. He felt that he had to defer to Superintendent Shelly who was in charge of the operation. He could merely point out the dangers involved and say that there is a risk. That was the strategy that had been adopted in the beginning and that is what he wished to accommodate.

Sergeant Russell was asked whether there was any discussion about the concept of sterile area. He stated that a sterile area could not have been achieved in the total sense that Mr. Bailey referred to. They discussed cordons and the fact that people

were not to enter the area unless they served a purpose. It was not discussed in great detail after that.

The fact that there were uniformed officers in the area did not give him cause for concern. The Garda Síochána is primarily an unarmed force, he said. It would not be an unusual feature that uniformed people would be present for all sorts of reasons for example to reassure John Carthy. He was not directing operations up at that area and he had to leave that to other persons. He was, however, concerned for everyone's safety at the scene. He could not recall whether he made any enquiries as to what those individuals were doing. Sergeant Russell agreed that he did not speak with Sergeant Foley. He was asked whether with the "*benefit of hindsight*" he felt that he should perhaps have spoken to Sergeant Foley and with the local armed members who were in position. He stated that he would not accept that, and contended that he should report to his superior, the scene commander, which is what he did. Sergeant Foley was working under Superintendent Shelly.

He was aware that there were unarmed persons in the area as he had seen a uniformed presence. Being armed did not mean that you were not exposed to danger; the firearm provided you with a chance to defend yourself; that was the difference.

Sergeant Russell did not see any of the local gardaí exposed to a risk of crossfire following the exit of John Carthy. He believed that while a risk of crossfire always exists at such incidents, he did not believe that it happened in this case.

He did not agree with Mr. Bailey that the officers should have been further back on the roadway.

4. Assistant Commissioner Hickey

Location of command post

Assistant Commissioner Hickey in his written reply to the Tribunal stated that the location of the jeep, which became the command post, was at the most suitable location in the prevailing circumstances. The eventuality of John Carthy's exit from the house was considered. He was conscious of various options open to John Carthy in relation to direction of travel and behaviour. The ERU tactical team was deployed to deal with him. The garda response would have to be governed by John Carthy's actions and behaviour. In the event, the ERU dealt with the threat posed by John Carthy, and the local gardaí took cover, as provided for in the plan. He felt that in this case people concerned did what they were expected to do.

People who were there present were trained and he thought that what he saw, in terms of the location of the command post, was appropriate.

Plans

Plans are made by scene commanders. Other more senior officers may be consulted and intervene if there is something in the plan with which they do not agree. He told the Tribunal that there was no disagreement at Abbeylara.

Deployment of armed officers – placing of local armed officers under the same command as ERU members

Assistant Commissioner Hickey was asked whether consideration was given to removing local armed gardaí from the scene after the deployment of the ERU. He stated that local armed gardaí were deployed to support the ERU, if required, and the tactical team were deployed to deal with John Carthy's exit from the house, controlled or otherwise. Therefore, consideration was not given to removing the local armed gardaí. He was asked whether the local officers, armed and/or unarmed should have been in the immediate vicinity when John Carthy was walking up the road with his loaded gun. He answered:

“sooner or later John Carthy was going to encounter somebody on that road, and if the command post was never at that location we had personnel posted at the ESB pole. That was Detective Sergeant Foley and two other officers”.

He did not agree with Mr. Bailey that two groups of armed officers were moving towards each other. He felt that Mr. Bailey's comments were obvious but, *“that did not happen in this situation. They were not actually moving towards each other.”* He accepted that while it was a *“possibility”* that the two groups could move towards each other, it did not happen in this case, and it was catered for where the local people were told to take cover. He was asked whether the risk of unpredictable behaviour was addressed in the context of a situation where there was a risk of a *“blue on blue”* shooting, and he stated that it was addressed in that the ERU were delegated to take charge of the situation and local people were told to take cover.

Assistant Commissioner Hickey also stated that the option of having local gardaí under the command of Sergeant Russell was not considered. He stated that in the deployment at any operation there was a rule of thumb that the sergeant takes charge of between four and six officers depending on the circumstances.

Number of ERU personnel

Assistant Commissioner Hickey stated that he had no concerns in relation to the number of tactical officers used. The geography of the location was such that the premises were covered front, side and back, and this seemed to him to be adequate.

Moving containment – shape of cordon

Moving cordon, he said, was not a new concept and the shape of the cordon at Abbeylara provided that people did not get into situations of crossfire.

Assistant Commissioner Hickey was questioned about whether when John Carthy came out of his gateway and presented his weapon it meant that at that point it was too dangerous to operate the *“L”* shaped operation, being the only plan that had

been conceived. He accepted that it was a short time frame and a short distance; *“Any plan was only as good as first contact”*. If you have a plan and whoever you are dealing with does something unpredictable, you have to react *“as Sergeant Russell has accepted”*, in relation to what is happening on the ground. He stated that from the start that there were various elements of the plan, but they were predicated on John Carthy’s actions and behaviour. Assistant Commissioner Hickey stated further, that in some jurisdictions it may be part of the culture of police operations that a person may not be allowed under any circumstances to come outside a gate with a loaded firearm, broken or otherwise. That is not how the gardaí work. It is not part of their regulations and *“it was impossible to predict what might happen if he came out other than in a controlled situation”*.

Role of local officers in moving containment

He was not concerned about the position of local officers because they had *“ready cover and they did take cover”*. Their very presence at the location was not something which at that time he visualized as being a particular problem. He stated that *“there is a lot of talk about “blue on blue” shooting but there wasn’t actually and people did what they were trained to do and what they were instructed to do and were conscious of crossfire”*. It was his understanding that what actually happened with John Carthy was that when he proceeded up the roadway, Sergeant Jackson and Garda McCabe were behind him, slightly to his left, and the other ERU people were up parallel to him and one ahead of them. Sergeant Russell was up on the wall to his left; the other members had *“got ahead of John Carthy on his left”*. He felt that the ERU members had moved in an “L” shape and had not stayed static.

Crossfire – “blue on blue” – sterile area

Assistant Commissioner Hickey stated that an integral part of firearm training is the inherent danger of crossfire in any armed operation. He indicated that the training highlights the absolute imperative of availing of cover where necessary. In this case the officers concerned, because of their positions, relied on their training and intuition, and despite John Carthy’s non-cooperation, and in particular his behaviour, avoided crossfire. In all operations you depend on people to behave as they are trained and he felt that that is what happened in this case. Crossfire was given consideration. In relation to the formulation of a plan to deal with the risk of crossfire he was happy with the situation as it existed. However, *“it is predicated on when you are dealing with a subject who is armed and possibly moving, and that is an element that complicates the situation.”*

5. Chief Superintendent Tansey

Location of command post

The command post was *“a convenient location for meeting and communication between the scene commander, the negotiator and tactical commander.”* The thinking was that it was necessary to have the command post there, primarily because of the lack of interaction or engagement by John Carthy insofar as the negotiation post was

concerned. The tactic of moving containment was taken into consideration, but it was a balancing act:

“The way I looked at it was that it was important to have the command post in reasonably close proximity to the negotiating cell because of the fact that no progress had been made. I mean, I think I mentioned earlier on that if progress or substantial progress had been made insofar as negotiation process was concerned, then the negotiator and the scene commander and the command post could have been moved back.”

He was questioned on whether: *“If the people at the command post had not been there, the decision to shoot by Detective Sergeant Jackson and Detective Garda McCabe may not have been made at the particular point it was made.”* Chief Superintendent Tansey said that he did not accept that proposition.

He did not agree that the positioning of the command post minimised the moving containment option, but he stated that certainly it was a balancing act. In the context of the moving containment plan, he was asked why they had not considered having the command post further away. He stated that when the actual plan for moving containment was put in place, there was no guarantee which way John Carthy was going to exit, if he did exit: *“You could not say that the coming out on the roadway was an obvious option and you had to plan for every eventuality.”*

He stated that there was no consideration given to moving the command post from its original position; it was out of range and out of the line of fire. It was a position from where activity at the scene could be observed. It was available for communication and consultation with the negotiator and the tactical leader.

It was put to the witness by the solicitor for the Carthy family that, assuming the command post was not there, John Carthy would have continued walking up towards Abbeylara and would not be in a position of confrontation with local members. He responded:

“if you are associating the three armed members, local members, as being posted at the command post, that is not correct. They were actually posted at the ESB pole. So regardless of whether the command post was there, they would have been there. That was their positioning. They weren’t posted at the command post, which was, I would say thirty feet at least back from the ESB pole”.

He was also asked:

“Q. Isn’t it the case that once John Carthy was out onto the roadway, that effectively the cordon had been breached and there were going to be difficulties, isn’t that the case?”

A. Well, you see, the cordon wasn’t breached in the strict sense.

Yes, he came through the inner cordon as such, but I mean the members of that cordon – they were the people who were detailed to actually take on the moving containment.”

Plans

In relation to committing plans to writing, it was not part of his training that strategic plans ought to have been written down. It was his experience that for major events, such as major sporting events, a plan would be written down.

He felt that you could not actually “dot your i’s and cross your t’s” insofar as an operation like moving containment was concerned. It is predicated to a great extent on what action the subject is going to take so that it is impossible to plan for every possible scenario.

As far as Chief Superintendent Tansey was aware, the question of potential risk of crossfire was not specifically addressed when plans for the uncontrolled exit were drawn up and implemented because it was part and parcel of and inherent in any operation of this nature. All armed members received very detailed instructions in this regard during the course of their training and refresher courses.

Deployment of armed officers – placing of local armed officers under the same command as ERU members

Chief Superintendent Tansey agreed that when the ERU arrived, they took over the inner cordon and the local armed officers were withdrawn to the extent that they had no further participation in that cordon. He outlined in a written reply to the Tribunal, that the precise deployment and positioning of personnel, both ERU and local armed members, by the scene commanders in this case contributed to a reduction in the potential risk of crossfire. Positioning of local armed members as back-up to the ERU, after they were deployed to man the inner cordon, was a necessary strategy in this case. For that reason, the withdrawal of local armed gardaí was never considered.

He was asked by the Chairman whether it was advisable that there should have been one tactical commander in relation to the whole scene that would include all armed officers. In response he stated that the ERU were a specialised and highly trained unit. Local members would have training, but not necessarily to the same degree, and consequently to put them under the same command as the ERU was something that would not be recommended because of the training that was involved. In any team people have strengths and weaknesses. The commander who was familiar with his own officers would know precisely what the strengths and weaknesses of his team were and he could use them as he saw fit.

Moving containment

Chief Superintendent Tansey confirmed that a moving containment was a tactic of which he was aware. He said:

“I am sure I did receive some instruction on it, insofar as theory was concerned, but I was never involved in a practical situation where it was actually implemented”.

He stated that he was not specifically lectured on the concept of moving containment in either his Superintendents Development Course or Chief Superintendents Development Course. But it:

“would be in the ordinary course of garda operations, it would be something that we would be very conscious of. I am talking about firstly in the wider circle, in other words, that one would contain a suspect in a particular area, a wider area, and then obviously you break that down as time goes on to a smaller area, and that is all to do with cordons”.

He had never been involved in a practical exercise involving moving containment though he accepted that it was going to be a difficult operation. It required everybody knowing their part. He agreed that one of the advantages of having the ERU present was their rigorous training regime. The programme of training one week in a month is an advantage. Moving containment was necessary because of the regulations which allow for the discharge of weapons only in certain circumstances:

“if, as in this instance, John Carthy came out, initially when he came out he was not an immediate threat to life, so it was absolutely essential that the moving cordon system be brought into operation”.

With regard to the involvement of local officers and moving containment, he understood that they were to be involved only in an emergency situation. They were not to take an active part in it: *“that was a matter specifically for the ERU members”.*

Chief Superintendent Tansey thought that the local officers would have had some training in respect of moving containment.

Role of local officers in moving containment

Chief Superintendent Tansey was questioned on whether it should have been an important part of the plan regarding the uncontrolled exit that local officers would at all times remain under safe cover behind walls or buildings. He stated as follows:

“well, what they were retained for was as back-up. They weren’t actually told that, Mr. Chairman. What they were told was that in the event of him coming out, they were to stand back and take cover. That is the actual instructions they got”.

He further stated that:

“every day of the week, ordinary armed members are back-up to the ERU. The ERU is a small unit and if they are carrying out an operation, there would always be back-up from other units”.

Crossfire – “blue on blue” – sterile area

Chief Superintendent Tansey stated that there is an element of risk in all armed operations. The potential for crossfire is ever present. However, that potential in all tactical operations is significantly reduced with effective firearms training; an acute awareness of safety at all times; the knowledge of the use and effect of the discharge

of a firearm and the deployment and positioning of personnel. He contended that such a crossfire situation did not occur and was never likely to occur.

The two armed units were, he said, assigned specific but separate roles and briefed accordingly. The fact that John Carthy emerged onto the roadway with his loaded shotgun and turned in the Abbeylara direction did not alter the potential for crossfire in any way. The same level of potential risk of crossfire existed regardless of what route John Carthy decided to take, once it was an uncontrolled exit and he was armed with a loaded shotgun.

To say that there was a “blue on blue” was “*simply not true*”, he stated. The instruction to local members was to stand back and take cover and let the ERU proceed with the operation. They would only become involved in an emergency situation.

In relation to the position of Sergeant Foley, Chief Superintendent Tansey did not agree with the Chairman’s suggestion that this was a “blue on blue” situation: “*If Detective Sergeant Foley was firing, then he would have been firing across into the field, he would not have been firing down the road*”.

Chief Superintendent Tansey agreed with Mr. Bailey’s observation that two groups of armed police moving towards each other was a high-risk tactic. However, he contended that such an occurrence did not take place. Plans for the uncontrolled exit ensured that the situation would not occur.

In relation to sterile area, Chief Superintendent Tansey understood that the inner cordon was a completely sterile area and in between the inner cordon and the outer cordon is also known as a sterile area. It allows, however, for police to be in that particular area and for civilian people who are assisting in the actual negotiation. Chief Superintendent Tansey stated that he would be concerned that Garda Gibbons was in this general area. He was, he thought, some distance behind the command post and he was not between the command post and the Carthy household. He agreed that Garda Gibbons was in the sterile area, but it was the sterile area to which police would normally have access. It is “*not the sterile area inside the inner cordon where there is absolute sterility insofar as that is concerned*.” He accepted that Garda Gibbons had no function in the area and that he was not part of the back-up. He had just arrived in a patrol car a few moments before that and wanted to speak to someone in that general area: “*it would have been much better if Garda Gibbons wasn’t there, no question or doubt about that*”.

6. Detective Sergeant Jackson

Crossfire

Sergeant Jackson observed that the risk of crossfire arises in most operations involving armed gardaí. At the outset of the operation, crossfire was a concern, “*since members were required to operate in a cordon system and at reasonably close proximity to one another*.” These concerns, he noted, automatically became

heightened when John Carthy emerged onto the roadway with his weapon. Part of the training of the ERU involved movement and cover, and an appreciation of the difference between concealment and cover. In group deployments of armed personnel there is a consciousness among officers that you do not “*place yourself at the opposite side of your colleague*” and that you take cognisance of crossfire. It is a concept expanded upon as people develop and get more proficient in firearms.

Sergeant Jackson stated that while the risk of crossfire in armed situations is always present, he was of the opinion that when John Carthy emerged from his home, the risk was “*minimal*”. “*From a positional perspective*”, Garda McCabe and he were, he stated, out of the line of fire of those armed members who were at the command post. From a training perspective, the risk was also minimal because people there were trained to take cognisance of the effects of their weapon and the dangers of crossfire before discharging their weapons. The fact that local officers may never have discharged their weapons did not alter this because the bulk of gardaí, even in the ERU, have never fired a weapon in a live situation. Further the plan at Abbeylara was that the outer cordon was a back-up cordon. They were not designated to intervene except in the contingency that something happened to an ERU person.

When questioned as to whether panic in an officer who feared for his life, might result in his not being accurate when discharging his weapon, he stated:

“... with respect, I was one of the central figures on the roadway and I did not observe any panic”.

If other evidence was accurate, and there was panic, would this add to the risk of injury by crossfire? The risk of crossfire was present when you have highly trained individuals. He reiterated that he saw no evidence of panic, but if persons did panic that would be a concern to him. However, the issues of crossfire and dynamics at scenes are addressed in training. He would therefore be surprised if a member carrying a firearm did display signs of panic. He did not observe panic, he did not panic, nor did he shoot John Carthy by virtue of any panic.

His action in discharging his weapon, he stated, was not precipitated or influenced by a potential danger or risk to himself from crossfire from a local armed officer. He discharged his weapon solely on the basis of the threat posed by John Carthy. Discharging a weapon on the basis of a risk of injury from crossfire was not compatible with the firearms regulations, he observed.

7. Other non-senior officers

Officers who stated that they engaged in the moving cordon observed that they had formed an “L” shaped cordon. They also addressed the issue of crossfire, and stated that while there is a risk of crossfire in relation to armed incidents, it did not occur at Abbeylara. Local armed officers who were at the scene gave similar evidence. All officers recognised the inherent danger of crossfire where two groups of armed police face each other, but none conceded that any such risk had arisen at Abbeylara. All gave evidence of their relative positions *vis à vis* other officers and John Carthy,

as indicative that the risk of crossfire did not exist at the time the subject was moving up the road or when he was shot. ERU officers gave evidence of the more advanced training which they received in relation to both crossfire and moving/flexible cordons. Other officers also provided evidence on these issues.

SECTION B: – Information and Intelligence Gathering, Log Keeping and Family Liaison

1. Information and intelligence gathering

Introduction

It was accepted by all witnesses that the gathering of information and its assimilation into intelligence is essential to a properly run police operation.

This was succinctly put by Detective Superintendent Hogan:

“when things are happening very quickly, you want to get as much intelligence as you can from whatever source you can. I think the nature of policing is such that intelligence and knowledge of what is happening is an essential part of policing in a way, but particularly in a stressful situation or if you are going to deal with a stressful situation . . . In a reactive situation, you need intelligence quickly, so you get it from whatever source”.

In strict terms, information is what is gathered and intelligence is the product of the analysis and assessment of that information, including an assessment of its likely accuracy. In the course of the evidence and submissions made to the Tribunal, these definitions were sometimes used interchangeably and in particular on many occasions what should be more strictly called “information” was referred to as “intelligence”, but in these cases the sense of what was meant was clear.

The approach taken by the scene commanders

Superintendent Shelly informed the Tribunal he was the person who received intelligence from the various officers and he was the person to assimilate all information. He assumed responsibility for any intelligence that came into the scene. He said he “felt comfortable” that he was “well able to manage that” and he “was happy with the decisions he made”. He did not think that in the light of his other responsibilities, taking on the intelligence function himself was onerous. He said that he “didn’t feel under pressure”, and that he felt he was “more than able” to handle the responsibility.

It will be recalled that Superintendent Shelly was not the local District Officer; he assumed the position of scene commander on 19th April as Superintendent Byrne, the District Officer with responsibility for the Granard area, was in Dublin attending a course.

Superintendent Byrne said that when he came on duty as scene commander at midnight on 19th of April he looked at the question of the scene commander being responsible for the gathering of information and the assimilation and assessment of the information gathered, and decided that the scene commander “*could manage the intelligence gathering*”. In his review of this issue he stated that he discussed the matter with Chief Superintendent Tansey, Superintendent Shelly, Inspector Maguire and others.

Superintendent Byrne said intelligence gathering was co-ordinated initially by Superintendent Shelly, while he was scene commander, and then by himself when he took over.

When asked whether he was concerned that the scene commander was taking on the burden of gathering and collating intelligence, Chief Superintendent Tansey said that the scene commander had plenty of people around him to assist and he gave as examples, Sergeants Dooley and Mangan and later Garda Gibbons and that it was not unusual for the scene commander to take on this role.

Keeping of a log and recording the information as gathered

Superintendent Shelly commenced the keeping of a log of events at approximately 10:00 p.m. after the arrival of the Emergency Response Unit. This log was taken over by Superintendent Byrne when he came on duty and was again taken up by Superintendent Shelly when he returned to duty as scene commander on the morning of 20th April. The entries include some factual matters, certain instructions given to various officers and some of the information received from other parties, both gardaí and civilian; it is not complete.

Log entries were not always made contemporaneously in the wider context of it being a scene commander log and in the narrower sense of it being an intelligence log. It was subjected to criticism by policing experts, which is dealt with herein.

Training

The evidence of Chief Superintendent Ludlow

Chief Superintendent Ludlow informed the Tribunal that in the Operational Commanders Course given as part of the Superintendents Development Course, the importance of intelligence and information gathering was emphasised; particularly in the practical exercises that are conducted as part of this course.

On such courses instructions are given on the keeping of logs and the recording of information, particularly in aspects of the courses involving armed operations.

The evidence of Detective Superintendent Maher

Superintendent Maher lectured on the Superintendents Development Course. He said that in the context of discussions and lectures on the scene commander’s duties, instructions were given on the importance of the scene commander selecting

appropriate officers to take charge of different facets of the operation (such as cordons, negotiation, firearms, etc.,) together with the appointment of dedicated liaison officers. The delegation of intelligence gathering was stated by him to be an important function and that such intelligence as gathered should be available at the forward control point.

Superintendent Maher referred to the concept of an intelligence cell which was dealt with as part of a lecture delivered by him on the Hostage Negotiation Course. This is a cell where all relevant intelligence in relation to an incident could be gleaned and analysed and from which it could be disseminated. Relevant intelligence would include all information in relation to the subject of a siege so that a profile of a person could be created and developed. Superintendent Maher said that local detectives would be ideal persons for this role in a rural setting as they are the personnel who usually have knowledge of the individuals involved. The intelligence operation should be co-ordinated by a senior police officer typically the local detective sergeant, and he or she should have a responsibility for feeding the information and intelligence to the scene commander. He said that the intelligence cell may be located at the base station and the information sent forward to the scene commander by the intelligence co-ordinator. The base station would more than likely be the local garda station.

The evidence about their training on questions of information and intelligence gathering given by Superintendents Shelly and Byrne

Superintendent Shelly said that he was told during his Operational Commanders Course as part of the Superintendents Development Course that the gathering of information was very important in an operation and the guidelines as to how to deal with that were explained to him. He said that:

“basically the establishment of an intelligence cell at the scene may be something that would be considered or should be considered by the people in charge, basically the operational commander”. There was nothing written in stone he explained but, “obviously the principle of being aware of what was happening and gathering as much intelligence as you could was paramount to the success in any operation”.

When questioned on whether he received guidance as to the circumstances in which it would be advisable to establish an intelligence cell, he stated that every case would be different. He explained that the length of the operation, and the likely continuing length of the operation were important factors in determining whether an intelligence cell would be required. He understood from his training that it was for the operational commander to reach a decision on that matter based on these factors and also on the amount of intelligence with which one would be required to deal.

Superintendent Shelly said that specifically in a siege type situation such as that at Abbeylara, guidance was given during the course of his training as to the circumstances when it would be advisable to establish an intelligence cell. Circumstances would depend on the particular incident that one was dealing with, and that a scene commander *“would have to make a judgement call on that, as I did*

at Abbeylara when I was dealing with the issue there". He stated that that is what he understood and took from the training he received. He agreed that the importance of gathering intelligence was stressed on the courses and he described the gathering of intelligence as a *"fundamental principle"*. He agreed, echoing the evidence of Superintendent Hogan, that when a situation is *"foisted upon you as Abbeylara just happened, then obviously you want to get intelligence, as quickly as you can get it, and find out as much as you can, as quick as you can"*. It was within his training, he said, and it was open to him to establish an intelligence cell and to appoint an officer to take charge of that cell. When asked as to whether at Abbeylara he gave consideration to the establishment of an intelligence cell, he stated that he took on the responsibility himself, and that any intelligence that came into the scene, came to him as scene commander, and that he dealt with it. When questioned whether there were benefits in establishing an intelligence cell headed by an intelligence officer, and whether any such benefits were explained to him during the course of his training, he stated that they were so explained to him. However, he repeated that what he took from the course was that there *"was nothing written in stone in relation to it"*. He contended that he was *"well able to deal with the intelligence that came to me"*. The benefits in the establishment of an intelligence cell that were described to him in the course of his training were, he said, that if one was getting a lot of intelligence from a lot of different sources, that there is someone to deal solely with the information.

Superintendent Byrne stated that his training was similar to that received by Superintendent Shelly.

The Experts' views on information and intelligence gathering

Mr. Bailey

Mr. Bailey stated that in the United Kingdom scene commanders appoint individual intelligence officers for the incident. Their role is to gather information about the subject of the operation, the location, the weapons, motivation, family, friends, medical history, etc. Gathering of information is both self-initiated and in response to tasks set by the scene commander, to whom the intelligence officer reports. The intelligence officer gathers and collates information which is subjected to a process of cross-checking and assessment, the intention of which is to provide the commander with a view of its likely accuracy.

Mr. Bailey stated that information specific to the incident begins when the police first become aware of the incident. There is, however, often information and intelligence in the form of personal knowledge of individual officers and official records that exists before the incident begins. Collecting such details and actively seeking further intelligence are a significant contributing factor in the decision-making process. In the early stages of an incident, he stated, information may be recorded at the scene, at the radio control centre or at the initial command centre. As the incident develops, he stated that it was good practice to entrust the collection, evaluation, storage and retrieval of information and intelligence to one individual.

An illustration of what he perceived as a failure in the intelligence system was the fact that Detective Sergeant Jackson sought medical information in the early hours of Thursday 20th April, although Dr. Cullen, from whom he was seeking that information, was one of the first on the scene when the incident commenced. Mr. Bailey thought that a successful intelligence officer would have obtained medical information from the doctor at the beginning of the incident and arranged to recall him in the event of additional information being required. He also believed that some information was obtained from Dr. Cullen in the early stages of the siege but it was not recorded in a way that could have been used at the command post to inform the decision-making process, e.g., Dr. Cullen's understanding about John Carthy's antagonism towards the police and his partial information on the subject's mental history.

Mr. Bailey explained that in his opinion the absence of an intelligence cell rendered more difficult the gathering of information in a structured manner, but also rendered it more difficult in deciding which information was significant and which should have influenced decisions taken. An example which he gave of this was that in the early stages of the siege little or no significance was attached to the link between Detective Garda Campbell telling John Carthy that Dr. Cullen was outside in the car, and the shot fired which struck the wing of the patrol car in the driveway. It was not until some time later that it was established that John Carthy was reluctant to return to St. Loman's hospital, which was what he might have considered the likely result of seeing Dr. Cullen.

Mr. Bailey explained his view that the analysis of information gathered early in the incident is one of the roles of the intelligence officer and involves "looking for links" with other intelligence or events that occur later. A successful intelligence cell should review intelligence and events and inquire why any particular individual "did this" or "said that". Trying to obtain answers to such questions is illustrative of the tasks of the intelligence cell. He believed that the scene commander should have the intelligence cell co-located with the command post whenever possible, so as to facilitate the continuous flow of intelligence which would inform the decision-making process. The intelligence officer is an adviser to the commander and attends meetings to review the progress of the operation and to provide reports of intelligence gathered. At such meetings he also receives requests for information required.

Mr. Burdis

Mr. Burdis was particularly concerned about the failure of the senior commanders to properly establish a formal intelligence gathering mechanism and an intelligence cell. He thought that, in fairness to Superintendent Shelly, "*it is the system*" that should have "*automatically required an intelligence cell to be established*". Superintendents Shelly and Byrne, he observed, carried intelligence in their heads, having appointed themselves as intelligence officers. He pointed to difficulty in relation to this in that the specific pieces of information that had been obtained by Garda Reynolds from Mrs. Rose Carthy on the morning of Thursday 20th April were not recorded in the scene commander's log. Additionally there was no record in Superintendent Shelly's log of Inspector Maguire's conversation with Mr. Walsh on the question of a solicitor.

Mr. Burdis believed that the scene commanders failed to make use of senior detectives. Thus, for example, an officer should have gone to the local authority to see if a plan of the house existed, particularly when Sergeant Dooley failed to get any reliable plan from the family. Mr. Burdis believed that there was considerable information to be obtained from the family, John Carthy's friends, his medical advisors and from records of the Garda Síochána which were not obtained or recorded in a collective way. He pointed to the fact that it should not have been the responsibility of senior officers to look at the gun restoration file. This was a function for an intelligence officer. He also thought that by failing to appoint an officer or officers to collate and analyse any of the intelligence available, the operation was always going to "struggle". He thought that there appeared to have been no general management of the data; no assessment of what was effective and what was not, and no indication that intelligence played any part in assisting Superintendent Shelly and others to determine their strategies. Additionally there was little evidence to indicate how material was provided to Sergeant Jackson, other than to say that he was meant to "make of it what he could". Mr. Burdis thought that because much of the information was not developed or documented in a way that could be properly analysed, it was difficult for the senior officers to look at the advantages or disadvantages of adopting a particular line, and of allowing Sergeant Jackson to think through the best way of raising issues and opening topics of conversation during his negotiation. He thought that on many occasions Sergeant Jackson was left totally alone to determine how best to deal with a particular issue. An example he gave of this was the question of Kevin Ireland. He was concerned there was no attempt to properly debrief Mr. Ireland and there was little, if any, analysis made of what John Carthy had actually said insofar as it may have reflected his state of mind.

In relation to the officers who were asked to speak to the family, Mr. Burdis thought that they were not properly briefed. He believed that no proper record was maintained of conversations with the family. There was no collective record of what the family had said to the gardaí and no means of maintaining a record of what the negotiator had said. He was concerned that there was no written record of who Mr. Carthy's friends were, and what they had to say about him. Insofar as the request for a solicitor was concerned, Mr. Burdis thought that an intelligence officer would not have been satisfied with a "I don't know" type response from the family members and would have probed beyond that, particularly as the family was likely to have retained a solicitor in connection with the provision of the new house. Further, Mr. Burdis noted that there was no proper evaluation of the written material available in the garda station, insofar as this was read or examined.

Both Mr. Bailey and Mr. Burdis were of the view that the local officers released from cordon duty by the arrival of the ERU were ideally suited to be employed as information gatherers.

Mr. Lanceley

Mr. Lanceley said that in the United States a formal intelligence gathering effort would have been established at the command post and an officer assigned to oversee and co-ordinate that effort. As intelligence was gathered, it would be placed

on situation boards and disseminated to each component of the various management teams, i.e., the negotiation team and the command staff. This would apply even in simple incidents and situations. He pointed out that the benefit of adopting this approach is that everyone has access to the same information.

Dr. McKenzie

Dr. McKenzie stated in evidence that best practice suggests that the gathering of personal and sometimes intimate information about a subject in a siege is of critical importance. He thought that information about the most effective way of dealing with John Carthy was available from his family who had some years of experience of dealing with him in times of mania and in periods of depression. Details were available of solicitors used by John Carthy and his family. He thought that best practice would dictate that following the delayed transmission of information about the telephone call from John Carthy to Kevin Ireland, and regardless of the reliability of his reporting of that conversation, Mr. Ireland should have been urgently interviewed and debriefed, if only to deal with the problem of what amounted to hearsay at third remove.

Other matters which emerged in the evidence

In the course of the evidence on the issue of information gathering and intelligence, a number of specific areas of criticism emerged on certain key issues. Some of these have been referred to in the summaries of the experts' views. Specific areas that were identified and explored by both the experts and by counsel for the Tribunal, and the parties, included the fact that Superintendent Shelly alleged that he did not learn at an early stage of Dr. Cullen's comment to Garda Gibbons about John Carthy's attitude to the gardaí; the fact that Dr. Cullen was not interviewed in a comprehensive way as a matter of urgent priority; the fact that the gun licence file in Granard garda station containing Dr. Shanley's letter was not examined until the following morning; the fact that the file in connection with John Carthy's arrest for the burning of the goat mascot was not identified and examined; the fact that Kevin Ireland was not interviewed; the fact that Dr. Shanley's involvement was not ascertained or identified at an early stage; and the fact that none of the solicitors who had acted on John Carthy's behalf in the past or solicitors who had acted for the family were identified.

That Mr. Ireland was not contacted or debriefed represents a focal point of criticisms made in this area, in that this led to reliance by Superintendent Shelly on the information conscientiously given to him by Ms Leddy, which information he treated as accurate, notwithstanding that it had come through a circuitous route and was third or fourth hand. Two aspects of this were relevant; the first being that Kevin Ireland stated in evidence that in response to a request from him to John Carthy not to do anything stupid like shooting himself or anyone else, that the subject said to him that "*He hadn't a notion*" and that he was "*just trying to keep them away from the house or something*". The second point is that Superintendent Shelly said that Ms Leddy reported to him that Mrs. Mary Ireland, Kevin Ireland's mother, from whom she had received the information, had told her that her son had informed her (Mrs.

Ireland) that John Carthy had said something about “*watching this space*”. It seems that this was not said in the telephone conversation between John Carthy and Mr. Ireland but rather in an earlier conversation between John Carthy and Mr. Ireland prior to 19th April and in the passing from person to person the two conversations had become confused. In relation to the first point, i.e., that John Carthy hadn’t a notion of injuring anyone; this was not communicated to Superintendent Shelly or to the negotiator; and the second, insofar as it purported to have occurred in a telephone conversation that day, which was not so, was communicated to the negotiator Sergeant Jackson.

It was suggested in examination, most particularly of Superintendent Shelly, that the erroneous steps in relation to this information that were taken on foot of incomplete knowledge of the telephone conversation between John Carthy and Mr. Ireland could have been avoided if Mr. Ireland had been properly debriefed by an experienced officer who was familiar with events at Abbeylara and the intelligence thereby gleaned, analysed and assessed by an intelligence cell. It was urged that this was a stark example of the benefit of setting up such an intelligence cell as suggested by the experts and by the training provided by the Garda Síochána. Sergeant Monahan who had spoken to Mr. Ireland when he telephoned Granard station, had not been involved in the Abbeylara siege and had no contact with Ms Leddy or Mrs. Ireland.

On this topic Superintendent Shelly agreed that it would have been better to have checked out the information by contacting Mr. Ireland.

In relation to many of the criticisms and comments from the experts, Superintendents Shelly and Byrne purported to deal with these by saying that they believe that they had complied with their training in that it gave them a discretion as to whether or not an intelligence cell and a dedicated intelligence officer were necessary, and they decided that they were not; a judgement with which they remained content. They formed that opinion and did not comply with the training they had received though neither had any prior experience as scene commanders or an armed siege situation or any experience of contending with a dangerous person motivated by mental illness.

2. Log Keeping

Introduction

The experts, particularly Mr. Bailey and Mr. Burdis, had criticisms and comments to make on the style and standard of log keeping at Abbeylara. These criticisms were not confined to the failure to keep a separate intelligence log, but were broader in their application, in that they dealt with the overall question of the logs, including the fact that they were kept by the scene commander. Accordingly, insofar as it has not been dealt with already, it is convenient to deal with the general question of log keeping here.

The Experts' views

Mr. Bailey

Mr. Bailey thought that there were only so many things that can happen at a firearms incident and he said that it was accepted good practice to prepare record books in advance. These could be pre-printed in bound volumes and provide a chronological log of the incident and act as an aide mémoire to controllers and commanders. This "firearms log" would contain details of the original call to the police, the immediate response, subsequent actions, intelligence required, plans made and decisions taken. This record would be dated, timed and include options considered and rejected as well as the information and intelligence on which the decisions for selection of tactics chosen were based.

Mr. Bailey said that this documentation process should continue throughout the incident with each piece of intelligence being considered against the plan and contingencies to ensure that the appropriate decisions were taken. He said it was usual for the scene commander in the three tier system of "gold, silver and bronze" (this is discussed in detail in Chapter 10) to call meetings at regular intervals to review the progress of the incident and obtain the views of those able to advise him about the suitability of the plans, contingencies and tactics currently agreed. These meetings, he said, should be documented and the decisions recorded, thereby adding to the audit trail of the decision making process. In referring to the evidence of Chief Superintendent Ludlow, to the effect that the importance of keeping logs and recording information was a feature on which newly promoted superintendents would receive training in the course of their Superintendents Development Course, Mr. Bailey found it hard to reconcile the evidence given by Chief Superintendent Ludlow with what he thought was the failure to keep proper logs during the incident at Abbeylara. He thought there was poor quality in the details of what "passed for logs" at Abbeylara, which was not consistent with the description of the training given by Chief Superintendent Ludlow.

Mr. Burdis

Mr. Burdis expressed the opinion that the log keeping was very intermittent and incomplete, and that what notes were kept by Superintendents Shelly and Byrne were open to different interpretations. He thought that it was impossible for Superintendent Shelly to assimilate all the information he was receiving, and to evaluate and determine policies single-handedly. He believed that Superintendent Shelly had no prospect of ever being able to maintain a comprehensive log, and that a full time log keeper would have resolved the problem of recording the data and it would also have had the benefit of providing access to the data for a wider variety of senior and junior officers, and would form the basis of developing an intelligence strategy which would have allowed contingency plans to be worked on by a number of officers at the same time. Mr. Burdis said that a paper or computer based log would have ensured that every officer received the same material of briefings and that those briefings would have been available at all times, not just when Superintendent Shelly could find time to give them. He thought that as a senior

commander, pressures of the moment are often too demanding and too great to be constantly stopping to make notes.

The evidence about their training on the question of log keeping given by Superintendent Shelly

Superintendent Shelly said that in his training during the practical exercises, the person playing the role of scene commander had a loggist with him. His training informed him to maintain a written log but that the appointment of a loggist was an option open to the scene commander, depending on the circumstances with which he was dealing. Superintendent Shelly took the view that the log that he maintained met the requirements given to him during training by keeping a note as accurately as possible of everything that was happening, and of the information coming into his possession. He did not agree that it was difficult for him to keep a log, in circumstances where he had other duties and functions to perform. He said that as he was the person who was getting the information, he was the person to make the record and that that *“was the best way to do it”*.

In summary on the question of log keeping, Superintendent Shelly said:

“I think that, it is my own view you can either agree with it or disagree with it, but I think anyone who had a look at the log that we maintained at the scene – when you talk about future such incidents, or whatever – that they would say that they were well kept and they were detailed and they did have a good overview of what had happened”

When Mr. Bailey’s criticisms of the log keeping, as outlined above, were put to Superintendent Shelly he said that *“well, I don’t agree with him, it is as simple as that. I believe I kept a proper log at the scene, as did my colleague, Superintendent Byrne”*, and the former went on to say that he believed that the log that was kept was consistent with the training that he received. When it was put to Superintendent Shelly that it would have been more effective to have a loggist doing all this for him, he replied: *“you could argue that, but as I said, I felt comfortable with what I was doing and I certainly felt that the log that was maintained was detailed and, indeed, was effective”*.

Other matters which emerged in evidence – the log kept by Detective Garda Sullivan

The other log that existed was that kept by Garda Sullivan. He informed the Tribunal that he was directed by Sergeant Jackson at the outset of the operation that he (Garda Sullivan) would be an aide to him and that this function would include note taking and liaising with the scene commander, together with such other duties that might arise when they arrived at the scene and became familiar with requirements.

Garda Sullivan did take a note. He was asked in evidence the purpose of the note and the reason why it came into existence. He said that the notes were *“not meant to be a detailed account of what happened in the totality of the event and that is not what I understood my role to be in taking a detailed note, they were not meant to be*

an evidential log of events. They were taken, if you like, under difficult circumstances and I did my best to record as contemporaneously as possible some of the events that I was present for during the course of the event''. He explained that an evidential log is one that consists of a complete and accurate record of everything that occurs at the negotiation point – this was not the type of note he was taking.

He went on to state that he confined himself to recording events that occurred or comments that were made while he was there, or comments made by John Carthy of which he was informed by Sergeant Jackson. He said that there were many happenings that were not recorded by him in that he didn't see that it was possible for him to record every utterance and every movement that John Carthy made.

He was aware that standard operating procedures required the scene commander to keep a log, but he never saw that log, even to the time when he gave evidence to the Tribunal. He saw his log as providing some sort of time-scale of happenings as witnessed by him or events for which he was present, recorded so as to assist Sergeant Jackson while he was negotiating.

3. Family liaison

Introduction

Mr. Burdis described the historical perception from which the concept of family liaison grew. The current position in the United Kingdom is that family liaison officers are appointed where there is extreme trauma to family members. The intention in the appointment of family liaison officers is that they have a dual role. The first role is of reassurance to the family about the process and what is taking place. The second role is that such an officer, in the course of conversations with the family over a period of time, may gather intelligence and identify areas that might require further explanation, or that might provide further information and intelligence for the operation, whether from the point of view of negotiations, or tactical strategy.

Sergeant Mangan, one of the officers who spoke to members of the family, including Mrs. Rose Carthy, in the Mahon house over the period of the incident, appointed Garda Cunniffe as the family liaison officer. Garda Cunniffe had no experience or training as a family liaison officer. She had recently qualified as a police officer and Granard was her first assignment. She received no instructions on what her function was with the family. She was inappropriate for the role of family liaison officer. She did not know what information she should seek or might be able to obtain. She took up duty at approximately 10:30 p.m. on 19th April. Garda Cunniffe's involvement and the state of her knowledge has been dealt with in Chapter 4.

While giving evidence in connection with this appointment Sergeant Mangan said that she *“saw her [Garda Cunniffe's] role as being a support to the family. That if they had any questions or any worries or whatever, that she would be able to either answer the questions or get the information they were looking for, and also that information would be fed back through her to the family as a link and she would become a familiar face to the family.”*

The evidence of Superintendents Shelly and Byrne

In his evidence Superintendent Shelly agreed with the general proposition that a family liaison officer was someone who not only imparts information to the family but also acquires information from the family. He said that this was a concept that was well known within the Garda Síochána; a point which is also clear from the evidence of Superintendent Byrne.

The evidence on family contacts

In addition to the appointment of Garda Cunniffe as liaison officer, a number of other officers had contact with the family gathered at the Mahon household. These included Sergeants Dooley and Mangan and Garda Reynolds. Their evidence has already been outlined.

In particular it should be noted that when Garda Reynolds went to the Mahon house at approximately 8:30 a.m. on 20th April, he did not know at that time that John Carthy had a mental illness.

The Experts' views

Mr. Burdis

Mr. Burdis thought that both Sergeant Mangan and Garda Cunniffe had been helpful in supporting the family but they provided little real intelligence. He believed there was no indication that either Sergeant Mangan or Garda Cunniffe were briefed in detail as to their role or about the importance of any focused intelligence gathering that could have been of value to the negotiator in bringing about a peaceful conclusion to the situation. He said that he found no indication that any form of log or note was being kept of the discussions with the family by members of the gardaí. He thought that a full-time family liaison officer should have been appointed. He noted that Garda Cunniffe came off duty at approximately 3:30 a.m. on 20th April, 2000.

An illustration of the failure to fully brief Garda Cunniffe, who had been appointed as the liaison officer, was that during her time in the Mahon house she did not receive any information from the scene. She returned to the Mahon house at approximately 8:30 a.m. on 20th April and remained there until 11:00 a.m., but neither at the time of her return was she aware, nor during the period of her stay there did she become aware, that John Carthy had made specific requests, in particular requests for a solicitor and cigarettes. She said she was not in a position to give the family any further information as to what was happening.

Mr. Lanceley

Mr. Lanceley said that in the United States sometimes a family liaison officer is assigned to the family and in some cases may even move into their home for the duration of the incident. This officer stays with the family to pick up on information of use to the crisis management team and relay the information to the intelligence officer.

He said that another useful purpose for assigning an officer to the family is to gain the trust and confidence of the family. A final benefit of assigning someone to the family is that no one “gets lost”. He instanced here the “losing” of Mr. Martin Shelly. This has been addressed in detail in Chapter 4.

The scene commanders’ evidence on, and their response to, the criticisms

Superintendent Shelly agreed that Garda Cunniffe was not told that John Carthy had made a request for a solicitor, which request had occurred approximately an hour after her appointment as family liaison officer. It was suggested to Superintendent Shelly that the full use and benefit of a family liaison officer would only arise if he or she was fully briefed and fully informed about what was going on at the scene. He agreed and said he thought that Garda Cunniffe knew exactly what was happening, explaining that in his view her knowledge came from the fact that she had been at the scene and should know what was happening, saying that “*everyone there knew about it, what was happening, so I am sure Garda Cunniffe was no exception*”.

Superintendent Shelly agreed that the police officers who brought Ms Carthy and Mr. Shelly to Devines’ house should have been instructed to inform the scene commander of their whereabouts.

Superintendent Byrne said that during his period as scene commander he did not pass any information to either Sergeant Mangan or Garda Cunniffe to convey to the family, and he did not receive from them any information from the family. He was unable to comment on whether Sergeant Mangan or Garda Cunniffe were fully briefed, in that they had been appointed by Superintendent Shelly before his arrival. He did say that he did not have any discussions with either Sergeant Mangan or Garda Cunniffe during the night.

Superintendent Byrne did not have a satisfactory answer as to why Mr. Martin Shelly could not be located after John Carthy had agreed to speak to him or what efforts were made to locate the witness.

SECTION C: — Negotiations

Introduction

When asked in evidence as to what he saw as the essence of negotiation, Detective Sergeant Jackson said that in relation to incidents such as Abbeylara:

“it is about interaction with the individual; getting involved with them and trying to open up a reasonable degree of dialogue with him. Having said that, if there is a difficulty in that area, it may involve, as I said, some degree of reasonably constant dialogue to try and reassure the individual inside as to the motivation of the guards for being there and an acknowledgement of the person’s fear of the consequence of their action and maybe of coming out. So, in this particular case, that would be the essence of it”.

He then went on to agree with some general principles which had evolved for the conduct of negotiations, such as empathy and building rapport; building trust; being able to deliver on what you say you are capable of delivering on, as best one can; not misleading or telling the subject anything that is untrue or a lie; a willingness to compromise with the subject, in the context of an assessment of the individual factors and dynamics in each case; clear lines of communication; obtaining as much accurate information as possible, by way of background, from the subject himself; and ensuring that the negotiation did not deteriorate into a contest of wills.

The experts who dealt with negotiation issues were Mr. Lanceley, Dr. McKenzie and Mr. Burdis and to a limited extent, Mr. Bailey, who had certain comments to make on the location of the negotiation post.

1. The techniques

Sergeant Jackson said that at various times in the course of his negotiations he utilised the following techniques in his attempts to engage with John Carthy:

- A strong sense of empathy, showing that he understood and appreciated John Carthy's feelings.
- Attempts to defuse the subject's intense emotions, to try and reduce him to a more rational working level so as to allow him to interact with Sergeant Jackson. This involved engagement with John Carthy by displaying patience and understanding.
- An attempt to identify his state of mind and his feelings, then repeating them to him to show that he (Sergeant Jackson) was listening, and understanding the way the subject was feeling. Technically this is known as "emotional labelling". By way of example, Sergeant Jackson illustrated how you would effect this, when he said to John Carthy:

"John, you sound very angry, you sound very upset, what is the problem and what has caused all of this, I am here, I want to hear about it".

He said that he utilised this method throughout the incident.

- An attempt to allay any fears John Carthy had in relation to the presence of the gardaí at the scene.
- On issues, such as the subject's requests, revisiting them if there was no progress in other areas and being proactive to some extent, so as to achieve something positive out of them.
- Reassuring John Carthy and acknowledging his worries and fears.
- Giving Mr. Carthy time to consider and think. He said that silence is part of the process.

Sergeant Jackson drew a distinction between how a negotiator deals with a conventional hostage incident, where the hostage takers normally display goal

oriented and purposeful behaviour; and a non-hostage incident, where the person involved deals in a very self-destructive and senseless way, driven by anger as opposed to any particular demand for any advantage. In dealing with a hostage incident, the accepted police thinking is that the police should operate a high visibility containment by the firearms team, with negotiators rigidly playing for time, attempting to convince the person of the benefit of surrendering and that their course of action is not to their advantage. In the latter non-hostage situation the strategy should be based on low visibility containment together with engagement with the subject; allowing him to vent his anger; listening to the subject and providing him with problem solving solutions particular to the individual. The evidence indicates that the negotiator did nothing to provide John Carthy with problem solving solutions particular to his situation – such as his fear of a long prison sentence; his desire for a solicitor at the scene and his repeated requests for cigarettes.

From the evidence before the Tribunal it would appear that in the early stages of the development of the concept of a dedicated negotiator, police forces concentrated upon the utilisation of the negotiator in hostage type incidents. This arose as a response to such incidents as the Iranian Embassy siege in London in 1980. However, it appears that the current common experience is that the majority of incidents dealt with by police forces which require the use of negotiators are non-hostage type incidents. In response to this, in recent years there has been greater concentration on the separate techniques and skills that are required for this latter work, leading to the broader concept of a “crisis” negotiator rather than a “hostage” negotiator.

It is also worthwhile noting that Mr. Lanceley in his evidence illustrated another broad distinction that has evolved in the thinking in recent years – with particular reference to the position at Abbeylara – when he drew a distinction between crisis negotiation and crisis intervention. He said that negotiating by its nature would suggest that one or other of the parties could back out of any agreement reached, or of the negotiations themselves. He said that this could not happen in a situation where a police force is called to intervene in a siege. A police force cannot back out of the scene. In those circumstances, Mr. Lanceley believed that effectively the police are not negotiating but rather they are intervening in a crisis situation. He thought that negotiation was a term more particularly relevant to hostage scenarios. Effectively, Mr. Lanceley was of the view that in non-hostage situations one is dealing at root with crisis intervention. In a hostage situation, one is dealing with crisis intervention together with the use of bargaining; in hostage situations it is difficult to get away from bargaining.

Dr. McKenzie, differentiating between the principles and the techniques of hostage negotiation and non-hostage negotiation, said that the principles of hostage negotiations were firmly based on behavioural psychology. As an example of a practical illustration of this, he said that requests for such things as food, cigarettes and medicine would only be complied with following a positive response from the subject. He said that where hostages are being held and demands being made the practice of delay and prevarication followed by some reward for an acceptable piece of behaviour on behalf of the subject, such as allowing medical assistance, or

releasing a hostage, is perfectly correct. These are known as “positive reinforcers”. They are based upon the sound behavioural principle that the reinforced behaviour will be repeated and that in turn the repeated behaviour may be further reinforced. The aim here is the negotiator will manipulate the behaviour of the subject leading in due course to a satisfactory outcome. Although he thought that this approach provided some useful strategy in a single-barricaded-subject situation, its excessive application in those circumstances may be unwise. In circumstances where there are no hostages and no demands (and in this regard he distinguished demands from requests) and “little to negotiate upon”, the key feature is to keep matters under control.

Mr. Lanceley illustrated the practical distinction between hostage and non-hostage situations, by drawing attention to the question of “demands and goals”. In a hostage situation, the hostage is being held for the fulfilment of “substantive demands”, those being ones that the subject could not fulfil through legitimate means. In contrast what are described as “non-substantive demands” are ones that a subject can obtain through legitimate means. Demands that frequently arise in non-hostage situations are non-substantive demands, and when these arise in a non-hostage situation a negotiator has to ask why the subject wishes to have these non-substantive demands fulfilled. This is the question that the negotiator will more than likely have difficulty in answering and illustrates the difference in the skills required to deal with a non-hostage situation.

2. Detective Sergeant Jackson’s experience

Sergeant Jackson has been a member of the Garda Síochána since 1980. Prior to that he had worked in Dublin Corporation, Dublin County Council, and for a manufacturing firm. He had about two years’ employment experience before joining the Garda Síochána. His first posting was Harcourt Terrace station in Dublin and in 1982 he was transferred to Kilmainham station also in Dublin where he did general beat and patrol car duties dealing with a broad range of general police work. His period in Kilmainham also included some work in the local drugs unit.

In 1985 he joined the Special Detective Unit and was posted to Harcourt Square in Dublin, specifically to the Special Task Force in which he received firearms training.

In 1986 he joined the Emergency Response Unit and underwent the assessment and training procedures which are outlined in Chapter 10. He was promoted to the rank of sergeant in June, 1991 and returned to uniform attached to Store Street station in Dublin (where he remained, carrying out mainly personnel/supervision duties) until his transfer in January, 1994 to Blanchardstown station in Dublin where he was in charge of the local Crime Prevention Unit involving a broad range of work in criminal investigation and prevention.

In August, 1996 he was transferred to the Special Detective Unit as a detective sergeant and was a member of the Inquiry Unit for the North Dublin area, working primarily in intelligence gathering on subversive and serious crime. In September

1998 he rejoined the Emergency Response Unit. In October, 1998 he received tactical training in Germany and in August, 1999 attended the FBI hostage rescue team centre at the FBI headquarters at Quantico, Virginia. He said that negotiation was an element of this course but was not the specific reason for the training. It was broadly based, covering all the elements of hostage and rescue. His attendance at this course was primarily from a tactical team perspective.

In March, 2000, Sergeant Jackson was chosen to attend the London Metropolitan Police National Negotiators Course, a two week, full-time course. On return from it he was appointed national negotiator in the ERU.

Prior to this appointment Sergeant Jackson's practical experience relevant to the matters that arose at Abbeylara came primarily from dealing with domestic violence issues, particularly during his period at Kilmainham garda station. In evidence Sergeant Jackson made the point that most garda personnel who are in the front line end up with a degree of experience in dealing with individuals in crisis states. In his evidence Sergeant Jackson drew the Tribunal's attention to one incident in particular that occurred while he was stationed in Kilmainham. He was called to a business premises in Inchicore where an armed man had taken employees hostage; had fired shots and had refused to come out. This individual turned out to be a disgruntled employee who had been dismissed. The area was cordoned off and negotiating commenced leading to a surrender after five or six hours.

In 1990 Sergeant Jackson was part of a unit involved in the containment of an armed gang who were holding staff members hostage in a bank at Athy, Co. Kildare.

All of this having been said, the incident at Abbeylara was the first of its kind at which Sergeant Jackson attended with the designation of negotiator. In that capacity he had never before dealt with a live incident, and had not been involved in a siege type incident concerning an armed man motivated by mental illness.

3. Detective Garda Sullivan's experience

As already stated, Garda Sullivan was appointed by Detective Inspector Hogan as Sergeant Jackson's assistant. He was his only assistant, and together they made up the negotiating team.

Garda Sullivan joined the Garda Síochána in 1982 and became a member of the Emergency Response Unit in 1994. Prior to that he was stationed in Clontarf Garda station and in the Divisional Task Force located at Santry, both in Dublin. His ERU experience included firearms duty, and he was part of the inner cordon team involved in the incident at Bawnboy, Co. Cavan in January, 1997. During training with the London Metropolitan Police in 1998 he served with a unit similar to the Emergency Response Unit for two weeks; the training he received being on the tactical side. In 1998 he also completed the firearms instructors course in the Garda Síochána.

Garda Sullivan had no training in, or experience of, negotiations. He had never acted in the capacity of assistant to a negotiator before.

4. Other qualified negotiators

It appears that in April, 2000 there were a number of negotiators available within the Special Detective Unit in Dublin – approximately five in number. Additionally, there were in the region of 25 to 30 trained negotiators spread countrywide.

5. Detective Sergeant Jackson's knowledge of mental illness

In his basic training Sergeant Jackson attended the lecture given in the Garda Training College, in Templemore on the Mental Treatment Act, 1945. Other than the knowledge that he gleaned on the London Metropolitan Police Negotiators Course, his knowledge of mental illness was derived from his own general reading and life experience.

In relation to his knowledge of manic depression, and in particular the distinction between it and depression simpliciter, he said that:

"I had a general knowledge from, I suppose, my own general experience and reading in relation to manic depression. I also had knowledge from my training in the UK I was aware manic depression is a serious form of depression. I was aware that it involved swings between elation and depression. From my reading I was aware a lot of famous people, artists, writers, poets, suffered from manic depression. Abraham Lincoln, Winston Churchill, I think, were all sufferers, so in a general way from reading I was aware of the illness, that it was a serious illness. I was aware that during periods of elation people can have ideas of grandiosity and I remember reading at one stage, people tended to spend money above and beyond their means during periods of elation. I was also aware of the depressive state; people having morbid thoughts. Suicide was an issue when a person was in depression. Generally, thoughts of death, loneliness, low self-esteem, these were all in peoples' minds when they were depressed. I was aware also that either in the elated phase or in the depressive stage, people in these particular instances, can lose touch with reality and may suffer from hallucinations or delusions during a bout of this particular illness".

6. Training

Detective Sergeant Jackson

Sergeant Jackson attended the London Metropolitan Police Negotiation Course which ran from 5th to 17th March, 2000. This course dealt with hostage and non-hostage situations, given that at that time 70% of incidents in the United Kingdom were of the "non-hostage" variety. As already stated, prior to attending that course the training Sergeant Jackson had received was primarily on the tactical side, and although it gave him some general knowledge of negotiation, the London Metropolitan course was the first one which was specifically concerned with

negotiations. At the outset candidates were required to undergo psychometric testing to assess their overall suitability for the course, and their capability to act as a negotiator.

The evidence established that the London Metropolitan Police Negotiation Course is one of a high standard and calibre, which is held in particular regard by police forces worldwide.

The topics and skills covered by the course included:

- The identification of the type of individual you are dealing with and setting out some information about various types of mental illnesses and conditions. From Sergeant Jackson's evidence, it appeared that there was no specific reference in the London course to "elation" in the manic phase of bipolar disorder, or instruction on how to deal with such a phase.
- Appropriate negotiation strategy with people with depression.
- The art of active listening.
- Styles of communication – emphasising empathy and honesty.
- Dealing with demands with an emphasis on the distinction between hostage and non-hostage situations, i.e., that in a non-hostage incident a demand, if reasonable, may be worth fulfilling without requiring something substantive in return and should be acceded to, provided the item can be delivered safely.
- The importance of the tone of voice, and body language.

In practical terms the course laid emphasis on the need for information and intelligence and the method of managing the use of the material generated, including as much relevant information as possible about what has motivated a person; what sort of person they are; their background, and state of health. The course stressed the importance of:

- Maintaining close contact with the stronghold.
- Ensuring an ability to record matters vital to the negotiations.
- Ensuring that negotiators operate as a team, ideally three or more in number but never less than two. In this connection Sergeant Jackson said his training taught him that the ideal situation was to build up a negotiation cell at a remove from the scene.
- While negotiations may start in "face to face" mode, the ideal position is a negotiating cell. In this regard his training indicated that "face to face" negotiations were to be avoided, if possible.
- In the event of "face to face" negotiations, secure cover should be sought and any display sheet on which relevant records of information and

intelligence have been made should be mobile, to allow for movement in the event of a retreat.

- That the negotiation cell established should:
 - Be outside the inner cordon but near the forward command post;
 - Be in a temporarily occupied building or a purpose-built or adapted police vehicle, capable of holding at least six people;
 - Be comfortable, not in the line of fire and be protected from the elements;
 - Be selected on the basis of long-term involvement rather than short-term deployment.

- That the negotiation team be as follows:
 - Number 1, the principal negotiator, engages in conversation with the subject;
 - Number 2, gives direct support to number 1 in interpreting and implementing the strategic commander's overall strategy through a negotiating tactic. This negotiator is also responsible for the safety of the principal negotiator when both are engaged in "face to face" situations.
 - Number 3, provides a communication link between the negotiator and the remainder of the command structure and also supports the role of number 2 in implementing the overall strategy and in the pursuit of shorter-term objectives in terms of intelligence gathering. Additionally, this individual is responsible for maintaining a detailed log of the events and may have to manage the visual displays as well.
 - Number 4, is responsible for the maintenance of a visual display of all information relevant to the negotiations such as deadlines, demands, delivery or collection plans, the surrender plan, a break-out plan, and the general intelligence gathered.

In addition Sergeant Jackson stated that the London Metropolitan Police training stipulated that a negotiation coordinator, who is an experienced and competent negotiator with sound operational skills, should be part of the negotiation cell. His responsibility is to ensure that the cell is properly sited, equipped and run, and that the negotiators actively and accurately implement the overall strategy. He is also responsible for advising the scene commander on the best negotiating strategy and steers the team of negotiators by working closely with the other teams. He is responsible for arranging the deployment of a complete new team, normally after a twelve-hour shift has been completed, but this may vary according to the circumstances and should take account of the length of time each individual has already been on duty, prior to the incident commencing.

In his evidence Sergeant Jackson stressed that this is the ideal situation, and that his training indicated that *“it is really on the basis of the primary resources of the incident, assessing the dynamics as to how many negotiators you actually need or want in that environment and really it would be very cumbersome to bring three or four negotiators on a “ face to face” and that is some of the issues that are discussed in training”*.

In this context Sergeant Jackson said his training provided that the roles as outlined can be compacted to suit a particular scene. He said that the role of number 3 and number 4 negotiator can be compacted into the role of number 2 negotiator; and that he received training on this topic. He was of the view that at least two negotiators should be used, and that if the circumstances allowed, then more could be employed.

- Also the London course stressed the benefit of other specialists such as a psychiatrist, medical advisors or clinical psychologists, who may be able to provide guidance in terms of negotiating and also advise on the welfare of the negotiating team. On the broader question of medical advisers, Sergeant Jackson said: *“I think the common sense approach indicates that it would be very good practice to contact an individual’s medical specialist, either through the clinical psychologist retained, or directly, if necessary. So yes, that would be fair to say, it is something that should be considered and should be done on that basis, yes”*.
- The importance of maintaining a negotiating log. It was not done at Abbeylara.
- That, if possible, negotiations should be recorded.

7. Scene commander training

Introduction

The document entitled *“The Siege Operations”* which was prepared by Detective Superintendent Maher and used by him in his lectures was referred to in evidence. He said that the primary objective of this lecture was to engender the overall concept of siege management in district officers, who may not have had substantial expertise or exposure to the management of major incidents previously. The purpose was to make these officers aware of the expertise that was available to them and to give them some instruction as to how to manage a scene.

Superintendent Maher stated in evidence that the contents of the presentation are now given by Inspector Michael Jackson in his lecture on *“Principles of incident and on-scene command”* as part of the Operational Commanders and Superintendents Development Course and are similar to those that were given by him when he lectured on this course.

In relation to negotiations, these lectures involved instructions on various methods of communication, that is by way of telephone, loudhailer or direct contact and a discussion of the disadvantages of each of these methods. In particular,

Superintendent Maher said that instruction was given on the fact that “person-to-person” negotiation “*places the negotiator in obvious physical danger*”.

The course also included instruction in the concepts of a negotiation cell and a negotiation coordinator.

Participants on the Superintendents Development Course were also informed of the availability of technical resources, including specialised telephones, and advice on the availability of the services of a clinical psychologist. Superintendent Maher’s course notes state that “*his professional advice would be very valuable in a siege type incident*”.

8. The negotiation post and its location

The evidence

Detective Sergeant Jackson

The evidence was that the initial attempts at negotiating were conducted by Sergeant Dooley and Superintendent Shelly before the arrival of Sergeant Jackson and the Emergency Response Unit. On his way to Abbeylara, Sergeant Jackson had given advice to Sergeant Dooley and Superintendent Shelly about the conduct of the preliminary negotiations being carried out by them. It was during their negotiations that Mr. Thomas Walsh had his first contact with his cousin by mobile telephone. Sergeant Jackson was not asked his advice in that regard.

During his journey to the scene from Dublin, Sergeant Jackson received the information already alluded to from Superintendent Shelly. Included therein was the brief partial information that had come to Superintendent Shelly from Dr. Cullen through Garda Gibbons. No details were furnished by or sought from the doctor. Superintendent Shelly did not interview him or arrange for any other officer to do so. Sergeant Jackson stated that he was not aware what specific information had come from Dr. Cullen, but that he took the information he received from Superintendent Shelly in “*a block*”.

Sergeant Jackson agreed that making an assessment of the then current phase of John Carthy’s illness would be part of his overall investigation.

On his arrival at the scene Sergeant Jackson learned that Sergeant Dooley and Superintendent Shelly had carried out their attempts at negotiation from the ESB pole at the boundary between the Carthy and Burke properties. When Sergeant Jackson commenced negotiations he also occupied that position and he remained there for approximately ten minutes. Initially he thought that this was a point that was far enough out of John Carthy’s line of sight and range to be able to talk to him in reasonable safety. It was on high ground, looking down at the house and it also afforded good cover to anyone speaking to the subject from that point.

Soon afterwards Sergeant Jackson reassessed the situation. The main reason for doing so was his concern that John Carthy could not hear him unless by phone or loudhailer and Sergeant Jackson would have difficulty in hearing any response from him.

The witness believed that verbal communications were extremely important. In addition he thought that it would be helpful to be able to see how the subject was behaving which would allow him (Jackson) to *“interact with him verbally on that basis”*.

He made it clear that he was wary about close contact with John Carthy, in the nature of “eye to eye” contact, because that can cause an adverse reaction in people who are depressed or in a crisis state. He described contact with the subject as “face to face” rather than “eye to eye”. In the context of moving the negotiation post closer to John Carthy, he saw his physical closeness to him, and the danger of provoking an adverse reaction as a negative point, but he thought it was one that needed to be offset against the potential benefit of having communication with the subject.

Various alternative locations were looked at and a position at the pillar near the centre of the roadside boundary wall of the Carthy house was chosen. This pillar is shown marked as X on photograph numbers, 3, 8 and 11 in the series of photographs which are contained in Appendix 5. It was in a direct line with the gable window of the Carthy house, being the window of the kitchen. This was where the subject spent nearly all of his time during 19th and 20th April. The distance from the kitchen window to the pillar in the wall is in the order of 38 feet. It was within the firing range of John Carthy’s shotgun.

Sergeant Jackson said that he thought that the advantages of this location were that the subject could hear him when he was using the loudhailer; that he was able to see his reactions to what he was saying and that he had the ability from this point to speak to him without the loudhailer unless he was threatening and firing shots.

Sergeant Jackson stressed that he saw the new location as a temporary measure. Because it was at the centre of the inner cordon it created an extra difficulty for the tactical team. It was identified as one of necessity rather than choice. He agreed that it was not ideal but that his thinking was that if and when he established telephone contact with John Carthy he would withdraw to a better position, such as one of the nearby houses. In general, Sergeant Jackson thought it was the best of a poor selection that was on offer.

He said that he discussed the matter with Detective Sergeant Russell and with Superintendent Shelly and it was agreed between them that he would move to the new location.

It was accepted by Sergeant Jackson that communication by loudhailer was not satisfactory for a number of obvious reasons, in particular that the subject did not have the benefit of a loudhailer and there was the unhappy situation that if private and intimate details were discussed by loudhailer, he would have the impression that

they were being broadcast generally. Sergeant Jackson and the other relevant garda officers agreed that the new negotiation post was physically unsatisfactory, requiring Sergeant Jackson to crouch behind the wall when John Carthy levelled his gun or fired shots, thus interrupting the flow of communications and cutting short any potential dialogue, leaving Sergeant Jackson exposed to the elements and creating difficulty in the recording of information, intelligence and events occurring at the scene, as well as causing significant further difficulties for the tactical team in that this new post was located within the “sterile area”, a practice generally to be avoided. Probably the most serious disadvantage relating to the relocated negotiation point was that it gave John Carthy the opportunity, which he frequently enjoyed, of causing ERU officers there to duck up and down by levelling his gun at them (*vide* his telephone conversation with Kevin Ireland). He also availed of the opportunity to shoot a megaphone and a loose concrete block off the top of the wall. The latter fell on Sergeant Jackson who was crouching behind the wall at the time. The new negotiation point was severely criticised by the police experts – see hereunder.

Aside from one short period referred to below, Sergeant Jackson carried out all his efforts at contact and negotiation with John Carthy at the new negotiating point from about 10:30 p.m. on 19th April until he emerged from the house on the following day.

Sergeant Jackson never achieved sustained communication with the subject by telephone, much less his agreement to communicate in that way. His telephone contact was brief and intermittent and was only on the subject’s mobile phone. The negotiator never achieved any contact at all on the landline in the Carthy household. Sergeant Jackson’s only other contact with him during this period was either by direct speech over the wall or by the loudhailer. In summary, he was of the view that he never established a level of satisfactory communication with the subject that would have allowed him to move from his cramped and unsatisfactory location at the pillar of the garden wall.

He said that consideration was given to the suitability of the relocated negotiation post in discussions which he had with Superintendent Shelly and Superintendent Byrne, particularly in the context of the shots fired by John Carthy. During Sergeant Jackson’s watch eight shots were fired. Seven were in the direction of the pillar behind which the negotiation post was located, and there is photographic evidence of damage to the inner side of the wall at or about the pillar. There is no evidence that Mr. Carthy intended to shoot any police officer there. His subsequent telephone conversation with Kevin Ireland clearly indicates the contrary. It appears that the shots were fired after he caused the officers to duck behind the wall.

Detective Sergeant Russell

Sergeant Russell stated in evidence that he selected the negotiation position behind the pillar which was in direct line with the gable wall of the Carthy house. He said that in selecting this position he considered the safety options and had to weigh up a number of factors, believing that he was responsible for providing Sergeant Jackson with the opportunity to bring the incident to a peaceful conclusion. He said that it was *“incumbent on us to take some risk to resolve the situation. If that meant exposing*

ourselves to some degree of danger, well, we were prepared to do that if it meant that Michael Jackson could continue with his negotiation and hopefully bring it to a peaceful conclusion”.

The experts’ views on and analysis of the location of the negotiation post

By way of general explanatory note, on each of the topics on which the experts gave their views, which were critical of the actions or decisions of any garda officer, each of the latter was given an opportunity to deal with such opinions and their attention was directed to certain specific areas by letter from the Tribunal. Their written replies were then amplified in evidence by the appropriate officers. In this chapter the letter written to each officer is referred to as the “recall” letter, and the evidence given by each as the “recall” evidence.

Introduction

The experts’ opinions on the location of the negotiation post were connected with their comments on the issues of officer and third party safety; risk assessment; the wisdom of “face to face” negotiations; the use of the loudhailer; the use of a separately located negotiation cell and the use of specialised equipment. It is convenient to consider all of these related issues under one heading.

It is also important to note that while the question of the location of the negotiation post is one that is firmly within the scene commander’s remit; in this instance the appreciation of the criteria involved in the selection of a negotiation point were matters of which Sergeant Jackson would be acutely aware, having just completed his London Metropolitan Police course. It was a number of years since Superintendent Shelly underwent his Superintendents Development Course, which contained limited instruction on the principles and techniques applicable to negotiation. Accordingly, Superintendent Shelly and subsequently Superintendent Byrne naturally relied on the advice they received from Sergeant Jackson, while at all times making clear in their evidence that the final decision on this, as with other operational issues within their remit, was made solely by them and if they were of the view that any suggestion on this or other topics from any relevant officers subordinate to them were ones with which they did not agree, they would have had no hesitation in rejecting such advice.

The distinction between the roles of the scene commander and the negotiator was illustrated by Mr. Bailey in his evidence when he said, in connection with the relocation of the negotiation post to the pillar in the boundary wall:

“I think the negotiator quite rightly has focused on how best can they fulfil what is a difficult and complex role at the scene. It is also, I think, the responsibility of the scene commander to ensure that their safety is not compromised by their eagerness to fulfil that role. Therefore, whilst the commander should attempt to provide the negotiator with the negotiation point that they are seeking, they have to provide an overview of safety and effectively overrule the negotiator if safety is going to be compromised by the location that the negotiator would be in.

In the UK we have had shots fired that have hit negotiators, not fatally I hasten to add, and negotiators have positioned themselves in positions which commanders have reviewed and withdrawn them from. So it is not an unusual situation. It is, I think, on the basis of the different focus of those two individuals, the scene commander's overview of safety and the negotiator's desire to conduct the negotiations in such a way that they will be successful".

Mr. Lanceley

Mr. Lanceley thought that from the outset of the negotiation response, there did not seem to have been an appreciation of the level of danger inherent in the incident. He said that the negotiation position, at the pillar, left negotiators and third party intermediaries too close to the Carthy residence and too vulnerable to hostile fire. He was of the view that the negotiators presented themselves as a target and John Carthy availed himself of the opportunity, firing on at least six occasions at the negotiation post. He said that the safety of the negotiators is a negotiation problem. He thought that it is not only that the negotiators are risking their lives but also that they are setting back the negotiation. He said that every time the negotiators exposed themselves to gunfire, John Carthy shot or aimed at them. He thought that John Carthy was amused by his power to make the gardaí duck for cover and that he boasted of this to Kevin Ireland in his conversation with him. In view of the fact that the negotiators could see the subject and he could see them, they had to be, at the very least, exposed to hostile fire. He said that there were a limited number of ways that negotiators could establish a dialogue. The first of these and the preferred method in the United States is the telephone whether it is a hard line telephone, mobile phone or telephone designed for law enforcement agencies in siege situations. The second and next best method is direct voice from cover with or without a loudhailer. The third method, and one that he was strongly of the view should be avoided especially with suicidal individuals, is exposed "face to face" negotiations. He thought that at Abbeylara a combination of all three methods was used. In the use of exposed "face to face" negotiations, cover was only used when Sergeant Jackson felt threatened or John Carthy was shooting in his direction. He said that in the United States negotiators are taught not to use "face to face" negotiations with armed subjects, including suicidal subjects, in that they are considered far too dangerous. As an illustration of the inherent dangers in this approach Mr. Lanceley drew attention to the fact that on one occasion when the subject fired the shotgun at Sergeant Jackson's position, forcing him to take cover, a minute later Sergeant Jackson thought it safe to look over the wall again. Mr. Lanceley posed the question as to what had changed in that short period of time, from it not being safe to look over the wall to it being safe. He could find nothing that had changed. He thought that in the United States the scene commander, the tactical team leader or the negotiation team leader would have told Sergeant Jackson to find another negotiation position. He was strongly of the view that, in the United States, Sergeant Jackson would not have been allowed to negotiate from behind the boundary wall. Interestingly, he said that he saw it as a good measure of Sergeant Jackson's skill as a negotiator that he almost convinced Mr. Lanceley in his evidence that being by the wall was a good idea. He said it was not a good idea because it was not safe. The witness said that if he had been in the position of the negotiation

team leader he would have deemed the negotiation position behind the wall to be clearly unsafe and would have attempted telephone contact from an alternative point. He said that in the United States if the subject did not answer the telephone immediately, and often this is the position, negotiators would keep calling until he did answer even if it took hours or days. In the context of being asked whether he believed that the scene commander, Sergeant Jackson and Sergeant Russell concerned themselves with officer safety, Mr. Lanceley said:

"I don't think they discounted it. However, at the same time I tend to think that their assessment was unrealistic. They were overly optimistic. If a negotiator can't find a safe place from which to negotiate, that does not mean he goes to an unsafe place from which to negotiate. What he then does is he doesn't negotiate at all. I would have preferred, Sir, that Inspector Jackson would not say anything to Mr. Carthy than have Inspector Jackson where he was. I would have preferred, Sir, that everyone just kept out of sight and said nothing at all to Mr. Carthy. That would be my preference. It might even have helped the negotiation process because I believe after several hours with nothing happening, Mr. Carthy may have said something. Where Inspector Jackson was, it was just a very dangerous place to be".

He went on to say that depending on the precise circumstances, he probably would have withdrawn from that point when John Carthy either pointed or fired the gun.

Mr. Lanceley said that by giving the subject the target of the negotiation post it allowed him to "self-enrage". The witness stated that with all the personal problems going on in his life, it would have been more appropriate to talk to him over the telephone. The loudhailer may be suitable at the beginning of an incident to gain the subject's attention, but in the United States, concerted effort would have been made to transfer the negotiation to a more private form of communication, such as the telephone. He noted that very private issues were being discussed and he said:

"shouting and using a loudhailer is not conducive to discussing and resolving such intimate and private issues as Mr. Carthy's mental disorder, suicidal ideation, love life, job loss, loss of possible self-esteem and self-worth, anger, slagging he had been receiving, the feelings about the garda, guilt over self-inflicted blame for his father's death, the loss of his family home, etc."

Mr. Lanceley said that any conversation under the Abbeylara circumstances would have been difficult but, *"with a person who has been described as sensitive and diffident it would have been especially so"*.

Mr. Lanceley expressed the view that because John Carthy did not answer the telephone initially, this did not mean that he would never have done so. Even if it took him hours or days to answer the telephone, that extra time was likely to "pay big dividends". If no other means of communication were being employed, John Carthy would have eventually picked up the telephone realising that the incident was going to be worked in that way. He stated that *"by using only the telephone Mr. Carthy would have been educated as to how things are done in an incident such as this"*. The very fact that he had to shout to be heard kept his arousal levels high.

Mr. Lanceley accepted that Sergeant Jackson went to “*extraordinary lengths*” to contact the subject by telephone. The latter rebuffed those attempts and he agreed that in those circumstances, it must have been very difficult and frustrating for Sergeant Jackson to try and establish telephone contact. He agreed that the use of the telephone and the attempts to make use of it presented difficult issues for Sergeant Jackson in the circumstances in which he found himself. However, he did say that no time limit should be placed on the attempts to achieve telephone contact, but that as the establishment of communication with the subject is the first step in trying to build up rapport with him a negotiator should keep calling.

Dr. McKenzie

Dr. McKenzie stated in evidence that the key problem in the negotiations, which was identified by Sergeant Jackson, was that the first position selected as a negotiation point was too far from the Carthy house, and the second was too close. However, regardless of any well-intentioned desire to develop a bond with John Carthy, any question of rapport/empathy development was severely damaged by the need to use a loudhailer to make contact with the subject. Even the alternative – shouting over the wall – was beset with problems. He said that he accepted that the circumstances surrounding Sergeant Jackson’s negotiation attempts were plagued by difficulty and danger. In his opinion the loudhailer is not commensurate with any effort to strike up rapport or to demonstrate empathy. Furthermore, if tone of voice and “echoing and feedback” are important, efforts to use such devices are rendered futile by the need for shouted “conversations”. Subtleties of tone or voice (on either side) are non-existent. He said that he thought it was clear from the negotiator’s evidence as well as from the evidence of others at the scene, that Sergeant Jackson was a skilled, thoughtful and knowledgeable negotiator, and that he did his best in trying to display the skills of “active listening”, but most, if not all of his efforts were thwarted by a lack of adequate (suitable) equipment. He said that in the absence of a proper facility for communication, however much the negotiator might wish it not to be so, a loudhailer produces a one-sided monologue approach.

He thought that it was of critical importance that such communications should take place on a person-to-person basis and, in the absence of a telephone line, it should be undertaken using a “throw phone” or a “field phone” or some similar form of equipment. He said that such equipment not only provides an effective form of rapport building through intimate communication (he described that “*one can hear a smile*” in a person’s voice on a telephone), it also provides the opportunity for gathering of intelligence. The issue of equipment is dealt with in more detail below.

Dr. McKenzie said that in the context of loudhailer use and the associated poverty of communication, it is important to consider what the situation looks like from the viewpoint of the subject inside the building. He may view him or herself as the principal negotiator and will expect, as a matter of course, responses to observations, questions, comments and demands that are made by him or her. Where, because of inadequate communication, the police negotiating team cannot hear responses or demands, any expectation of rapport is defeated. This almost inevitably leads to growing frustration in the subject. Dr. McKenzie was asked, in the context of the

numerous attempts that were made by Sergeant Jackson to make contact by telephone with John Carthy and in the context of the responses that he received, what he (Sergeant Jackson) was to do. Dr. McKenzie replied that the answer was simple – “*keep on trying*”. In this context he drew the Tribunal’s attention to the fact that there was telephone contact between Sergeant Jackson and the subject in the early afternoon after the loudhailer had been shot from the wall at 1:06 p.m. This is a point which was elaborated upon by Mr. Burdis in his evidence. Dr. McKenzie thought that fairly subtle use of words and language should be used in repeatedly pointing out to a subject that the police officers conducting the negotiation are having difficulty outside in hearing what is being said. He stressed a negotiator should not be overbearing in such a situation.

Mr. Bailey

Mr. Bailey thought that it was unlikely that many commanders in the United Kingdom would have agreed, on the grounds of safety, with Sergeant Jackson’s request to move the negotiation post to the pillar at the boundary wall. Furthermore, he was of the view that if such agreement had been allowed, a negotiator would have been withdrawn immediately John Carthy aimed the shotgun at him, let alone fired shots at the wall. He said that he could understand Sergeant Jackson’s reason for making the request to negotiate from the wall, but thought that from a commander’s perspective the risk was too great to adopt the wall as the negotiation position. In his view it was a command responsibility to ensure the safety of the negotiator. He said that the safety of the negotiator should take priority over the effectiveness of the negotiation, if that choice needs to be made; and that if the contrary view is taken, eventually a negotiator will be shot by the subject of an operation.

He thought that in addition to the safety considerations, an additional reason that a scene commander in the United Kingdom would not have adopted the wall as the negotiating position is that it provided John Carthy with more control over the process than they would have wanted. Simply by pointing the shotgun he could stop the negotiation when he wished. He also believed that a scene commander in the United Kingdom would not have allowed non-police personnel to go to any negotiating point where there is a risk of them being shot. A further concern for a United Kingdom scene commander would have been that if a member of the inner cordon shot the subject through the window because they feared for the safety of someone at the negotiating post; it could be argued that the decision to negotiate from the wall contributed to the need to fire.

Mr. Burdis

Mr. Burdis was of the view that the location of the negotiation post put Sergeant Jackson in a very difficult situation. He would have to be in a crouched position most of the time while he was there, trying to receive information and having to assess whether it was safe for him to expose his head above the wall at all. Mr. Burdis thought that if one wants “face to face” negotiation, it has to be in circumstances where it is consistently safe to be able to do so, not relying on whether the gun is pointing in one’s direction or not at any particular moment. The difficulty that

presented itself was compounded by the requirement to use the loudhailer which was unsatisfactory for a number of obvious reasons. Mr. Burdis believed that Sergeant Jackson was in a very dangerous situation, and he (Mr. Burdis) would have wanted to move from that position as quickly as possible to a neighbouring property, or even a vehicle, but certainly away from the situation where he was under the threat of fire at any moment. He said that a necessary ingredient in such movement would have been the establishment of telephone contact with John Carthy. Mr. Burdis thought that not enough time was spent in trying to get him to use the landline. In echoing the point made by Dr. McKenzie, Mr. Burdis said that after the time when he shot the loudhailer from the wall, there was a period of communication which contained significant exchanges between Sergeant Jackson and John Carthy, which took place by way of mobile phone. Mr. Burdis thought that there was more depth to the conversation which took place at this time, and that these conversations were an opportunity to develop a relationship whereby Sergeant Jackson might continue to make contacts by use of the mobile phone. Mr. Burdis commented that it appeared as if Sergeant Jackson was only using the mobile phone on a temporary basis until a replacement loudhailer could be brought, and that once that had arrived he went back to using the loudhailer.

Mr. Burdis believed that by daylight on Thursday, 20th April, he would have seen it as a priority to move the negotiation post from the wall, even in circumstances where Sergeant Jackson had not succeeded in establishing reliable telephone contact. He said that the scene commander should have given consideration to moving the negotiation post from the dangerous position it was in, being one where there was the risk of an officer exposing his head at the wrong moment and being killed.

The evidence on recall

Detective Sergeant Jackson

Consequent upon the evidence on training and also that from the experts, Sergeant Jackson was asked the following question by letter from the Tribunal:

“Did he consider advising the establishment of a manned and equipped negotiation cell at a location removed from the immediate vicinity of the Carthy old house? If not, was there a reason for this?”

His reply was:

“At the outset and throughout the incident the potential for the establishment of a negotiation cell at a remove from the old house was a consideration that could arise if substantive phone contact took place with Mr. Carthy. In these circumstances the scene commander would be advised accordingly. The goal of substantive telephone contact was pursued from the outset of the operation and continued throughout, but was never achieved.”

In further examination Sergeant Jackson justified choosing and remaining at the negotiating point at the garden wall. He said that:

“a lot flowed from the position at the negotiation post in relation to limited communication with Mr. Carthy, bringing the intermediaries down to the scene and extracting, as best we could, some form of dialogue between the negotiator and the third party inside. That was only possible from that negotiation position, either on the loudhailer or verbally and also intermittently on the phone; but none of that would have been possible if we had decided, as the experts have suggested, to remain at a remove until Mr. Carthy answers the phone”.

He answered the criticism made of the empowerment of John Carthy by accepting that he (John Carthy) had a degree of control over the negotiator’s actions but that this was accepted by the gardaí on the basis of having limited options in relation to communication.

He said that it was a matter of checks and balances in relation to living *“with the level of threat that existed”* and he said that *“in our assessment we could”*.

During the course of the evidence the following exchange took place between the Chairman and Sergeant Jackson:

“Q. Chairman: Would it come down to this, Inspector Jackson, as to the positioning of the negotiation point when it was moved to the wall opposite the kitchen, that there were considerable downsides in connection with that? Negotiating by megaphone, I take it you would probably agree with Dr. McKenzie, is far from being an ideal mode of communication. You would agree with that?”

A. Yes, Chairman, yes indeed.

Q. Chairman: Secondly, looked at from the point of view of the negotiators, I think the weather situation wasn’t too difficult, fortunately, but if it had been bad, it would be very uncomfortable and unpleasant for the negotiators, to say the least of it, perhaps even impossible to persist in using that particular site. That is another downside to it. A preference, I suppose, would be to be able to use somewhere such as, for example, the Burke house, which would give you the comfort of having a roof over your head. It would enable you to negotiate more easily with John Carthy, insofar as you wouldn’t be posing a threat to him or an attraction for him, whichever way he was looking at it, causing you to jump up and down and so on, as he has described to Mr. Ireland in his conversation; but, the big downside about moving the place for negotiation was to be able to communicate, because that is the essence of the whole thing. It would really depend on being able to persuade him to communicate with you by telephone?”

A. I think you have that in a nutshell, Chairman.

Q. Chairman: If that had been possible, then to negotiate from, let us say Burkes’ house, would have been a far more preferable arrangement than that which was actually used?”

- A. *Absolutely, Chairman. In addition to reaping the rewards of very good verbal contact, you remove the difficulty for the tactical team in relation to the negotiating position. You do not have that dynamic within the inner cordon, of people attempting to communicate.*
- Q. *Chairman: Yes, that is another advantage that is there in it.*
- A. *Yes.*
- Q. *Chairman: It all turns on communication, and being able to persuade him to communicate?*
- A. *Absolutely. Some of the experts have criticised the amount of time we have spent attempting to persuade Mr. Carthy to talk on the phone, and that was done at the start of the incident and throughout because I was very conscious of attempting to move the negotiation team back from the scene and to be able to talk on the phone with Mr. Carthy. Unfortunately, substantive phone contact, whilst there was intermittent contact on the phone, there was nothing substantive in order to allow me to remove myself back to a more suitable position, Chairman. That is the essence of it, I think you are quite right.*
- Q. *Chairman: Yes. It would necessitate agreement with John Carthy to use, to be prepared to use the telephone?*
- A. *That is correct, Mr. Chairman.*
- Q. *Chairman: Without that, you probably wouldn't get very far?*
- A. *It is impossible, and I think as we discussed before, technically I could be in Dublin and still be able to communicate with Mr. Carthy. Now, that is an extreme case but as long as he spoke on the phone I could select my position away from the immediate confines of the inner cordon."*

As to Dr. McKenzie's concern about the use of the loudhailer, Sergeant Jackson said that it was not the most beneficial means of communication but that it was the best form on the basis of what he was trying to achieve, that is, reassurance of and engagement with John Carthy.

On Dr. McKenzie's and Mr. Burdis's point that a significant passage of interchange occurred when the loudhailer was shot from the wall, Sergeant Jackson thought that similar parcels of communication took place in other periods during the incident and he did not see this particular exchange as standing out. For this reason he did not attach any significance to the fact that it took place by telephone and at a time when Sergeant Jackson was not within John Carthy's view.

In relation to the main thrust of the experts' criticism to the effect that the strategy in relation to the negotiation post, as initially adopted was not producing any significant benefit and that nothing new was tried, Sergeant Jackson said that the method and position that they had adopted was the only method *"of realistically being able to bring to bear any sort of verbalisation with Mr. Carthy"*.

In relation to the establishment of a remote negotiation cell, Sergeant Jackson said that the key element in the establishment of such a cell was the existence of telephone contact with John Carthy. He said that throughout the incident during the “face to face” negotiations he attempted to establish and maintain telephone contact with a view to setting up and moving to a remote cell, but without success.

Superintendent Shelly

The Tribunal wrote to Superintendent Shelly and the other three senior officers, requesting a statement in relation to whether they had considered the establishment of a manned and equipped negotiation cell on a location removed from the immediate vicinity of the Carthy house? If not, was there a reason for this?

Superintendent Shelly replied as follows:

“The potential for the establishment of a negotiation cell at a remove from the old house is a consideration that could arise as a result of substantive telephone contact with the subject, John Carthy. If this had happened we could have moved to a location away from the vicinity of Carthy’s old house. At the outset, Detective Sergeant Jackson had attempted to engage John Carthy by telephone from the ESB pole at Burkes’ house. However, this did not materialise and it was agreed to move the negotiation point to the pillar on the wall in front of the Carthy’s old house”.

Superintendent Shelly outlined his training in relation to the location and siting of a negotiation cell as being in line with the foregoing statement. He stated that unfortunately they never got to a stage at Abbeylara where they could move the negotiation post from where it was. Having outlined the efforts made by Sergeant Jackson to make telephone contact with John Carthy he explained that he had agreed to the negotiation post being moved to the pier opposite the gable window of the Carthy residence so that the negotiator *“could have eye contact at least with the subject and talk to him from there”*. Superintendent Shelly agreed that no consideration was given during the course of the operation to siting the negotiation cell in another locality because of the difficulty in establishing ongoing direct communication with the subject. He stated *“had it been otherwise it could and would have been done.”*

He differentiated the incident at Bawnboy (referring to an incident which occurred in January, 1997 – see section D of this chapter), where a negotiation cell was established, from Abbeylara in that at Bawnboy there was telephone communication between the subject and persons outside from an early stage.

Superintendent Shelly was asked, in the context of his training, what planning was put in place for the establishment of a negotiation cell had John Carthy made the requisite amount of telephone contact. It was suggested to him that such an element of pre-planning did not appear to be present. Superintendent Shelly replied that the plan was to try to make contact with the subject through negotiation and if that happened the negotiation cell would have been moved to a remote location from the Carthy house.

Superintendent Shelly was asked whether he took the issue of safety into account when agreeing to the relocation of the negotiation point at the Carthy wall. He replied that the nearer you go to such a situation the more danger there is but that the ERU are specifically trained in relation to this.

Superintendent Shelly was asked to comment on the evidence of the expert witnesses that they would have been reluctant to allow the negotiation post to be located where it was. In particular Superintendent Shelly was directed to the evidence of Mr. Lanceley who felt that the officers located at the negotiation point provided John Carthy with “a target” to shoot at and that this had the effect of allowing him to get an adrenalin rush and “self-enrage”. While Superintendent Shelly accepted that negotiating is a dangerous job, he stated that he was happy that the pillar of the wall provided Sergeant Jackson with adequate cover. He did not accept that Sergeant Jackson was a target or that he intended himself to be a target. Superintendent Shelly was specifically asked whether he felt that in agreeing to the siting of the negotiation point at the Carthy wall the risk of the safety of the negotiator and other officers concerned was increased. Superintendent Shelly agreed that there was a substantial risk but told the Tribunal that he was satisfied that there was good cover and that the negotiator was in a position to conduct negotiations, albeit with difficulty and with an element of danger. He stated that for this reason he did not consider moving the negotiation point at any time during the operation. He agreed that safety was a fundamental principle of any operation.

The Chairman stated that he understood the use of a negotiation point at the Carthy wall for a comparatively short period of time. However, he questioned Superintendent Shelly as to what the situation would have been if there had been a deterioration in the weather conditions and how this would have affected persons exposed to the elements at the negotiation point. Superintendent Shelly stated that officers are trained to operate in difficult conditions and repeated that the purpose of the negotiation post at that location was to try and make contact with John Carthy; had this happened they could have repaired to another location.

It was put to Superintendent Shelly by counsel for the Carthy family that he, Superintendent Shelly, had departed from his training in relation to the issue of the location of the negotiation point. Counsel enquired of Superintendent Shelly as to where in his training it is said that a “*remote negotiation cell with a negotiation team is merely an aspiration?*” Superintendent Shelly replied that he understood from his training that negotiations should be conducted from the place which the negotiator believes is best. It was suggested to Superintendent Shelly that one should apply what is in a training manual unless there are very good and substantial reasons for its non-application. Superintendent Shelly did not accept the assertion that he or his colleagues put some form of a gloss on the training or treated them as mere guidelines that did not require to be adhered to. In response to this Superintendent Shelly was asked by counsel for the Commissioner whether or not he agreed with the evidence of Chief Superintendent Ludlow that training programmes developed by the Garda Síochána are generic in nature, noting that the unique nature of policing is such that no generic training model will provide a tailored response to meet the

challenge of every situation. What the generic approach allows, in conjunction with experiential learning, Chief Superintendent Ludlow explained, is the creation of a set of skills and abilities that can be drawn on to provide a balanced response to diverse incidents. Superintendent Shelly agreed that this was the nature of the training received.

During the course of the evidence the following exchange took place between the Chairman and Superintendent Shelly:

Q. *Chairman: Is it the situation, Superintendent, that looking at the problem that you are faced with, you try to comply with the guidelines that you have received, insofar as it is possible to do it, but that there may be elements of a guideline, for instance, that is in the special circumstances not possible to comply with? For example, in the Abbeylara case to have a negotiating position removed from the house?*

A. *That is a very good example, Chairman, of what I was saying.*

Q. *Chairman: You couldn't do that, your evidence is that you couldn't do that, unless and until Mr. Carthy agreed to use a telephone?*

A. *Yes."*

Superintendent Shelly was questioned as to why recourse was not had to any of the 26 other trained negotiators in the country throughout the duration of the siege? Superintendent Shelly explained that he felt that Sergeant Jackson and Garda Sullivan were *"more than up to the task and able to continue on with it . . . and that there was sufficiency of them there to do it"*

Counsel for the Carthy family repeatedly explored a suggestion that Superintendent Shelly's reasoning for not relocating the negotiation post was part of a wider pattern of blaming John Carthy for the actions or inactions of the Garda Síochána. He suggested that it was *"part of a wider pattern, a pattern of culture of blame, of spreading blame to detract attention in a way from the shortcomings of the gardaí in this operation"*. This was strongly rejected by Superintendent Shelly who agreed that such a tactic would be most unfair, and said that it was not adopted by him or anyone else at the scene.

In relation to officer safety, Superintendent Shelly told the Tribunal that he considered the position of the negotiation post to be as *"as safe as was reasonably possible in the circumstances"* and that if that position became unsafe in any way he would not have authorised the officers to be there. In relation to the proposition that such officers were presenting a target for John Carthy to shoot at, Superintendent Shelly spoke of the benefit of the negotiators being able to recommence negotiations after each shot. He also spoke of the fact that they allowed for periods of reflection during the negotiations for both John Carthy and themselves. *"They didn't bombard him continually with questions"* he stated, *"they were very measured, I thought, in the type of question that they asked and the content of it insofar as we could hear what was happening"*.

Superintendent Shelly also told the Tribunal that he was happy with the location of the negotiation post *vis à vis* the third party intermediaries who were brought down to this point to speak to John Carthy. He stated that he considered all this and was happy with their safety.

Superintendent Shelly said that from his training he had an understanding of the role of the negotiating coordinator, and that he saw Garda Sullivan as occupying that role. He went on to say that he interpreted the role of assistant to the negotiator and the role of coordinator as being one and the same thing. He said that this was notwithstanding the fact that he knew that Garda Sullivan had no training as a negotiator, but that *“when he was with Detective Sergeant Jackson that he would understand the concepts of everything that was happening on negotiation”*. It was put to Superintendent Shelly that training documentation seemed to indicate that the role of the coordinator was that of a strategic adviser, and he was asked whether he saw Garda Sullivan in this role. Superintendent Shelly said that he saw him as a coordinator even though he was untrained, saying that:

“When he was with Detective Sergeant Jackson, I understood that he would understand and have knowledge of the basics of what was happening at least. He appeared to have that to me.”

Superintendent Byrne

In response to the question put to the four senior officers as to whether they considered the establishment of a manned and equipped negotiation cell at a location removed from the immediate vicinity of the Carthy old house, and if not, was there a reason for it, Superintendent Byrne replied:

“Given the method of communication which occurred during the incident, mainly face to face negotiations requiring proximity between the negotiator and John Carthy, the issue of a remote negotiating cell did not arise”.

However, questioned later as to whether it was ever in his mind to pull back out of the negotiation area he stated, *“it crossed my mind but no, we decided, it was never a decision I made to pull back”*.

Superintendent Byrne was aware that during the period that he acted as scene commander John Carthy discharged shots in the vicinity of the negotiation point, two of which were discharged at 3:30 a.m. on the morning of 20th April. He was asked if he gave any consideration at that time to moving the negotiation point. He said that he did not consider that then, but there was ongoing consideration given to the issue. He explained the rationale for not moving the negotiation post as the following:

“John was an ill man. If we had backed off and left him there, there was a great fear that John could harm himself and our anxiety was to help him and to try and talk him out, that was the rationale for all our activity”.

He accepted that the positioning of the negotiation post was dangerous, but stated that he did not give any consideration to whether it was in some way interfering with the negotiation process. He felt that it was their *“only hope”*, having failed after four

hours at the ESB pole to make any meaningful contact with John Carthy. He reiterated Superintendent Shelly's belief that the Carthy wall provided cover to the negotiators from shotgun fire. He stated that *"all those matters were thought of and addressed and seriously considered"*.

In response to Mr. Burdis's criticism that there appeared to have been no objective plan to move from the front of the wall once a more suitable means of communication was established (an issue that should have been very much in the mind of the scene commander), Superintendent Byrne conceded that he probably wasn't thinking ahead in that regard. He didn't have *"plan B ready"*. His efforts were focused on initiating dialogue with the subject and utilising third parties to try and achieve this, and he was motivated by the fear that the subject may harm himself.

Superintendent Byrne said that in his view Sergeant Jackson took on the role of negotiator and coordinator. He did not regard Garda Sullivan as a coordinator. While he was scene commander he did not see any necessity for a negotiating coordinator to assist Sergeant Jackson in the role of negotiator. This was not something to which he gave any consideration.

Superintendent Byrne thought that Sergeant Jackson and Garda Sullivan had set up *"a negotiation cell"* at the pillar of the garden wall.

The witness said in examination by counsel on behalf of the Commissioner, that it was not part of his training that you should establish a remote negotiation cell or should not attempt any other method of negotiation.

Chief Superintendent Tansey

Chief Superintendent Tansey responded to the question posed by the Tribunal to the four senior officers by saying:

"A manned and equipped negotiation cell at a location removed from the immediate vicinity of the Carthy old house was a consideration, provided the negotiation process progressed to the level that facilitated/allowed such a move to take place, with benefit to the negotiation process. This situation was never arrived at."

Chief Superintendent Tansey's training did not familiarise him with the concept of a formal *"negotiation cell"*; such phraseology was not utilised during his training; however he was familiar with the concept of conducting negotiations at a remote location.

He had no conversation with the other senior officers or the scene commanders in relation to the provision of a negotiation cell. He stated that having requested a trained negotiator he believed that when such a person arrived together with an assistant that *"that was sufficient to do the job that had to be done"*.

Chief Superintendent Tansey told the Tribunal that he gave consideration at the outset to locating a negotiation post at a remove from the scene. However, in the

absence of meaningful contact having been made between the negotiator and the subject, he did not see the point in removing the negotiation post to a remote location. He concluded that there was little point in having such a cell with all the facilities if *“there is nobody to negotiate with”*. While accepting that safety is the *“number one issue”*, he assessed the element of risk involved in the location of Sergeant Jackson at the Carthy wall and decided that it was *“an acceptable risk to resolve the incident peacefully”*. He had regard to the fact that the negotiator and his assistant had body armour and ballistic helmets.

Chief Superintendent Tansey stated that they could have certainly moved back if a breakthrough had been made in the negotiations and further, that he would not have sanctioned the location of the post at the wall if there had been ongoing dialogue with John Carthy. However in the absence of any breakthrough he did not agree that they should have moved back having regard, *inter alia*, to the fear that they held that John Carthy may harm himself and/or others.

In relation to the possible risk to members of the public who were brought to the negotiation post, Chief Superintendent Tansey stated that any risk was acceptable given the need to initiate negotiations. In assessing the risk he had regard to the cover provided by the wall and the fact that such persons were under the guidance of Sergeant Jackson at all stages who, he stated, was extremely cautious regarding the situation and took the necessary precautions. Examined by counsel for the Commissioner, he asserted that the issue of third party intermediaries was specifically the responsibility of the scene commander in an operational sense. He would not expect to be consulted on matters in relation to the assessment of danger or risk. However, he stated that if something came to his notice with which he did not agree he would of course point it out.

In response to Mr. Bailey’s criticisms in relation to the location of the negotiation post (namely, officer safety; the element of control that it afforded John Carthy and safety concerns in relation to members of the public brought to the post), Chief Superintendent Tansey reiterated his reasons for not removing the post and stated that *“it was an acceptable risk that was taken for honourable reasons . . . I would dispute the fact that it wasn’t a safe location, within certain limitations”*.

Chief Superintendent Tansey said that *“a negotiation cell”* was set up at the wall by Sergeant Jackson and Garda Sullivan. It was suggested to the witness that the negotiation cell as described in the training documentation is nothing to do with people talking on the telephone or otherwise, but rather the purpose of the cell is to provide a dedicated back-up team as described in the training documentation to improve the quality of the negotiation and the negotiator’s chance on the front line, whether it be at the wall or on the telephone line or by whatever means, to which Chief Superintendent Tansey replied that the difficulty was that Sergeant Jackson would have to leave his position at the wall on occasion and should John Carthy have wished to communicate at that precise moment there was nobody there to engage with him. Chief Superintendent Tansey thought that this was totally inappropriate.

Assistant Commissioner Hickey

Assistant Commissioner Hickey responded by saying:

“The purpose of the Garda operation was the safety of the local community; the safety of Garda personnel involved and the safety of John Carthy. There were early concerns that he may harm himself. It was vital that he should not be allowed in any situation with his shotgun where he would put any citizen at risk. In order to achieve these objectives, because John Carthy did not engage on the telephones available to him, the negotiator was located as close as possible taking safety issues into account”.

Assistant Commissioner Hickey was not asked to sanction the relocation of the negotiation post from the ESB pole to the wall on the night of 19th April. This was a decision that would be within the competence of the scene commander in conjunction with the tactical commander and the negotiator.

In light of this statement, Assistant Commissioner Hickey was questioned as to whether he was concerned for the safety of members of the public who were brought down to the negotiation post. He replied, that he considered it to be a *“risky situation”* but that having spoken with Superintendents Shelly and Byrne and Sergeant Russell he knew that an assessment had been made of the risk: *“It was considered an acceptable risk. There were precautions taken and I was anxious that we should do anything humanly possible to try and resolve the situation”*.

Prior to April, 2000, Assistant Commissioner Hickey was not *“acutely”* aware of the concept of a *“negotiating cell”* but he was aware of the expression. He told the Tribunal that ideally in Abbeylara they would have removed the negotiating point to a remote location, but that this was dependent on telephone interaction between the negotiator and the subject. In response to the criticisms by Mr. Lanceley in relation to the location of the negotiation post he believed that some advantage was to be gained from the location at the Carthy wall in that the negotiator was able to tell the subject, via the loudhailer, who was ringing and was able to ensure that the phone was in fact ringing. He further thought an advantage was gained by the negotiator’s ability to see John Carthy in the house. Admitting that there was an element of danger in the positioning of the post, he emphasised the cover that was provided by the wall.

Questioned as to what he identified as sufficient progress by the afternoon of 20th April to justify the risk of remaining at the Carthy wall, Assistant Commissioner Hickey stated that it was his belief that John Carthy had fired less shots after the arrival of the ERU. He also had regard to the fact that he would eventually run out of ammunition. He questioned Thomas Walsh as to the amount of ammunition that John Carthy may have in the house and he was aware that there are restrictions on the amount of ammunition one may have depending on whether the shotgun licence is limited or unlimited. He further discussed this point with Sergeants Russell and Jackson. Another justifying factor was that John Carthy was not using the telephone. Assistant Commissioner Hickey felt that the location at the wall was the ideal location to hear him if he responded by way of shouting.

9. Equipment

The evidence

Detective Sergeant Jackson brought with him to Abbeylara his ballistic protection equipment, radio units, lighting material, flip charts, pens and a tape recorder. In relation to the tape recorder it was his intention to use it if possible at the scene. His assessment at the scene was that because of the position he was in at the garden wall, with movement up and down and to the side it was not possible to record the various conversations. Other relevant equipment discussed in evidence during the course of the Tribunal, which may have been of use at the scene, were the “field phone” and “closed circuit television” (CCTV).

Sergeant Jackson and the relevant senior officers were aware of the availability of this equipment.

Field Phone

Sergeant Jackson did not bring a field phone with him to Abbeylara. He said that he would not consider the use of a field phone at the outset of the incident, as he needed to attend the scene and make an assessment of what was happening prior to deciding whether to request a field phone. He said that the field phone was available from the Technical Support Unit of the Garda Síochána. His evidence was that the seeking of a field phone would only arise at the instigation of the negotiator and after detailed and substantive verbal contact and subsequent telephone contact. He thought that at the time he set out for Abbeylara from Dublin the question of the use of a field phone was at a relatively far remove. He said that he wished to see how he progressed with the equipment that was already at the scene. He knew that the landline had been reconnected to the house, and that Mr. Carthy had a mobile phone.

Senior Officers

In the letter of recall written by the Tribunal to the relevant senior officers, they were each asked the following:

“Were they aware of the availability of a field phone and of its possible uses? If so, did they request or consider requesting that a field phone be brought to the scene? If not, was there a reason for this? In this regard I direct your attention to the evidence of Inspector Michael Flynn on day 108.”

Inspector Flynn was in charge of the Technical Support Unit at Garda Headquarters in the year 2000. He told the Tribunal that a scene commander or the divisional officer at an incident could request equipment or personnel from the unit and a decision would be made on the deployment of such equipment or personnel by the appropriate officers in the unit in conjunction with the requesting officer.

Assistant Commissioner Hickey

Assistant Commissioner Hickey's reply to this request was:

"I was aware of the availability and possible use of a field phone. There was never a consideration that it be brought to the scene as John Carthy had a landline and a mobile phone, neither of which were used to engage with the negotiator."

Assistant Commissioner Hickey went on to state that he was not concerned about any third party, over whom the gardaí would have no control, such as the media, contacting Mr. Carthy. He said he had no evidence that such was a risk. In accepting that he never considered the possible use of a field phone he also accepted that there was a possibility that Mr. Carthy could have contact and be contacted by persons other than the gardaí and over whom the gardaí had no control.

Chief Superintendent Tansey

Chief Superintendent Tansey said in reply to the letter:

"I was aware of the availability of a field phone. The use of a field phone is contingent on a number of issues, the arrival of a stage of substantial engagement in the negotiation process and if that is achieved, which was not achieved in this case, then secondly agreement with the subject on the safe delivery of the field phone to the stronghold. There are already two telephones in the house, but John Carthy would not engage".

He said that if the subject did engage on the telephone, either the landline or the mobile phone, he could not foresee a situation where a field phone would be mentioned to him for a number of hours into that interaction. He thought it would have the effect of possibly putting back the negotiation process. Accepting that there may have been a place for a field phone down the line had good interaction been established, Chief Superintendent Tansey pointed out to the Tribunal that a field phone had never been used in Ireland in any siege operation. He said that while a field phone was not at the scene, it could have been obtained within a short period of time.

Superintendent Shelly

Superintendent Shelly replied as follows:

"Yes, we were aware of its availability and its use. However, the use of a field phone is dictated by a number of factors:—

consistent and substantive degree of engagement of the subject;

securing agreement on the method of delivery of the field phone.

In this particular case neither of those considerations were present. The gardaí were aware that John Carthy had two phones in his house".

He said that the delivery and use of such an item would depend on the degree of engagement with him and that this was of paramount importance in that it would be

a question of getting a field phone into the house safely so that he could use it. Superintendent Shelly said that in his view they never arrived at that situation. He said that the use of such equipment was dependent upon the level of co-operation that they received from John Carthy.

Superintendent Byrne

Superintendent Byrne's answer was:

"Yes, I was aware of its availability and its possible uses. No, I did not consider the field phone be brought to the scene. The requirement for the field phone at the scene did not arise".

Detective Sergeant Jackson's evidence

Sergeant Jackson stated that a dedicated phone would only be introduced after a substantial period of engagement, so as to reduce the risk of undermining the negotiation dialogue because of John Carthy's suspicions. He took the view that he had not got to the first leg of this in that there was no real engagement by telephone. He said that the fact that any telephone would have to be brought from Dublin did not concern him greatly because of the time it would take to introduce the topic of a field phone with the subject and within which agreement would be reached with him for its delivery. He also thought that contact by mobile telephone would be as good, and if this could be achieved, it might cause further difficulty trying to get another dedicated phone to John Carthy.

CCTV

In the Tribunal's letter of recall, each of the senior officers was asked the following:

"It is understood from the evidence of Superintendent Brown (Day 113) that video equipment/monitors were available in the Cavan/Monaghan Division of the Garda Síochána in 1997. Were they aware of whether such video surveillance equipment was available to the Longford/Westmeath Division in April, 2000. If so, did they consider or discuss with anyone any potential benefits which this equipment might have at the scene."

Senior Officers

Assistant Commissioner Hickey

Assistant Commissioner Hickey replied as follows:

"I have been involved in operations using video at remote locations and would have no difficulty in requesting such equipment if required. Even at this stage I can see no benefits of using such equipment in the circumstances that prevailed at Abbeylara."

Assistant Commissioner Hickey said in evidence that the benefit of the negotiation point at the wall was that Sergeant Jackson could see what was happening in the house and what John Carthy's movements and demeanour were, and he thought that this was not something that could have been easily catered for by video equipment

or CCTV. Assistant Commissioner Hickey expressed concern as to where such a camera would be located and whether it could provide a target for John Carthy.

Chief Superintendent Tansey

Chief Superintendent Tansey replied:

“Video equipment/monitors were not available within the Longford/Westmeath Division in April 2000. I was aware that it was available from the Technical Support Unit. The use of it was not discussed. Had progress been achieved in the negotiation process that facilitated the establishment of a remote negotiation cell, and a remote command post, then the possible benefits of using such equipment would have been considered”.

He said that as far as he was concerned everything revolved around the negotiating point and the progress of the negotiations. If that had been achieved, *“then we would have considered moving to a remote base and certainly the introduction of monitors would be live in so far as that was concerned”*. He went on to say that he had postponed consideration of the issue to see how matters progressed.

Superintendent Shelly

Superintendent Shelly in answer to this query said:

“I knew that this equipment wasn’t available in Longford/Westmeath Division in April, 2000. However, it could have been obtained from Garda Headquarters. On the basis of the method of command which I employed at the scene, I was of the view that managing the scene at a remote location with the use of technical equipment was not a consideration. Detective Sergeant Jackson remained at his negotiation position because John Carthy did not engage in any meaningful way by the use of the telephone”.

He said that while he accepted that this equipment could have been installed without John Carthy’s knowledge, the disadvantage was that the negotiator would be looking at a monitor where nothing would happen and nothing could change. Accordingly, he didn’t see the reason for it.

Superintendent Shelly was asked whether he considered contacting the technical support staff in Garda Headquarters and requesting them to dispatch such technical equipment as a field phone, listening devices or monitors or CCTV monitors? He stated that he did not because the level of engagement with John Carthy was never such that any suitable method of delivery of such equipment could have been arrived at nor could officers retreat and rely on such equipment in circumstances where there was no substantive contact with the subject.

Superintendent Byrne

Superintendent Byrne said that:

“I was aware of the equipment and monitors and their potential use. I did not consider their deployment at Abbeylara”.

He said that in the context of trying to make contact with John Carthy and communicating with him, he could not see that going away and leaving a camera fixed on him would be of any benefit.

Dedicated Equipment

Dr. McKenzie thought that best practice would suggest that a box should be available for negotiators containing:

- specialised telephone equipment and other sensors.
- laminated A5 sheets, outlining signs and symptoms of common mental disorders, with broad warnings about and/or indicators of possible negotiation strategies.
- a supply of specially designed logbooks for use by key personnel at incidents such as Abbeylara.
- portable, voice-activated tape recorders together with a supply of tapes and batteries.

He also said that it should be the responsibility of a designated member of the negotiation team to collect the box from its central storage point and transport it to the scene.

10. Duty times

Detective Sergeant Jackson's evidence

Sergeant Jackson took up duty on 19th April at 7:00 a.m. at Castlerea, Co. Roscommon. His duty involved the escort of a prisoner from Castlerea Prison to the High Court in Dublin. At approximately 12:30 p.m. he terminated this escort duty and returned to Harcourt Square Garda station in Dublin for refreshments. He said that he took up duty again at 3:00 p.m. on a VIP escort in the Dublin area and remained on this escort until 7:40 p.m. approximately. At that time he received a telephone call from Inspector Hogan who informed him that he was sending him to Abbeylara to act as the garda negotiator. He arrived there shortly after 10:00 p.m. From the time that Sergeant Jackson commenced his negotiations he remained at the scene, primarily at the negotiation post until 5:30 a.m. on 19th April. He then took some rest in a vehicle that was on the Abbeylara side of the command post and returned to the negotiation point at approximately 8:00 a.m. At approximately 3:20 p.m. on 20th April he left the negotiation point again and went to a garda vehicle for a rest period returning to the negotiation point at 4:30 p.m.

In evidence Sergeant Jackson said that at some time prior to his going to rest at 3:20 p.m. on 20th April he had spoken to Superintendent Shelly who had asked him how he was coping or holding up and he told him that he was happy to continue. He said that while it wasn't discussed at that stage, it was on his mind that if the incident proceeded into a second night, he would need to be replaced.

Detective Garda Sullivan's evidence

Garda Sullivan took up duty at 7:00 a.m. on 19th April at Harcourt Square Garda station in Dublin. He said that he was detailed for duty for VIP escort in the Dublin area, and was due to finish duty at 3:00 p.m. on that day, but his recollection is that he continued with that work after 3:00 p.m. He thought that he was joined by Sergeant Jackson some time after 3:00 p.m.

The Experts' views and analysis

Mr. Bailey

Mr. Bailey said that the overriding responsibility to initiate enquiries as to the hours worked rests with the scene commander. He said:

"In my opinion, the hours worked by members of the ERU who were deployed to Abbeylara on Wednesday were excessive although I have not seen any evidence that the hours worked by individual members played any part in the outcome of the incident. In my view, it is best practice for the tactical or scene commander to have responsibility to ensure that all personnel deployed to the incident are replaced when appropriate and do not work excessive hours."

Mr. Burdis

Mr. Burdis thought that as a matter of good practice, Sergeant Jackson and Sergeant Russell should have told Superintendent Shelly that they had been on duty for twelve hours when they arrived at Abbeylara. He thought that the senior officers should have taken much greater care over the welfare requirements of Sergeant Jackson and his colleagues. He thought that they remained on duty in close proximity to the scene for far too long. He also said that in his view Superintendent Shelly should have required that there was an adequate programme for the replacement of officers put in place from the time of the initial response.

It was his belief that as a general guide a negotiating team should work a twelve-hour shift, the coordinator having the responsibility for arranging replacements for himself and the team. The training received by Sergeant Jackson, suggested that as a general guide a new team should be deployed, as arranged by the coordinator after a twelve-hour shift has been completed. This may vary according to the circumstances and should take account of the length of time every individual has already been on duty prior to the incident commencing.

Mr. Burdis was also concerned that in the light of the fact that Sergeant Jackson failed to make any real impression on John Carthy in the course of the negotiations, some consideration should have been given by the scene commanders as to whether or not he was too weary to try new ideas, ploys or tactics. Mr. Burdis thought that this difficulty could also have arisen from Sergeant Jackson's inexperience, and this is something that should have been to the forefront of the minds of the senior officers.

Mr. Lanceley

Mr. Lanceley said that in the United States, in an incident lasting 24 or 25 hours, three to four negotiators would be used per shift. The number used would depend on the intensity of the negotiations and the negotiating effort. He said that in the United States twelve-hour shifts were generally operated, although he himself thought that a twelve-hour shift was too long and he had observed negotiators making mistakes through tiredness and frustration. He himself would prefer ten-hour shifts. He thought that the length of time of duty was to a large extent dependent on a number of factors including the intensity of the negotiation effort.

The evidence on recall

In the letter of recall each of the senior officers was asked the following:

“Was consideration given to requesting that the tactical team or negotiators/ negotiation team should be relieved, changed or that their numbers be increased? If not, was there a reason for this?”

Assistant Commissioner Hickey

Assistant Commissioner Hickey replied to this question as follows:

“I was aware that consideration was given to relief for personnel involved in negotiation and tactical aspects. On the Thursday morning I became aware that Detective Sergeant Jackson had a rest period earlier. I was present when three members of the ERU arrived at lunchtime and I had been aware that they were on their way”.

Assistant Commissioner Hickey, by virtue of his position was not involved in the management of the issue of reliefs, but said that he was concerned about welfare issues when he arrived on the morning of 20th April. He asked Superintendent Byrne whether or not the officers had been in a position to have any rest during the night. Superintendent Byrne confirmed that this was so.

Chief Superintendent Tansey

Chief Superintendent Tansey replied:

“I was not present at the scene on the morning of the 20th April. However, I was aware that the scene commanders’ training course would have prepared the scene commanders and made them conscious of the possible necessity to relieve members of the tactical team and negotiation team. The continuous assessment of the performance of individual team members would be a priority. I knew that members of the Emergency Response Unit were accustomed to working long hours in stressful situations and were trained for such operations. I know that they are trained to a very high standard of physical and mental fitness. I am aware that their training prepares them for situations that require great stamina, sleep deprivation etc. I knew that the leaders of the tactical and negotiation teams would arrange reliefs for their team members in conjunction with the scene commanders as the necessity arose. Three extra members arrived on the 20th April and were suitably deployed. At a conference to be

held at 6.00 p.m. on 20th April the subject of the changing of the tactical team and negotiation team were subjects for consideration''.

In relation to the criticism voiced by Mr. Burdis to the effect that there was no indication that Chief Superintendent Tansey was aware how long the members of the ERU and the negotiator had been on duty, and that this is a normal type of welfare matter that senior officers address as a matter of course (which also involves planning at least 12 to 24 hours ahead as part of preparing contingencies beyond the immediate situation), Chief Superintendent Tansey said that he assumed that the ERU personnel sent by Detective Chief Superintendent Walsh were fit to do their job and carry on through the night. He himself did not make any enquiries from Superintendent Shelly as to the position in relation to the hours worked by the members of the ERU.

Superintendent Shelly

Superintendent Shelly replied as follows:

“The issue of reliefs and replacement of all members at the scene, including the tactical team and the negotiators, was considered throughout the incident by me as scene commander. I was aware that members of both teams were taking rest periods. Where possible, I maintained regular contact with both D/Sergeants Jackson and Russell in this regard. The issues of reliefs and rest periods was addressed directly with both D/Sergeants Jackson and Russell. As the on-scene commander, I had first-hand knowledge of how all members were performing and as such I was able to assess the standard of their performance on the ground. In this regard I gave particular attention to the standard of performance of the tactical team and the negotiation team, and I was satisfied that they were equal to the task. Three additional ERU personnel were assigned to this duty on 20th April, 2000 and I had discussed with both D/Sergeants Jackson and Russell the issue of relief on the 20th April, 2000, as I was contemplating a complete change of personnel from 8:00 p.m. of that evening”.

Superintendent Shelly did not know how many hours the members of the ERU had worked prior to coming to the scene. His only knowledge at the time of their arrival was that they had worked all day.

Superintendent Shelly said that subject to his intention to change personnel at 8:00 p.m. on 20th April, he was entirely reliant on the ERU to advise him as to when they would change personnel.

Superintendent Byrne

Superintendent Byrne answered the question as follows:

“In respect of rest and relief; a short time after the commencement of my tour, I enquired as to the status of all members at the scene including the ERU tactical and negotiating teams. As the incident progressed, consideration was

given to the requirement of having additional ERU personnel attend at the scene''.

In evidence he said that his enquiry was *“how are they for sleep or how long were they working and that some of them had worked a good proportion of hours on the day of the 19th as I had myself”.*

He said that he made this specific enquiry from Sergeant Russell and Sergeant Jackson, and was told by them the specific duties that they had carried out earlier in the day. He said that he was *“reassured by the two sergeants that everybody was mentally and physically very fit, and from what I observed the two sergeants certainly were. So I had no real concerns at that time.”* He said that as a matter of practice and subject to finding that there was some need to intervene, the local superintendent, who is the scene commander, leaves the question of the ERU reliefs to the ERU themselves.

11. The Negotiating efforts

Negotiation team make-up

The experts' views and analyses

Mr. Burdis

Mr. Burdis told the Tribunal that negotiating is the art of persuading angry people to comply with strategy set by the scene commander to give up peacefully. In order to achieve this outcome, there must be a predetermined method for the gathering and management of information and intelligence. He stated that any negotiating situation requires a team comprising of at least two trained negotiators together with a loggist known as *“a boardman”*. In addition there should be a coordinator who is also trained in negotiation.

Mr. Lanceley

Mr. Lanceley said that in the United States a typical crisis negotiation team would have a primary negotiator who is the principal communicator with the subject. There would also be a secondary negotiator whose responsibility includes monitoring the negotiations and maintaining a negotiation log; providing the primary negotiator with discussion topics; providing support for the primary negotiator, and relieving the primary negotiator as required. He also said that a negotiation team leader would supervise and monitor the team and would act as a liaison officer with the scene commander and tactical team leader.

He said that regardless of the size of the law enforcement agency concerned, finding a secondary negotiator should be a priority. He thought that Sergeant Jackson had the absolute minimum number of negotiators for a siege of short duration, *“but no more”*.

Detective Sergeant Jackson's approach

The experts' views and analyses

Mr. Lanceley

Mr. Lanceley thought that Sergeant Jackson attempted many standard crisis techniques with John Carthy and that those approaches were *"well done"*. Mr. Lanceley stated that he *"would have been proud to have Mr. Jackson on his hostage negotiation team tomorrow"*. He said that he appeared to be a mature, well-trained officer and he skilfully applied the crisis negotiation techniques that he was taught.

Mr. Lanceley described *"active listening"* as a key technique. This technique involves the negotiator communicating to the subject that he is not only listening to the factual contents of what the subject is saying to him, but also to the emotional content behind the facts. He thought that this technique was reflected in many of the approaches adopted by Sergeant Jackson such as reassurance of John Carthy; expression of concern for his personal welfare; attempts to build him up in positive statements about him; attempts to inject some help and hope into the situation; confronting the issue of suicide directly, and the fact there was no requirement for any *quid pro quo* in the situation as there might have been in a hostage incident. From the point of view of developing rapport, Mr. Lanceley thought that the subject was actively avoiding its establishment.

As set out earlier, Mr. Lanceley's primary criticism of Sergeant Jackson was in relation to the siting of the negotiation post.

Dr. McKenzie

Dr. McKenzie thought that Sergeant Jackson clearly understood the importance of active listening, empathy, echoing and feeding back. He thought that he was a skilled, thoughtful and knowledgeable negotiator who did his best to try and display the skills of active listening.

Dr. McKenzie thought that at some points in the negotiation process Sergeant Jackson was *"winning"*; causing John Carthy to respond by trying to disengage himself from that situation *"as rapidly as possible, quite often by firing his shotgun, to try to emphasise the separation of himself from what had just happened to him"*, as a demonstration *"of his intention not to engage"*.

Dr. McKenzie had a number of criticisms which he described as very minor. The first of these related to an exchange after 8:00 a.m. on 20th April when Sergeant Jackson discussing the help that his family could be to John Carthy, asked him to *"think about how good you would make them feel if you put the gun down and talk. If you won't come out for yourself John then come out for them. Come on John, come on out"*. Sergeant Jackson said that his response was to put his head in his hands; he looked confused, and had an anguished look. Dr. McKenzie described it as an example of what is known in the literature of the *"psychology of selling"* as a *"buy sign"*. This non-verbal behaviour suggested a moment of indecision which, Dr. McKenzie

thought that Sergeant Jackson failed to capitalise upon. Initially, Dr. McKenzie described this as *“one of the few mistakes”* that Sergeant Jackson made. In subsequent examination by counsel for the Commissioner, Dr. McKenzie accepted that categorising this as a *“mistake”* was probably too high.

Sergeant Jackson answered Dr. McKenzie’s criticism on the issue of this failure to recognise the *“buy sign”* by saying that he did recognise it as such and followed it through.

Dr. McKenzie also referred to an exchange that took place between Sergeant Jackson and John Carthy at 1:44 p.m. on 20th April when the negotiator said *“John, please tell me what has happened to make you do all this, tell me about it, and can I help?”* to which he received the response *“I am going to get ten years for all of this, ten fucking years.”* Dr. McKenzie referred to this response as being one of *“negative fantasizing”*, in that John Carthy’s future prospects filled him with fear rather than enthusiasm or any positive thoughts. Dr. McKenzie thought that Sergeant Jackson failed to recognise that this was a negative admission by the subject and that he was apprehensive about his future.

Sergeant Jackson’s reply to this point by Dr. McKenzie was that his belief that John Carthy was contemplating or thinking about something that might happen subsequent to the siege, albeit negatively, was to some degree positive for two reasons; the first being the whole question of the suicide issue, and secondly that he may have been considering his position in relation to emerging from the house.

Mr. Burdis

Mr. Burdis thought that after the loudhailer was shot from the wall on 20th April there was a period of communication which contained significant exchanges between Sergeant Jackson and John Carthy. These took place by way of mobile phone. Mr. Burdis thought that there was more depth to the conversations that took place at this time, and that they offered an opportunity to develop a relationship whereby Sergeant Jackson might continue to make these contacts by use of the mobile phone rather than by the loudhailer. Mr. Burdis said that it appeared that Sergeant Jackson was only using the mobile phone on a temporary basis until a replacement loudhailer could be brought, and once that had arrived he went back to using the loudhailer.

In relation to particular aspects of the negotiations; Mr. Burdis thought that Sergeant Jackson should have explored John Carthy’s animosity towards and grievance with the gardaí. He would have wanted to explore levels of trust by opening a conversation about the grievance. In relation to Sergeant Jackson’s assessment of the grievance as *“10”* on a scale of *“1 – 10”*, Mr. Burdis thought that the difficulty with this was that Sergeant Jackson did not know the nature of the grievance. Mr. Burdis said that it is a negotiator’s role to reduce the level of antipathy. He thought that what Sergeant Jackson should have been trying to develop was trust between Mr. Carthy and himself rather than trust between John Carthy and the Garda Síochána.

In reply to this Sergeant Jackson said that he had raised the issue of the animosity in a “*more general sense.*” He said that notwithstanding the fact that the issue of the alleged assault was not known by him during the course of the negotiations he had measured John Carthy’s mistrust of the gardaí at “*the optimum*”.

12. Contact with Dr. Cullen

The evidence in connection with the initial contact between Garda Gibbons and Dr. Cullen at the outset of the incident, and the subsequent contact made by Detective Garda Campbell in the early morning of 20th April is already specified in Chapter 4.

Superintendent Shelly

In this context Superintendent Shelly was written to by the Tribunal and asked the following question:

“The evidence indicates that there was knowledge from early in the evening of the 19th April 2000 of the following facts:

- (a) That John Carthy suffered from mental illness and had had periods of in-patient psychiatric treatment at St. Loman’s hospital;*
- (b) That Dr. Cullen was John Carthy’s general practitioner who prescribed regular mental health medication for him;*
- (c) That the doctor had warned Garda Gibbons that John Carthy was antagonistic towards the police.*

Why did Superintendent Shelly not interview Dr. Cullen personally, or arrange for a senior officer to do so as a matter of urgent priority (vide the evidence of Superintendent Hogan, Superintendent Maher, Mr. O’Mahony and Insp. Jackson), to ascertain full information of the deceased’s state of mental illness and other related matters to enable the negotiator to plan a strategy? And also to ascertain the reason for the warning given to Garda Gibbons about John Carthy’s antagonism towards the police. When did Superintendent Shelly first learn that John Carthy had been medically examined by Dr. Cullen for personal injuries, allegedly sustained by him while under interrogation in police custody?

Is there an explanation for the failure to interview Dr. Cullen promptly on 19th April, or at all, prior to 4 a.m. on the following morning and never by a senior officer?”

Superintendent Shelly replied as follows:

“I was aware that Dr. Cullen had been at the scene from the outset and I was satisfied that he had been debriefed by Garda Gibbons. Dr. Cullen had been interviewed and I was satisfied that he had given all the information that he had to the gardaí.

At the time I believed that Dr. Cullen had attempted to engage John Carthy to no avail.

I learned sometime after the incident on 19/20-4-00 that John Carthy had been medically examined by Dr. Cullen for injuries allegedly sustained by him in garda custody.

I don't accept that there was a failure to interview Dr. Cullen on the 19-4-00 for reasons as already stated.

- *Interviewed by Garda Gibbons at the outset of the incident on 19-4-00.*
- *Interviewed by Garda Campbell early on 20-4-00.*
- *I interviewed Dr. Cullen on 20-4-00 at the scene.*

I had requested Dr. Cullen to come to the scene on 20-4-00''.

Superintendent Shelly's evidence, i.e., that "Dr. Cullen had been interviewed [by Garda Gibbons] and I was satisfied that he had given all the information that he had to the gardaí" is patently untrue. The information furnished by the doctor to Garda Gibbons was sparse (see Chapter 8).

It did not include:

- i. any amplification of or explanation for the warning given by Dr. Cullen about his patient's antagonism towards the police;
- ii. the involvement of Dr. Shanley as the psychiatric specialist treating the subject;
- iii. the furnishing of relevant medical reports in Dr. Cullen's possession; and
- iv. ascertaining whether the doctor had any advice which might be helpful to the negotiator.

None of the foregoing matters were put to him by Garda Gibbons, Garda Campbell or by Superintendent Shelly in their interviews with him. Garda Gibbons's debriefing fell far short of what was required as Superintendent Shelly ought to have been well aware. Knowledge of the involvement of Dr. Shanley and the medical records in Dr. Cullen's possession would never have come to light but for the intervention of Sergeant Jackson circa 3:00 a.m. on 20th April which led to Garda Campbell's visit to the doctor at that time. The negligence of both scene commanders (particularly Superintendent Shelly) in this crucial area is manifest.

The passages from the evidence of Mr. O'Mahony, the director of psychological services in the Prisons Division of the Department of Justice, Equality and Law Reform (about the importance of obtaining information from a subject's treating doctor, referred to in the question posed to Superintendent Shelly and set out in more detail below), were put to him in examination, and he agreed that this was part of his training. He agreed that the benefit of obtaining this information soon, and as quickly as possible, allows the negotiator to plan a strategy.

Superintendent Shelly said that the reason he did not direct any person to further interview Dr. Cullen on that date was that the doctor had been there and he had spoken to the gardaí. He said the gardaí had also spoken to members of the family.

He said the situation was ongoing and he believed that at that stage of the incident, that the doctor had given as much information as he had.

When asked in the context of the fact that John Carthy had serious mental illness in the past, necessitating in-patient treatment in St. Loman's hospital, was it not important to have someone interview Dr. Cullen to ask him for further information that he may have. Superintendent Shelly said:

"Yes, it was important. As I said, it was done in the manner it was, I wasn't underestimating it, Chairman, but that was how I managed it at that time".

In relation to the warning Dr. Cullen gave to Garda Gibbons about the fact that John Carthy might be "aggressive towards" the gardaí in view of the incident with the mascot goat and his detention in the station in Granard, Superintendent Shelly was asked why Dr. Cullen was not asked about the source of, or the cause for this antagonism, and said:

"As I said, I have tried to explain this as best I can. There was no reason why. I mean I spoke to the man, he was very helpful and he wanted to be helpful. I could say that had I been told I would have known but I didn't ask him and I cannot put the matter any further than that. There was no reason why I didn't do it, we had learned, come a good way at that time, as you said with the communication with Dr. Shanley and that. That was done and I presume – I probably did speak to him about that, and that communication had been made at that end, but that is as far as I can put the other issue for you. I am sorry, but I cannot put it any further".

Superintendent Shelly agreed that it was part of his role to make inquiries and when it was put to him that asking Dr. Cullen the reason for John Carthy's antagonism towards the gardaí might have been a suitable inquiry to make, his reply was, "Yes. I didn't make it, that is all I can say".

He went on to agree that it would have been an appropriate and suitable inquiry to have made.

Superintendent Byrne

Superintendent Byrne was asked whether it had crossed his mind that it might be beneficial to inquire from Dr. Cullen why he gave the warning to Garda Gibbons and what was the reason for it in his mind. Superintendent Byrne replied:

"No, it didn't. Having spoken to the gardaí and from what I had gleaned and heard from several people, I was very satisfied Dr. Cullen was most helpful and was giving full – call it cooperation, for want of a better word – anxious to assist us. I assumed that he had given us all that was available to him at that time".

When asked whether it was fundamental to the issue as to how the gardaí might deal with John Carthy, that they would need to know why he was antagonistic towards the gardaí, Superintendent Byrne said:

“Now, I wasn’t aware of that, we will say, on 19th at 10:00/10:30, but I understood from my discussion with Thomas Walsh that John had many difficulties in his life, I didn’t consider that the Garda incident was a particular problem; it was a problem”.

Superintendent Byrne further stated that:

“Dr. Cullen was promptly interviewed on the 19th April and re-interviewed at 4 a.m. on the 20th April 2000 by Garda Campbell and subsequently interviewed after 9 a.m. on the 20th April by Superintendent Shelly”.

Detective Sergeant Jackson

Sergeant Jackson agreed that at the outset of the incident it was important to ascertain the phase of the bipolar disorder that John Carthy was in at the time when negotiations were about to start. In that context he was asked whether it might have been prudent for him to have asked Superintendent Shelly to arrange to have Dr. Cullen interviewed to see whether he had any views on this, more particularly bearing in mind the fact that Dr. Cullen had already been at the scene and had observed John Carthy’s behaviour. His reply to this was that he was in possession of a substantial amount of information in relation to Mr. Carthy at that time, and it was not to the forefront of either his or Superintendent Shelly’s mind to be *“crossing every t and dotting every i”*. He went on to say that it was felt that the initial information that they had was enough to go and talk to John Carthy, and to try and make contact with him. He said that intervention at that stage was the primary concern, and that he relied on the people that had dealt with Dr. Cullen, he being the front line negotiator.

In this context, on his recall, the view that Mr. Burdis had that Sergeant Jackson should have been a prime mover in securing the attendance of Dr. Cullen, Dr. Shanley and Mr. Regan at the scene was put to Sergeant Jackson. In response he said that in his belief the:

“issues that Mr. Burdis raised were addressed, maybe not to his satisfaction as he has indicated, but I think I was a prime mover in aspects of those”.

Sergeant Jackson agreed that from his arrival at 9:50 p.m. on 19th April, to 3:30 a.m. on 20th April, the medical information that he had was that John Carthy had serious ongoing manic depression for which he was being medicated on lithium. This was part of a *“block”* of information that he had received from Superintendent Shelly. He agreed that this information was not exhaustive but stated that his primary concern as a negotiator was to begin talking to John Carthy out of fear for his, John Carthy’s safety, and for that of Garda personnel.

13. The role of psychiatric or psychological support

Introduction

The role of an independent psychiatrist or psychologist in a siege situation was explained by Dr. McKenzie in his evidence as follows:

“It is increasingly common for psychologists and/or psychiatrists to be called by the police to the scene of an incident such as this at an early stage. The purpose of so doing is to provide a triple-pronged resource. Firstly, the psychologist may be able to provide useful cues to the negotiator and possible negotiation ploys. Secondly, he or she may provide a professional oversight of the negotiator(s) who are not exempt from psychological risk when building rapport and conducting negotiations. Thirdly, such a professional may be able to provide beneficial links to others, both in the criminal justice system and in the psychiatric/psychological services world.”

Mr. Lanceley echoed this in his evidence saying that the mental health professional’s input would have been reassuring to the officers, help them understand what they were up against and, possibly, even help them in peacefully resolving the incident.

He also said:

“One of the ways an M.H.P. [mental health professional] can be very helpful is with patient confidentiality problems. In the U.S., it can be difficult for a police officer to call a doctor and get information that would generally be considered privileged. If an M.H.P. telephones a doctor and they can speak doctor to doctor, it is easier to get the information. Additionally, while looking for useful information for the crisis management team, many law enforcement officers would not know what to ask an M.H.P. and would not know what information was of importance.”

Dr. McKenzie explained in evidence that psychiatrists and psychologists associated with the police would be people not only with an understanding and expertise in negotiation and the work of negotiators, but also a significant knowledge of the organisation of the police force that they were working with, preferably having trained with that force.

Evidence was given to the Tribunal that the position regarding the employment of psychologists by police forces varies internationally. Some police forces engage psychologists on a contract basis and maintain a panel, while others employ dedicated full-time experts in that area.

Training evidence

Superintendent Maher (in the course of his evidence about the lectures he gave on the Operational Commanders Course, during the time of his involvement in the training provided as part of the Superintendents Development Course, which was attended by Superintendents Shelly and Byrne), stated that the relevant lecture indicated that the services of a clinical psychologist were available to the Garda Síochána in siege operations, if required. The name of Mr. O’Mahony, clinical psychologist, was referred to in the lecture. Mr. O’Mahony was the director of psychological services in the Prisons Division of the Department of Justice, Equality and Law Reform. He held that post from April, 1980.

The evidence of Mr. O'Mahony

Mr. O'Mahony's evidence on his involvement with the Garda Síochána was that in late 1988 or early 1989 he was asked to offer assistance to the Garda Síochána in the area of hostage negotiation. He agreed to help, the arrangement being an informal one. He took part in a hostage negotiation course of two weeks' duration in January, 1989, and he was asked to offer professional advice on the behaviour and personalities of hostage takers and also to support negotiators. He attended a further day-long training exercise for negotiators some time later. He said that his input to the course was brief and he lectured about areas such as depression; suicidal behaviour; and persons who may be suffering from stress or threat arising out of a domestic situation. In his lecture he concentrated on behaviour from a psychological perspective and also to some extent various types of illnesses that one could expect to encounter. On this course he learned about the system and the process by which negotiation takes place. He was of the view that his participation in the course was somewhere between that of lecturer and student; the line was blurred. He had no further contact with the organisers of this course until a further course was held in March, 1993. This included a day-long exercise at Dublin Airport. Again, he said he attended both as student and observer. He stated that it was his belief that he was involved as part of a national hostage negotiation team. He had no further contact with that team after the course in 1993. He was never called to an incident. In 1996 the Department of Justice set up a working group to oversee the development of protocols for hostage taking incidents within the prison system, and Mr. O'Mahony assigned Mr. Colm Regan, a member of the Department's psychology service to undertake the psychological component of this work. In doing so he told Mr. Regan that he had been involved with the hostage negotiation team for the Garda Síochána, but that as far as he was concerned "*it had been a dead letter for a very long time*".

He did not assign anything to do with the Garda Síochána to Mr. Regan, because he (Mr. Regan) had no experience or training. Mr. O'Mahony retired from the Prison Service on 31st December, 2001.

Mr. O'Mahony said that it was important that a subject's treating doctor should be fully consulted regarding the state of the patient's mental health and his assessment of him, as "*that is a source from which the best available information is to be found so it will be absolutely essential. It would be a matter of urgent priority*". He said the negotiator has one hand tied behind his back if he doesn't have the kind of information that will emanate from the treating doctor. He observed that if a mental health person on the team is there, he is a vehicle through which information from the treating doctor can be translated to the negotiation team. He agreed that it would be difficult for a non-medical person to ascertain all of the relevant medical information and that a psychologist or psychiatrist would be able to speak to the treating doctor in his own language and be able to assess what is important and what perhaps is not very important.

Mr. Colm Regan's involvement with the Garda Síochána

Mr. Regan stated in evidence that in 1994 he took up the position as clinical psychologist at the Department of Justice; the psychological service forming part of

the then Prisons Division which is now the Irish Prison Service. He has contributed to the hostage management programme for the prison service since 1996. His competence and experience relating to the psychological aspects of hostage situations is in the prison context. Mr. Regan never attended a Garda Síochána hostage negotiation course nor has he ever been requested to attend such a course. He was never involved in a situation where he had been called upon by the Garda Síochána to attend at or assist in relation to an incident taking place outside the confines of a prison. He was never given any role or assigned any role in the context of training, lecturing to or assisting the Garda Síochána in their hostage negotiation courses.

The events of 19th and 20th April, 2000

It was against this historical background that Mr. Regan was contacted by Sergeant Jackson in the course of the incident at Abbeylara. Sergeant Jackson said that he knew Mr. Regan was a clinical psychologist working in the prisons section of the Department of Justice, Equality and Law Reform. He thought that he was involved in their negotiation team. He said that on his way down to Abbeylara from Dublin on 19th April he had endeavoured to contact Mr. Regan by telephone and left a message on his answering machine. At approximately 8:30 a.m. on 20th April, Mr. Regan contacted him.

The evidence of Detective Sergeant Jackson

Sergeant Jackson said that the purpose of this consultation was to obtain professional advice about dealing with depressive people such as John Carthy and he was looking for any advice that Mr. Regan could offer, if he could offer it. He was not sure whether or not Mr. Regan would be able to offer him help or guidance. Sergeant Jackson said that he was aware of the psychologist's role being a dual one, namely assessing the subject's behaviour in the stronghold and assessing the negotiation strategy and even the performance of negotiators. It was in that general sense that he contacted Mr. Regan to invite him to tell him (Sergeant Jackson) if he felt he could offer any advice or help in the matter. He described his contact as being purely on a "*consultatory basis*". Sergeant Jackson said that he was looking for professional help about dealing with depressive people. When asked whether this was so, why he had not contacted Dr. Cullen and subsequently Dr. Shanley, he said that Mr. Regan was someone who had a degree of experience in relation to "*negotiation strategy etc.*" Sergeant Jackson did not mention anything about John Carthy's request for cigarettes or for a solicitor to Mr. Regan. He said that the latter told him that he was not able to offer "*any huge assistance*" given the fact that he was removed from the scene and as such was not able to offer advice. Sergeant Jackson said that when he made Mr. Regan aware of the possible psychiatric problems affecting John Carthy, Mr. Regan advised him to make contact with the relevant psychiatric services. Sergeant Jackson thought that Mr. Regan's position on the matter was that as he was at such a far remove from the situation and was not in tune with the dynamics of it, it would be inappropriate and unwise for him to offer any specific advice. Sergeant Jackson said that he believed Mr. Regan was available "*for him to contact on an advisory capacity in the Department*". Sergeant Jackson said that there was no panel

of designated psychiatric specialists available to negotiators. Sergeant Jackson did not ask Mr. Regan to attend the scene or to contact Dr. Cullen. When Sergeant Jackson was asked whether it would have been a wise course to ask Mr. Regan to contact Dr. Cullen on the basis of his professional knowledge and understanding, he agreed that this was a “a very valid point” and said that in other jurisdictions this is the mechanism that is utilised by police psychologists.

The evidence of Mr. Regan

Mr. Regan gave evidence on the conversation which he had with Sergeant Jackson on the morning of 20th April as follows:

“I think it was a brief conversation regarding an ongoing incident at Abbeylara that Detective Sergeant Jackson was involved in trying to resolve. We spoke generally about the circumstances of the siege and the person involved and I explained to Detective Sergeant Jackson at the time that being at such a remove from the scene, not being on scene and not having any role with it that, I couldn’t really comment on it and it would be unwise or inappropriate to do so. He indicated to me that there may be psychiatric issues involved or that the person may have a history of psychiatric consultation and I advocated or advised him that he should refer to that person’s psychiatrist and get assistance from there, that that was the most appropriate course of action and the person who would be most helpful”.

He did not receive any request to go to the scene and he had never been involved in a situation where he has been requested by the Garda Síochána to attend any scene that was not in a prison. He said that he never had a role as a psychologist within the Garda Síochána and he was not aware of any agreement between the Department of Justice, Equality and Law Reform and the Garda Síochána for him to act in such a role. He said that in his conversation with Sergeant Jackson he spoke generally of the importance of actively listening to John Carthy and of providing him with alternative options to help resolve the situation.

Experts’ views

The experts were critical of the fact that there was no psychologist on hand to support the scene commander and Sergeant Jackson, and also that the relevant arrangements for having such a psychologist on hand were not put on a formal footing. Mr. Burdis thought that in particular it would have been helpful for Sergeant Jackson to have had some assessment of whether or not John Carthy intended to cause himself some physical harm. He thought that the failure to secure the services of Dr. Cullen, Dr. Shanley or Mr. Regan at the scene was a serious shortcoming in the operation. He thought there was an obvious value in having professional psychiatric advice on hand, but there was no evident assessment of this by the senior officers.

The recall evidence

In the recall letter the senior officers were asked the following:

“Were they aware of whether the services of a clinical psychologist were available to the Garda Síochána at that time? If so, did they give consideration to arranging the attendance of such a person or expert at the scene.”

Assistant Commissioner Hickey

Assistant Commissioner Hickey replied as follows:

“I was aware of the existence of such a service under the auspices of the Department of Justice. I did not personally know Mr. Regan, but I discovered shortly after arriving in Abbeylara that Detective Sergeant Jackson had made contact with him. In the event, he was not in a position to provide assistance”.

Assistant Commissioner Hickey said that his impression from the training that he was involved in was that Mr. O’Mahony was available to give advice. Mr. O’Mahony never attended any training or practical exercises in which Assistant Commissioner Hickey was involved. When asked as to whether he saw a role in asking Mr. Regan to contact Dr. Cullen, he said that he would find it difficult to visualise Mr. Regan finding out any more from Dr. Cullen or Dr. Shanley than was found out in any event.

Chief Superintendent Tansey

Chief Superintendent Tansey’s reply to the question from the Tribunal, was as follows:

“I became aware that Detective Sergeant Jackson had endeavoured to make contact with a clinical psychologist on the evening of 19th April without success. I became aware that Detective Sergeant Jackson had made contact with Mr. Regan, clinical psychologist, on the morning of 20th April and that he had said that he was at a loss in respect of giving advice or becoming involved in the negotiation process. He advised to contact the relevant psychiatric services.”

Chief Superintendent Tansey said that his training course did not refer in detail to the benefit of having a psychologist speaking to the treating doctor in his own language and knowing what type of question should be asked of that doctor. While Chief Superintendent Tansey was not at the scene at the time this telephone conversation took place, he did not subsequently direct Sergeant Jackson to contact Mr. Regan again to see could he assist by contacting John Carthy’s doctors.

Chief Superintendent Tansey did not accept Mr. Burdis’s criticisms about the assessment of the value of having professional mental health advice on hand and reiterated the contact that had been made with Dr. Shanley in support of his rejection of this criticism.

Superintendent Shelly

Superintendent Shelly replied to the question as follows:

“Yes, I was aware of the existence of the services of a clinical psychologist to the Garda Síochána.

The advice of the clinical psychologist was sought through Detective Sergeant Jackson, the negotiator; however, he could be of no particular assistance to us in this matter.

Consequently, the negotiator, Detective Sergeant Jackson did not request his attendance at the scene”.

Superintendent Shelly said that he was aware from his training that a psychologist was available to liaise with the negotiator and assist him.

Superintendent Shelly was not aware that such a psychologist could also provide a professional oversight on how the negotiator was performing. Nor was he aware that such a person could provide a link between any medical personnel treating the individual and the police. He understood that that would be between the negotiator and the psychologist. Superintendent Shelly thought that any contact that would occur with a psychologist who was available in the Department of Justice would be made by a negotiator. Superintendent Shelly did not know the identity of the psychologist. Superintendent Shelly did not speak to Sergeant Jackson about the desirability of contacting the psychologist or bringing him to the scene at any stage prior to Sergeant Jackson contacting Mr. Regan. When he learnt of the fact that Sergeant Jackson had contacted Mr. Regan he did not suggest that the negotiator should contact him again and ask him to attend the scene, the reason being that he was informed that the negotiator and Mr. Regan had discussed the matter and that Mr. Regan could be of no particular assistance.

Superintendent Byrne

Superintendent Byrne replied to the question as follows:

“I was aware of this service; through the negotiator contact was made with Mr. Regan with a view to ascertaining what assistance he could be”.

Superintendent Byrne said that he had been informed during his training of the availability of a psychologist attached to the Department of Justice, Equality and Law Reform. He did not know his name and had never met him. He was aware of the potential role that a psychologist could play at the scene. He said that he understood that Sergeant Jackson had spoken with the psychologist and that he (the psychologist) *“wasn’t available or he just couldn’t come, he had no role to play was the word I got back.”* He thought that Mr. Regan had advised contacting the local psychiatric services. This was the reason why Superintendent Byrne did not direct that Sergeant Jackson request Mr. Regan to come to the scene.

Detective Sergeant Jackson

In the Tribunal's letter of recall, Sergeant Jackson was asked the following:

"Did he give consideration to requesting the attendance of a clinical psychologist at the scene?"

His reply to this was:

"The expertise that the clinical psychologist could provide was considered and Mr. Regan was contacted on that basis. This may take the form of a telephone contact, continued phone contact or attending the scene. In either case, it must be predicated by making verbal contact with the psychologist and ascertaining his views on the incident. On making contact with Mr. Regan he felt at a loss to assist and indicated that it would be unwise for him to offer an opinion and he recommended the psychiatric services relevant to Mr. Carthy be contacted".

On his recall Sergeant Jackson reiterated his earlier evidence on this topic as already set out and went on to say that he did not consider asking Mr. Regan to contact Dr. Cullen or Dr. Shanley. When Mr. Regan told him that he did not see himself in a position to assist, that aspect of the conversation did not "go any further".

14. Third party intermediaries

Introduction

The expression "third party intermediaries" or "TPIs" refers to the use of persons, other than members of a police force, who are involved in the resolution of an incident, to attempt dialogue with a subject as part of a negotiation strategy. Such a person may typically be a friend or family member of the subject. At Abbeylara, several TPIs were utilised in an attempt to engage John Carthy in dialogue. These were Thomas Walsh, Martin Shelly (Pepper) and Sean Farrell. Other people were mentioned to John Carthy by name and his response to them noted, namely: his sister, Marie, his mother, Rose and his psychiatrist, Dr. Shanley. Immediately prior to John Carthy exiting his house, arrangements were being made by the officers at the scene to facilitate dialogue between John Carthy and his sister, Marie, and with his treating psychiatrist, Dr. David Shanley.

Training

Sergeant Jackson gave evidence to the Tribunal on the training he received in March, 2000 in relation to the use of TPIs. Guidelines on the London Metropolitan Police course established that the use of TPIs is likely to arise for consideration approximately four hours into a siege-type situation. The training divided TPIs into two categories – "high risk TPIs" and "high gain TPIs". "High risk" relates to such persons as emotionally involved relatives, diplomats, politicians and the media. "High gain" refers to such persons as legal representatives, detached professionals and respected relatives.

In relation to emotionally involved relatives, his training stressed the need to acquire, and independently assess, as much background information as possible on the nature of the relationship between the parties and what help they might be in a position to give. The scene commander should be “*careful and cautious*” in using emotionally involved relatives and be alive to the fact that the subject may utilise such a relative as an “*audience for suicide*.” It follows that any potential intermediary should be fully assessed in terms of their relationship with the subject and their potential impact on the scene.

When an intermediary is proposed, regardless of whether the subject has requested them or not, the subject must be aware of what is being planned and must accept and be willing to speak with the intermediary proposed. Sergeant Jackson, in explaining that the introduction of an intermediary necessarily involves the negotiator relinquishing a certain degree of control, stressed the importance of briefing the intermediary in relation to what they will find at the scene; the method of communication to be employed and the areas or subject matters that they may discuss with the subject. It is also important to check that the proposed intermediary is willing to act in this capacity and that they understand that difficulties, such as abusive comments, may occur. The intermediary should be informed that they will be guided in what to say and how to respond to the subject. A contingency plan should be agreed in advance should the need to terminate the discussion or interaction arise.

The training envisaged that most interaction between an intermediary and a subject will occur over a telephone or in a face to face scenario. In relation to face to face negotiations, training emphasised the safe management of the intermediary given the fact that they are entering an environment that is unstable. Whether the intermediary will have eye-to-eye visual engagement with the subject or just dialogue from behind a ballistic screen or other form of cover will depend on the dynamic of the situation. Sergeant Jackson was aware of another situation that is utilised in the United States whereby messages from an intermediary are recorded, either on audio or video cassette, and played to the subject.

Experts’ views and analyses

Mr. Lanceley

Mr. Lanceley was sceptical of the benefit of using TPIs at Abbeylara. As a general proposition he believes that TPIs should not be utilised in negotiations. He explained that in the United States negotiators make a concerted effort to avoid the use of third party intermediaries and that it is in a situation like Abbeylara that he would be least likely to use them. “*The avoidance of TPIs may appear to be unkind or counter-intuitive, but the practice is based upon cruel experience.*” In the United States, he explained, TPIs have prompted homicides and suicides and, in some circumstances, have themselves been killed. Mr. Lanceley was not aware of any four-hour time frame or guideline after which the likelihood of using TPIs may arise for consideration.

Mr. Lanceley noted John Carthy's responses to the third party intermediaries and potential third party intermediaries at Abbeylara. He invited the Tribunal to consider the response of John Carthy to each individual, setting it out as follows:

*"**Tom Walsh:** Met with hostility . . . [and on the second attempt at dialogue] . . . Mr. Carthy's shotgun, intentionally or unintentionally was pointed in Walsh's general direction."*

*"**Martin 'Pepper' Shelly:** No response."*

*"**Sean Farrell:** no response though Mr. Carthy looked distressed. Detective Garda McCabe reported that Mr. Carthy appeared to be sniggering during this time. He at one stage levelled the shotgun and pointed it at the negotiation position."*

Mr. Lanceley also invited the Tribunal to consider the response of Mr. Carthy to the mention of the following individuals:

*"**Dr. Patrick Cullen:** Extreme hostility and shot fired at the mention of his name."*

*"**Rose Carthy:** When Mr. Jackson told Mr. Carthy that 'his mother is very worried about him and that she cares for him a lot.' Mr. Carthy laughs and says, 'you haven't lived with her for ten fucking years'."*

*"**Marie Carthy:** No response. When his sister Marie is mentioned, he 'smirks' and fires a shot and on another occasion, he merely laughs. Mr. Carthy discharges a round when told that Marie is on-scene."*

It is pertinent to note that in the early afternoon of 20th April, the subject endeavoured to contact his sister by mobile phone after his call to Kevin Ireland.

*"**Dr. David Shanley:** at the mention of his name Mr. Carthy makes no response other than a smile and a laugh."*

The primary problem identified by Mr. Lanceley and Dr. McKenzie in using TPIs is that the negotiator cedes control of the negotiations to a person who is not trained in negotiations and the management of sieges. One way of maintaining control that has been used in the United States (in the rare circumstances when TPIs are used) is to tape-record the message from the TPI to the subject. *"If you just put someone live on the telephone"*, Mr. Lanceley warned, *"you can't control what they say and often they say some outrageous things"*. *"The problem is,"* he explained, *"sometimes they work very well, sometimes there is no response. Sometimes they set back the negotiation and sometimes their use leads to disaster and you never know . . . third party intermediaries always bring extra baggage"*. With this caveat firmly expressed, Mr. Lanceley was of the view that the TPIs that were used at Abbeylara were *"briefed very well"*, in that they had been briefed as to their responsibilities and what areas they should cover and what areas they should avoid, and that they *"performed well . . . I didn't see any of the TPIs say anything that was particularly harmful to the negotiation"*. However, he was critical of what he perceived to be a lack of appreciation for the level of danger inherent in the incident and especially of the

position of the negotiation post which he believed left the negotiator and third party intermediaries *“too close to the Carthy residence and too vulnerable to hostile fire”*.

Considering the use of third party intermediaries at Abbeylara, Mr. Lanceley concluded that:

“it did not appear that the use of TPIs was leading to anything other than possible agitation, danger and emotional upheaval to both the TPIs and Mr. Carthy. Yet, the Garda persisted in trying to find someone to solve the problem for them. Detective Sergeant Russell seems to have recognised the problem. Russell said that he was concerned that Mr. Carthy’s conduct had become what he described as “erratic” and for this reason, recommended to Superintendent Byrne that no further visits by non-gardaí should be considered at that time. TPI individuals are always convinced of their ability to assist and are always shocked and hurt when the subject rebuffs their loving attempts to assist. The incident ceased being a family problem when Mr. Carthy took up his shotgun and caused his mother to leave the house. It then became a law enforcement problem”.

Dr. McKenzie

Dr. McKenzie was equally concerned by the use of third party intermediaries at Abbeylara. saying that the *“commonly held view, rigidly adhered to for many years by those engaged in teaching negotiation techniques, is that third parties, including friends and families, should not be involved in direct negotiation with the subject.”* He told the Tribunal that this is *“doubly true when mental illness is known to be a dynamic. In some mental disorders”*, he explained, *“tense or equivocal family relationships can be a key factor in their aetiology. Such matters are beyond the ken of the police, particularly in the opening stages of an incident, and for that reason, the use of family members should be avoided.”* Accepting that there are some circumstances in which the use of third party intermediaries may be acceptable, Dr. McKenzie stated that *“their use is to be carefully considered”*. He was particularly concerned by the early use of TPIs at the scene. He stated that it is a core principle of negotiation that in the early stages of a siege the only person with whom the subject has contact is the police negotiator; *“it is only from him or her that reinforcement should emanate”*.

Dr. McKenzie said that there may be a lack of control over TPIs in the absence of specialised police equipment such as a secure phone, or field phone. Like Mr. Lanceley, he did not see that the use of TPIs at Abbeylara caused any particular problems but he regarded their use as *“unfortunate . . . there was what I can only describe as an unseemly haste to try and involve family members . . . There was no, I think, real consideration given to the fact that the family members could easily (a) have said something which was beyond the control of the police; or (b) might have been the very cause, the trigger in fact of what was disturbing John Carthy at that time. Nobody knew”*.

Dr. McKenzie also referred to John Carthy’s response to the mention of his mother’s name as an indicator of the potential danger of introducing third parties including

family members. He told the Tribunal *“best practice would suggest that, in the absence of comprehensive information about friends and family gathered over an extended period, the unpredictability of such encounters, regardless of the nature of any ad-hoc briefings, is at best unwise and at worst counter-productive”*.

Detective Sergeant Jackson’s response on recall to the expert analysis

Sergeant Jackson told the Tribunal that he was satisfied that *“it was the correct decision; that it did not hamper negotiations in any shape or form and there was a potential benefit to be derived from their use”*. He recognised that certain difficulties can arise in relation to the use of family and friends as TPIs, but was adamant that no such issues arose at Abbeylara. He stated that the capabilities of the TPIs were assessed along with an assessment of their willingness to act in this capacity. He informed the Tribunal that background information was obtained about each person and an assessment was made of the relationship with John Carthy. He stated that no adverse or potentially adverse effects were ascertained. Further, relatively strict control was administered from the negotiating post. Stressing that nothing was said or done that inflamed the situation, Sergeant Jackson stated that:

“the proof has to be in what actually occurred. It did not cause a difficulty at the scene. I think outside of training and outside of best practice, I think you do have environment factors. Rural Ireland is a very family-orientated society. People were concerned for John’s welfare, and I think the unnecessarily rigid application of a rule in relation to all intermediaries may not have been appropriate in this case”.

Potentially successful TPIs?

Introduction

Consideration was given at the Tribunal to whether a person, other than a member of the Garda Síochána, whom Mr. Carthy had confidence in and trusted, was likely to have the best prospect of meaningful dialogue with him. In particular the Tribunal considered the role of Ms Marie Carthy and Dr. Shanley in this regard.

Psychiatric evidence on this issue

Dr. Sheehan

Dr. Sheehan, having considered this proposition, stated: *“Mr. Carthy was mentally ill. He probably had no or limited insight. He was probably manic, paranoid and suffering from both alcohol and nicotine withdrawal. His mother had left the house because of his behaviour. [Not so. She left at his request.] He was antagonistic towards the gardaí. He was probably paranoid about them. It would have been very difficult for anyone to gain his trust and confidence”*.

Professor Fahy

Professor Fahy was asked if, in his view, anyone might have been effective in communicating directly with John Carthy. Professor Fahy stated that he saw little in the evidence to give any cause for optimism in this regard:

“approaches from friends and so on were rebuffed in very firm terms. He pointed a gun at a friend . . . I suspect that as the events progressed, he was becoming more inaccessible, especially towards the end, where it seems communication virtually shutdown. In general,” he told the Tribunal, *“I would have felt quite pessimistic at the prospect of a professional or a relative being able to entice Mr. Carthy into a very constructive exchange or resolution”*.

Professor Fahy was further questioned by the Chairman in relation to whether, in light of John Carthy’s known antagonism towards the Garda Síochána, it may be feasible to consider that he would have decided or entertained the thought of surrendering his gun to someone whom he trusted and had high regard for, who was not a member of the force. Professor Fahy explained that such consideration would have to be premised on the assumption that John Carthy was thinking clearly at the time and he, Professor Fahy, was not sure that he was thinking strategically and clearly at the end.

Potential use of Marie Carthy as a TPI

The scene commanders, Superintendents Shelly and Byrne, together with Assistant Commissioner Hickey and Chief Superintendent Tansey were asked by the Tribunal whether they considered the possibility of bringing Ms Carthy to the negotiation point, and, if not, why not?

Superintendent Byrne

Superintendent Byrne was acting scene commander when Ms Carthy first arrived at the scene in Abbeylara at approximately 11:00 p.m. on 19th April, having been brought by the gardaí from her home in Galway. At this time she was interviewed, along with Martin Shelly and Thomas Walsh, in relation to the possible motivation for her brother’s behaviour. Ms Carthy and Martin Shelly repaired to a nearby house owned by Mr. and Mrs. Devine, opposite the church in Abbeylara where it was intended that they would spend the night. At approximately 2:00 a.m. on 20th April, Mr. Shelly was brought to the negotiation point to try and initiate dialogue with John Carthy. The latter had agreed with the negotiator’s suggestion about two hours earlier that “Pepper” should be brought to the scene. There was substantial delay in finding him although he had been delivered to Devine’s in a garda car. Ms Carthy, accompanied by her friend Patricia Leavy, also attended at the scene with him. Marie Carthy told the Tribunal that she *“practically begged”* the police to allow her to speak with her brother. However, she was not allowed down to the negotiation point at this time. She stated that she was worried and upset about John and conceded that she may have tried to push past Superintendent Byrne in an attempt to get down to the negotiation point. Superintendent Byrne prevented her from getting past.

Superintendent Byrne said that Ms Carthy was not brought to the negotiation point at this time because the negotiation effort was concentrated on arranging for Martin Shelly to speak with John Carthy. In response to a direct request from Marie Carthy to speak with her brother, Superintendent Byrne replied, “No, not at the moment, Marie.” He went on to explain:

“I was calling her by her first name; we were quite friendly at that stage because I had met her three times, [since her arrival from Galway] twice before and this was my third time to meet her. She did attempt to go by me and I prevented her. I put out my arm and I blocked her passage and she went to go the other side of me, she made two attempts and I prevented her from going down because I said it wasn’t right at the time. Martin Shelly, he wanted Martin and we wanted to bring Martin down to him to resolve the situation . . . John had been told we were getting Martin for him and we weren’t going to bring any surprises to John like. We wanted him to trust us and that was the whole tenor through our entire negotiation”.

Superintendent Byrne, having given evidence that, in his opinion, Marie Carthy was under the influence of alcohol at this stage, was of the firm view that, alcohol or no alcohol, she would not be brought to the negotiation point at that time and that such decision had been made prior to her arrival at the scene early on the morning of 20th April.

Superintendent Byrne’s allegation that Ms Carthy was allegedly drunk when she was brought to the vicinity of the negotiation point with Martin Shelly and Ms Leavy at circa 2:00 a.m. on 20th April, was not borne out by the latter witnesses and was strongly denied by Ms Carthy herself. As already stated in Chapter 4, there is uncontroverted evidence that when Ms Carthy was in Devine’s house before retiring for the night, Mrs. Devine suggested that she (Ms Carthy) and others might have a hot whiskey. She agreed and had one such drink only. This was confirmed by Mr. Devine. There is no evidence that that single drink affected Ms Carthy’s sobriety then or later when brought by the police to the scene with Martin Shelly and Ms Leavy. She also denied having had any other alcohol that day. In that regard Mr. Devine stated in evidence that when Ms Carthy and Mr. Shelly arrived at his house, they “*had definitely no drink*” taken. I am satisfied that he was a credible, truthful witness. Superintendent Byrne did not detect any smell of alcohol from Ms Carthy. He was unable to explain why no reference was made in his log to her sobriety or insobriety when brought to the scene circa 2:00 a.m. He conceded that there was no question of insobriety when he met and spoke to her on two other occasions in course of the previous three hours.

Garda Campbell gave evidence of having met Ms Carthy when she arrived with Mr. Shelly and Ms Leavy at the scene. He described her as being agitated and upset and anxious to go down to the negotiation point to speak to her brother. He stated that he did not form any view that there was anything else (other than agitation and upset) wrong with Ms Carthy at that stage. He was then asked by counsel “*could you form a view as to whether or not she was under the influence of alcohol or she was being affected by alcohol or under the influence?*” to which he replied “*I would*

have formed that opinion, yes''. This is contrary to the answer he had already given to Q. 969 in the transcript for Day 14. His change of evidence indicates that his testimony is unreliable. I do not accept Superintendent Byrne's allegation of Ms Carthy's alleged drunkenness. (See also my observations on Superintendent Shelly's evidence hereunder.) However, I do accept that Ms Carthy may have a volatile personality; that she was upset and distressed about the tragic situation in which her brother was at that time and that she was anxious to speak to him as soon as possible. It is reasonable that the negotiator decided not to introduce her then, as she had not been prepared by the gardaí for that function, and that he would concentrate on Martin Shelly only as a potential intermediary at that time as his presence had been specifically sought by Mr. Carthy.

As to the use of Ms Carthy; it is evident that the appropriate course would have been to postpone availing of her as an intermediary until she had been carefully questioned and briefed by an experienced officer, who was familiar with events at Abbeylara, and her opinion had been canvassed on how her brother's anger and fears might be defused. Her thoughts in that regard and other background information she might have been able to give had potential significance in planning negotiation strategy. It was also important to prepare her for her function as an intermediary with her brother. There is no evidence that any steps were taken regarding the interrogation of Ms Carthy on the foregoing matters or to prepare her for participation in negotiations. Although it had been made clear to the gardaí that she was the person her brother turned to when distressed by outbreaks of mental illness, her potential was never availed of by the negotiator or the scene commanders – an extraordinary omission by them which has not been explained. I note that strenuous efforts have been made in the interest of the gardaí to downgrade Ms Carthy's potential importance as an intermediary with her brother. This has extended to dishonestly obtaining erroneous press coverage suggesting that she did not have a good relationship with him. That matter is dealt with in my Ruling on 19th November, 2004 which is contained in Appendix 7.K to this Report.

Superintendent Byrne confirmed that prior to Ms Carthy's arrival at the scene he had consulted with Sergeant Jackson as to whether she should be allowed to attempt dialogue with her brother. It was agreed that the introduction of Martin Shelly as a third party intermediary should be the focus at that time since John Carthy had responded positively to the suggestion that he be brought to the wall. Sergeant Jackson explained how he had mentioned Marie Carthy to the subject in the context of exploring what third party intermediaries could be of benefit at the scene. He was specifically asked, given that he was aware of a closeness between brother and sister, if he had given any consideration about whether Marie Carthy was an appropriate person to mention to the subject as someone that he could speak to rather than Martin Shelly. He replied that, as part of assessing the position in relation to intermediaries, they had background information to suggest that Ms Carthy, along with various other persons, would be potentially beneficial. If, he told the Tribunal, the mention of Marie Carthy's name to John Carthy had produced some form of engagement with the subject whereby he agreed to speak to her or even asked for

her then this would have been facilitated as appropriate. He specifically mentioned Marie Carthy's name in the hope of achieving this level of engagement.

Superintendent Shelly

In relation to whether or not he considered the possibility of bringing Ms Carthy to the negotiation point, Superintendent Shelly replied as follows:

“The question of bringing Miss Marie Carthy to the scene was considered by me early in the incident as we recognised the potential value. It was arranged to have Miss Carthy brought from Galway on the evening of 19th April and she was accompanied by her friend Martin “Pepper” Shelly. At the scene the assistant negotiator, Detective Garda Sullivan spoke to Marie Carthy and enquired from her if she would speak to her brother and she agreed. John Carthy was informed of her presence at the scene. However he didn’t respond.

On the following day, 20th April 2000, we were aware that she was available to speak to her brother and this information was conveyed to John Carthy by the negotiator. Miss Carthy was an important person in her brother’s life and the offer to have her speak to him was made to John Carthy; however, he didn’t respond positively. Other persons close to John Carthy and respected by him did, in fact, speak to him at the scene, Tom Walsh, Sean Farrell and Martin Shelly and he was positive towards them. [In fact, he failed to respond to any of them as the superintendent, as scene commander, would have known.] However, the same response wasn’t forthcoming for his sister Marie, from John Carthy”.

Superintendent Shelly clarified what he meant in relation to Mr. Carthy being “positive” towards others at the negotiation point in that he had agreed to or was at least agreeable to speaking with them and did in fact have some form of interaction with them. It was “regrettable” he said “that he didn’t respond in any way to allowing or wanting Marie, his sister, to speak with him”.

This observation is contrary to John Carthy’s unsuccessful effort to contact his sister by mobile phone in the early afternoon of 20th April after his phone call to Kevin Ireland, a few hours before he left home and embarked on his fatal journey towards the car where his sister and Dr. Shanley were at the time. (He failed to contact his sister because he used an old number which had been recently changed.) This matter was investigated by Chief Superintendent Culligan and the following passage is at paragraph 62.4 of his Report:

“087-6708137

Marie Carthy’s – refers to this as her old mobile. The fact that this number appears as the second number on the list of calls made from John Carthy’s phone suggests that this number was called by John Carthy at some time after he called Kevin Ireland at 12.24 p.m.”.

However, it is appreciated that in course of the siege Superintendent Shelly would not have been aware of John Carthy’s unsuccessful effort to phone his sister after his

conversation with Kevin Ireland on 20th April, nor would he have been aware then of the subject's own assessment of his sister and of her importance in his life as appears in his correspondence with Ms X in February, 2000. (See Chapter 8 where the correspondence is quoted in full.) Nonetheless, the scene commander knew, or ought to have ascertained if Ms Carthy and other family members had been properly interrogated by experienced, well briefed officers, that she had a very close, loving and caring relationship with her brother as borne out by her efforts on his behalf in Galway in the previous January/February and early April when he had exacerbations of his mental illness. Failure to prepare Ms Carthy for possible contact with her brother during the morning of 20th April and failure to ascertain what information or opinion she might have about his motivation for violent conduct in defending the old family home, and her observations on how his anger might be defused, deprived the negotiator of potentially important information which could have been of significant advantage. Ms Carthy, her mother and other close family members were aware of crucial facts which had coalesced at the time of the siege in John Carthy's mind i.e. the significance of the old house in the history of the Carthy family, in particular its association with the subject's deceased father, who died on Holy Thursday ten years previously; the intended imminent demolition of the old home and John Carthy's unsuccessful effort in correspondence in the name of his mother to prevail on the local authority to allow the family to retain the old house because of its particular significance to them. The gardaí were aware that John Carthy had intimated to his mother at the commencement of the incident that he was not going to surrender the old home to anyone and would defend it against all comers. Bearing in mind the imminent demolition of the building, this ought to have prompted the scene commander or negotiator to arrange with the county manager to postpone demolition pending further consultation with the subject and his solicitor on completion of his in-patient treatment under Dr. Shanley at St. Patrick's hospital. That course might have defused the situation sufficiently to end the impasse. It was not adverted to by the gardaí. No explanation has been given about why Ms Carthy was not interviewed in depth or on why she was not utilised as an intermediary with her brother.

Superintendent Shelly was further questioned in relation to what level of consideration was given to bringing Ms Carthy to the negotiation point. He stated that consideration was given to allowing her to speak to her brother on the night of 19th April and that this was in fact conveyed through the negotiator to John Carthy but no response was forthcoming. *"We were anxious that that would be achieved, if at all possible,"* he told the Tribunal. Superintendent Shelly was adamant that no decision was made to prevent Marie Carthy from speaking with her brother. In fact, he said, it was believed that it would have been a positive thing; they were hopeful that such contact could be arranged. He stressed this by pointing to the fact that Garda Sullivan was, to the end, trying to facilitate communication between brother and sister. Patricia Leavy told the Tribunal that she believed, both from hearing what Superintendent Byrne said to Marie Carthy and from her own discussion with the gardaí at the scene, that the intention was that Marie Carthy would have the opportunity to speak with her brother at an appropriate time.

Superintendent Shelly told the Tribunal that in April, 2000 his state of knowledge in relation to the use of third party intermediaries was that they *“could be very helpful”*.

Chief Superintendent Tansey

Chief Superintendent Tansey, when questioned in relation to what level of consideration was given to bringing Ms Carthy to the negotiation point stated that he was not involved in such deliberations nor would he expect to be; this was a function of the scene commander. However, he stated his belief that it would have been necessary to get John Carthy to consent to any such arrangement.

Assistant Commissioner Hickey

Assistant Commissioner Hickey shared a similar understanding as Chief Superintendent Tansey. *“I have no doubt,”* he told the Tribunal, *“that she would have been brought to the negotiating post, the same as the other friends, if John had agreed to talk to her”*. However, he felt that the use of third party intermediaries was most properly a matter for the scene commander.

Experts’ views and analyses

Mr. Lanceley

Mr. Lanceley, noting John Carthy’s response to being told his sister is at the scene (smirks; fires a shot; laughs), posed a rhetorical question as to whether any thought was given to the possibility that bringing Marie Carthy to the scene might lead to disaster? As pointed out already, he does not seem to have been aware of the subject’s attempt to contact his sister in the early afternoon of 20th April.

Dr. Sheehan

Having regard to the potential involvement of Marie Carthy as an intermediary, Dr. Sheehan stated his belief that the person most likely to have been able to have dialogue with John Carthy was his sister, Marie. *“It was to her that he had turned when becoming unwell in early April 2000”*, he explained. *“She had also been with him in Galway in February 2000 at the time of his arrest. She had sought help for him. Furthermore, in his letter to his girlfriend in February 2000, he mentions only one family member by name, his sister Marie.”* Dr. Sheehan also cited a solicitor and Dr. Shanley as other possible intermediaries. However *“ultimately,”* he said, *“due to the severity of Mr. Carthy’s mental state, even though I have suggested that Mr. Carthy’s sister, Marie, a solicitor – or even Dr. Shanley – may have been able to intervene successfully, I do not think that they would have succeeded in de-escalating the stand-off to a safe level leading to a peaceful outcome”*.

Dr. Sheehan was asked his views in relation to the use of family members generally as intermediaries in situations where mental illness is involved. *“In terms of general principles,”* he replied *“one would frequently involve a family member and more often than not that is very helpful, but when considering the situation with Mr. Carthy and his responses to, for example, the mention of her [Marie Carthy’s] name, and*

firing the gun subsequently, on balance I don't think – and it never happened so one can't be sure – but I don't think that she would have been successful in talking him down''.

Potential use of Dr. Shanley as a TPI

Detective Sergeant Jackson

Sergeant Jackson was questioned in relation to his understanding of what Dr. Shanley's role at the scene would be. *"I suppose it was twofold,"* he said, *"firstly, obviously, Dr. Shanley was John's psychiatrist. He certainly could come and give us advice in relation to John's background and in relation to what he would feel his areas were, we could try and encourage John into dialogue. Also, I was aware from the previous night from reading the report that John appeared to have a reasonably good relationship with Dr. Shanley and may be it may be possible that they may engage with one another. So, really, there was a dual role, as I saw it, for Dr. Shanley that if the circumstances prevailed that we could engage him with Mr. Carthy at that stage''.*

Dr. Shanley

Dr. Shanley was specifically asked his opinion as to the likelihood of a person who John Carthy knew, had confidence in, trusted and respected, having the best prospect of meaningful dialogue with him. *"I find it very difficult to deal with this question,"* he said, and explained to the Tribunal:

"In an abstract sense, one would expect that a person who John knew, had confidence in, trusted and respected, would have had the best prospect of a meaningful dialogue with him. However, this was a siege situation. I have only ever seen John in a clinical sense. I have no experience or expertise in the conduct of siege negotiation. However, it appears from Dr. Cullen's evidence given to the Tribunal that his arrival on the scene on 19th April, 2000 did not elicit a positive response. Given John Carthy's reaction to Dr. Cullen, I cannot say whether there was anyone else who might have had a better prospect of meaningful dialogue with him. Quite clearly, neither I nor any lay person would have any of the training or expertise of the specialist Garda negotiators''.

Professor Fahy

Professor Fahy told the Tribunal that he could

"find little evidence from review of the medical records and transcripts that Mr. Carthy would have been amenable to interventions by his GP or psychiatrist during the siege. His mental state was highly irritable, he was overtly aggressive (firing his shotgun approximately 30 times), and he ignored or was critical of the overture of friends and close family . . . at the time of his death Mr. Carthy was only minutes from an overture from Dr. Shanley, but there was no good reason to suppose that that would have been effective in calming Mr. Carthy or preventing his subsequent self-destructive behaviour''.

In agreeing with Dr. Kennedy that John Carthy's unwillingness to engage in any sustained communication of any sort rendered the situation unusually difficult or impossible to bring to a safe and controlled conclusion, Professor Fahy thought it extremely unlikely that a clinician, even one known to John Carthy, would have had an impact in bringing the situation to an earlier or safer conclusion. However, Professor Fahy believed that Dr. Shanley would have been a helpful resource to the garda negotiating team in helping them to understand the nature of his mental illness.

Mr. Lanceley

In relation to using a subject's own mental health professional as a TPI, Mr. Lanceley explained that this is not something which would be done or encouraged in the United States. A negotiator would consult with such a person but would not allow him or her to speak directly to the subject.

Dr. McKenzie

Dr. McKenzie viewed Dr. Shanley as a third party intermediary and, as such, was mindful of the problems associated with their use. He was of the view that *"Dr. Shanley should not, save in extreme circumstances, communicate directly with John Carthy"*. However, he thought that the presence of Dr. Shanley at the scene, or at a minimum in repeated and regular contact via telephone, would have been a valuable resource; especially if a mental health professional had been present at the scene at Abbeylara to engage in "peer-to-peer" contact with Dr. Shanley. Dr. Shanley's role at the scene should have been as a resource to *"brief the police,"* he explained: *"to assist the police, but not actively to negotiate, unless and until it became crucial, by which I mean a specific request made by the subject of the siege that he wants to speak to his own psychiatrist or something of that kind"*. Dr. McKenzie introduced a further note of caution in relation to allowing Dr. Shanley to speak with John Carthy. Referring to the *"ironic or sarcastic laugh"* that emanated from the subject on the mention of Dr. Shanley's name, Dr. McKenzie cautioned against assumptions that there is always a positive relationship between a psychiatrist and his or her patient. Noting the evidence that Dr. Shanley believed he had a positive relationship with John Carthy, Dr. McKenzie stated:

"the only person who can ever really tell us whether that is really true is John Carthy himself. The ironic, sarcastic part of the laughing that Inspector Jackson refers to, suggests that Dr. Shanley might not have been quite the person that others, from an external point of view, think that he was, in relation to John Carthy . . . I don't mean to denigrate the relationship between John Carthy and Dr. Shanley";

and Dr. McKenzie explained:

"I am merely talking about the circumstances at this particular moment in time on the 20th April during the course of the siege . . . the assumption that Dr. Shanley would necessarily be the appropriate person to help him, may be mistaken".

15. John Carthy's requests

Cigarettes

John Carthy made two requests for cigarettes, the first at approximately 3:25 a.m. and the second at approximately 10:00 a.m. on 20th April.

The 3:25 a.m. request

At the time of the first request Superintendent Byrne was the scene commander. Sergeant Jackson and Sergeant Russell gave evidence that prior to the first request they had discussed the question of how a delivery would be affected, should some request come from John Carthy.

Sergeant Jackson said that they had agreed that the best course of action for a delivery would be to maintain engagement and contact with John Carthy, "*hopefully put the gun out of commission*", and during this period while Mr. Carthy was engaged, effect delivery to the house from the rear.

"Putting the gun out of commission"

Sergeant Jackson said that this involved saying to John Carthy:

"John, put the gun on the floor, come to the window, show us your hands and we will deliver the cigarettes around the rear, to the front door. We will move back".

Sergeant Jackson's initial response was to explain to him that getting cigarettes to him should not be a problem, but they needed to talk about getting them to him, to which he received the response, "*Fuck off and don't bother*".

In this initial engagement Sergeant Jackson explained to him that he wanted him to agree a safe method of delivery with the object being to engage him in dialogue and to try and develop a degree of trust. He described this as his first purpose, with the second being the actual delivery, involving John Carthy's agreement to put the gun down on the floor; to come to the window; to show his hands and for the cigarettes to be left at the door.

At the time of this request Sergeant Jackson did not know that John Carthy was a heavy smoker. He viewed the request as significant with "*substantial potential*".

The witness said that he repeated these instructions to John Carthy on several occasions before a shot was fired at approximately 3:30 a.m. In evidence Sergeant Jackson accepted that the detailed instruction he said he gave to John Carthy was not in his original statement made to the Culligan Inquiry and adopted by him in the Tribunal. He furnished two supplemental statements to the Tribunal dealing with his visits to the scene after 20th April, 2000, but he did not include any reference to the instruction that he said he gave to John Carthy. Sergeant Jackson said that the broad position was set out at the start in his statement, and only became highlighted when the issue of the cigarettes as "*a bargaining tool*" arose after Dr. Shanley's evidence.

(This latter matter is dealt with below.) Sergeant Jackson thought that this led to his position being misinterpreted, and that he was the only one who was able to articulate it.

He said that in giving his original statement he believed that its purpose was to assist in the official assessment of the garda actions in relation to the shooting of John Carthy; that assessment being carried out by Chief Superintendent Culligan and it was not an assessment of specific negotiation techniques.

Evidence of Detective Garda Sullivan

Garda Sullivan did not hear the actual request. He thinks it occurred when he was on refreshment duty. He said that on his return to the negotiation post, Sergeant Jackson was pursuing the issue with John Carthy.

On the question of the safe delivery Garda Sullivan said that he remembered Sergeant Jackson trying to agree a safe method; telling John Carthy that *“he was very anxious to get him whatever he wanted and that cigarettes weren’t a problem but the gun was a problem”*.

Evidence of Detective Sergeant Russell

Sergeant Russell said:

“I expressed concern that we would have to agree a safe method of delivery and I asked him [Sergeant Jackson] could he get John to agree to just put the gun out of harm’s way until we got them, if he was going to offer him the cigarettes. He took my concern and he explained that to John Carthy himself. I heard him saying, he said he wanted to give him cigarettes, ‘but John we have to agree a safe method of delivery and we want you to put the gun out of harm’s way until we get them into you’”.

Sergeant Russell went on to say that Sergeant Jackson asked John Carthy to *“put the gun to one side”* while they got the cigarettes to him, by which he meant, that if *“he left the gun down and remained at the window, that we would be able to get the cigarettes in”*.

Sergeant Russell agreed that he explained this to Superintendent Byrne, and said that he would be able to get any item to him *“provided we were satisfied that he would accommodate us in some fashion by just leaving the gun to the side”*. He agreed that if he had been given assurances in relation to safety, that he would have delivered the cigarettes to the door or the window.

“Bargaining Tool”

The evidence to the Tribunal was that *“bargaining”* is a ploy more appropriately used by negotiators in conventional hostage incidents rather than a single subject incident such as that at Abbeylara. In the view of the experts, particularly Dr. McKenzie and Mr. Lanceley, it is what distinguishes hostage negotiations from crisis intervention.

The evidence was that, as a general principle, bargaining should not be used in a single subject incident.

The first specific reference to “bargaining” was in Dr. Shanley’s evidence on examination by counsel for the 36 named gardaí when the following exchange took place:

Q. *“I think also, you mentioned earlier, Dr. Shanley, the question of cigarettes and getting cigarettes to Mr. Carthy. In fact, that came about I think, in response to a question from Detective Sergeant Jackson. Was there anything he wanted; how was he for food; was there anything he could do for him and he said he wanted fags – ‘Majors’ – and arrangements were immediately set in train by Detective Sergeant Jackson to get cigarettes to the scene?”*

A. *I entirely accept that but it did appear to me, Mr. Chairman, on reading the transcript that it was very difficult for John to get those cigarettes and that it became a sort of bargaining tool and I understand that strategy, but I feel it might have defused the situation and demonstrated the good will of the gardaí if, without any conditions, cigarettes had been allowed earlier rather than later”.*

It should be stated that in all of Dr. Shanley’s evidence he emphasised that he was not familiar with the principles of police negotiations in armed incidents of the type that presented at Abbeylara.

When asked to comment on Dr. Shanley’s evidence, Sergeant Jackson said:

“The term “bargaining tool” is normally associated with, as I would regard it, a conventional siege situation where you have maybe rational individuals inside who request an item or request something and nothing should be given without getting something tangible in return. For instance, a released hostage or some weaponry or ammunition, so that, in the broadest sense, is a bargaining tool. This case, as I have said already, was different to a conventional siege. Cigarettes were a means to engage John in dialogue. There was nothing tangible required for John to give, other than a degree of engagement with me, in order to deliver the cigarettes and that is as far as it went. There was nothing required for John to do in relation to the weapon, other than make it safe temporarily, to allow us to deliver the cigarettes. In a sense it is described by Dr. Shanley as a bargaining tool, it certainly wasn’t. As I have said, nothing was required from John, other than a degree of engagement. Nothing tangible was requested from him in relation to delivering the cigarettes. From John’s perspective – which is the key perspective here in relation to what I am trying to do – he didn’t give up anything for the police to deliver the cigarettes”.

The following exchanges then took place:

Q. *“You have told us there that you saw it at the initial stages as a method of building rapport and trust with him and also that it was another avenue, whereby you could engage with him, isn’t that so?”*

A. *That's correct, Mr. Chairman, yes.*

Q. *From a number of points of view, this was an attractive proposition?*

A. *Yes, Mr. Chairman.*

Q. *Did those attractive areas that you were going to be dealing with, did they overwean — sort of overpower — any question of getting, actually getting the cigarettes to him or was that of equal significance, the fact that the cigarettes should be got to him rather than dragging this out as a method of engagement, if you understand the question I am asking you?*

A. *Our position from the start was, we were going to give John the cigarettes, we wanted to give John the cigarettes. Nothing was required in return from John. All we needed to do was engage with him and deliver the cigarettes. It is as simple as that and that was the position on the day.*

Q. *I am just asking you at this stage, what did you see as the primary intention that you would have had at this, was it building rapport was it building trust or was it actually getting the cigarettes delivered?*

A. *It was an opportunity for both, it was an opportunity, no. 1, to build trust with John, by proving to him we were willing to deliver the cigarettes. It was an opportunity to develop rapport between myself and John. As I have said already it was a strategy that was embarked on with this in mind and the first part of that strategy was to invite a request from John which was successful and he did request cigarettes. The second part of that strategy was to engage him and talk to him and deliver the cigarettes to him, so it was a two-pronged approach and we had every reason to believe that, with a bit of perseverance, that could be achieved'.*

Superintendent Shelly

Superintendent Shelly, who was not the scene commander at the time of the first request was asked in evidence about the concept of bargaining and seemed to be unclear as to whether or not the cigarettes should be used as a bargaining ploy, but thought that this would be part of the exercise. This exchange was as follows:

“Q. *But you have told me that the cigarettes were being used as a bargaining ploy. This man so needs a smoke, that he will trade the gun for the cigarettes, that seems to have been the hope?*

A. *That would be part of — yes, yes, Mr. Chairman — if that was achieved, and that has been, in my experience, successfully attained in other operations.*

Q. *That means, you will get your cigarettes and satisfy your need for a smoke, provided you surrender?*

A. *Not necessarily, Mr. Chairman.*

Q. *Or part with the gun, in practical terms was surrender, was it not?*

A. *It certainly was, that would be part of the equation that I am sure was in Detective Sergeant Jackson's mind and certainly in my mind as well, yes."*

Superintendent Byrne

Superintendent Byrne said that he understood the position was that all that was required of John Carthy was that he would co-operate in the safe delivery of the cigarettes and that:

"we wouldn't have liked to see the gun in his hands but that we could see John himself while the situation was developed, that another member could deliver the cigarettes or anything else, as I explained earlier, around to the doorstep".

Chief Superintendent Tansey

Chief Superintendent Tansey who was not at the scene at the time of either of the requests, stated in evidence that all of the issues surrounding the cigarettes were matters for the scene commanders he had appointed. He was asked the following question:

Q. *"Chairman: I am just wondering whether the only thing that was of interest to the negotiators was the gun and/or the ammunition and they were the only bargaining counters that they wanted to talk about.*

A. *Well, that would be the situation – the situation was that the negotiator was anxious that the gun would be put beyond use. Great if he threw the gun out the window. But if he didn't, if he actually threw some ammunition out the window or broke the gun and left it where it could be seen and he moved away from it. That is my understanding of the arrangement the negotiator was trying to enter into."*

Chief Superintendent Tansey only learned of the request for cigarettes made by John Carthy, from Superintendent Shelly at some stage late in the morning of 20th April. He thought that he learnt of the second request for cigarettes before, if not at the same time as he learnt of the first request.

Assistant Commissioner Hickey

Assistant Commissioner Hickey said that his impression from Sergeant Jackson, when he discussed this issue with him on his arrival at the scene in the morning of 20th April was that for Sergeant Jackson *"bargaining with the gun"* was not the main issue. Assistant Commissioner Hickey went on to say *"that, of course would be ideal, but it was to get John Carthy to focus on some issue and to try and engage with him"*.

Assistant Commissioner Hickey stressed that Sergeant Jackson emphasised to him that his (Sergeant Jackson's) object was to try and engage John Carthy. Assistant Commissioner Hickey told the Tribunal:

"For instance . . . if he threw out a cartridge, that would be a step in the right direction. If he broke the gun, but that in the early stages, that was still down

the road. It was to try and engage with him and, as has been said, I didn't particularly ask Detective Sergeant Jackson why he didn't throw a packet of cigarettes at the window. I would have thought, and indeed it crossed my mind, that if cigarettes were left outside the window at any stage, that would disimprove the situation, because, as it was, John Carthy was being contained in the house. I didn't think that we should do anything to encourage him to come out in that respect. For instance, if he came out with the gun, the situation would have disimproved."

In the examination of Assistant Commissioner Hickey the following passage from Sergeant Jackson's statement, which was confirmed in evidence, was put to the witness:

"I told Superintendent Byrne about John mentioning cigarettes. I said that it is my opinion that it may be an area that can be developed when John finishes resting. I was of the opinion that delivery and discussions with John about the delivery of cigarettes would be beneficial in the process of building rapport and interaction between us and, thus, aid the negotiation process. In addition, the successful delivery of the cigarettes, after agreement with John, on a method of delivery would help build trust between us. The giving of cigarettes to John may also entice him into giving something in return, maybe agree to throw out some ammunition or maybe even the gun. Superintendent Byrne agrees with this assessment."

This passage relates to a conversation between Detective Sergeant Jackson and Superintendent Byrne after the 3:25 a.m. request for cigarettes.

Assistant Commissioner Hickey was asked whether that statement would represent a fair assessment of the various strands of benefit that Detective Sergeant Jackson communicated to him at the time of their conversation on the morning of 20th April, and he replied:

"I would accept that, Mr. Chairman, but he did emphasise to me about engaging him, trying to engage him."

Sergeant Jackson was asked about the last two sentences of that part his statement quoted above and said in evidence:

"As is said at the outset, our position or my position and the Superintendent's position, was nothing tangible was definitively required from John in order to achieve the delivery of the cigarettes. If engagement took place with John either on one or possibly various other occasions, if trust was gained with John, it may also entice him in order to progress the process further to actually give out something tangible at a later stage and maybe even bring the situation to a peaceful conclusion. That was a strategy that was embarked on at the very beginning to engage with John, to try and develop a rapport with him. Once that rapport was developed about the pure delivery of cigarettes, with nothing required in return initially other than engagement. I stressed the words in my statement 'may entice him' so there was no suggestion of the necessity for that

to happen in order to get the cigarettes. But, as a negotiator and as somebody whose strategy should be ultimately aimed at bringing the situation to a peaceful resolution, these were all things that need to be in your mind when you are trying to progress an incident. For instance, if in the exchanges John did agree to throw out some ammunition, really the value of that to us on the ground tactically is basically nil. But, what it does mean is that in John's mind he has agreed to give us something back and that in itself would mean a lot more may flow from it. So, that is really what was intended in those lines after that."

In further answer to a question from the Chairman Sergeant Jackson said that the fact that "he may throw out some ammunition and eventually may give us the gun on that basis" was the objective which would be a consequence of the build-up of rapport between them.

The evidence as to why the cigarettes were not delivered after the 3.25 a.m. request

Sergeant Jackson said that at approximately 3:50 a.m. he spoke to Superintendent Byrne about the request telling him that the subject did not engage but he looked as if he was going to rest and appeared relatively calm. He said that he told Superintendent Byrne that this was an area that could be developed and progressed, but that the question of delivering cigarettes at that stage did not arise. He was hopeful that when John Carthy finished resting he would agree some degree of engagement in order to deliver the cigarettes.

Superintendent Byrne said that he had a discussion with Sergeant Jackson about leaving the cigarettes at the door or at the window while John Carthy was resting and said that Sergeant Jackson told him that it would not be beneficial to leave them without his consent or co-operation.

Superintendent Byrne said that it was not specifically a safety issue, the consideration being based upon whether or not the delivery would be beneficial, rather than whether it could be done safely, an issue that was to be considered in the context of the negotiation and negotiation technique.

Sergeant Jackson said that the primary reason for not delivering the cigarettes while John Carthy was resting was that it was an issue that could lead to engagement with him when he woke, but also said that if a covert delivery was made and he was to discover the cigarettes in the morning he may believe that his security had been breached leading to an undermining of his trust. Sergeant Jackson said that he was trying to conduct an assessment, balancing the advantage of delivering the cigarettes at that time, that is, that John Carthy's nicotine dependency and his craving for cigarettes would be dealt with, and the disadvantage being a risk of the loss of the ability for further engagement, arising from the invasion of his space.

The 10:00 a.m. request

Detective Sergeant Jackson

Sergeant Jackson said that at approximately 10:00 a.m. on 20th April John Carthy asked again for cigarettes, he thought by shouting out the window. This was as a result of a general query from Sergeant Jackson as to whether there was anything that he wanted, together with a specific reference to his earlier request for cigarettes the night before. Sergeant Jackson told the Tribunal that John Carthy's actual reply in answer to the query was "fags".

Sergeant Jackson said that he told John Carthy that he wanted to deliver the cigarettes to him but the gun was the difficulty saying "*what I want you to do is to put the gun on the floor, come to the window, show me your hands and while you are there, we will get someone to put the cigarettes at the front door. Then we will move back, the cigarettes will be there and you can come out and collect them*". He said that he received no reply to this.

In his original statement made to the Culligan Inquiry and adopted for the purposes of the Tribunal, Sergeant Jackson said the following in connection with this request:

"At approximately 10.00 a.m. John asked me again for Major cigarettes. I told John that this should not be a problem. As I have already mentioned I was anxious that we should get him the cigarettes as it would be a positive police action and may help build up some trust. I asked John to agree a safe way of getting the cigarettes into him. I said, 'I want to get you the cigarettes but I am worried about the gun you are firing at us. Can we agree a safe way of getting them into you?' No reply from John. Garda Sullivan relays the request for cigarettes to the command post. My advice to the scene commander was to allow the cigarettes to be delivered if a safe way is agreed for the delivery. Superintendent Shelly agreed. A delivery plan was formulated between the scene commander, Superintendent Shelly, Detective Sergeant Russell and I in the event of John co-operating".

Detective Sergeant Russell

Sergeant Russell said he discussed safe delivery with Superintendent Shelly, and told Sergeant Jackson that they would have to agree a safe delivery. He told the negotiator to ask John Carthy to leave the gun aside or "*put it out of harm's way*" and that was duly explained to him. He said that the considerations for the delivery were the same as in the earlier request but with the added difficulty that they were dealing with daylight at the time of the second request.

Detective Garda Sullivan

In his original statement made to the Culligan Inquiry and adopted for the purposes of the Tribunal, Garda Sullivan said:

"at approximately 10.00 a.m. John Carthy makes a passing request for cigarettes. Detective Sergeant Jackson tells him that wasn't a problem. He told

him that we would get them for him. I relayed this request to Superintendent Shelly and sometime later I collected the cigarettes at the command post and brought them to the negotiating point. Detective Sergeant Jackson informed Carthy that we had the cigarettes for him. Detective Sergeant Jackson emphasised to Carthy that it was too dangerous for us to bring them in while he had the gun, but if he put the gun down and came out he could have his cigarettes''.

Garda Sullivan was asked in evidence whether it was the case that what he reported Sergeant Jackson said to John Carthy, about the cigarettes, occurred after he (Garda Sullivan) returned from the command post with the cigarettes? Garda Sullivan replied that this was something that was said by the negotiator at all times while pursuing the issue of cigarettes and, in particular in relation to this occasion, he heard him saying it at the time when the request was first made at 10:00 a.m.

When asked specifically whether he heard Sergeant Jackson saying to John Carthy *"If you put the gun down and came out he could have his cigarette"*, he said that that sounded *"very harsh. It wasn't said in that fashion. It sounds like an ultimatum and certainly wasn't said in that way. It is perhaps badly worded"*.

When asked to describe the way that he recollected this being said, Garda Sullivan said:

"Detective Sergeant Jackson was pursuing the issue and trying to agree with John how the cigarettes could be delivered. He was emphasising that it was too dangerous, that he had a gun and he couldn't possibly deliver the cigarettes to him while the gun was in his hands. That the gun was an issue and it was just too dangerous for anybody to attempt to bring them in. I recalled him trying, over protracted periods, trying to agree with John if a safe method could be arranged, that he would have no problem giving him the cigarettes. A lot of this time John was not responding and I don't recall John making any suggestions in reply. Certainly Sergeant Jackson kept emphasising that the gun was a big issue in relation to the safe delivery and if there was any way we could agree a safe delivery, that we had no problem giving him the cigarettes. It was along those lines, Mr. Chairman''.

Garda Sullivan was extensively examined on this topic, and in particular the fact that he did not include, in his statement made to the Culligan Inquiry, a passage that what was said by Sergeant Jackson to John Carthy was *"along the lines"* of *"put your gun down and stand at the window and put your hands up and we will deliver them"*. Garda Sullivan said that he did not recall those particular terms at that time. He said that these terms were *"consistent with a lot of the conversation he had or the dialogue he had in relation to cigarettes"*. He went on to say that the first time such a passage arose for consideration by him was when he heard Sergeant Jackson give evidence of it in the Tribunal.

Aftermath of the 10:00 a.m. request

Superintendent Shelly said that he learned of this request when he returned to duty on the morning of 20th April. He was anxious to obtain the cigarettes, and arranged for Garda Michael Carthy to go to Abbeylara village to purchase three packets of Major cigarettes and some matches. It emerged that the local shopkeeper said that Benson and Hedges were John Carthy's brand. These were given to Garda Carthy. This was at about 10:00 a.m. on 20th April. In relation to the question of delivery Superintendent Shelly said that the safety of all concerned was of paramount importance and the issue of the gun had to be dealt with before any other plan could be proceeded with.

When the cigarettes arrived on the scene at approximately 10:50 a.m. they were delivered to the negotiation post. At approximately 11:00 a.m. Sergeant Jackson showed the cigarettes to John Carthy and again described the proposed method of delivery as previously described by him. He asked John Carthy to *"please put it [the gun] down on the floor and come to the window and put his hands up at the window, we would deposit the cigarettes at the door and pull back and he could collect them there"*.

He responded by saying *"bring them in"* and beckoned to Sergeant Jackson with his hand. Sergeant Jackson said that this was said in *"a sarcastic tone"*.

In evidence Sergeant Jackson said that he reiterated to him the need to agree a safe method of delivery and repeated the method he was suggesting. He said that in reply to this John Carthy said *"fuck off and don't bother"* which he repeated when Sergeant Jackson again described the proposed method of delivery.

Medical Contact

The evidence also established that there was no contact between either of the scene commanders or anyone on their behalf with any of the medical professionals on the question of the desirability, or otherwise, of the delivery of cigarettes to John Carthy, or the obtaining of advice on how from a medical viewpoint such a request should be dealt with.

Nicotine withdrawal

Dr. Sheehan

Dr. Sheehan stated that maximum withdrawal symptoms occur between 24 and 48 hours following cigarette deprivation, and went on to say that:

"... the absence of cigarettes was likely to aggravate his nicotine withdrawal and further increase his agitation, reducing the likelihood of him cooperating with the negotiator".

And that:

“the symptoms of nicotine withdrawal would have started about two hours after his last cigarette reaching a peak between twenty-four to forty-eight hours later. In other words, Mr. Carthy could have been developing symptoms of irritability, restlessness, difficulty concentrating, anxiety, depression and insomnia after stopping his last cigarette. Symptoms would have been increasing in severity and almost reaching a peak over the twenty-two hour period. From a medical viewpoint the probability of a nicotine withdrawal state would have exacerbated Mr. Carthy’s already disturbed mental state. Clearly, it was not wise to allow the situation to develop. The possibility of nicotine withdrawal must be considered as a motivating factor in Mr. Carthy walking out of the house. If he had not smoked a cigarette for twenty-two hours, he would have significant withdrawal symptoms”.

Dr. Sheehan was asked whether he considered nicotine withdrawal to be a predominant motivating factor driving John Carthy’s behaviour. He replied that it was impossible to say what the motivating factor was and that nicotine withdrawal was simply a possibility; one of a range of possibilities. He stated that in favour of nicotine withdrawal as a motivating factor was the fact that there was increased agitation in the number of hours before John Carthy emerged from the house and that the onset of the maximum withdrawal symptoms would also have coincided with the time that he left the house. Nicotine withdrawal would have disturbed further an already disturbed mental state.

Dr. Sheehan agreed with the Chairman that it was relevant that on exiting the gate John Carthy turned left and was walking in the direction of both the shop (supply of cigarettes) and his sister’s location.

Dr. Sheehan was asked to comment on Dr. Kennedy’s report in terms of nicotine withdrawal, where the latter expressed the view that nicotine withdrawal would have added little if anything to someone who has already reached maximum arousal. Dr. Sheehan stated that while he respected Dr. Kennedy’s view he felt it was a judgement call and that in his view the irritability and agitation and tension that comes with nicotine withdrawal would exacerbate the pre-existing agitation, arousal and irritability caused by the mania.

Dr. Sheehan was asked whether he agreed that John Carthy had a heavy dependence on cigarettes. Dr. Sheehan agreed. It was put to him that from the first request for cigarettes in the early hours of the morning of 20th April to the time of his exit from the house that evening that John Carthy had not hit the peak withdrawal effect of 24 hours. Dr. Sheehan agreed. It was suggested to Dr. Sheehan that John Carthy’s agitation and discharge of some 26 shots before he made his first request for cigarettes was unrelated in any way to their absence. [In fact 24 shots had been discharged prior to the first request for cigarettes at 3:25 a.m. on 20th April. The 25th shot was discharged at the negotiation post immediately thereafter.] Dr. Sheehan agreed that this was so. The witness stated that he felt that the question of nicotine withdrawal becomes more relevant as the hours go by because one is adding a

further irritant to somebody who is already irritable and aggressive in the context of mania.

He agreed that the mania would be the dominant factor rather than the nicotine withdrawal. Dr. Sheehan further agreed that if the first request for cigarettes coincided with John Carthy's last available cigarette that his nicotine withdrawal symptoms had not peaked by the end of the siege; it would have been about two thirds of the way there.

Dr. Kennedy

Dr. Kennedy stated that nicotine withdrawal:

"would in my view have represented a relatively minor irritation to Mr. Carthy. He was already so aroused and so cognitively impaired in his perception and reasoning that nicotine withdrawal could have added little, if anything".

Dr. Kennedy explained nicotine withdrawal in the context of psychological arousal and its effects on mental processes and performance. This he described as the "Yerkes Dodson Law". He explained that:

"the state of deprivation leads to increasing physical arousal. Up to a certain point increasing physical arousal improves one's performance, . . . but beyond a certain level of arousal performance falls off and one begins to make mistakes. In a manic state, the arousal is maximum, it is as high as it can be and performance in various mental functions falls off, all sorts of mental capacities begin to be impaired. . . . A manic state is pretty near to the maximum of arousal that one can have".

He went on to say:

"the irritability, the adverse affects of nicotine withdrawal . . . is a much milder effect than could be described by mania. So what one is considering is the extent to which nicotine withdrawal would further exacerbate the arousal and further impair the already impaired performance of someone in a manic state. So what I am suggesting is that one is adding a feather to a brick, it would have an effect but not a great effect".

The aggravating effect could not be discounted but it would be small. He differed in his view from Dr. Sheehan on the extent to which he stated that irritability and agitation is increased as a result of not having cigarettes.

Professor Fahy

Professor Fahy agreed with the evidence given by Dr. Sheehan that withdrawal symptoms from nicotine begin about two hours after the last cigarette and that it reaches a peak between 24 to 28 hours after the last cigarette. Professor Fahy said that, if John Carthy was a heavy smoker, he would definitely have experienced unpleasant withdrawal symptoms. Professor Fahy did point out however that although he may have been extremely uncomfortable, as a result of nicotine

withdrawal, it would not have explained his destructive, inaccessible, irrational behaviour. Professor Fahy agreed with Dr. Kennedy that an acute psychotic or an acute hypomanic episode is of a totally different order of magnitude in terms of a mental state disturbance compared with nicotine withdrawal. However he did accept that the nicotine withdrawal could only have made things worse and not better. Professor Fahy agreed that if there was a question of nicotine withdrawal it had not got to the stage of peaking when John Carthy exited the house on the evening of 20th April. He said however that it could have been uncomfortable for him.

Professor Malone

Professor Malone undertook a study in the late 1990s while at Columbia University in New York to explore the association between cigarette smoking and suicidal behaviour in major psychiatric disorders. Up to that time it had been assumed that the apparent link between smoking and suicide attempts among people with severe mental illness was coincidental. Professor Malone anticipated that, if indeed the connection were coincidental, then one would expect to find no difference in the levels of cigarette smoking in a group of patients with severe mental illness, such as schizophrenia or bipolar disorder, between those who had not attempted suicide and those who had attempted suicide at some point in their history. In the course of his study Professor Malone discovered that cigarette smokers with depression had lower indices of the neurotransmitter serotonin. He explained that serotonin is one of the key brain neurotransmitters involved in the regulation of mood, appetite and also impulsivity and restraint. Professor Malone's study led him to hypothesise that the effects of chronic severe cigarette smoking are more profound than previously thought. In addition to the serotonin neurons being harmed, there was evidence that dopamine neurons were also affected. Dopamine, he explained, is a neurotransmitter involved in the experience of pleasure. Using his knowledge gleaned from this study Professor Malone posed two hypotheses; the first that because John Carthy smoked so heavily, nicotine craving and withdrawal would be likely to have occurred (a) earlier and (b) with greater intensity than had he been a mild to moderate smoker. The longer that John Carthy had gone without cigarettes the greater his vulnerability to the unpleasant and undesirable effects associated with nicotine withdrawal. Secondly he opined that as a result of the foregoing he had "*greater vulnerability to centrally mediated, unpredictable behaviour*".

Should the cigarettes have been delivered? – the experts' views

Mr. Lanceley

Mr. Lanceley thought that John Carthy's request was a non-substantive demand but questioned whether or not he really wanted the cigarettes, in that he did not demonstrate any willingness to co-operate in their delivery.

Having said that he thought that the benefit of providing cigarettes would include the likelihood of rapport being established as he would now see the gardaí and specifically Sergeant Jackson as being willing to work with him. Another benefit he saw was that the cigarettes may have helped calm him down, at least marginally.

He also thought that to allow John Carthy to believe that cigarettes would be delivered and then to decide, rightly or wrongly, that the delivery would not be done, was bound to cause problems.

Mr. Lanceley was of the view that generally speaking he would accede to such a demand *“if he could do it safely”*. He thought that one must leave the safety decisions to the personnel at the scene and allow them to determine for themselves the level of threat to the personnel especially as they took enormous risks throughout the incident.

Finally, he thought that if a packet of *“Benson and Hedges”* cigarettes (rather than the *“Major”* brand requested by John Carthy) had been delivered this would have caused great difficulty, and would show that the negotiator was not listening and did not care about what he wanted, or knew better than he did about what he wanted; he thought that this could be seen as showing disrespect.

Dr. McKenzie

Dr. McKenzie said:

“where there are no hostages, no demands and little to negotiate upon, the key feature, seems to me, is to keep matters under control, thus, the situation relating to John Carthy, the delay and possible prevarication in the delivery of cigarettes may have been unwise”.

He thought that the cigarettes issue presented an opportunity for the police to use the cigarettes as positive reinforcers for acceptable behaviour. He said that:

“the reinforcement process commences with a delivery of the reinforcer, unattached to a specific behaviour to create a need and is then gradually associated with positive behaviours”.

He thought that appropriate delay and prevarication on the part of the authorities in responding to a request or a demand in a hostage taking situation may well prove counter-productive in a siege situation and that meeting the request of a subject may well assist the authorities in their efforts to establish contact with him or her. He thought that in the instant case the provision of two or three, perhaps no more than five cigarettes at the earliest opportunity would be seen as positive behaviour on the part of the gardaí and from then on the provision of further cigarettes should be conditional on the receipt of something in return from the subject. Thus the second supply of cigarettes would only be given to the subject if, for example, he threw some ammunition out the window at the request of the negotiator. The cigarettes would then be used as reinforcers. He said that each further supply of cigarettes would require a repeat of the admitted good behaviour on the part of the subject. The effect of delivering some of the cigarettes to him would have the dual benefit of meeting a part of his request and, also, giving an opportunity for rapport building and contact between the police and him.

Dr. Sheehan

In the course of the Tribunal's request to Dr. Sheehan, he was asked the following question:

"To that end, and bearing in mind his antagonism towards the police, was it desirable to meet promptly as a gesture of good will, any reasonable request which he might make, such as the provision of cigarettes and the production of a solicitor?"

Dr. Sheehan replied:

"In my opinion, it was certainly desirable to quickly meet Mr. Carthy's request for cigarettes and a solicitor. The absence of cigarettes was likely to aggravate his nicotine withdrawal and further increase his agitation, reducing the likelihood of him co-operating with the negotiator. The request for a solicitor was an opportunity to provide him with a person of his choosing who may have been able to act as intermediary between him and the gardai".

Dr. Kennedy

Dr. Kennedy thought that a meaningful response to John Carthy's request for a solicitor or cigarettes would have been helpful in establishing some element of rapport between him and the negotiator. He said that the request for cigarettes should have been met if the cigarettes could have been safely delivered.

The delivery of cigarettes – the experts' views

Dr. McKenzie

Dr. McKenzie expressed the view that it would have been possible for the delivery of cigarettes to be negotiated in some way. He said that there was a need for the negotiator to take the lead and be prescriptive. He said that the cigarettes should be at the scene and shown to the subject who should then be told, in descriptive terms, how the delivery is going to be achieved while meeting the needs of police safety. He thought that Sergeant Jackson was not prescriptive enough in telling John Carthy how the cigarettes were going to be delivered. He thought that he should have been told how the cigarettes were to be delivered rather than the issue being left for negotiation, thus leaving it in the hands of John Carthy.

Mr. Burdis

Mr. Burdis thought that Sergeant Jackson utilised ploys that were more appropriate to hostage negotiation particularly in relation to the cigarettes delivery question. Mr. Burdis thought that the issue of *"encroachment onto territory"* is very much a part of the hostage situation where there is a danger of a hostage taker causing injury or carrying out retaliation.

Dr. Sheehan

Dr. Sheehan said that from a safety point of view it would be appropriate for the negotiator to be prescriptive in his approach to the delivery of cigarettes.

Dr. Sheehan was asked whether such a delivery would have the potential to increase John Carthy's grandiosity. He said that he thought that this was already present and that in granting his request by delivery of the cigarettes this was likely to help the rapport between himself and the negotiator.

Covert delivery

Dr. McKenzie

Dr. McKenzie acknowledged that in the interest of safety and to deal with the problem of John Carthy's failure to agree a method of delivery, covert delivery of the cigarettes would have been an option. However, he said that best practice would suggest that this was an unwise strategy. Dr. McKenzie illustrated this by setting out the psychological thought on the concept of interpersonal space, which he described as being broken down into three sub-levels:

- i. Intimate space.
- ii. Personal territory; which includes home territory with a special sub-set of this being a person's house which has specific societal rules about how it is to be approached, which involve well-established traditions about knocking on doors, ringing doorbells, lines of approach and marked pathways, and entry to appropriate, identified access points. Dr. McKenzie said that failure to comply with these rules and traditions may well be considered by people inside the property as an unjustifiable breach of their privacy and personal/home territory. As with other invasions of personal space, the likely outcome is at very least agitation, and sometimes even overt aggression.
- iii. Defensible space which extends to areas that the occupier properly can see from the premises and according to the psychological literature that area which they psychologically need to "defend" from illegitimate incursion.

Dr. McKenzie thought that the question of a covert delivery of cigarettes was properly treated with circumspection by the negotiation team. He said that there was some evidence to suggest that those suffering from various kinds of mental illness are much more conscious of an invasion of aspects of personal space than others and it seemed to him very likely that a demonstration that the Garda were capable of invasion of personal space (that is John Carthy's home territory) might well have provoked an unwanted reaction. He thought that it was likely in the circumstances that any covert delivery would have provoked, at the very least, annoyance on the part of John Carthy and it would have certainly have created difficulties in the cause of trying to build rapport. He thought that it was likely that John would have viewed any such delivery as a breach of trust.

Mr. Lanceley

He thought that if the cigarettes had been delivered while John Carthy's attention was diverted, or while he was sleeping that would not have helped the situation. He said that for him to find cigarettes suddenly and inexplicably appearing on his windowsill after they had been surreptitiously delivered would have exacerbated the incident.

Dr. Sheehan

Dr. Sheehan said that in his view what was at issue was not a covert delivery of cigarettes but rather that John Carthy had asked on two occasions for cigarettes. Therefore the delivery would in fact be a response to an expressed request. He thought that a covert delivery of cigarettes to someone who had not requested them would be an invasion of personal space but here the issue was that John Carthy had requested the cigarettes. Though possible that the covert delivery of cigarettes, even though they had been asked for, would be regarded as an invasion of personal space, he felt that the likelihood was that he would not see it like that. He thought that it was clearly desirable that any request for cigarettes be made by an overt delivery; however, he thought that it was reasonable for them to be delivered covertly because this met the request. In considering whether a covert delivery would be seen by John Carthy as an invasion of personal space, he said that his view was based upon the presence of severe mental illness.

Dr. Kennedy

He agreed that the concept of defensible space as described by Dr. McKenzie was appropriate in the circumstances. He thought that the introduction of cigarettes in a covert fashion could rebound badly, because of John Carthy's paranoia and the invasion of his personal space. Dr. Kennedy thought that the distinction between responding to a request by covert delivery, and delivering something that was not requested was one that was less significant because of his psychotic state. When asked to comment on Dr. Sheehan's view that as John Carthy had asked for the cigarettes a delivery in those circumstances was not a unilateral act by the police, he responded by saying that such a situation presented a risky judgement call because the subject is aroused, manic, irritable, and very easily provoked. In the circumstances the emphasis must be on the safety of the police and while there may be some virtue in delivering the cigarettes, there was a risk that even then the subject might view it as a provocative act.

Professor Fahy

Professor Fahy said that in circumstances where a person is paranoid and he becomes aware that his space is being infringed, this can cause him a great deal of insecurity. He thought that while a delivery that had been asked for was much less likely to provoke a suspicious response, any covert infringement of a mentally ill person's space carries risk. He thought that the risk posed by a covert delivery would be reduced to some extent, if that delivery was in response to a request. He said that one could not rely on John Carthy to have a rational response to an issue such as covert delivery of cigarettes. He also said that one could not assume that he would

be grateful for a delivery of cigarettes, as it was impossible to know how he was going to react because in the first place he had a mental illness and in the second he was at times a “*querulous*” person. He said that people who are mentally ill and in an agitated state often misinterpret signals and often react in a hostile and suspicious manner to helpful overtures, and therefore in dealing with an acutely disturbed patient one should put safety first.

Solicitor

The evidence of Detective Sergeant Jackson

Sergeant Jackson telephoned John Carthy’s mobile phone at 11:38 p.m. on 19th April. He greeted the subject and told him who was calling, whereupon John Carthy said “*where is my solicitor*”, followed by, “*get the fuck out of here*”. Sergeant Jackson said that John Carthy’s tone was very quick and barely coherent and that he felt it was possibly a challenging or taunting tone. John Carthy then hung up the telephone.

Sergeant Jackson saw this as a significant development; it was an exchange that introduced something new into the equation which he was anxious to develop. While viewing it as “*a breakthrough of sorts*,” Sergeant Jackson thought that it was something that he had to work on with the subject. He attempted to telephone him once more but the telephone was not answered. Sergeant Jackson called out to him over the loudhailer and asked him who his solicitor was and where he or she could be contacted. The reply was: “*I want the best, the best, the best*”. Sergeant Jackson felt that this was again said in a barely coherent but challenging way. He told the Tribunal that he viewed this exchange as something to build on and develop. He attempted once more to find out details in relation to what solicitor John Carthy wanted.

The negotiator suggested that he put down the gun and that the solicitor could meet him outside if that is what he wanted. John Carthy was reported to have banged the gun on the table and to have said “*excitedly*” that he wanted the solicitor to come into the house. Sergeant Jackson told him that it would be a problem for a solicitor to go into the house and again repeated the suggestion that he put down the gun and meet a solicitor outside. He explained to the Tribunal that he was attempting, at this stage, to put options before John Carthy; the suggestion to put down the gun and come and meet a solicitor outside was presented as an option for him to consider and not as a demand. Sergeant Jackson was adamant that he was not delivering some sort of “*mantra*” in relation to putting down the gun. He explained his hope that if John Carthy considered what was being said to him, he may realise that the gun was causing a problem and that his behaviour was not in line with what he should be doing. However, he replied by saying “*no way, don’t bother*”.

Sergeant Jackson attempted to reassure the subject by telling him that they were not there to hurt him and that if he came out no one would hurt him. He then specifically said to John Carthy that he believed he may not trust the Garda and offered to get a solicitor, a friend, a priest or anyone he wanted to meet him outside. He replied, “*I am not coming out, no way*”. Sergeant Jackson explained that he was using the

request for a solicitor to build on the possibility of finding any intermediary that was acceptable to John Carthy.

Sergeant Jackson was asked what level of importance he attached to ascertaining if John Carthy did in fact have a solicitor and, if so, making initial inquiries from that solicitor and/or bringing him or her to the scene. The negotiator reiterated that the mention of a solicitor was a *“breakthrough”*, but that some development or further action was required on behalf of the Garda Síochána in relation to it. He described his response as a *“two-pronged approach”*. First, he continued his attempts to communicate with John Carthy about the identity of the solicitor and, secondly, he instructed Garda Sullivan to relay the request to the scene commander, i.e., to be explored by him.

Garda Sullivan returned some time later and informed Sergeant Jackson that, as far as the scene commander was aware, John Carthy did not have a solicitor but that he wished the matter to be explored further with him. Sergeant Jackson told the subject that they really wanted to get him his solicitor and tried once more to initiate dialogue in relation to the matter of who his solicitor was and how he or she may be contacted. He stated that it was important to get whoever John Carthy had in mind at that stage. He made no reply but Sergeant Jackson described him as moving about the room and coming to the window and looking out. He said that he was mumbling to himself and he felt that he was not taking cognisance of what was being said.

The negotiator was asked if he considered that a solicitor might have been engaged in some manner concerning the building of the new Carthy residence. Sergeant Jackson stated that he was aware of the new house but that such a thought did not occur to him. He told the Tribunal that it was obvious to him that John Carthy had, or appeared to have, someone particular in mind, and that his focus was on trying to ascertain precisely who that person was. However he agreed that his demand for *“the best, the best, the best”*, might suggest that he did not have a particular solicitor in mind; a fact that occurred to both himself and the scene commander at the time. Sergeant Jackson thought that what John Carthy was saying was somewhat *“incoherent and to some degree . . . not concise or rational”*, and that the request needed to be developed particularly in light of the fact that he wanted the solicitor to come into the house.

Shortly after 3:00 a.m. on the morning of 20th April, Sergeant Jackson spoke with Superintendent Byrne, then acting scene commander, in relation to the issue of the solicitor. It was agreed with Superintendent Byrne that Sergeant Jackson should try raising the issue again with John Carthy in an attempt to move the negotiating process forward. The negotiator asked John Carthy once more what solicitor he wanted and reiterated that the Garda were willing to get anyone he trusted to come to the scene. There was no reply. Sergeant Jackson then informed him that they were willing to get any solicitor for him and bring him to the negotiating post but that they couldn't allow the solicitor to go into the house. He asked John Carthy if he was agreeable to this. Again there was no reply. Sergeant Jackson stated that he was

trying to “move John from that position of wanting the solicitor in the house if at all possible to try and progress [the negotiations]”.

When asked specifically if they, at this stage, considered bringing any solicitor to the scene, such as a well-known local solicitor, Sergeant Jackson explained to the Tribunal that, as with bringing any intermediary to the scene, some degree of agreement was required from John Carthy: *“It was predicated on John saying ‘this is okay, I will agree to that and I will talk to him’. . . if John said ‘okay, any solicitor will do, bring him to the negotiating point and let him ring me’, that is what it was predicated on, not necessarily John expressing exactly who and what he wanted”*. He felt that in the absence of developing it further with John Carthy some *“further difficulty”* might be caused by bringing any solicitor to the negotiating post whereupon the subject may demand that he be allowed into the house. *“I did try to make it clear to Mr. Carthy,”* he told the Tribunal, *“that we were willing at any stage to facilitate, within the boundaries of safety, the attendance of any solicitor at the scene and unfortunately there was no reply to that”*.

At approximately 9:00 a.m. on the morning of 20th April Sergeant Jackson had a meeting with scene commanders, Superintendents Shelly and Byrne. Superintendent Shelly instructed him to re-explore the issue of the solicitor, along with the issue of the cigarettes.

Attempts to engage John Carthy in dialogue about the solicitor again took place at approximately 12:00 p.m. Sergeant Jackson told the Tribunal that he dealt with the topic in the same manner as before. John Carthy’s response is recorded as *“fuck off, don’t bother”*. (That response would have coincided approximately with the subject’s phone call to Kevin Ireland in which he asked him to contact a particular solicitor on his behalf and to request him to come to the scene. He also indicated to his friend that he might end the siege if he had the benefit of a solicitor to advise him.)

Sometime after 1:00 p.m. on 20th April, Sergeant Jackson received information in relation to the telephone call that John Carthy had with Kevin Ireland. In light of the fact that the issue of a solicitor had arisen during the course of that conversation, Sergeant Jackson sought once more to initiate dialogue around this area. Having regard to the nature of the phone call as relayed to him, he felt that John Carthy might at times have been thinking rationally; something he hoped to capitalise on. Sergeant Jackson again informed him that they would bring a solicitor to the negotiating post if he could identify a solicitor for them. John Carthy replied that he wanted a *“Republican”* solicitor. Sergeant Jackson informed him that they would get one for him and requested the name and number of such a solicitor. Further words of reassurance were offered in relation to the fact that everything would be okay when he came out of the house, whereupon John Carthy retorted, *“No fucking way, I want him in here”*. Sergeant Jackson reported that the subject then smiled, in a taunting way. Sergeant Jackson again suggested to the subject that he come out of the house to meet the solicitor and further explained his concern in relation to allowing a solicitor into the house when he had a gun. John Carthy replied, *“don’t bother, don’t bother”*.

Sergeant Jackson was questioned, having regard to the fact that any attempts to engage John Carthy in relation to a solicitor had failed, whether they considered at this stage bringing any solicitor to the negotiation point to see if he would in fact engage with one. He reiterated his previous evidence in relation to requiring a degree of agreement from John Carthy before any intermediary could be brought to the negotiating post and further that they needed to move him away from the position of wanting the solicitor in the house; *“as with all intermediaries, and a solicitor is similarly in that position, we needed to try and develop with John that this course of action we were going to take would achieve something. We never got to that position with Mr. Carthy in relation to the solicitor issue”*.

Sergeant Jackson accepted that the request for a solicitor was an important development in that it was a request which emanated from John Carthy himself; one of the very small number that did.

At approximately 3:00 p.m. on 20th April, Sergeant Jackson felt that it may be beneficial for Garda Sullivan to attempt negotiations with Mr. Carthy. Shortly before he commenced negotiating Superintendent Shelly informed Garda Sullivan that the solicitor that John Carthy was requesting may be called *“John or Mick Finucane”*. Garda Sullivan relayed this information to Sergeant Jackson at the negotiation post. During the course of his attempts at negotiation with John Carthy, Garda Sullivan introduced the issue of the request for a solicitor. John Carthy mentioned the name *“Finucane”* and asked Garda Sullivan why the police did not get him. Garda Sullivan told the Tribunal that he tried to push John Carthy further on this point in an attempt to get clarification as to who the solicitor was and how he may be contacted. The witness explained that he thought John Carthy was listening to him and that it was a good opportunity to try and engage him in dialogue. He was also anxious to find out who this person called *“Finucane”* may be. However, the subject was very *“dismissive”* of such attempts at dialogue responding with, *“fuck off out of here”*. John Carthy then became more aggressive saying: *“Free State bastards . . . shoot me, shoot me”*.

The evidence of Superintendent Shelly

Superintendent Shelly identified three main difficulties in relation to John Carthy’s request for a solicitor, which the Garda attempted to resolve through the medium of negotiation. The three areas that needed to be resolved were:

- The identity of the solicitor;
- Agreement on the method of communication with a solicitor; and
- The fact that he had stated that he wanted the solicitor to enter the house. *“That just couldn’t happen on safety grounds,”* he told the Tribunal, *“I, as scene commander, would never agree to that. I would never agree to allow anybody else into that house because it just wasn’t safe to do so”*.

Superintendent Shelly was further of the view that an exploration of these issues may have helped to build up some degree of trust and communication between John

Carthy and the negotiator and therefore the issue of the solicitor involved more than the mere provision of a solicitor at the scene.

Superintendent Byrne

Superintendent Byrne, in considering the request for a solicitor, thought that it would be beneficial if John Carthy was willing to talk to anybody, irrespective of the profession or employment of that person. *“That was our whole purpose”*, he told the Tribunal, *“to try and get John to talk to somebody, be it the negotiator or somebody else, so that we could resolve this issue of him in there with the live firearm”*. He agreed that in particular a solicitor may often be seen as a bulwark between the citizen and the Garda and is a person who can receive information in confidence.

Sometime between 3:00 a.m. and 4:00 a.m. on the morning of 20th April, Superintendent Byrne himself thought about the possibility of bringing a local solicitor to the scene but decided *“rightly or wrongly”* not to.

Chief Superintendent Tansey

Chief Superintendent Tansey told the Tribunal that he was informed shortly before 1:00 a.m. on 20th April that John Carthy was looking for a solicitor. He believed that Sergeant Jackson was trying to establish from the subject the name of the solicitor that he required. Chief Superintendent Tansey believed that the plan in relation to the solicitor was *“straightforward”*; if John Carthy named a solicitor then that solicitor would have been brought to the scene. However, if they had thought that any solicitor would have done, Chief Superintendent Tansey stated that they would have ensured the attendance of any solicitor at the scene, but that he, and others at the scene, were of the opinion that the solicitor who was most likely to assist in the negotiation was a solicitor named by John Carthy himself. When the name *“Finucane”* became known to the Garda as the possible solicitor that John Carthy was referring to, Chief Superintendent Tansey believed that all possible attempts were made to identify him further. The obvious step of contacting the Law Society was not adverted to by anyone. He also stated that no decision had been made, the effect of which would be to deny him access to a solicitor.

Assistant Commissioner Hickey

Assistant Commissioner Hickey informed the Tribunal that he first became aware of John Carthy’s request for a solicitor when he attended the scene on 20th April. He was made aware that ongoing efforts were made throughout the negotiation process to find out what solicitor John Carthy in fact wanted. Assistant Commissioner Hickey told the Tribunal that he could not at that stage see any benefit in having a solicitor not known to John Carthy in attendance at the scene. He was aware of Inspector Maguire’s evidence in relation to his conversation with Thomas Walsh as to whether or not John Carthy had a solicitor. Interestingly Assistant Commissioner Hickey stated that in his mind the focus of the issue of the solicitor changed when John Carthy requested the presence of a solicitor in his house and when the name *“Finucane”* was mentioned. *“I thought he was hallucinating and referring to the late well-known Pat Finucane. I still think it is significant ”*, he told the Tribunal, *“that Mr. Michael*

Finucane never had any dealings with John Carthy and in fact was not a solicitor at the time". Assistant Commissioner Hickey was then aware that the negotiating effort was proving difficult and that little rapport had been established.

Experts' views and analyses

General

It is important to understand that both Mr. Lanceley and Dr. McKenzie viewed the issue of whether a solicitor should have been brought to the scene to negotiate with John Carthy as a third party intermediary issue. Therefore, their comments in relation to TPIs are relevant here, especially in relation to the dangers or downsides they identified in using TPIs as part of a negotiating strategy.

It is pertinent to comment that none of the experts referred to Mr. Carthy's phone call to Kevin Ireland in which he intimated that his purpose for seeking a solicitor at the scene was in connection with possible negotiation of an end to the impasse. He was also described by his friend as being "*calm*" and clear in what he was saying. That was about five hours before his death.

Mr. Lanceley

Mr. Lanceley was adamant that in the United States a solicitor would never have been allowed to enter the house to speak with a subject. In relation to whether or not a solicitor would have been allowed to attempt dialogue with the subject, Mr. Lanceley felt that this would be unlikely but that it would depend entirely on the circumstances of the particular situation. Mr. Lanceley agreed with the approach adopted by Sergeant Jackson in that he too would have emphasised that John Carthy could speak to a solicitor if he came out of the house without the gun; he would also have reassured him in that regard. Mr. Lanceley told the Tribunal that he would have given consideration to bringing a solicitor to the scene as a source of support and confidence to John Carthy and may have even considered tape recording a message from the solicitor to him; thereby retaining Garda control over what was being said. He accepted that the presence of a solicitor at the scene might have helped the situation.

Mr. Lanceley agreed with Mr. Burdis's assessment that John Carthy's requests for a solicitor were centred on helping him out of the predicament of the moment rather than some deep-seated personal problem. Mr. Lanceley stated that one of the questions he would have explored with John Carthy is why he wanted to see a solicitor. Mr. Lanceley further believed that if he really wanted a solicitor present he could have phoned one himself, rather than relying on the Garda, whom he did not appear to trust, to get one for him; the subject had access to a phone and used it to contact others during the siege. (In fact Mr. Carthy had ascertained shortly before the event that his own solicitor, Mr. Connellan was out of the country at that time on vacation.)

Dr. McKenzie

Dr. McKenzie believed that a solicitor should have been brought to the scene, despite the fact that no particular solicitor had been adequately identified by John Carthy. The arrival of a solicitor could then have been announced to him. He felt that the failure to bring a solicitor to the scene was likely to have been excessively frustrating for the subject and might, when coupled with the issue of the cigarettes, have lead to some degree of distrust, in that his requests were not being responded to. However he emphasised that the purpose of the presence of a solicitor would not have been to speak directly with John Carthy but to act as a resource for the police, for example in the provision of information in relation to the demolition of the Carthy old home or any other such matters. All would however be channelled through the negotiator. The solicitor should, under no circumstances, be permitted to enter the house.

Dr. McKenzie highlighted a further role in that the solicitor could provide a link to other lawyers that may be required; this is similar to the peer-to-peer communication envisaged with mental health professionals at a scene.

Dr. McKenzie was asked if he agreed that it would have been an option for John Carthy to simply pick up the telephone and call a solicitor if he in fact really wanted one present at the scene. While agreeing that that may have been a possibility, he viewed the requests for an unidentified solicitor as *“part and parcel of an absence of desire adequately to negotiate the exit with police officers. It does not mean”*, he explained, *“that there is not an intentional request for a solicitor being made, but it does mean, that there is every possibility that there is a kind of – I can only use the word ‘game’, that is being played, where requests are made, which are not actually important in any proper sense of the word, because it is already formulated in Carthy’s mind that there is going to be an end to this”*. (This is at variance with Mr. Carthy’s explanation to his friend, Kevin Ireland, for wanting the benefit of a solicitor at the scene, i.e., in the context of negotiating an end to the impasse.)

Mr. Burdis

Mr. Burdis viewed the issue of the provision of a solicitor at the scene in a slightly different light from Mr. Lanceley and Dr. McKenzie. Mr. Burdis, while sharing the view in relation to the downsides of TPIs, saw professional persons such as doctors and solicitors as fitting into a different category. He explained that although they should never end up in a position where they are undertaking the police function of negotiating, they may be used to reassure a subject in a supportive way. Mr. Burdis told the Tribunal that he would personally have had little difficulty in providing a solicitor to be available to speak to John Carthy and all the more so in circumstances where there was a known distrust of the Garda and a reliance (that should have been known from an early stage had files and records been properly accessed) by John Carthy on professional supports to aid his cause. Mr. Burdis agreed with the other experts that no solicitor could have been allowed enter the house unless it could be determined that it was safe so to do. Mr. Burdis was of the view that had a solicitor been brought to the scene it would have allowed Sergeant Jackson to open up a new

avenue of negotiation which may have been fruitful; it would have been identified as a positive police action.

Dr. Sheehan

Dr. Sheehan identified such utterances as *“the best, the best, the best”* and the request for a *“Republican”* solicitor as being a typical display of *“grandiosity”*. Grandiosity, he explained, is a symptom of mania; it involves abnormal beliefs or a sense of enhanced self-esteem. Therefore what John Carthy wanted was something out of the ordinary, something that he considered as special. Dr. Sheehan initially expressed a view that John Carthy may have responded to a solicitor had one been introduced as an intermediary, especially a solicitor who had acted for him before with a successful outcome and had a degree of credibility in John Carthy’s mind separate from the Garda; a body he was paranoid about. However, he ultimately concluded, that, due to the severity of his mental state, he did not think a solicitor would have succeeded in de-escalating the stand-off to a safe level leading to a peaceful outcome. Agreeing that it might have been useful to attempt to get John Carthy to respond to a solicitor, Dr. Sheehan reiterated his view that *“the way he interacted with so many of the other people there between not responding, between letting off a shot, that is why my conclusion there was, that I think at the end of the day, I don’t think he was actually going to cooperate or collaborate with anybody”*. Dr. Sheehan believed that the failure however to meet such requests as the solicitor and the cigarettes was likely to increase John Carthy’s antagonism towards the Garda and the negotiator and would not have helped establish or promote a sense of rapport with the negotiator.

Dr. Kennedy

Dr. Kennedy told the Tribunal that a request for a solicitor from a patient in a clinical setting would be responded to in a similar manner to the approach adopted by Sergeant Jackson at Abbeylara. He explained that the clinician would first try and address what solicitor or what type of solicitor was wanted. He or she may then explore how the patient would wish to communicate with the solicitor. However, he stressed, if dialogue is not built up between the clinician and the patient it would be difficult to progress such a request further. In the absence of any such dialogue he accepted that it would not be unhelpful to try and bring any solicitor to the scene, even if not the solicitor envisaged by the patient, but he remained of the belief that *“until there is some kind of dialogue, it is not going to be as helpful as it could be”*. Dr. Kennedy, while agreeing with the Chairman that it may have been reasonable to bring a solicitor to the scene and allow him to attempt dialogue with John Carthy, doubted that it would have led to his safe exit from the house and a peaceful resolution to the siege. However, Dr. Kennedy did accept that a meaningful response on the part of the Garda to the request for cigarettes and a solicitor would have assisted in establishing or endeavouring to establish some element of rapport as between the negotiator and the subject. Dr. Kennedy agreed with Dr. Sheehan that the manner in which a solicitor was requested was evidence of grandiosity. He further referred to the fact that John Carthy had told Kevin Ireland some months previously that a solicitor by the name of Finucane had assisted him in getting his

gun back from the Garda. Dr. Kennedy was of the view that John Carthy believed that he had been and could be assisted by a solicitor of renown and that such belief was delusional in that Mr. Finucane had never met him, let alone offered him any legal assistance.

16. An armed negotiator

Sergeant Jackson, being a detective, was armed.

An issue which arose in the course of the evidence arising from the expert reports, was the question of the propriety of an armed negotiator.

Evidence

Detective Sergeant Jackson

Sergeant Jackson told the Tribunal that he did not have “*what I would call a tactical role, i.e., I did not form part of the flexible cordon that was to encompass John if, indeed, he did emerge*”. He said that at the outset of his involvement on his arrival at Abbeylara he had discussed his role and function with Garda Sullivan in the event of an uncontrolled exit by John Carthy. He said that he told Sergeant Russell that he was anxious that he would stay negotiating with John Carthy as long and as far as possible, having due regard to his safety and that of Garda Sullivan, and said:

“I was anxious that if there was a possibility, in an uncontrolled exit, that my intervention vis à vis negotiation may convince John to put down the weapon, I was anxious that that should be maximised. It was agreed between myself and Detective Sergeant Russell and Superintendent Shelly, that I should try and remain negotiating with John as long as possible in the event of an uncontrolled exit”.

Experts’ views

Mr. Bailey

Mr. Bailey told the Tribunal that in the United Kingdom negotiators are not drawn from tactical officers and with the exception of members of the Police Service of Northern Ireland, they are never armed. He thought that in countries where there is an unarmed policing tradition it is very undesirable to have armed negotiators. Mr. Bailey thought that there was an argument that an armed negotiator might have confidence in his ability to protect himself which would make him more likely to take a risk that an unarmed negotiator would not take. Mr. Bailey thought that because of his view that it was not desirable that negotiations should be carried out from a position that is in the subject’s line of fire, there was no need for negotiators to be armed for their own protection. He said that while he thought it would be unfair to be too critical of Sergeant Jackson, he believed that it is not in the interest of negotiators or the likely success of future operations for the negotiator to be involved in shooting the subject of a siege. He thought that if John Carthy had been wounded

and remained on the road it would be extremely difficult for Sergeant Jackson to recommence any negotiations with him if he had been involved in the shooting. He was of the view that it would be more difficult for negotiators in the future to gain the trust and confidence of the subject of a siege, if that subject is concerned that they might be shot by the negotiator. He thought that arming the negotiator would lose one of the advantages that an unarmed negotiator has, i.e., that he or she is in a position to say, in reply to a statement from the subject of the incident that “*you are here to shoot me*” – “*I do not have a gun, I cannot shoot anyone*”.

Mr. Lanceley

Mr. Lanceley said that in the early 1970s in the United States, the thinking was that negotiators should go “face to face” with the subject unarmed. He said that experience showed police forces that in doing so they were putting their negotiators in very grave danger. He went on to say that the arming of the negotiator is not a topic for discussion in the United States in that there is public knowledge that all police officers are armed while on duty.

SECTION D: – Previous Operational Experience – Bawnboy

Introduction

The scene commanders at Abbeylara had no prior experience of commanding an armed siege type situation or any incident involving an emotionally disturbed or mentally ill person who was in possession of and using a firearm.

The question therefore arises whether the Garda Síochána, as an organisation, had any such experience. Documentation discovered by the Commissioner suggests that they had some prior experience. However, it should be noted that no two incidents are the same. Perhaps, the most analogous incident to the subject matter of this Inquiry was one at Bawnboy, Co. Cavan in January, 1997. The evidence in relation to it reveals that significant differences and circumstances existed, particularly in relation to the negotiation process. The principal difference was that, unlike Abbeylara, the subject of the incident at Bawnboy had no mental illness, was willing from an early stage to engage in telephone communication with the negotiator, and in fact, on occasions initiated contact. Evidence as to what occurred at Bawnboy was given to the Tribunal by district officer, Superintendent P.J. Browne, who was the scene commander for the duration of the incident.

1. Circumstances

On 15th January, 1997 between 12:15 p.m. and 12:30 p.m. the County Registrar for Cavan, his assistants and members of the Garda Síochána, (whose duty it was to prevent a breach of the peace) arrived at a house at Bellaleenan, Co. Cavan, which was located in a rural setting, approximately two miles from the village of Bawnboy, for the purposes of executing a Court Order for the eviction of the occupier, a Mr. Jan Isenborger and his mother. Following a short conversation outside the house

between the County Registrar and Mr. Isenborger, he re-entered the house and re-emerged with a rifle type firearm and began firing shots in the direction of the County Registrar, his assistants and the gardaí. A number of persons were injured. A stand-off subsequently ensued which lasted approximately 24 hours and involved local gardaí and members of the ERU. It appeared at an early stage during the course of the siege that Mr. Isenborger's actions were motivated by his concern for his terminally ill mother who resided with him in the house, and whose death occurred during the course of the incident. Mr. Isenborger was not mentally ill.

2. The initial Garda response

Inspector Tadhg Foley and a number of other gardaí went to the scene. In the early stages of the incident, the occupier of a neighbouring house contacted Mr. Isenborger by telephone and requested, and received, permission for an ambulance to go to the scene. During the course of this contact Inspector Foley was in the neighbouring house. He spoke by telephone to Mr. Isenborger. This facilitated the commencement of negotiations. Inspector Foley had not received any specific training as a negotiator.

On his arrival at the scene shortly afterwards, Superintendent Browne became aware that Inspector Foley had already commenced negotiations, and he took the view that he should continue. A trained negotiator, a detective superintendent stationed at Monaghan garda station, was called to the scene. He was also of the opinion that Inspector Foley should continue with negotiation attempts, assisted by a trained negotiator. Subsequently negotiators arrived from the Special Detective Unit. In the words of Superintendent Browne they were *“there to help formulate questions and record answers to the various questions that were being put to . . . [the subject] . . . questions that he was posing back to the negotiators and the responses coming from both sides”*. The services of the ERU were requested and obtained.

The local house from which the negotiations were conducted was evacuated and made available to the gardaí. A command post and negotiation cell was established at that location, which was about five hundred yards away from the subject's house and in an elevated position above it.

The scene commander, Superintendent Browne, said in evidence that he spent most of his time in the room of the house that served as the negotiation cell, listening to the negotiations.

3. Cordons

Inner and outer cordons were established. The inner cordon was around the subject's house for the purpose of containment. The outer cordon was established at a perimeter area to prevent unauthorised entry. The outer cordon consisted of uniformed gardaí and detectives. In the early stages armed local detectives formed the inner cordon with the senior detective taking charge. A local sergeant took charge of the outer cordon. All roads with access to the scene were sealed off. The

area between both cordons became the operational area. The neighbouring house in which the command post and the negotiating cell were located was situated between the inner and outer cordon.

Following the arrival of the ERU, the local officers were withdrawn from the inner cordon and the ERU took charge of it. No unauthorised personnel were allowed between the outer and inner cordons. Superintendent Browne decided who was to be permitted to enter through the outer cordon.

4. Tactical commander

On the arrival of the ERU, a detective inspector attached to that unit assumed the duty of tactical commander at the request of Superintendent Browne, the scene commander.

5. Inner cordon numbers

There were two sergeants and eight detective gardaí from the ERU manning the inner cordon. While the detective inspector from the ERU had command of this unit, it was subject to overall command by the scene commander. Eleven members of the ERU were present, including the detective inspector who was in charge. Superintendent Browne stated that the decision on the number of ERU personnel brought to the scene was one within the remit of the ERU itself. During daylight, members of the inner cordon were relieved for rest periods, which took place in the house that had been established as the command post.

6. Communication with the subject

The only means of contact with Mr. Isenborger was by means of a landline from his neighbour's house. Communication was two-way, not only was the subject contacted by telephone, but he also made telephone calls to the negotiators. Superintendent Browne said that the subject "*engaged from the very beginning*". It was thought by garda officers present that Mr. Isenborger did have contact with someone outside the area of the scene during the course of the negotiations. The subject showed no animosity towards the local gardaí and indicated that he would not shoot any uniformed member but that he was afraid of plain clothes' officers coming into his house and trying to overpower him.

7. Demands and requests

Mr. Isenborger demanded that plain clothes members be kept away from his house. He also demanded that the media be taken out of sight of his house and this was complied with. It should be noted that any contact with the media was dealt with by the scene commander, Superintendent Browne.

8. Deliveries

Through the regular contact that took place between the garda negotiator and the subject, deliveries were arranged to the subject's house. These consisted of deliveries

of cigarettes and Coca-Cola, and the deliveries were orchestrated by agreement between the negotiator and Mr. Isenborger. On two occasions Mr. Isenborger handed over firearms to the gardaí and on one of these he also handed over a quantity of ammunition. He was a collector of firearms and had a number of guns in his house together with ammunition. Delivery plans were not committed to writing.

In connection with the general question of a delivery, Superintendent Browne said in evidence that he would not take a decision to put an officer in danger to make a delivery which had not been negotiated. He said that a delivery of any item would not have taken place without agreement *“because without engagement and without agreement, I was not going to send my people in to an area where they could maybe have lost their lives, and finally that was going to be my decision.”*

9. Equipment brought to the scene

Video equipment and monitors were available locally from Monaghan garda station, and were requested and brought to the scene. The sergeant in charge of communications at Monaghan travelled to Bawnboy and during the hours of darkness he placed a video camera overlooking the operational area and a television monitor at the command post. A total of nine video tapes were produced during the incident. A “walkie-talkie” system was also used. In addition the ERU brought specialist equipment such as night vision glasses and lighting to the scene.

10. Logs

A scene commander’s log and a negotiator’s log, which were both extensive, were maintained at the scene. Mr. Burdis calculated that there were 45 pages of rough notes, which he described as *“evidential”*, and 49 pages of a formal negotiator’s log. The negotiator’s assistant checked all logs, which were kept by the negotiator himself or by the scene commander. Superintendent Browne said that he personally did not take notes at the scene but there was another officer delegated to take notes for him. He said that this responsibility was given to a number of officers who relieved each other at various times. The negotiators who came from the ERU brought pre-prepared, blank logs with them. These negotiators assisted the front-line negotiators and made notes on flip charts.

11. Command structure

The logs produced to the Tribunal referred on at least one occasion to *“Gold 1 – Chief Superintendent Rooney”*, the local divisional officer; *“Silver 2 – Detective Superintendent Somers”*, the negotiator who had come from Monaghan garda station, and *“Silver 1 – Superintendent Browne”*, the scene commander. The expression *“zulu 1”* was given to other officers. Superintendent Browne when questioned as to whether these notes were referable to a tiered command system, such as that of *“gold, silver, bronze”* as operated in the United Kingdom, said that this was not the case, but that they referred to call signs for the relevant officers.

12. Third party intermediaries

At the request of the Garda, Mr. Isenborger's neighbour, whose house served as the command post, made initial contact with him and obtained his agreement to the attendance of an ambulance at the scene to care for the injured. She knew Mr. Isenborger "exceptionally well". Another man who knew him and had befriended him since his arrival in the area also spoke to him on the telephone, after it had been established by the negotiators that Mr. Isenborger wished to speak to him. This conversation was conducted from the house in which the command post was located.

13. The psychologist

A psychologist was not brought to the scene. The local gardaí knew Mr. Isenborger. He had no history of mental or psychological difficulty, although he was greatly distressed about his dying mother's medical condition.

14. Exit plan

A plan was prepared to deal with the issue of a controlled or uncontrolled exit. This was discussed between the scene commander and the officer in charge of the ERU. It was not committed to writing, the reason for this being, according to Superintendent Browne that there were "a huge amount of imponderables".

Superintendent Browne said that "all units and patrols were aware of the situation arising in the event of an uncontrolled exit. If such an exit took place it was to be prevented. Patrols circled the perimeter roads continuously and radio communication was available, and any unit could be told to go to any particular location." Superintendent Browne did not give any specific instruction in relation to a flexible plan, he said "because every plan has to be flexible because of the situation that could evolve at any time". Contact with the inner cordon was through a radio system dedicated to the use of the ERU, a radio set being located in the negotiator's room. Superintendent Browne as scene commander had use of that. An ambulance and a fire tender were brought to the scene and located at the outer cordon. The fire tender was brought to the scene because Mr. Isenborger was observed setting a fire in his back garden.

15. The decision to fire

Superintendent Browne said that in giving instructions to the inner cordon as to how to deal with Mr. Isenborger if he came out of the house, armed and non-compliant, he told them that the subject was not to be allowed to leave the area of operations. He said that he instructed the tactical commander that it was a matter for each garda officer "to assess the impending situation themselves and that they would, having regard to the Garda Síochána firearms regulations, have to make up their own mind and their own assessment as to what amount of force they would have to use in the situation that confronted them at the time". He went on to say that he "could not

tell them to shoot or not to shoot because that is a completely individualistic area where you have to make up your own mind on the situation that is confronting you."

16. Conclusion of the incident

On the evening of 16th January Mr. Isenborger told the gardaí that he wanted to spend the evening with his mother but that he would "*finish*" the siege at 8:00 a.m. the following morning. Further negotiations then took place that led to Mr. Isenborger agreeing to hand over the other guns in his possession before coming out of the house. On foot of this agreement three officers went to the house at approximately 8:30 a.m. on the morning of 17th January, spoke to Mr. Isenborger and entered the house. He was subsequently arrested.

17. Observation of police experts

Mr. Alan Bailey

Mr. Bailey said that the manner in which Bawnboy was managed was more like that by which an incident in the UK would be handled in terms of the positioning of the command vehicles and negotiating cells.

Mr. Michael Burdis

Mr. Burdis said that the evidence at Bawnboy indicates that "*there are practices within the management of An Garda Síochána that cover the formal handling of such a situation*". He went on to say: "*it begs the question as to why Detective Sergeant Jackson, newly trained and appointed as a negotiator, was not provided with the correct support and formal documentation*". He said that it was clear that the following were present at Bawnboy:

- i. a clear command structure;
- ii. a clearly identifiable negotiating cell with proper records being maintained in log form;
- iii. the command post was located in a safe place;
- iv. a scene commander's log was maintained;
- v. CCTV was available to the scene commander; and,
- vi. significantly more ERU officers were available, particularly on the inner cordon.

He said that the two incidents were quite different, but their one similarity was that they were both siege situations and that "*there is a methodology in the way that you approach a siege situation*" and "*that methodology should be there in whichever scene you are attending and the approach to it should be the same each time*".

He said that it is "*only how the situation develops that changes, because of the response and the way that the individual who is the subject of the siege, behaves. The methodology should not be different. It should be the same every time.*" Finally he

observed that at Bawnboy there were *“all sorts of facilities available that didn’t seem to apply or were even tried to be applied at Abbeylara”*.

CHAPTER 7

The Aftermath – Post-Mortem, Forensic and Ballistic Examination

SECTION A: – Post-Mortem Examination

1. Evidence of Professor John Harbison

At approximately 7:00 p.m. on 20th April, 2000, Professor Harbison, State Pathologist, was contacted by the Garda and was told that there had been a fatal shooting in Longford. Before leaving Dublin, Professor Harbison made arrangements to have John Carthy's body removed to hospital in Mullingar and he subsequently arrived there at approximately 10:25 p.m. As the time of the shooting was known, he considered that it was not necessary to examine the body at the scene. He deferred his visit to the scene until after the post-mortem examination. He visited the location on the following day, Friday, 21st April, 2000.

Professor Harbison instructed the radiographer on duty to have x-rays taken of the skull, chest, abdomen and thighs. No fractures were detected. The body was identified by Mr. Thomas Walsh at 12:30 a.m. The post-mortem examination was carried out later that day.

The clothing on the body was examined, three holes in the front of the jeans were seen. John Carthy had been wearing a padded navy blue jacket and examination of it also revealed a number of holes made by the bullets. Holes and blood staining were also noted on other garments worn by him, including a football shirt.

There were a number of wounds on the front and back of the body, and Professor Harbison ascribed a numbering system to them, referable to entry and exit wounds from the top of the body down. The entry wounds were identifiable by virtue of their shape and the existence of what were described as "*abrasion collars*". These wounds were on the back of the body and were numbered 1 to 4. The exit wounds which were on the front of the body were irregular in shape and were larger than the entry wounds. The nature of the exit wounds was consistent with the bullets "*tumbling*" through the body before exit. The wounds were as follows:

- Wound No. 1 – An exit wound of the bullet which had entered John Carthy's back at the level of the first lumbar vertebra, corresponding with entry wound No. 5. Exit wound No. 1 was an oval wound 1 inch above and to the left of the left nipple and over the left fourth rib. Entry wound No. 5 was circular, over the first lumbar vertebra just to the right of midline of the lower back. It was 7mm. in diameter and surrounded by a "*slightly oval abrasion collar*." Between entry and exit there was a rise of $9\frac{5}{8}$ ins. between 50 and 60 degrees from back to front in a person standing erect. These

measurements were approximated from the differences between the heights above John Carthy's heels. The pathologist inferred that the subject was "*crouching somewhat*" when struck by the fatal bullet, inflicting damage to the heart. While this wound did not "*absolutely have to be the last to go in chronological order, it was common sense that it was the last one*". Therefore, this equated with the wound inflicted by the fourth shot. Internal examination revealed that this bullet passed through the left psoas muscle at the level of the body of the twelfth thoracic vertebra, thereafter passing through the upper pole of the left kidney. It went through the stomach and the diaphragm; and then through the left ventricle of the heart.

- Wound No. 2 – An exit wound on the anterior surface of the scrotum corresponding and connected with entry wound No. 6 over the sacrum or base of the spine. The wound went forward and ultimately exited through the scrotum and the penis. The entry wound was over the sacrum, 11mm. from upper left to lower right.
- Wound No. 3 – An exit wound on the left thigh. There was also a slightly open entry wound on the postero medial aspect, or outer surface, of the left thigh with an abrasion collar on its inner and upper margins. This corresponded to entry wound No. 8, a wound which was on the inside of the left thigh.
- Wound No. 4 – An exit wound, just below the buttock corresponding to entry wound No. 7 which was a slightly oval wound, 6mm. by 5mm. on the postero lateral aspect (outer surface) of the left thigh. Entry wound No. 7 had an abrasion collar: it was 2ft. 6ins. above the left heel. It was thought that there was some slight difference in the trajectories of the two bullet wounds to the thigh.
- Wound No. 9 – An injury to the right calf was labelled wound No. 9 by Professor Harbison. This wound consisted of two superficial lacerations at the back of the right calf with a communication track through the subcutaneous tissue.

The abrasion collars on the wounds at the back of the body were evidentially consistent with 9mm. bullet entry wounds.

There were no other injuries to John Carthy's hands or legs. Professor Harbison confirmed that he found no marks or indicators on the subject's face which might suggest that it came in contact with the road. He thought that the entry wounds for the first three bullets suggested an intention to fire "*at a low trajectory*".

He described the body as that of a lean, relatively young male. Professor Harbison stated that from his post-mortem examination, John Carthy was in a reasonably good state of health and fitness, although he stated that this did not necessarily mean athletically fit, rather, disease free.

The source of wound No. 9 was considered in detail. Professor Harbison informed the Tribunal that he had received information from gardaí, whose names he could not recall, that four bullets had been discharged. Initially, he was not sure that the source of the wound was a bullet and described it as a “*projectile*”. He found it difficult to make a diagnosis of this injury, because it did not look like a bullet wound. The possibility therefore arose of a re-entry and exit wound. It was not certain in which direction this wound was inflicted. He favoured the view, that the upper was an entry wound and the lower an exit wound. He had no doubt that the other bullet wounds entered from the back and exited the front of the body. A difficult but possible explanation for the fifth wound was that the leg was raised to an almost horizontal position. He thought it very unlikely that this was a ricochet from the road, because a bullet ricocheting off a hard surface would distort whereas the oval wound at the upper end of the tract and also the one at the lower end implied a cylindrical object passing through. This was also difficult to explain in the absence of injury to the thigh area. One therefore had to postulate, he said, that the bullet or projectile may have deflected slightly in the soft tissues from its entry as it went through. He could not see how the wound could have been inflicted from the front, as there was no wound to the front of the leg. The only other possible explanation was a high stepping gait on the deceased’s part. It would have been easier to explain the wound, as a fifth wound, he stated, rather than having to contort the body into such a position as would permit an explanation that a bullet from one of the four injuries in the trunk of the body deflected into the calf. He observed:

“The only way I could see that as being possible would be for the leg almost straight, to have been raised parallel with the road, in a sort of high kick position, which is not a normal running or walking position of a leg . . . like a goose step”.

An explanation would have been much easier if he had heard that there was a fifth shot, but, he said, he had heard nothing of a fifth shot. Even in the context of another bullet it was a difficult wound to explain because if the deceased had been standing when struck, the bullet would have to have come from above. He also thought that this was unlikely.

Professor Harbison had heard this type of situation described medically in other cases as “*diagnostically destitute*”. With no other explanation and only four bullets, he expressed the opinion that it must have been a re-entry wound. Nevertheless, he considered that re-examination of John Carthy’s jeans might be necessary to throw light on this.

Having reconsidered the forensic evidence and in the light of examination of the clothing, he agreed with the contents of the final report and evidence of Professor Christopher Milroy (a consultant pathologist whose evidence is considered below) that this wound was caused by the bullet which had entered John Carthy’s lower back and exited through the scrotum; having been deflected downwards on its route. In chronological terms, this equated with the third bullet which struck John Carthy; and the first discharged by Detective Garda McCabe.

Information regarding shooting

Professor Harbison told the Tribunal that it was his practice to seek background information from the garda in every case before embarking on post-mortem examination. He stated that such information as he had received in relation to what occurred at the scene was transmitted to him by members of the Garda, but he could not recall at the time of giving evidence the precise nature of the information he had received or from whom he had received it. However, he produced a handwritten note to the Tribunal which referred to Detective Garda James Campbell and *"info re shooting"*. There was also a short written reference to Superintendent Michael Byrne. Professor Harbison had no recollection of speaking to Garda Campbell or of the information which was imparted. Further, he had no recollection of when he first became aware that the gardaí had indicated or accepted that four shots had been discharged. He thought that assuming normal procedures were followed by him, it would have been at, or even before, the post-mortem examination.

2. Evidence of Professor Christopher Milroy

Professor Milroy is a Professor of Forensic Pathology at the University of Sheffield and a Consultant Pathologist to the Home Office in the United Kingdom. At the time of giving his evidence to the Tribunal, he was also the Chairman of the Royal College of Pathology. He prepared a number of reports which were submitted to the Tribunal. In one of his early reports he expressed the opinion that the wound to the right calf was problematic. He felt that this wound might represent a fifth, probably ricocheting bullet. Professor Milroy described the appearance of *"more holes than bullets fired"* as a *"not uncommon problem"* presented to pathologists from time to time.

He thought that for this to be a re-entry and re-exit wound and in order to account for its vertical anatomical track, John Carthy's right leg would have to be held in a high position with the leg extended horizontally. He expressed a preliminary opinion that if it was a re-entry and exit wound, an explanation was that the right leg was brought up following the infliction of the wound to the lower sacrum. This, however, also seemed unlikely given the nature of the slope of the road and the body position that would have to be adopted. In an initial report he stated that the source of the fifth wound *"is likely to be a matter of conjecture"*.

Subsequently, Professor Milroy, when attending the Tribunal, and in course of his evidence examined the jeans and other items of clothing. He also reviewed photographic evidence of x-ray examinations of the pelvic area. Following that examination, he reported to the Tribunal and concluded as follows:

"In my opinion, the wound present on the right calf, injury number 9, in Professor Harbison's report, has resulted from the same bullet that has caused injuries, numbers 2 and 6. This bullet has entered the back of the body through the sacrum. It has then traversed the pelvis, before striking the front of the pelvic bone. This has resulted in the bullet being deflected steeply downwards and has exited the body through the right testes before continuing downwards, damaging the jeans above the level of the knee and has entered and exited the calf before exiting the jeans."

He continued:

“Further evidence for this pathway is shown in the examination of the clothing. The defect in the underpants and the jeans would suggest a quite steep trajectory through the pelvis, which is inconsistent with the position of the gardaí who fired the guns. Although Professor Harbison records the exit wound injury number 6, as being some 2.5 inches below the entrance wound, it is likely that this was measured from the scrotum and not the symphysis pubis. If one considers the pathway of the bullet through the pelvis, it is clearly more horizontal than the distance as recorded above the heel for the entrance and exit wounds. I have considered the possibility that the calf wound represents a fifth bullet having been fired. However, as this must have been fired from in front of John Carthy and then ricocheted off the road, it would then have caused further injury to John Carthy in view of the findings in the jeans. That is, it would have travelled upwards and struck the thigh pelvic area and no such additional damage was present. Therefore, having considered the post-mortem finding, in combination with the damage to the clothing, it is my opinion that all the injuries on John Carthy have occurred from the result of the discharge of four bullets. The medical evidence does not support a fifth bullet having been fired.”

Professor Milroy demonstrated this by reference to the clothing. The bullet which was discharged at the lower sacrum (i.e. the first shot fired by Garda McCabe) exited through the jeans, and instead of being somewhat towards the top of the fly area, it was a number of inches below that point. This further indicated that the bullet must have been deflected downwards:

“That also fits the fact that it went through the root of the penis and then through the scrotum and the scrotum lies lower than the symphysis pubis.”

This bullet struck the pelvic bone, he concluded. It struck the symphysis pubis, as was evidenced in the photographs which were produced to the Tribunal. The bullet came out low down, struck the symphysis pubis and deflected downwards steeply. This deflected bullet thereafter entered and exited John Carthy’s right calf. The direction of this bullet had to be downwards, because if it was travelling in the other direction, an injury to the subject’s thigh would have been expected.

He also stated that this explanation was consistent with a normal walking motion rather than what had been described earlier in the Tribunal as a “*high stepping gait*” or a “*goose step*”. Entry wound No. 2 and exit wound No. 6, accounting for the wound in the calf, did not entail any exceptional leg movement. Ordinary walking was sufficient to account for that movement. In addition, the nature of the calf wounds on entry and exit were indicative of an “*unstable bullet*”. The holes were too big to be an initial impact from an undeflected bullet. Professor Milroy explained as follows:

“A bullet that is discharged from a rifled weapon, by which I mean all the weapons used in this, the Sig Sauer pistol and the Uzi machine-gun, they have rifling in the barrel. In other words, these are grooves cut into the barrel so that

the bullet will come out and it will spin. It is spinning and that will give it gyroscopic stability and that is why you do it. It makes the bullet much more accurate and the bullet going much straighter. Now a normal bullet will spin . . . once it has entered this tissue, because you have got forces then dragging on it, it becomes unstable and it begins to tumble. It will tumble in a straight line but it will cause more damage, a bit more damage than the flat end and also because the bullet is tumbling as it comes out of the skin, it causes a larger exit wound, and that is how we pathologists often work out exit and entrance wounds, because the entrance wound is regular; because it is the end of the bullet that is going in and the tumbling bullet indicates that it is a larger wound. Now this wound in the calf is irregular and therefore a tumbling bullet might tumble and actually go in head first or it might be at an angle like that, say 45 degrees where you get a large entrance wound”.

If this was a fifth bullet, it had to be a ricochet and it must have hit an intervening target, he contended. Having considered all the circumstances, Professor Milroy concluded that there was no evidence of John Carthy having been struck by a fifth ricocheting bullet. The wound was accounted for by deviation of one of the four bullets which were discharged at John Carthy; being the bullet which went through his pelvis. As the bullet causing wound No. 2 crossed the pelvis it was relatively horizontal and was in a similar direction to the thigh wounds. As it exited the front of the pelvis it was deviated. The fact that the bullet exited through the testes indicated that it must have exited through the crotch area in the jeans. This further indicated a change in the pathway of the bullet by way of a sharp diversion downwards. The bullet trajectory was essentially horizontal to a point near the symphysis pubis. When it emerged, it went downwards, almost 90 degrees in a change of direction.

Professor Milroy stated that had one carried out an autopsy on a person about whom the pathologist knew nothing other than that he had been shot by people in a laneway, a “*blind autopsy*”, that it would have been “*quite right to have considered the possibility of a fifth bullet having caused that injury to the calf*”. Had he no information regarding the number of bullets discharged, he would have considered the possibility of a fifth bullet. The examination of clothing, he said, “*is not always readily available when a forensic examination is being carried out, given the fact that clothing may be required for other forensic purposes*”. The examination of the clothing, in this case, had been instructive:

“Q. *In summary, therefore, on this portion of your evidence, you are saying that it would have been correct to consider the possibility of a fifth bullet at the time of the autopsy?*

A. *In my opinion, it would be.*

Q. *But that you, having considered the medical evidence and the evidence in relation to clothing, that you have discounted that possibility?*

A. *I have”.*

Had the bullet been discharged from the front of John Carthy, additional damage would have been detected on the body. There was, therefore, no medical evidence that John Carthy had been shot from the front. The possibility of a bullet having been discharged from the front was also excluded because of the nature of the injury and the damage to the clothing. Professor Milroy stated that the wound could not have been a ricochet from behind given the leg position. Therefore, the possibility of a fifth ricocheting bullet from behind could also be excluded. Professor Harbison, having had the opportunity to consider the revised report of Professor Milroy, agreed and accepted his opinion.

3. Ruling of the Tribunal

Following consideration of the foregoing revised evidence given by Professors Milroy and Harbison, the Tribunal issued an interim ruling excluding the possibility of John Carthy having been struck by a fifth bullet. In the light of Professor Milroy's ultimate opinion, with which Professor Harbison agreed, the Tribunal is satisfied that John Carthy was struck by four bullets only. The full content of the ruling is contained in Appendix 7.F to this Report.

SECTION B: – Forensic and Ballistic Examination

1. Introduction

The evidence of what occurred when John Carthy emerged onto the roadway, in relation to the actions taken by members of the Garda Síochána, primarily and almost exclusively, derives from the direct evidence of those who participated in the events or their superiors. What happened was not video recorded, as CCTV equipment had not been brought to the scene. Neither were they audio recorded, as tape recorders were not utilised.

Detective Sergeant Jackson and Detective Garda McCabe confirmed that they discharged their weapons. All other armed officers who were present at the scene, (ERU and local members) were questioned on whether they had discharged their weapons and all stated that they had not. All officers, including Sergeant Jackson and Garda McCabe, were questioned on whether they were aware of any other persons discharging their weapons and all stated that they were not.

The evidence of the pathologists establishes that John Carthy was struck by four bullets, one of which caused his death. As part of the forensic examinations which took place, John Carthy's shotgun and 13 weapons of the ERU were examined but the weapons of local armed officers were not. Such ballistic examinations as took place revealed that bullets were discharged from two weapons which were the property of the ERU. These weapons were the Sig Sauer pistol used by Sergeant Jackson and the Uzi sub-machine gun used by Garda McCabe. That examination excluded the possibility that shots were discharged from weapons, other than the

two aforementioned; thus corroborative of their evidence in this regard. The bullets issued to members of the ERU have been accounted for in evidence.

John Carthy's weapon was found to have recently been discharged. There was one live cartridge in the left barrel and the safety catch was discovered to have been off.

Certain further ballistic evidence which was readily capable of being ascertained, however, was not pursued. The weapons of local armed gardaí were not examined. Some of these gardaí had their weapons drawn; and in one case, according to the evidence of Detective Sergeant Foley, he was a split second from discharging his weapon at the subject. The Tribunal considers it not only appropriate, but necessary, to consider the evidence regarding absence of examination of these weapons and the explanations proffered therefore.

The Tribunal has also considered the weapon and ammunition records discovered to the Tribunal and maintained by garda stations in the Longford/Westmeath division at which various officers at the scene were based; Longford, Athlone, Granard and Mullingar. In the case of Granard, the records are complete; in the case of Athlone, the ammunition and issuing records are not complete. The Tribunal has not had sight of any records for Longford or Mullingar garda stations.

Chapter 25 of the Garda Code provides for regulations in relation to record keeping and the issuing of firearms. The code also imposes an obligation to provide a duty report whenever firearms are produced or used on duty. No such formal duty reports were prepared. The explanation given for this was that such reports were not completed by reason of the investigation which was undertaken by Chief Superintendent Culligan in the course of which all the local armed officers at Abbeylara had made statements recorded in writing which contained the information which would have been specified in formal duty reports.

2. Preservation of crime scene

Shortly after the shooting, Superintendent Shelly ordered Inspector Martin Maguire to preserve the scene, which was being treated as a crime scene. Preservation commenced almost "*immediately*". Within hours of the shooting, the Garda Commissioner announced that an investigation was to be conducted by Chief Superintendent Culligan.

A cordon tape was put in place between a point on the roadway outside Burke's house and, at the far end of the Carthy house, a further tape was placed across the road. A qualified Scene of Crime Examiner, Sergeant Sean Leydon, who was stationed in Athlone, was contacted at approximately 6:00 p.m. by Detective Garda Campbell and was requested to bring a scene of crime tent to the scene. He arrived at Abbeylara at 7:25 p.m. At that stage he did not meet any senior officer and his contact was mainly with scene of crime preservation personnel. He stated in evidence that he did not receive any instructions from any senior officer when he initially attended at the scene. He observed the deceased lying on his back at an angle with his head close to the grass margin on the right hand side of the road as

one faces towards Abbeylara. John Carthy, he said, was wearing a multicoloured green, white and blue rugby jersey, navy blue nylon jacket, blue wrangler denim jeans and a pair of black laced shoes. A shotgun was noted to be on the road close to the deceased. Sergeant Leydon noted two 9mm. cartridge cases on the road a short distance from the body. There was a cartridge gun belt on the road. Sergeant Leydon proceeded to erect and place the crime scene tent over the body. He then placed plastic sheeting over the shotgun and plastic base plates over the two empty cartridge cases lying on the road.

At approximately 9:00 p.m. Sergeant Leydon met Superintendent Shelly who informed him that personnel from the Technical Bureau in Dublin were on their way to the scene. He had no conversation "*whatsoever*" with any senior officer regarding what had occurred when John Carthy exited the house. However, he was aware generally from news bulletins and from members in Athlone garda station of what had occurred. His principal duty at the scene was to preserve anything of evidential value. He did not inquire into the circumstances of the fatal shooting as this was a "*unique situation*" and certain things that had happened, he said, were "*obvious*". He did not become aware that an inquiry under Chief Superintendent Culligan had been announced until the following Monday, 24th April, although to him it was obvious that there was going to be an investigation as it was a serious matter; a life had been lost. Sergeant Leydon did not, himself, make any inquiry of the local officers and was aware only of what he had been told by Garda Campbell when he was requested to come to the scene – that John Carthy had been shot by members of the ERU.

At 10:30 p.m. the body was conveyed to the general hospital at Mullingar and Sergeant Leydon travelled in the hearse to the hospital. Prior to leaving the scene Superintendent Shelly directed him to collect "*all of the ERU weapons and ammunition*". He was told that arrangements had been made for them to be handed in later that night to Mullingar garda station by the members of the ERU who were present at the scene. He stated that he followed these instructions.

Removal of the jeep

The evidence establishes that the ERU jeep (which had been used as the command post, and near which were located local armed members who stated that they feared for their lives when John Carthy proceeded up the roadway) was removed from the area by Detective Garda Carey shortly after the shooting. He was instructed to gather up his equipment and leave the scene by Detective Sergeant Russell. He left in the jeep with Detective Garda Ryan. No instruction was issued to keep the jeep in position. The significance of the position of the jeep was considered by the Tribunal. Senior officers were questioned on its removal and on whether it was considered to be part of the crime scene to be preserved.

Superintendent Shelly stated that he did not consider the jeep to be part of the scene. He did not give any instruction "*one way or the other*" in relation to the removal of it. After the incident he directed Inspector Maguire to immediately take steps to have the scene preserved. He regarded the scene as the area between the

ESB pole and Farrell's house. He stated that he issued specific instructions at the scene to Inspector Maguire as to what area was to be preserved. The jeep was in place at this stage. He stated that he had been informed by Sergeant Foley, before the jeep was moved, that no local armed garda had discharged his weapon. Had one of the local gardaí taking cover behind the jeep discharged his weapon, then the jeep would have become part of the scene, he contended. He accepted that the jeep was gone before the crime scene examiners from the Technical Bureau arrived. He believed that he had identified the correct area to be cordoned off. It was his view that it was open to the crime scene examiners to widen the search area if they wished, as happened on the Saturday morning when the scene under examination was extended towards Abbeylara.

Superintendent Shelly provided a written explanation as to why he did not consider the jeep to be part of the scene. This was, he said, for a number of reasons:

- i. The distance of the jeep from the area where John Carthy was shot was, he said, "*substantial*";
- ii. The distance to the jeep from where the ERU members discharged their shots was substantial;
- iii. From his observations and enquiries at the scene there was no evidence to suggest that the jeep had been struck by a shot; and,
- iv. No shots were discharged either from or at the jeep. Superintendent Shelly stated in evidence that he did not give instructions in relation to the jeep "*one way or the other*".

He confirmed that the jeep was in position when he gave the instructions to Inspector Maguire to preserve the scene. He believed that the jeep was gone when he spoke to Sergeant Foley some half an hour later; when he was informed that Sergeant Foley had had his weapon drawn and was about to fire at John Carthy. Even if he had this information while the jeep was still there, he would not have considered it to be part of the scene. He accepted that the jeep was within range of John Carthy's weapon. He accepted that if there had been shots discharged from that area, it would have been in the scene – but, he said there were no shots fired from there. He felt that the decision he made in this regard, concerning the area of the crime scene to be cordoned off, was correct, and that the evidence was found within that scene.

Chief Superintendent Tansey stated that he gave no directions in relation to the preservation of the scene. He left that task to the scene commander. He had no recollection of being at the scene when the jeep was moved. He believed that he was down at the church when this occurred. He did not believe, however, that the jeep formed part of the crime scene. An innocent explanation for the action in removing the jeep was suggested to him; that someone may have just driven the jeep away in order to convey members of the ERU back to Dublin and was accepted by him as a possibility. Assistant Commissioner Hickey stated that he had no involvement in the preservation of the scene and gave no directions in relation thereto. He would not have directed its preservation as part of the scene.

It will be seen, therefore, that the senior officers maintained that the jeep was not positioned in such a way as to be part of the scene which required to be preserved. It is fortunate that earlier on the morning of the shooting, when the media were brought to the scene, the jeep was photographed in position, thus enabling the Tribunal to make a reasonable estimate of its location when John Carthy emerged onto the roadway. During the course of evidence to the Tribunal, the Chairman expressed surprise that it was not regarded as part of the scene for examination purposes. Officers who were in the vicinity of the command vehicle at the time stated in evidence that they were put in fear of their lives by John Carthy as he advanced towards them holding his gun in what was perceived to be a threatening way. Had it been maintained in position for such examination, and appropriate measurements taken, it would have further facilitated the assessment of the positions of all persons at the scene in relation to each other.

3. The Garda Technical Bureau

Ballistic Section

The ballistic section is one of a number of technical units that make up the Garda Technical Bureau. Other sections include the fingerprint, photographic, mapping and criminal records sections. In April, 2000 Detective Superintendent Liam Coen was in overall charge of the Bureau. Detective Inspector Edwin Handcock was the officer in charge of the ballistic section which comprises a detective inspector, three detective sergeants and approximately ten detective gardaí. The staff included Detective Sergeant Seamus Quinn and Detective Sergeant Patrick Ennis.

Detective Sergeant Seamus Quinn (since retired)

On 20th April, 2000 Sergeant Quinn was informed by Inspector Handcock that there was a siege in progress in Abbeylara; that shots had been discharged from a particular house and that when the siege was over, irrespective of its outcome, he was to travel to Abbeylara to examine the scene. At 6:30 p.m. he was contacted at home by Inspector Handcock and directed to attend at the Technical Bureau to collect the crime scene van. He there met Detective Sergeant Patrick Ennis and travelled with him to Abbeylara. Inspector Handcock briefed Sergeant Quinn to the effect that John Carthy had been fatally shot by the ERU.

Detective Sergeant Patrick Ennis

Sergeant Ennis was appointed crime scene manager. Evidence to the Tribunal suggests that it is normal practice for a detective sergeant from one of the disciplines to be placed in charge of the crime scene.

Attendance at scene

Sergeant Quinn and Sergeant Ennis arrived at Granard garda station at approximately 8:45 p.m. They were directed to the scene by the station orderly and informed that Superintendent Shelly was there. On arrival, shortly after 9:00 p.m., he (Quinn) met Superintendent Shelly. Moments later Assistant Commissioner Hickey joined them.

Sergeant Quinn was informed that John Carthy had come out of the house; he had walked towards Abbeylara; had been called upon to stop; had failed to do so, and, was shot by the ERU. Sergeant Quinn had not learned of the presence or positioning of local armed gardaí at that time. He stated that he was not informed that evening, at the scene, by either Superintendent Shelly or Assistant Commissioner Hickey that local armed gardaí had been present. He entered the crime scene at 9:20 p.m. and he remained there until approximately 10:30 p.m. When at the scene he observed the following:

“On the opposite side of the road to the Carthy house and at a point near the end of the garden wall, beside the Burke property, a crime scene tent had been erected. Near the garden wall a plastic sheet covered some object on the road. At a point opposite the Carthy entrance on the road, two pieces of red plastic covered other objects. Having had this scene photographed, I entered the crime scene tent and saw a body covered with a red blanket. I removed this blanket for photographic purposes. The body was that of a male, lying on his back with the feet on the road and the head on the road edge nearest to the ditch. The body was dressed in a jacket, tee-shirt, vest, jeans, underpants, socks and shoes. The belt and fly of the jeans were open and the vest and tee-shirt pushed up revealing a bare mid-area. The left arm was outstretched from the body at an angle of approximately 30 degrees and the right hand was resting on the right hip area. The legs were outstretched and the heels were six inches apart. Eight feet away from the right hand-side of the head of the body lay an empty leather shotgun cartridge belt. I then marked the outline of the body with crayon together with the shotgun cartridge belt. Beneath the plastic sheet outside of the tent I found a shotgun with its stock nearest to the garden wall and its muzzle facing the road. The stock of the weapon was eight feet nine inches from the nearest right-hand pier and twenty-two feet from the nearest left-hand pier of the wall. I lifted the weapon and noted that its safety feature was in the off position. I broke open the breech of the weapon and found a live 12-gauge shotgun cartridge in the left barrel. The right barrel was empty. I handed both items over to Detective Garda Colette Murray, fingerprints section. In an area on the roadway, opposite the entrance to the Carthy house, under a plastic cover I found a spent 9mm. cartridge case. This item was fifteen feet five inches from the right-hand pier. A second 9mm. spent cartridge case lay beneath the plastic cover, some six feet further onto the road. These items were photographed in situ and their locations were encircled in crayon. . . . At 10:20 p.m. a hearse arrived at the scene and I assisted in the placing of the body in a coffin. The hearse left the scene for Mullingar Hospital at 10:30 p.m. and I immediately rang Professor Harbison and informed him of its departure. We also agreed that the post-mortem examination would begin at approximately 9:30 a.m. on the following morning. At 10:50 p.m. I finished work at the scene and left for Longford.”

Search of the scene – cartridges

A combination of live and discharged shotgun cartridges were found. Four spent 9mm. cartridges were also discovered.

Spent cartridges discovered at scene

Sergeant Quinn gave evidence of finding 30 spent shotgun cartridge cases in or about the scene. 14 spent shotgun cartridge cases were found in the kitchen, three in the corridor, two in the lower corridor, two in an empty room off the lower corridor, six scattered outside the hall door in the grass and three outside the kitchen window in the grass. Following his examination of the 30 spent cartridge cases Sergeant Quinn concluded that 17 had been discharged from the left barrel and 13 discharged from the right barrel.

Live cartridges found

Sergeant Quinn found a live 12-gauge shotgun Eley cartridge in the left barrel of John Carthy's shotgun when he examined it at the scene on 20th April, 2000. One live shotgun cartridge was found in the road ditch opposite the Carthy house. This was a Fiocchi 12-gauge shotgun cartridge size 8.5. This cartridge was found to be in good condition. Seven other live shotgun cartridges were found in the house, in the bottom of a wardrobe in the corridor. They appeared to have been "*put aside because of their condition*". This evidence suggests that all cartridges in good condition had been discharged or were in the breech of the barrels when John Carthy left his house, i.e., he had almost exhausted his supply of usable ammunition.

Examination of John Carthy's weapon

Sergeant Quinn examined the shotgun and gave evidence in relation to the capacity and properties of the weapon. On examination the weapon was in the closed position with a live cartridge in the left-hand barrel. The safety catch was off. He illustrated, in the witness box, that in attempting to pull the trigger with the safety catch on, he met with resistance. However, when the safety catch was pushed forward the triggers were free to move. Breaking open the barrel engaged the lugs on the underside; and on closing, the lugs pushed the safety feature into position. The weapon was approximately 15 years old but was in good condition, and was well maintained. The trigger pressures were within normal parameters for this type of weapon at 4.5 pounds for the forward trigger (operates the right barrel) and 6 pounds for the rear trigger (operates the left barrel). Sling rings were fitted at the time but it did not have a sling. He confirmed that the gun had no defect. The shotgun, he stated, did not and would not discharge accidentally by dropping it. Discharge of the weapon required the triggers to be used. The safety catch was in good condition. While a Baikal shotgun may have an automatic ejector, this was not a feature of John Carthy's weapon. The cartridges in this weapon presented themselves, rather than being ejected.

4. Examination of weapons

Request to acquire weapons – Detective Sergeant Quinn's initial evidence

Sergeant Quinn gave evidence to the Tribunal on two occasions. In his initial evidence he was questioned about his request to Sergeant Leydon to acquire all garda firearms at the scene. He confirmed that he was aware that all of the weapons he received belonged to members of the ERU. He also confirmed that there was no

discussion with Sergeant Leydon about seeking weapons belonging to the local armed gardaí. He stated that he did not consider looking at the other weapons because he was aware of the circumstances of the shooting and from where the shots had come. Sergeant Quinn was asked for clarification of his use of the words “at the scene” in the context of the request for the collection of all garda weapons and he responded: “within the actual scene itself, within the inner cordon, outside the Carthy home”. His evidence on recall, considered below, is noted to be inconsistent with this evidence.

Collection of weapons at Mullingar garda station by Sergeant Leydon

At approximately 12:20 a.m. on 21st April, Sergeant Leydon went directly from the hospital to Mullingar garda station where he met the members of the ERU who had been present at the scene and took possession of 13 firearms and ammunition. He recorded what he had received. Sergeant Leydon placed all of the weapons and ammunition in the safe in the garda station. The ammunition was packed into individual bags along with the weapon to which they related, each gun being separately packaged with its ammunition prior to being locked in the safe. He handed all firearms and ammunition collected by him to Sergeant Quinn on Sunday night 23rd April at Mullingar garda station when the Bureau staff had finished at the scene and were heading back to headquarters. Sergeant Leydon stated that he could not recollect having any conversation with Sergeant Quinn at that time. Nothing was said by Sergeant Quinn regarding a change of instructions to have ERU weapons only examined.

Examination of the ERU weapons

The weapons were brought back to the Garda Technical Bureau and examined by Sergeant Quinn over the course of the next five days. Two were found to have been discharged. Out of six magazines from the Uzi sub-machine gun handed over by Garda McCabe only five had a full complement of bullets. One was missing two rounds. He also found burned propellant powder in the barrel which is an indicator of discharge. He concluded that two bullets had been fired from the gun. On examination of Sergeant Jackson’s Sig Sauer pistol, burnt propellant powder was in the barrel, some in the breech and in or about the firing pin.

Examination of scene

Sergeant Quinn confirmed that he had been at the scene for two days and that extensive searches were carried out. Only four spent 9mm. cartridge cases were found, and these had been discovered within a short time of the incident, and plastic cones had been placed over them. Having taken photographs of the spent cartridges on the road, he, Sergeant Quinn, took possession of them. He contended that he would have expected a specially trained search team to have found any other spent cartridge cases. It was suggested to him that the evidence was dependent upon no one else removing a cartridge case; to which he replied:

“So now we are reduced to members of the Garda Síochána who may or may not have purposefully removed a cartridge case from a crime scene. I have never in 36 years come across it, Chairman, never. I am not saying that it cannot

happen, Chairman, but it should not if it did. I have never come across it in 36 years and I would be disgusted and amazed if it did happen''.

Initial search area

The search team commenced a search of the area on Friday afternoon, 21st April, when Sergeant Quinn returned to the scene following the post-mortem examination. Both Sergeant Ennis and Sergeant Quinn issued instructions to the sergeant in charge of the search team as to how the search was to be carried out. The initial search was conducted in the area that had been cordoned off the previous evening. Sergeant Quinn showed the sergeant in charge the type of spent cartridges or wads that he should be seeking. The search commenced on the road and thereafter the hedges were searched by way of "fingertip search". This covered an area described by him "as the full extent of the inner cordon". Other than the four spent 9mm. shells and the live cartridge discarded by John Carthy when he opened his shotgun on the road, no bullets were found. On completion of searching the inner cordon area, the search area was extended a distance of 268 feet (to the brow of the hill) in the Abbeylara direction.

Widening of search area

The decision to widen the search area was taken by Sergeant Quinn on Saturday morning, 22nd April. The purpose of the wider search was to attempt to find the bullets which had been discharged at John Carthy, as none had been discovered on post-mortem examination. No bullets were found in this area. Sergeant Quinn stated that only garda personnel were within the area between the outer cordon at the church and the Carthy residence during this period.

Non-examination of local weapons – Detective Sergeant Quinn's further evidence

The Tribunal requested a further statement from Sergeant Quinn dealing with a number of issues concerning the non-examination of local weapons. He made a second statement in response as follows:

- “(a) I attended the post-mortem examination and this examination proved that all shots, which struck the deceased were discharged from his rear. There were, however, two non-ERU members on the Springtown [Ballywillin] side of this shooting scene. Had either of these members discharged a shot, they would have had, in my opinion, have had to shoot through the ERU members to hit the deceased. In my opinion there was no question of this as it is against all firearms training and firearms drill.*
- (b) I received no instructions from a more senior officer as to what weapons I should/not examine.*
- (c) I was not aware whether the incident was likely to lead to an investigation.*
- (d) I never delegated any of my duties at the scene to another officer except to show a search team the type of bullet and cartridge which might be found during the search''.*

In his further evidence to the Tribunal he stated that he had no discussion with Sergeant Leydon about requests that he, Sergeant Leydon, may have received from more senior officers. He said that he had a general conversation with Sergeant Leydon at the scene on the night of 20th April and that *“the most important thing I asked him to do was to acquire all ERU weapons”*. It was noted, however, that in his initial statement to the Tribunal he recounted that he requested Sergeant Leydon to acquire all garda firearms that had been at the scene. His statement read as follows:

“Within the scene I spoke with Sergeant Sean Leydon who had erected the crime scene tent and covered other vital evidence which he had encountered. I asked Sergeant Leydon to acquire for me all garda firearms, which had been at the scene since the incident commenced. He undertook this task”.

It was put to him, and he agreed, that this statement indicated that he had requested that all weapons be collected. He was therefore asked how this general request was reduced to a more specific one regarding the acquisition of ERU weapons. He stated:

“It was reduced to ERU weapons before I actually took the ERU weapons back to the ballistics section in the Technical Bureau”.

He stated that the initial request in respect of all weapons was reduced to ERU weapons only because of *“information from the post-mortem and information I had received and gleaned throughout the examination of the scene”*. He stated that he communicated his decision to narrow the weapons for inspection to Sergeant Leydon on Sunday night, 23rd April at Mullingar.

Sergeant Quinn was asked whether following two days of physical examination of the crime scene he had found any objective further evidence which led him to reduce his request for weapons that he wished to examine. He responded:

“Apart from the post-mortem results which indicated to me that the shots came from behind Mr. Carthy and, to my mind, could only have been fired by the ERU officers. This is what made me reduce it from all weapons to ERU weapons only”.

He discounted the possibility of a shot being fired towards John Carthy which missed him:

“... for the simple reason that none of the searches that were carried out discovered any spent cartridge cases other than the four that were on the roadway. If any member of An Garda Síochána discharges his firearm, he is obliged (a) to report it and (b) that firearm must be handed in for examination by the ballistics section of the Garda Technical Bureau ...”.

He further stated that he first became aware of the involvement of armed local gardaí on returning to the crime scene following the post-mortem on the afternoon of 21st April, when he observed the garda mapper at work mapping the positions of the local gardaí during the incident. There were, he stated, conferences each evening either with Superintendent Shelly or Assistant Commissioner Hickey, as he had to report *“what I uncovered during the day”*.

He stated that if he was aware of the presence of armed local gardaí during the course of the incident he would have considered ensuring that those weapons were collected for examination had they been discharged. On arrival at the scene he was unaware that Chief Superintendent Culligan was appointed to investigate the shooting. However, he stated that it had *“crossed his mind”* that the shooting was likely to give rise to an independent investigation. On Sunday, 23rd April Sergeant Quinn met Chief Superintendent Culligan at the scene and had a discussion with him about his general findings. He knew and had met him around the country at different scenes. He was not aware, however, that Chief Superintendent Culligan was conducting an investigation at that time; this had not occurred to him then. He subsequently agreed that Chief Superintendent Culligan was taking an active role in *“some shape or form”*. He said that he only became aware of Chief Superintendent Culligan’s appointment after he had returned to the Technical Bureau, probably on the following Tuesday, 25th April, when he was in the initial stages of examining the weapons. In later evidence, however, he stated that he was aware before he went back to Dublin, on Sunday, 23rd April. Sergeant Quinn was asked whether in the light of this new knowledge concerning the investigation whether he had reconsidered his decision in relation to the examination of the weapons so as to exclude all the other officers who were at the scene. He said that he had made a decision and *“stuck by it”*.

He was questioned on whether he recognised that a crossfire situation may have arisen and for that reason it was important to rule out the possibility that local guns had been fired at the scene. He stated that he had not considered the issue of crossfire at that stage. He was asked why the obvious step of ruling out the local guns through examination, had not been taken. He replied:

“Chairman, certainly I do agree and hindsight is a wonderful thing but I had no report of any other cartridge being found during all of the searches that were carried out, which, to me, would have ruled out crossfire, (A). (B), no other armed garda reported that he had fired his weapon and no other armed garda had left in his weapon for examination, having fired it”.

It was not until his attendance at the Tribunal that he became aware that one of the local gardaí was within *“an ace”* of discharging his weapon. He stated that his understanding was that as long as John Carthy remained within the inner cordon that no one but the ERU had *“permission”* to fire. However, once he left the inner cordon then armed gardaí outside could take whatever action they deemed appropriate. No one had told him that, but that is what he understood.

Sergeant Quinn accepted, *“to an extent”* that in the examination of weapons which may potentially have been used at the scene, the process of exclusion was as important as the process of inclusion. On examination of the ERU weapons (13 in all), he had discovered that two of them had been discharged and at the time of that examination, he knew that John Carthy had been struck four times. It was suggested to him that given the fact that there were 13 weapons and four wounds, that it was important to exclude ERU weapons, because they were at the scene. He was therefore questioned as to whether, had he known that local gardaí were at the scene

and had their weapons at the ready, he would have requested that such weapons be submitted for examination? *“Not necessarily”,* he stated, because *“to the best of my knowledge no other weapons had been discharged, only ERU weapons”*. He believed that if any other weapon had been discharged it would have been handed in, as a member who so discharges his weapon is obliged to do. It was suggested to him that in so answering, he was in part relying on officers complying with their obligations under the Garda Code. This he said, was only a second consideration; the first being the search team missing a cartridge case.

Ultimately, he accepted that he *“possibly”* would have requested that the weapons of the local officers be brought forward for examination, had he known that *“there were members present who feared for their own lives and had their weapons at the ready”*. Sergeant Quinn said that he became aware on Sunday, 23rd April, following the incident that there were armed local officers present at the scene at the time of the shooting. However, he said that whereas he knew that they were present he also heard that none of their guns had been discharged. He was asked whether nevertheless, he should have requested their weapons to be delivered for examination, if he had not heard that no local gun had been discharged. He stated:

“... if a firearm, and I am going to repeat this for the umpteenth time, if a firearm is discharged it must be reported, it must be reported. It must be handed in for examination, and I, for 26 years, depended on both of those things happening. I honestly can’t put it any further.”

He had no suspicion, or reason to believe that a shot had been fired by one of the gardaí.

Request to examine weapons – Sergeant Leydon’s involvement

When Sergeant Quinn was requested to clarify whether he would have given consideration to having local armed officers’ weapons taken in for examination had he realised that they were present at the command post with drawn or cocked weapons, he replied:

“I may or may not have done. Certainly, my initial instructions to Sergeant Leydon were to get all weapons. . . I discounted all weapons now and only included all ERU weapons and that is all I examined”.

He said that he was unaware of Sergeant Leydon having received instructions directly from Superintendent Shelly to take possession of all firearms and ammunition of the ERU. His decision to narrow the request in relation to the weapons to be examined was, he said, taken on Sunday, 23rd April, before he took the weapons away from Mullingar station to the Technical Bureau. He stated that he discussed this decision to *“some degree”* with Sergeant Ennis but confirmed, however, that it was he who had the authority to make this decision and not Sergeant Ennis. Sergeant Leydon, however, stated that he received his instructions from Superintendent Shelly. This instruction was to gather in all ERU weapons.

Sergeant Quinn also stated that his decision to reduce the number of weapons to be examined was made following the post-mortem examination and a full

examination of the scene by the search team. At some stage, after the search team had finished, he said, *“I would have told Sergeant Leydon that I only required the ERU weapons”*. In subsequent evidence he confirmed that this was on Sunday night, 23rd April, in Mullingar. Sergeant Leydon stated, however, that when he handed over the weapons to Sergeant Quinn on Sunday, 23rd April, he did not have any conversation with him.

Conflict of instructions?

Sergeant Quinn stated that if, on the night of 20th April, Sergeant Leydon had only taken possession of weapons possessed by the ERU that that would have been contrary to the instructions that he had given him. He further agreed that had instructions been given to Sergeant Leydon by another officer only to collect the ERU weapons and ammunition, that that also would have been contrary to his instruction to Sergeant Leydon.

Sergeant Leydon had no recollection of receiving an instruction from Sergeant Quinn that he was to acquire *“all garda firearms which had been at the scene since the incident commenced”*. He would have regarded this as a *“crucial”* instruction and one that he was likely to remember. He believed that it was on Friday, 21st April that he became aware that local armed officers had been present during the course of the incident:

“There was no conversation, it was just that I handed over the thirteen weapons and the ammunition and that was it.”

Superintendent Shelly described Sergeant Leydon as a careful, experienced scene of crime examiner who would remember and follow instructions.

Detective Sergeant Quinn’s reasoning for narrowing of request

Sergeant Quinn explained that he had originally asked for all weapons to be collected because:

“I was not at the post-mortem examination at that stage. My instructions to Sergeant Leydon was at the scene on the first night at about 9.20/9.30. I knew ERU weapons were discharged at that stage. I didn’t know if any local garda weapons were discharged but having been to the post-mortem and not having any reports from local gardaí of them having discharged their weapons or there being no reports into the local superintendent of any local gardaí having discharged their weapons I took it upon myself to only take ERU weapons. I mean, the search team had also completed the search by Sunday and nothing was found” .

He was then asked whether he now felt he ought to have looked at the weapons of the local gardaí, if for no other reason than that it was in their interests. He responded that he believed that he took the right decision at the scene and he was going to stick by that. He disagreed when it was put to him that an examination of local weapons was something that should have been done. There was, he said, no guideline or instruction in the manual on criminal techniques, requiring that all

weapons be taken in. You must, he said, take evidence *“as a whole”*. No one, he said, heard any more than four shots. He also depended on the honesty of those at the scene that they had not discharged their weapons. He accepted, however, that a way of corroborating, objectively, the evidence of local gardaí, was to examine the weapons – but that was not the position he took *“having taken the evidence as a whole”*.

He accepted that a local garda *“might not keep his cool for as long as a trained officer”* and that *“he might discharge his weapon where he shouldn’t”*. He also accepted that this was the sort of criticism that the media might pick up on. However, he stated that it had not entered his mind to protect the local gardaí from that type of criticism. Sergeant Quinn again confirmed that the decision to narrow down the weapons which he proposed to examine was taken after he became aware that local armed officers had been present at the scene. He reiterated that, in making the decision, he considered the results of the search, the post-mortem, the obligations on members of the Garda Síochána to report any discharge of their firearms to a superior officer and to hand in their weapons. Finally, he was asked whether in the context of an internal garda investigation he thought it sufficient to rely on the garda regulations and the obligations placed on members of the Garda Síochána and their compliance with those obligations and regulations rather than objectively ascertaining whether or not the weapons had been discharged. Sergeant Quinn replied, *“I took the decision on what I have outlined”*.

5. Detective Sergeant Patrick Ennis

Sergeant Ennis has been attached to the ballistics section, Garda Technical Bureau, for 30 years. At approximately 6:00 p.m. on 20th April, 2000, he was instructed by Inspector Handcock to attend as crime scene manager at Abbeylara. He arrived at the scene at 9:05 p.m. and was accompanied by Sergeant Quinn. In attendance at that time were Assistant Commissioner Hickey, Chief Superintendent Tansey, Superintendent Shelly and Garda Joseph Fayne.

He observed the position of John Carthy’s body on the ground and he learned from Superintendent Shelly that the subject had emerged from his house, armed with a shotgun and that two members of the ERU had discharged shots at him. He was also told that John Carthy had broken open a weapon and thrown something into a ditch. He was not informed at that time that there were other local armed members at the scene. He believed that he was informed of the local armed officers’ presence on either 22nd or 23rd April.

Sergeant Ennis was not given any instructions regarding what weapons should be examined. He stated that Superintendent Shelly did not interfere with the way they were to conduct their examination. Communication with Superintendent Shelly was, he stated, to receive information rather than to obtain instructions. While they were told that ERU weapons were available for examination, Sergeant Ennis noted that:

“we weren’t instructed to examine them . . . I just want to clear that up. It would be normal procedure for us to examine firearms that had been discharged”.

He would, however, have expected Superintendent Shelly to give him all information relevant to their work. Would that have included being informed of the number of armed officers at the scene and where they were at the time of the shooting? He replied:

“Possibly from the point of view of recording exactly where they were on a map, for instance, and when we have a mapper there, it may have been advisable or required that the exact location of other armed gardaí would be indicated to the mapper so he could place their position or proper position on a map. That may be the case”.

Sergeant Ennis confirmed that four 9mm. cartridge cases were found at the scene. He understood that the ERU weapons were being handed in for examination and that Superintendent Shelly and Sergeant Quinn had made the necessary arrangements. He subsequently called with Sergeant Quinn to see Superintendent Shelly in his office in Mullingar, on Sunday, 23rd April. The firearms were handed over to them there.

He agreed that he had been informed on 20th April by Superintendent Shelly that two members of the ERU had discharged their weapons. He did not recall being told about local armed officers being in attendance. He was subsequently informed, *“on the following evening or the day after”*, that a total of four shots had been discharged and he thought that it was then that he learned that local armed officers had been in attendance when John Carthy was shot. Superintendent Shelly, while not questioning Sergeant Ennis’s evidence, thought that he had mentioned to him that local officers were present.

Sergeant Ennis observed that there is *“really no scientific way that one can determine”* whether a firearm has been recently discharged. One can see fouling from burned propellant, there may be a strong odour or there may be a build up of carbon or discolouration on the firearm which would indicate that it had recently been discharged; but if one wanted to conceal that fact, then the weapon could simply be cleaned. Practically all traces are removed when the gun is cleaned, he observed. He accepted that in certain cases, *“maybe not in this particular case”*, it may be necessary to prove that certain weapons had not been fired. Sergeant Ennis said that:

“... from the point of view of all the weapons from the ERU that Detective Garda Quinn received it would be his duty to look at those weapons, examine them, determine which of them, if any, had been discharged and to link them with any evidence at the scene. In other words, the discharged cartridge cases”.

Sergeant Ennis stated that he did not expect that all of the weapons at the scene would be taken in for examination *“for a number of reasons”*. These were, he said:

“One, being what I was told, that the only firearms that were discharged were by members of the ERU, two members. Two, the number of discharged cartridge cases which were found at the scene agreed with the number of rounds which I was told were discharged. Three, the number of bullets which caused the injury and subsequent death of Mr. Carthy were named by Professor

Harbison as four, so that tallied with everything that I was told and I saw at the scene''.

Whether the weapons in the possession of local armed gardaí at the scene should be examined or not was, he thought, a matter for *“others”*. He agreed with the Chairman’s question that it was not for him to decide but to examine guns presented to him.

It should also be noted that Sergeant Ennis had no recollection of a conversation with Sergeant Quinn in relation to the narrowing down of the request for the gathering of weapons. He stated that while crossfire was something which had crossed his mind, in so far as the ERU members were concerned, he was told that nobody else had discharged their weapons and he believed that *“a certain amount of trust has to arise in relation to this”* and it did not occur to him that a shot might have been fired by a local officer. He contended that he had no suspicion or reason to conclude that a local gun may have been discharged.

6. The evidence of Superintendent Shelly

Superintendent Shelly stated that he was informed by Sergeant Russell that two members of the ERU, Sergeant Jackson and Garda McCabe, had discharged a number of shots at John Carthy. He also stated that he spoke to Sergeant Foley and inquired from him *“what is the position of our people”*. Sergeant Foley then went and made inquiries from the local gardaí and reported back to Superintendent Shelly that none of the local armed officers had fired any shots. Superintendent Shelly stated in evidence that he received this information within minutes of the shooting. Within approximately half an hour to one hour later he learned from Sergeant Foley that they were very much afraid for their own safety, that their lives had been in danger and that they *“feared John Carthy ”*. Sergeant Foley informed Superintendent Shelly that he had his weapon drawn and *“conveyed the message”* that he feared he might have to shoot John Carthy.

While Superintendent Shelly did not see it as his role or function to commence an investigation, and he was not attempting to interfere with such investigation, he gave instructions so as to ensure that the best evidence was preserved. Superintendent Shelly did not direct the examination of firearms and ammunition in the possession of local officers at the scene. He explained that he took this decision because he was satisfied from his inquiries, made at the scene, that only two ERU guns had been discharged and that no firearms belonging to local armed gardaí had been discharged.

Why then were all ERU weapons examined for the purpose of elimination, whereas none of the local weapons had been so examined? The position of the local armed gardaí was different from that of the members of the ERU, he contended, because of a number of factors:

- i. their distance from John Carthy when he was fatally injured;

- ii. the fact that the exit plan tasked the ERU to deal with John Carthy and the specific tasks assigned to local armed gardaí as being back up to ERU members and not having a direct and immediate role with John Carthy in the uncontrolled exit;
- iii. the information from Sergeant Foley that no local armed gardaí discharged their weapons; and,
- iv. his own personal and immediate observations at the scene.

(As to the first point made by Superintendent Shelly i.e., the distances between local armed gardaí and Mr. Carthy when he was shot; it is wrong. The local officers in the vicinity of the ESB pole at the boundary between the Carthy and Burke properties were within approximately ten feet of where the subject was when fatally shot and their evidence indicates that they feared for their lives.)

On further questioning he accepted that John Carthy was within the range of the weapons of the local gardaí. He thought that the fact that the ERU were closer to John Carthy was *"an issue"*. It was suggested to him that in the context of such distances, in this case, that explanation was not relevant and he accepted that it might not be a relevant reason. With regard to the second explanation it was suggested to him, and he accepted, that there was an assumption underlying this reason that the exit plan would work; and further that it was assumed that under no circumstances would local gardaí discharge their weapons. He agreed that he could not state that, because it was an individual decision whether to discharge one's weapon. He accepted that even though in a back-up role, the fact that the local gardaí were armed meant that it was felt that they should be armed and that therefore there was a possibility that they might discharge their weapons. With regard to the fourth reason, he agreed that he had not seen what occurred. He was, he stated, referring to his *"presence"* and that from the first information at the scene there was never a question or dispute about who had discharged their firearms. He stated:

"I think it incredible that something like that could happen and that I wouldn't know about it or be told about it".

He had, he stated, no reason to doubt or disbelieve anything he had been told. The main reason for examination of ERU weapons only was that he was satisfied that two ERU officers had discharged their weapons. That was something, he said, that was established almost immediately. He had the names of the individuals who discharged their weapons and he had, he contended, made *"every inquiry possible"*. Why then did he feel that it was necessary to examine the other ERU weapons? This was, he said, due to the fact that they were in the same group and while he accepted what he was told, they were close by when John Carthy was shot. He disagreed that it was inconsistent to have adopted a different attitude as far as the local weapons were concerned. He stated that there was no deception and that it was *"beyond doubt"* that none of the local guns were fired. He thought that the Assistant Commissioner was as satisfied on this issue as he was. He further accepted that examination of the ERU weapons would provide independent corroborative evidence of what they had said in relation to the weapons discharged. It was suggested to him that in this context it was not only a desirable, but an essential step

to ensure that necessary corroboration was forthcoming. He replied that it was his wish that everything that could be done would take place but for reasons stated (his own knowledge and what he had been told) a decision was made not to forensically examine the local weapons. There was no attempt not to have all the facts brought out, he said, but he made a judgement call and he was satisfied with it.

On that evening a meeting was arranged at Granard garda station, at which garda welfare officers addressed most gardaí who had been present at the scene. Assistant Commissioner Hickey, who was in attendance, informed all present that the Garda Commissioner had directed an investigation and that that investigation was to be carried out by Chief Superintendent Culligan. At that meeting Assistant Commissioner Hickey alluded to the fact that the ERU weapons would be taken in for examination. Superintendent Shelly did not speak to any of the other senior officers that night about examination of the local officers' firearms but he instructed Sergeant Leydon to take possession of all the ERU firearms and ammunition and have them retained for ballistic examination at the Garda Technical Bureau.

Superintendent Shelly stated that he gave no instructions to Sergeant Quinn as to what weapons were to be examined. He had spoken to Sergeant Quinn and Sergeant Ennis at the scene at Abbeylara when they arrived from Dublin and had briefed them on what had occurred. He did not have any discussion with Sergeant Quinn, he said, regarding the examination of all local weapons. He stated that he told him that two ERU officers had discharged their firearms as a result of which John Carthy had been fatally injured. Superintendent Shelly gave his instruction to Sergeant Leydon sometime after 10:00 p.m. on the night of 20th April after Assistant Commissioner Hickey had spoken at the meeting. He stated that he relayed the Assistant Commissioner's wish that the ERU weapons be retained for examination. He knew nothing of a broader request or a decision to reduce the number of weapons to be examined, as suggested by Sergeant Quinn, and he also confirmed that he gave the instructions as recounted in Sergeant Leydon's evidence. The first that he had heard of Sergeant Quinn's decision to reduce the number of weapons for examination was when he, Sergeant Quinn, gave evidence to the Tribunal.

7. The evidence of Chief Superintendent Tansey

Chief Superintendent Tansey learned directly from Sergeant Jackson that he (Sergeant Jackson) had fired two shots from his pistol and he also learned from Garda McCabe that he fired two shots from his Uzi sub machine-gun. A group of ERU and local gardaí were present at the scene and Chief Superintendent Tansey asked the question "*did any one else fire a shot*" and in response people in the group shook their heads. Chief Superintendent Tansey gave no consideration to directing that local guns and ammunition should be ballistically examined, in view of the fact that only two ERU weapons were discharged. In response to a question as to whether he appreciated the significance of corroborative ballistic evidence if no local gun had been fired, he stated, "*I did not foresee the necessity to prove the negative.*"

Chief Superintendent Tansey was instructed by Assistant Commissioner Hickey to convene a meeting in Granard garda station on the evening of 20th April. By the time that he returned to Granard station that evening, Assistant Commissioner Hickey had made the decision that all weapons of the ERU should be collected for ballistic examination.

Chief Superintendent Tansey stated in evidence, that all of the senior officers were satisfied that no local guns had been fired and this was borne out by the actual examination of the scene and the results of the post-mortem. It should be noted however that Professor Harbison had recognised the possibility of a fifth bullet at the post-mortem. According to the Chief Superintendent the practice in previous cases where garda guns had been discharged was that only the guns of the members of the particular unit that discharged their guns were taken for ballistic examination.

Chief Superintendent Tansey had no direct conversation with Sergeant Quinn or Sergeant Ennis on 20th April at the aftermath of the incident, but was present when Superintendent Shelly was giving an outline of the incident to both officers. He stated that he would have been *“shocked if there was any evidence to suggest that any local member discharged their firearm”*.

8. Evidence of Assistant Commissioner Hickey

Assistant Commissioner Hickey learned of what happened from Chief Superintendent Tansey. He received a phone call shortly after the shooting. He went to Granard garda station first and then went to the scene. He was told that four shots had been discharged; two by Sergeant Jackson and two by Garda McCabe. He was given this information, at Granard garda station, by Chief Superintendent Tansey and possibly also by Superintendent Shelly. He also met the ERU officers. He informed them that there was to be an investigation which would be conducted by Chief Superintendent Culligan. He told the members of the ERU to hand over their firearms to Sergeant Leydon whom he knew had been appointed as exhibits officer. Assistant Commissioner Hickey said in evidence that he could not see any possible reason for the local guns to be examined. He did not, he said, inform Superintendent Shelly *“not”* to examine the local weapons, but his *“frame of mind”* was that it was not necessary to examine the local guns.

Assistant Commissioner Hickey relayed his wishes to Superintendent Shelly. He observed that it was open to the ballistic officers to extend the examination if they so wished and that he would not have interfered with such a decision. In view of his belief that local firearms were not discharged he did not see any logical reason to consider retaining those weapons on that evening. He was relying on information from others and had no first-hand knowledge. He confirmed that he met and exchanged pleasantries with Sergeant Quinn and Sergeant Ennis but did not engage in any discussion with them and did not give them any specific instructions. The Assistant Commissioner had no recollection of speaking to Sergeant Leydon after the incident.

9. Cover-up?

Was there a cover-up in relation to the failure to have local weapons examined? Senior officers were questioned in this regard.

During the course of his evidence the following questions were put to Superintendent Shelly:

“Q. Chairman: You see, I am not suggesting that you were part of some sort of cover-up in this regard, I have formed no view in this matter until I have heard all of the evidence; but it does occur to me that some senior officer perhaps might say when, in the ordinary course of events, all guns were going to be examined. (In that regard we must bear in mind Sergeant Quinn’s evidence; he had a change of mind about this, strangely enough.) That some senior officer might say, ‘well now, look, maybe a local gun was fired that we don’t know about and the firer put his cartridge in his pocket. If we have them examined and this emerges then we are in dire straits if it does. Better accept what they have told you and we won’t have their guns examined at all’. Could anything of that sort have emerged?”

A. It doesn’t bear thinking about, Chairman, that . . . (interjection).

Q. Oh it does.

A. To me, it would be a very serious matter. Even thinking like that, I know the point you are making, but that never arose, there was never a question of anything like that. As tragic as it was, from the very minute it happened, moment it happened, I was satisfied what had happened, exactly what had happened and I know that all of the people there, the two people who were senior to me and my other colleagues, were satisfied that that is what happened. Those are the facts, Chairman, I cannot honestly put it any further; but the possibility of somebody interfering with evidence at that scene or that they may have had, Chairman, didn’t arise.

Q. Chairman: Was there any practical difficulty in the matter of having the local guns examined if you had decided that that was the proper course to take?”

A. Absolutely not, Chairman.

Q. Chairman: Absolutely not,

Q. I would have thought so.

A. We gave the reasons as to why we felt that we had the issue more than covered.”

Chief Superintendent Tansey was questioned on whether it would have been of great importance to rule out a “blue on blue” situation and that no local gun had been fired, he reiterated that he “*honestly did not see the necessity to actually prove a negative on that evening*”. No one present that evening, he said, would have had the

presence of mind to pick up a shell from the ground and conceal the fact that they had discharged a weapon. Further, he contended, no local man was on his own and had he fired he would have been seen. If a “cover-up” happened, he stated that he would know it:

“If you are suggesting that I and other members like me covered it up, then the answer is emphatically no, I wouldn’t be a party to something like that”.

He stated that the decision to examine the ERU weapons was based on *“the evidence and on the situation that we found that evening”*. He stated that as far as he was concerned, there was not a scrap of evidence to suggest that a local gun was actually discharged on that evening.

Assistant Commissioner Hickey stated that:

“My whole experience and my ethos and everything we are trained to do would militate against that [i.e., a cover up]. I have no experience or suspicion of any case that I ever knew of or was involved in where some officer discharged a shot and didn’t own up straight away. As I said already, I find it hard to contemplate anything more serious in all the circumstances”.

The possibility of the covering up of a “blue on blue” shooting, which might be regarded as explaining why the second ERU officer fired in the way he did; i.e., that he was concerned for his own safety from other officers discharging their weapons rather than from the threat posed by John Carthy, was raised with Assistant Commissioner Hickey. He was questioned on the possibility of a motivation being to avoid evidence, not that he had in fact discharged his weapon, but that a “blue on blue” situation had occurred and therefore indicative of an error on the part of the gardaí. Assistant Commissioner Hickey stated that he could not see any possible rationale for such a cover-up:

“I couldn’t visualise a conspiracy of those gigantic proportions being hatched there and then and being pursued, and the dangers of making a situation that was bad a thousand times worse would be too appalling to contemplate”.

Anyone who did that, he said, would be bordering on lunacy. Whoever embarked on that road, he said, would not be in a position to predict, down the line, what might happen in relation to forensic evidence or *“other people or other witnesses”*, he contended. The Chairman further questioned as follows:

Q. *“I am not suggesting that you might have been aware that a shot had been fired and that there should be a cover-up to hide that fact, I am not suggesting that. What I am suggesting is might it have been regarded as a safety precaution lest perhaps any local gun had been fired and best not to examine their guns at all?”*

A. *That never arose . . . I cannot overemphasize enough that Chief Tansey and myself and various others, we have disciplined people, we have initiated inquiries, we have run inquiries where some of our own people have gone to prison, in some cases without complaint”.*

10. Firearms records and duty reports

The Garda Code makes provision for maintaining records in relation to firearms and ammunition issued and returned to officers on duty.

Chapter 25.37 – Issue of firearms and ammunition for official use

This imposes an obligation on an issuing member to make a record of the transaction in a book kept for that purpose. Particulars of the issue and return of the weapons and the condition of the weapon is to be noted on its return. It also prohibits the passing of firearms from one member to another at a post and imposes an obligation on the member to whom the firearm was issued to return it to the station officer of the station from which it issued.

Chapter 25.39 – Inspection of firearms and ammunition

This imposes an obligation on district officers to carry out periodic inspections, at least quarterly, of all weapons and ammunition held by members or in stations within their district. Detective sergeants also are obliged to inspect firearms, ammunition and equipment, of every member under their charge once weekly and a record of all examinations should be made and produced for inspection.

Chapter 25.42 – Use of firearms by members on duty

This imposes an obligation on members to make a report whenever firearms have been produced or used on duty on their return to the station.

The evidence

The Tribunal has been furnished with copies of the records maintained at Athlone and Granard garda stations in relation to firearms issued to local members for the period 19/20th April, 2000. Such records were made pursuant to Chapter 25.37 of the Garda Code. It is noted that the records were not kept in a standard format or in a bespoke register. The Granard register contains a complete record of the weapons issued; their serial number; the number of rounds issued; the signature of the recipient; the signature of the station officer; the date of issue and return of the weapon; the number of rounds returned; the signature of the returning officer and the counter signature of the station officer. In contrast, the Athlone register contained no reference to the make of the weapon or the number of rounds of ammunition issued or returned.

Formal duty reports were not made by officers who carried weapons at Abbeylara. The reasons given by them were that an investigation had been announced and that they made statements to the Culligan investigation team. They were not, therefore, it was contended, further required or requested to make duty reports. Thus, for example, Sergeant Foley did not make a duty report pursuant to Chapter 25.42 of the Garda code on his return to Athlone station for the above stated reason. He confirmed that no one had told him not to make such a report. Garda Campbell, stated that following the event in Abbeylara he made a statement but he did not make a duty report. Detective Sergeant John Quinn signed out three firearms on 19th

April at Athlone garda station. He did so on the instruction of Sergeant Foley. These were two Uzi sub-machine guns and a Smith and Wesson revolver. One of the sub-machine guns was for Garda Boland's use. This weapon was subsequently given to Garda Mulligan during the course of the operation. Garda Mulligan returned it to Athlone early on the morning of 20th April.

With regard to the periodic inspection of weapons, evidence was given that no specific inspection was carried out on the weapons following the incident, but that they were checked periodically. Thus, it was stated that on the occasion when the district officer carried out a general inspection he would check the weapons and ammunition stored there and also those personal issue weapons held by detectives attached to that station. Sergeant Foley said that such inspections were not necessarily carried out quarterly in Athlone garda station. He periodically inspected the firearms and ammunition of members under his charge. He could not recall however whether he had done so in the week prior or subsequent to 20th April, 2000. Garda Campbell said that it was not the practice in Granard garda station to carry out a weekly inspection of the firearms and ammunition held by detectives. Instead, once a year the sergeant in charge in the station requested him to produce his firearm and ammunition for inspection.

CHAPTER 8

Conclusions

In the light of the facts found by me which are specified in chapters 1 – 7 herein, and in this chapter, I have reached the following conclusions:—

SECTION A: — John Carthy — his Family History; his Life; Background; Health; Behaviour and Personality

Abbeylara is a small rural village in county Longford not far from the town of Granard. About a mile from the village on a minor road in the townland of Toneymore there are several adjoining dwellings each on a modest parcel of land. The original houses were built by the local authority in the first decade of the last century and were rented to various tenants. Four of the dwellings feature in subsequent events. The first of these on the Abbeylara side is Walsh's house; the next is Burke's dwelling; then the Carthy property, and finally, Farrell's house. The road climbs from Farrell's towards the parish church which is near the village on the side opposite the houses. The road is narrow (being 17 feet wide) but with a hard shoulder along the boundaries of the dwellings.

It appears that over the years the original tenancies were bought out by the occupiers. John Carthy's grandfather was the original tenant of their holding. The house was built in 1906 and was subsequently purchased by the family under a tenant purchase scheme in 1961. On the death of the grandfather, the property passed to John Carthy's father and it was the family home from the time of his parent's marriage in 1972. Save for periods away in agricultural college and while working in Galway in 1999/2000, John Carthy lived all his life in Abbeylara. The house had particular significance for him because of its association with his grandfather and his father who died in 1990. By coincidence both ancestors died at about the same time of year on a Holy Thursday. As it transpired, 20th April, 2000, the date of John Carthy's own death, was also Holy Thursday.

In the latter part of the 1990's the Carthy dwelling was showing its age; it had become dilapidated and had ceased to be fit for occupation as a house. It had reached the stage that in practical terms it required to be replaced by a new house. In August, 1998, Mrs. Carthy wrote to the county council requesting it to provide a new dwelling on the site. The local authority agreed to do so but on terms that, when replaced, the original dwelling would be demolished by the council. In a further letter dated 25th August, 1998 (which was actually written by her son, John, but signed by her) Mrs. Carthy proposed retention of the original dwelling in addition to the new house. The reasons which she advanced in support of that proposition was that the

old house had been the family home since 1902 and they would put forward proposals for the improvement and future maintenance of the building. Although it has not been specifically established in evidence, as John Carthy was the actual author of the letter and the old house was of some importance to him by reason of its association with his late father and earlier ancestors, it is probable that it was primarily his idea to seek that concession from the county council. The latter responded by pointing out that approval for provision of the new house was granted because it was uneconomical to repair the old one; but if Mrs. Carthy proposed to take on that task and repair the house herself, the council would not proceed with providing a new dwelling. That created an obvious difficulty for the Carthy family and the request to retain the old house was not pursued. Its significance is that in 1998, when provision of a new home was in negotiation with the county council, John Carthy appears to have been reluctant to have the original dwelling demolished, notwithstanding its dilapidation and the fact that the new house would be a far superior dwelling for his mother and himself. It underlines the fact that, at times but not always, the old home appears to have had particular importance in his life – a point which re-emerged spectacularly at the time of the siege leading up to his death. A contraindication emerges from the evidence of his cousins, Mrs. Patricia Mahon and Ms Ann Walsh. Mr. Carthy told each of them separately a matter of days before 19th April, 2000 when the siege commenced at the old house, that he was looking forward to going back to Galway after his mother was settled in to her new home; that he had no desire to stay in the old dwelling and looked forward to “getting rid of it”. However, the manifestation of major mental illness which emerged on 19th April, allied to the imminent tenth anniversary of his father’s death, referred to by Dr. Shanley, seems to have revived a compulsive concern about retention of the old house and the perceived need to defend it against all comers which he intimated to his mother soon after the commencement of his violent conduct on 19th April.

John Carthy’s history up to the age of 18 years was unexceptional. He was born on 9th October, 1972 and was the elder of two children. His sister, Marie, was two years younger. He had good health and the benefit of primary and secondary education. However, his father became terminally ill and died on Holy Thursday, 1990. This event had a major effect on him. Subsequently, in 1992 and 1993 when treating John Carthy for mental illness at St. Loman’s hospital, Dr. McGeown, psychiatrist, concluded that his patient had never got over his father’s death and continued to blame himself for it in some way. It is of interest that the records of University College Hospital, Galway where he was treated for a manifestation of his mental illness in January, 1999, under the heading “Significant Life Crisis” it was recorded “death of father eight years ago”.

In 1991 Mr. Carthy decided to enter third level education and to study agriculture as a boarder at Warrenstown College, Co. Meath. This seems to have been his first time living away from home and it was in the shadow of his father’s death. It was not a success. While there he suffered from depression for the first time. Dr. Cullen, his general medical practitioner, found that his condition was severe. He had no interest in activities; was feeling low and had poor self-esteem. He was preoccupied with his father’s death and was worried about his sister’s Leaving Certificate. His

distress was such that he agreed to enter St. Loman's psychiatric hospital as an in-patient where he came under the care of Dr. McGeown. A history of depression, hopelessness and suicidal ideation was recorded. The latter comprised one threat of drowning himself. He was described as sometimes feeling completely hopeless and under what he described as a "terrible burden". His energy was impaired and he lost interest in his studies and in his usual recreational activities. Dr. McGeown made a diagnosis of endogenous depressive illness in a person who he described as "a somewhat diffident sensitive young man". He remained under treatment as an in-patient for two weeks after which he returned to college. However, he suffered further bouts of depression there and eventually decided to give up studies at Warrenstown. He gravitated into assorted unskilled employments, notably in the building trade.

John Carthy's mental illness became exacerbated from time to time and he required three further periods of psychiatric in-patient treatment in St. Loman's hospital under Dr. McGeown, i.e. in July, 1993; August, 1993 and January, 1995 – all as a voluntary patient. The psychiatrist diagnosed a relapse of unipolar depressive illness in a young man with a fairly strong history of manic depression. The assessment of John Carthy's personality which the specialist made was again that of a rather sensitive, insecure, diffident young man probably relatively easily upset by any kind of emotional or physical trauma.

The various medical personnel who treated John Carthy endeavoured to keep him in a stable mental state through a range of medication and in general he collaborated in taking the medicines prescribed for him. He appears to have had a significant interest in his illness to the extent of voluntarily attending lectures about it. However, he suffered occasional relapses and in time he also developed hypomania and mania with occasional manifestations of delusion. The latter included an allegation that his mother and sister were seeking to deprive him of land which he thought was his property. In fact the land belonged to his mother and had been promised to him on her death. I am satisfied that there never was any dispute in the family about ownership of the land in question.

In April, 1995 John Carthy was concerned about what he perceived to be lack of progress in his mental treatment and he consulted Dr. Cullen about referral to Dr. David Shanley, a senior psychiatrist at St. Patrick's hospital in Dublin. The latter carried out a detailed examination and concluded that John Carthy's unipolar depression had developed aspects of mania or hypomania and he diagnosed bipolar affective disorder from which he continued to have manifestations from time to time for the rest of his life. In short, he had become subject to attacks of elation and also at other times to bouts of depression which might include suicidal ideation. He was liable to swings from "highs" to "lows" or vice-versa, but with substantial periods of normality between them when ongoing medication achieved an appropriate balance in his mental state. He did not have the rare condition known as rapid cycling disorder where the patient does not have periods of normality between bouts. John Carthy's problems were also exacerbated by excessive consumption of alcohol occasionally which appears to have been associated with manifestations of bipolar

affective disorder. Dr. Shanley introduced an additional medication, lithium, which is a mood stabiliser and an agent for treatment of manic depression. It achieved good results for John Carthy who Dr. Shanley believed was doing his best to overcome his difficulties. It appears that he remained well until 23rd February, 1997 when he was involved as a passenger in a serious car crash. His arm was trapped under the vehicle. He suffered substantial physical injuries and also significant psychological symptoms which related to the accident and not to his mental illness. His legal action arising out of the accident ultimately settled for £22,000.

SECTION B: — The Shotgun — Fears and Allegations

From 1992 John Carthy possessed a licence for a shotgun which he used to shoot game with friends. It was a Russian-made 12 bore, double-barrelled weapon, maintained in good condition. Mr. Patrick Reilly, a fellow member of the Abbeylara gun club with whom Mr. Carthy shot occasionally, described him as being very careful with his firearm. Mr. Bernard Brady, another member of the gun club, who had also shot game with the subject on several occasions confirmed that he handled his gun with care and attention. Mr. Brady stated in evidence that he had confidence in Mr. Carthy and never felt in danger when rough shooting in his company.

John Carthy's other sporting activity was handball for which he had a substantial reputation. In 1997/8 he was involved in rebuilding the handball court in Abbeylara which had become dilapidated and unfit for use. It appears that a problem emerged after its rehabilitation in that the court was frequently occupied by children and John Carthy had difficulty in finding a convenient slot in which to play. This upset him and appears to have caused him significant annoyance. It was alleged that he threatened to shoot the children but it was not suggested that he took any step to carry out that threat or to frighten the children with his gun. In fact the alleged threats were based on hearsay and, although followed up by the police, it was not possible to trace anyone who had actually heard such a threat. Mr. Carthy denied having threatened anyone. At or about that time he also had a row with a local employer whose wife, Evelyn McLoughlin, complained to the gardaí at Granard garda station (where she was a part-time employee), that she feared for her husband's and her own safety as Mr. Carthy had a gun and was alleged by her to be mentally unstable. She also had heard about his alleged threats to the children. Mrs. McLoughlin made no formal complaint to the gardaí. At that time Mr. Carthy had caused his solicitor to write to Mr. McLoughlin alleging wrongful dismissal by him and that appears to have given rise to her fears. Her complaints are referred to in another context later in this chapter at section Q.

The end result of the foregoing situation was a decision by relevant garda officers that Mr. Carthy's shotgun should be taken from him pending further investigation of the allegations. Garda Cassidy was deputed to do so and on 10th August, 1998 he succeeded in obtaining possession of the gun by having resort to a subterfuge. He alleged to Mr. Carthy that a direction had been issued by higher authority that all licensed guns in the area were to be taken into garda custody for inspection. Garda

Cassidy did not inform Mr. Carthy of any allegations made against him about threatening to shoot anyone or about his alleged mental instability. He accepted the alleged explanation and handed over his gun as requested. Garda Cassidy's reason for adopting a course of deception to obtain the gun from Mr. Carthy was that if he disclosed to him the true reason (i.e., the complaint made and the fear expressed by Mrs. McLoughlin) it is probable that the subject would have refused to voluntarily hand over his gun and a difficult situation would thereby emerge. Mr. Carthy spent much time thereafter endeavouring to recover possession of the weapon from the police. Eventually on 13th November, 1998 he succeeded in doing so, having obtained a letter of support from Dr. Shanley. Thereafter the gun was licensed annually by the gardaí in the usual way without any further complaint or allegation about it. As already stated, the gardaí carried out an investigation about the foregoing complaints but failed to establish any evidence in support of them. No formal complaints were made and the gardaí were unable to trace any witness who actually heard John Carthy threaten to use his gun against anyone. It seems likely that if he said any such thing, it was not intended to be taken seriously and was no more than a manifestation of annoyance. There is no doubt that he was upset and distressed by the conduct of Garda Cassidy in taking possession of his shotgun in 1998 for what he later discovered was a spurious reason and it was one of the grounds why he distrusted the Garda Síochána.

SECTION C: – The Burning of the Goat Mascot

There was also another reason for John Carthy's deep animosity towards and distrust of the police. It arose out of a criminal damage offence in September, 1998. The Abbeylara G.A.A. club had reached the Longford county football final. A local publican called William Crawford, who was not well disposed to John Carthy, had obtained a large wooden effigy of a goat and a car transporter having an estimated value of £2,000 on loan from a friend. It was dressed in the club colours and erected at the village green on the transporter where a week later on the night of 22nd/23rd September the entire was destroyed by fire. Garda records at Granard station indicate that at about 1:00 p.m. on the following day John Carthy called and reported that William Crawford was wrongly accusing him of having burnt the goat mascot. It appears that later on that day Garda David Martin from Smear garda station was informed by William Crawford that he had been reliably told by two eyewitnesses that John Carthy was the person who had destroyed the mascot. The location of the offence was not in Garda Martin's area and he reported it to Garda Turlough Bruen of Granard station to be dealt with by him. The information which he gave Garda Bruen contained little detail and was simply that he, Garda Martin, had confidential information that John Carthy had burnt the mascot and transporter. Without further detail or any investigation by him, Garda Bruen was satisfied that John Carthy was in fact the guilty party and he decided to arrest and interrogate him accordingly. He called to the Carthy home but Mr. Carthy was not there. He asked Mrs. Carthy to tell her son to report to the station at Granard that evening but did not say why. On receiving the message Mr. Carthy thought that it was probably about his gun which was still retained by the police at that time. He called to the station at about 7:30

p.m. where to his surprise he was immediately accused by Garda Bruen of burning the goat mascot which he vehemently denied. It is evident that Garda Bruen accepted without question the information he had been given by Garda Martin despite its paucity of detail and without any investigation by him, and that he firmly believed that Mr. Carthy was responsible for the destruction of the goat mascot on the previous night – a high profile crime which no doubt was of much interest to the people of Abbeylara. Garda Bruen did not regard it as necessary to interview any alleged eyewitness to the offence and appears to have decided that all required of him was to prevail on John Carthy to confess his guilt. The station records state that he arrested the latter at 7:36 p.m., detained him there, and subjected him to two lengthy periods of interrogation in which, throughout, John Carthy proclaimed his innocence. In addition, he alleged subterfuge by the gardaí in obtaining possession of his shotgun. Garda Bruen also obtained the assistance of Garda McHugh, who occasionally acted as a relief detective garda in Granard. He was present for both interviews. Contrary to police practice and instruction, no notes were taken by either officer. Garda Bruen's explanation in evidence was that he intended to take notes but Mr. Carthy was talking too quickly and he was anxious not to interrupt him as that might discourage him from giving his account. I do not accept that explanation. John Carthy's response was basic and simple. He vehemently denied having any part in the burning of the goat mascot. He had already lodged a formal complaint in the garda station earlier that day about William Crawford's false allegation. The note required of Garda Bruen would have been the recording of a simple denial which would not discourage the arrestee from giving his account as alleged. Furthermore, there was nothing to hinder Garda McHugh from taking notes. He conceded that fact in evidence and alleged that he did not remember at the time his duty to do so. That explanation is also rejected.

Circa 10:30 p.m. Garda Martin, having made further investigations, phoned Garda Bruen in response to an earlier call from him. The information originally given by William Crawford to Garda Martin was that he, Crawford, had been told by two reliable named persons that they had witnessed John Carthy burning the mascot. This was the basis of Garda Martin's belief that Mr. Carthy was the culprit. He did not contact either of the alleged eyewitnesses but assumed that Crawford and they were truthful and that John Carthy had in fact been seen committing the crime. Having contacted in response to Garda Bruen's phone call one of the alleged eyewitnesses he, Garda Martin, discovered that Crawford's information was untrue. The alleged witness had not seen John Carthy burn the mascot. It transpired that the latter had been wrongly arrested and accused of malicious damage by Garda Bruen. Circa 11:00 p.m. Mr. Carthy was released from custody and made his own way home from Granard station. He obtained a lift by car from a friend, Mr. Bernard Reilly. The latter stated in evidence that John Carthy told him on the way home that he had been arrested by the police and charged with burning the goat mascot notwithstanding his denial of having done so. He was upset and complained to Mr. Reilly that he had had *"a rough time at the station"*. On the following morning Mr. Carthy attended Dr. Cullen, his general practitioner, and consulted him about alleged physical assault by garda officers on the previous night while in detention at Granard station having been arrested and charged with the burning of the goat mascot. He

complained to the doctor, that *“he was sore around his neck”* and had *“pain in his upper neck”* which Dr. Cullen specified in his notes as being *“along the left side”*, but he found that the range of neck movement was normal. He did not find bruising on examination but there was tenderness in the area indicated. Dr. Cullen expressed the opinion that the type of tenderness which he found would be consistent with some trauma or application of force. The doctor described John Carthy as being distressed about his treatment by the gardaí. In his, Dr. Cullen’s, opinion his patient’s agitation was caused by a combination of being accused in the wrong and of being assaulted. He sent Mr. Carthy to Mullingar hospital for x-ray examination. No bony injury was found. Minor soft tissue injury, such as tenderness, would not be apparent on x-ray examination.

In the light of Dr. Cullen’s evidence on this issue, which I found to be patently fair and carefully expressed, it appears that John Carthy was probably subjected to physical abuse while under interrogation by Garda Bruen and Garda McHugh at Granard station on the night of 23rd September, 1998 and falsely accused of burning the goat mascot. Minor injury consistent with the allegations made to Dr. Cullen by Mr. Carthy of police assault while under interrogation indicates the likelihood that he was in fact subjected to some physical abuse while in custody and Dr. Cullen’s conclusion in that regard appears to be well founded. I do not accept the evidence of Gardaí Bruen and McHugh that neither of them physically abused the subject while under interrogation after an unjustified arrest and charging with a substantial crime.

As demonstrated by the immediate arrest and interrogation of Mr. Carthy within six minutes of his arrival at Granard station, there is no doubt that Garda Bruen positively believed that Mr. Carthy was guilty of the offence charged and he rejected his emphatic pleas of innocence. It is highly probable that, having recruited Garda McHugh to add further pressure in interrogation, Bruen set about attempting to extort a confession from the detainee. I apprehend that in these circumstances the interrogation would have been robust and that when it failed to achieve its purpose it spilled over into some physical abuse of the accused. When that also failed to achieve a confession of guilt, Garda Bruen realised that he had no evidence to sustain the accusation of crime he had brought against Mr. Carthy and shortly afterwards he learned from Garda Martin that Crawford’s allegation against the accused was untrue and that there was no justification for his arrest. On discovering that information, it would have been evident to Garda Bruen that he was in major difficulty (over and above responsibility for physical assault of a detainee in garda custody) as he was liable to be in serious professional trouble if his performance in connection with the interrogation of Mr. Carthy regarding the destruction of the goat mascot came to the knowledge of his district superintendent, a commander who expected proper conduct by his subordinates. On his own evidence Garda Bruen was guilty of indiscipline and negligence (a) in causing a member of the public to be arrested and accused of a serious crime without proper investigation or cause; (b) in failing to investigate before arrest the strength of the evidence (if any) which might be relied upon by the prosecution in establishing the guilt of the accused; (c) failure to ascertain the identity of and to interview any purported eyewitness to the crime alleged against the accused; (d) failure to ascertain before arrest that no eyewitness

to the crime had been interviewed by Garda Martin or by any other garda officer; (e) failure to carry out any investigation into the accusation made by William Crawford about the alleged destruction of the goat mascot by Mr. Carthy; (f) failure to comply with garda regulations about making notes of what transpired at and what was said during the interrogation of John Carthy or to direct Garda McHugh as his subordinate to take such notes.

The arrest, detention, interrogation and ultimate release of John Carthy on 23rd September, 1998, including the deceased's allegation of physical assault by his interrogators, was the subject-matter of some investigation by Chief Superintendent Culligan's enquiry into events at Abbeylara, including the relationship between John Carthy and the local police. However, the Culligan report contains no criticism of Garda Bruen or Garda McHugh and is patently sparse on detail. Notwithstanding obvious serious failures by Garda Bruen in particular, to which I have already referred and which he did not contest in evidence, Superintendent Byrne, who succeeded Superintendent Cullinane on his retirement in August, 1999 as area officer at Granard, did not investigate Garda Bruen's performance, nor did he ever interview Dr. Cullen about the issue as to whether John Carthy had been subjected to physical abuse while in garda custody under interrogation. It is evident that the history of the subject's arrest and interrogation about alleged responsibility for the burning of the goat mascot was an episode which was seriously embarrassing for the Garda Síochána and not one to which the superintendent would wish to draw attention. Instead, without any further investigation of the matter, Bruen was subsequently promoted to the rank of sergeant. The Tribunal Terms of Reference do not extend to an investigation of how that promotion came about. Both scene commanders are discredited by failure to instruct Detective Sergeant Jackson, the ERU negotiator, fully about the goat mascot arrest and detention of Mr. Carthy and what followed, and also the taking into possession and retention of his shotgun by subterfuge shortly before the mascot arrest and without any evidence in support of hearsay allegations made against him. John Carthy's attitude towards the police and the reasons for it became of major significance in the conduct of Sergeant Jackson's attempted negotiations with him during the siege which culminated in his death on 20th April, 2000. If the negotiator had been properly advised as to the cause and extent of John Carthy's animosity towards and distrust of the police, it might well have had an important bearing on his approach to the deceased and how he (Jackson) should handle the crisis at Abbeylara. He was deprived of important information by the scene commanders.

Another aspect of the misconduct of Garda Bruen regarding the arrest, detention and interrogation of John Carthy and related matters, including accusations of having destroyed the goat mascot, was of particular significance to Mr. Carthy in the context of his mental illness. There is evidence that these matters were etched in his mind and returned many times thereafter, including the period ending in his death. Garda Bruen has stated that at the time of the arrest he was unaware that John Carthy suffered or had suffered from mental illness. I do not accept that evidence. It is unlikely in the context of what had happened in the previous month (August, 1998); i.e., that complaints had been made to gardaí at Granard about alleged threats by

John Carthy that caused Sergeant Nally, to decide that the subject's gun should be taken from him while the allegations were investigated and also details were obtained about his mental health of which some information was known to the police at that time. Gardaí Earley, Connolly, Cassidy and Newton and Sergeants Monahan and Nally, both sergeants in charge, were all aware of the foregoing matters. Granard is not a large station. It seems probable that unusual events such as the obtaining possession of Mr. Carthy's gun and information about alleged threats made by him and about his mental health would tend to become general knowledge in the station. It would be surprising if Garda Bruen or Garda McHugh had heard nothing about any of these matters.

As to the allegation of physical abuse of Mr. Carthy while in police custody; it has been contended that if such abuse had happened on 23rd September, 1998, in all probability he would have referred to it in the course of his meeting with Superintendent Cullinane in the following month. In fact he did not mention on that occasion his arrest about the goat mascot or anything connected with it. It seems to me that it is entirely credible that he made no such complaint at that time. His objective at the meeting with Superintendent Cullinane was to obtain the return of his gun. It is unlikely that he would raise any topic which might militate against that intention. The same observation applies to the fact that John Carthy did not refer to the goat mascot arrest or garda abuse in course of discussions about return of his gun in late October, 1998 with Sergeant Monahan (a sergeant in charge at Granard).

By way of postscript; it is noted that Sergeant Monahan stated in evidence that he was satisfied that John Carthy had nothing to do with the burning of the goat mascot. His opinion is interesting in the context of Garda Bruen's performance.

SECTION D: — December 1998 — a Relapse in Galway, and subsequent Medical History

At Christmas of that year John Carthy and his mother went to Galway to visit Marie Carthy and to stay with her for the holiday period. Ms Carthy stated in evidence that while in Galway her brother had an episode of bipolar depression and *"he asked to be admitted or he asked me to bring him to the doctor or the hospital or whatever, because he didn't want to be admitted back to St. Loman's again and he knew he was sick himself"*. She and her mother brought him to University College Hospital on 26th December and he was admitted as an in-patient. He had complaints of poor sleep for the previous two weeks; feelings of irritability and exhaustion and poor concentration. It appears that he also had periods of elation and the admission note describes him as *"admitting to abusing alcohol whenever he became elated"*. His speech was rapid but he was not suicidal. His mood gradually stabilised and his speech became more normal and coherent. It was also recorded in the hospital note *"he feels he has let everyone down"* and, as already stated, the *"death of father eight years ago"* was recorded as a *"significant life crisis"*. He recovered sufficiently to be discharged on 6th January, 1999 as an out-patient. On his discharge he denied

“suicidal ideation, death wish or thoughts of self-harm”. He was discharged as an out-patient at the end of January and attended Dr. Shanley at that time. He saw Dr. Shanley again on 11th March, 1999. It was found then that his concentration was poor and his appetite was fair. He moved to Galway to work in March, 1999 but was unable to obtain employment for some time. He was living in digs with some other men.

Dr. Shanley saw Mr. Carthy on 11th June, 1999. This was his final consultation with him prior to the date of his death in April, 2000. His mood was a little better then, he was sleeping well and his concentration had improved. His appetite had not yet returned to normal. He had obtained some employment in Galway and was working a few days a week. He was drinking occasionally and smoking up to thirty cigarettes a day. Dr. Shanley was pleased with his progress and thought that his patient seemed to have adapted to living in Galway and to be getting on well there. He was not depressed or elated at that time. Marie Carthy phoned in early April, 2000 to make an appointment for her brother to see Dr. Shanley in Dublin. The date arranged was 20th April. Dr. Shanley conceded that he may have been contacted by Dr. Meagher (Dr. Cullen’s partner) sometime in early 2000 about a recent period of elation suffered by Mr. Carthy which caused Dr. Shanley to alter medication for the time being. He was told that his patient had been off work since 21st January, 2000.

SECTION E: — Four Events in January/February, 2000

Four important events occurred in John Carthy’s life in January/February, 2000. One of them in particular may well have had a great significance in the context of the exacerbation of his mental illness in the last two days of his life and the manifestation by him for the first time of protracted violent conduct of a grievous nature which involved repeated firing of his shotgun in the direction of garda officers near his home on 19th/20th April.

Before examining these events it is useful to look at John Carthy’s character and personality as they appeared at that time. The two senior psychiatrists, Dr. McGeown and Dr. Shanley, who treated him on numerous occasions and at some length for mental illness described their patient as being in the words of Dr. McGeown *“a sensitive, diffident young man, probably relatively easily upset by any kind of physical or emotional trauma”*. Dr. Shanley never witnessed John Carthy being aggressive. In his opinion he did not have an aggressive personality. (*“He was a quiet, very sensitive sort of person”*). Dr. Bluett, John Carthy’s general practitioner in Galway, assessed his patient as being *“quiet and affable”*. However, exacerbations of his bipolar disorder from time to time whether depressive, hypomanic or manic brought about substantial deterioration in his personality and on occasions led to delusions. The extent of the deterioration appears to have been related to the gravity of the stress factors affecting his life at a particular time which in turn might spark off excessive drinking or might otherwise lead to a serious exacerbation of his mental condition. Correspondence from John Carthy to which I shall refer presently provides a truly remarkable insight into the mind, nature and character of the author and the

underlying sadness and difficulties in his life which emerged when his mental illness developed further dimensions as time went on. It also underlines the reality of the close personal relationships with his sister and his girlfriend both of which were of fundamental importance to him.

The events in John Carthy's life in January/February, 2000 to which I have referred are described and commented on in the following passage from a ruling made by me on 19th November, 2004 in response to an application by counsel for the Garda Commissioner and certain junior officers relating to the evidence of a particular person identified as Ms X. The entire of the ruling is contained in Appendix 7.L.

“The Application

The application relates to written statements and a letter, originally furnished in confidence, which the Tribunal has received from Ms X in which she describes in detail the history of an intimate personal relationship which she had with the late John Carthy while they both resided in Galway in January and February, 2000 and an explanation of how and why it was terminated by her towards the end of February that year. Associated with the latter documents are others, including two letters written by Mr. Carthy to Ms X in February and March 2000; statements obtained by the Tribunal in response made by Mrs. Rose Carthy and Ms Marie Carthy, the mother and sister of the deceased, regarding matters arising out of information given by Ms X. There are also the written responses of Dr. John Sheehan, psychiatrist, and Dr. Ian McKenzie, psychologist, to the information furnished by Ms X. Her personal truthfulness and the veracity of what she has stated has not been contested by counsel for any party to the Tribunal, though some information furnished to her by Mr. Carthy has transpired to be erroneous and may be the product of delusion on his part arising out of a manifestation of his mental illness. Ms X's counsel, Mr. Patrick McCarthy, S.C., has informed the Tribunal that his instructions are that his client can add nothing further to the information she has given in her statements.

Counsel for both Garda parties submit that the information furnished by Ms X should be the subject-matter of oral testimony to be given by her in public on the ground that it is relevant to issues which the Tribunal is required to address under its Terms of Reference from the Oireachtas. It is further argued that, if held to be relevant, Ms X's testimony is required by law to be heard in public notwithstanding her prima-facie constitutional right to privacy as an innocent party in respect of an intimate, personal relationship and the harm which publicity is likely to bring about for her.

It is accepted by counsel for all parties that the root issue which I have to determine on the application is whether or not the statements made by Ms X are relevant to any issue which the Tribunal has to determine under its Terms of Reference from the Oireachtas. These are as follows:

“to inquire into the following definite matter of urgent public importance:

- the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co. Longford on 20 April, 2000; and to report to [the Oireachtas] and to make such findings and recommendations as it sees fit in relation to these matters;”

The Ms X Statements

Essentially her statements supplement information already known to the Tribunal from evidence which it has received. She confirms that in early January, 2000 she met John Carthy in Galway; there appears to have been an immediate mutual attraction between two persons of similar age and general background. An intimate, personal relationship developed rapidly through, it seems, almost daily contact. She found that John Carthy had a friendly, caring, affectionate personality. He was working at that time and was happy. She describes them as getting on well together and it appears that a real loving relationship was emerging between them. This is borne out by subsequent correspondence which John Carthy had with Ms X. At or about the end of January Mr. Carthy's situation changed radically in two respects. First, his lease of accommodation ended and he had to find an alternative place to live and also temporary accommodation in the meantime. His friends were unable to help him originally and he told Ms X that his sister, Marie, was not prepared to let him share her one room bed-sit as a temporary measure. In a statement furnished to the Tribunal in response Ms Carthy denies that she was asked by her brother to accommodate him at that time. She stated that she had done so occasionally in the past. The end result was that Ms X provided accommodation for John Carthy with her for a period of weeks. It transpired to be a very distressing time for her.

The second downturn in Mr. Carthy's life then was the loss of his job and a dispute in that regard which led to trade union involvement and a one-man picket mounted by him at his employer's premises. He was distressed that his fellow workers, though offering their support originally, failed to give it.

It is evident that the combined effect of the foregoing events comprised a serious quite sudden decline in Mr. Carthy's circumstances which lead to a relapse of his mental illness and the onset of a manifestation of mania which brought about a major change in his personality and relationship with Ms X. She described that his attitude towards her changed radically. He became “domineering, possessive, jealous, argumentative and demanding of her time”. He remained unemployed and she was obliged to provide for him. He was not physically abusive to her, but he subjected her to ongoing verbal abuse and insults. The end result was that what seemed to be a beautiful personal relationship developing between them was destroyed by a manifestation of his mental illness, probably arising out of the downturn in his life at that time. Ms X appears to have been shattered by John Carthy's changed personality. Nonetheless she persevered with the relationship for some weeks but, as there appears to have been no improvement in his behaviour, she decided in the end that it could not and ought not to continue and that it would have to be

terminated. And so she brought it to a final end on or about 20th February, 2000.

John Carthy's reaction to the termination of the relationship is contained in a letter written by him to Ms X in an effort to restore the situation between them. It confirms her account and he recognised that his conduct towards her, the product of his mental illness, had brought about what he regarded as a tragedy in his life. It is appropriate to quote the contents of that letter as it not only corroborates Ms X's information but it explains the extent of John Carthy's knowledge and appreciation of his mental illness at that time. It also makes clear the importance which he attached to the severing by her of his relationship with her and the fact that he regarded it as a great tragedy in his life. In all probability it was one of the factors which contributed, with other major events, to unbalancing his mind at Abbeylara two months later to an extent far beyond what had ever happened to him before. His letter is in the following terms:

"26/02/00

Toneymore,
Abbeylara,
Co. Longford

Dear [X]

I do not want to get you into trouble with your boss, by phoning you at work, I just want to let you know, that I am missing you and let you know how I feel about you.

You know that I believe that a person should not be with someone unless they love them, as I do you. I hope you feel the same, furthermore whatever decision you make I will respect it and will not be pestering you. I think too much of you to upset you any further. I give you my deepest apology for the upset and annoyance I have put you through.

I haven't told you this before but due to the fact that from time to time I get elated (high) has caused me, not to get deeply involved with someone until I met you. You are the first I told about this problem I have. I have been perfect for quite some time and I'm fine again thank God. I am sure you can understand somewhat, The way I have been acting in the last few weeks has put a lot of strain both on you and those closest to me. Marie in particular has been very upset and my friendship with "Pepper" has been put under strain. To them I owe a lot. But it is you [X], I have hurt most and it is this that upsets me most.

I do not wish to use this problem as an excuse for my behaviour but it is this that has made me so impatient and argumentative and so overbearing over the last while. I admire you for your honesty and you should always be in the future as trust is always best, in the long run.

I am sure we would be still together were it not for me being elated and my mood swings.

Being elated has never got me into trouble really but if it means that I have lost you, it has been very costly and ruined my happiness.

When I am “high” everything, must in my mind, be instant. Although it is usually a pleasurable experience being elated causes a lot of frustration for loved ones. As for my feelings at the moment. I have never been as happy with anyone before and I hope all is not lost.

It seemed to me, to be the real thing, “I never thought love could feel so good”. I told you on numerous occasions that I would be honest with you and I mean every word I say.

I feel something this good, only comes along once in a lifetime and I hope all is not lost. My friends could not understand why I was so happy when I met you, they didn’t realise how much you meant to me and you still do. With the elation goes big ideas, racing thoughts that has left me impatient. I hope you understand. My mood is fine now due to the emptiness and sadness due to missing you.

Maybe I don’t deserve a second bite at the cherry but I believe everyone deserves a second chance. The way I have been acting irrationally over the past few weeks hasn’t happened for five years up until now. [That statement is untrue in the light of evidence relating to in-patient mental treatment.] So while it has caused a lot of hassle to both you and Marie it is not a persistent problem and I hope you can take this into consideration.

Maybe we could meet to have a chat. I think we owe that to each other. I will be in Galway probably next Wednesday or Thursday. Maybe we could meet then “hopefully”.

I hope this letter gives you some idea of how I still feel about you. I hope it also gives you some explanation of the reason for my out of character behaviour which led to this situation.

No matter what has happened you still mean everything to me and I hope we can sort things out. By the way I hope you had a good weekend.

Your happiness is most important to me and I mean that. I could write all night but what I have written, means something to you, hopefully. Its now 1.50 a.m. I should go to bed.

Missing you more than words can say.

Love John XXX”

That letter, and another to Ms X shortly afterwards, did not bring about any change and, it seems, did not weaken her resolve that the relationship should remain terminated.

The next event after the ending of the relationship as established by evidence is that it immediately sparked off conduct by John Carthy on 20th February in Galway which so concerned Mr. Carthy’s sister, Marie, that she orchestrated his arrest by the police for the purpose of an immediate medical examination of him by Dr. Dymphna Horgan (a general

practitioner) while he was in police custody. She found him to be elated but not manifesting signs of serious mental disturbance. She recommended a referral to Dr. Shanley who she was told by John Carthy had been giving him psychiatric treatment. Ms Carthy made an appointment for her brother to see Dr. Shanley at St. Patrick's Hospital, Dublin on Holy Thursday, 20th April which transpired to be the day on which he was fatally shot.

Evidence has established that John Carthy returned to his home at Abbeylara. He obtained employment locally but gave it up in the week before his death – probably because of excessive drinking. Serious storm clouds continued to gather in his life. These included the fact that Holy Thursday was the tenth anniversary of his father's death (a relationship which had been particularly important to him); it coincided with what John Carthy appears to have understood as an imminent disaster i.e. the demolition of the original family home by the local authority as a new house on site had been provided to replace it. The old house had been the Carthy family home for generations. He associated it particularly with his father and grand-father. He did not want it to be destroyed and he seems to have indicated an intention to defend it against all comers, including the Gardaí, if necessary. It has been clearly established, and it does not seem to be in dispute, that the coalition of perceived disasters in John Carthy's mind on 18/19/20th April, 2000 finally drove him into a far more grievous manifestation of mental derangement than he had ever displayed before. In particular, it entailed for the first time physical violence and that in an extreme form over a protracted period of about twenty-seven hours, which involved firing from his house thirty shots with his shotgun which were mostly directed at Garda officers who were in his vicinity. It is evident that the manifestation of mental illness displayed by John Carthy at Galway and on other occasions during the previous ten years were of minor significance by comparison with what transpired at Abbeylara and it is evident also that what happened at Galway and/or elsewhere earlier did not constitute an advance warning of the profound change in John Carthy's conduct which became manifest in the last two days of his life. In short, a further in-depth investigation of his comparatively modest manifestation of mental illness at Galway or earlier, and of the intimate personal relationship between John Carthy and Ms X, are not remotely likely to furnish relevant new information or shed any significant light on the huge manifestation of mental illness displayed by Mr. Carthy at Abbeylara and how the Garda should have dealt with it in the light of the information then at their disposal or information and assistance which might have been available to them if they had sought it at that time.

I am satisfied that the foregoing assessment is an accurate description of John Carthy's situation in the final days of his life. In summary, the following events coalesced to create for him an appalling situation with which he was unable to contend.

- i. Exacerbation of his mental illness which he realised had destroyed an intimate personal relationship with Ms X which was of fundamental importance to him.
- ii. Ms X's inability to contend with his illness, in particular his changed personality occasioned by it, and her termination of their relationship. His letter to her reveals that because of his mental difficulties since 1990 he had previously refrained from having a close relationship with any other woman. Ms X, therefore, was of very great significance in his life. We know from the family that at the time of the siege, which was two months after Ms X had terminated the relationship, it was known that he was still greatly distressed about it to such an extent that Detective Sergeant Jackson was asked not to refer to Ms X in negotiations with John Carthy as to do so would upset him. The negotiator agreed to that request and did not raise the matter with him.
- iii. The tenth anniversary of his father's death was at hand. By coincidence it coincided with the imminent demolition of the old family home which, as already stated, was intimately connected in the mind of John Carthy with his father and grandfather. He may have been motivated by a desire not to fail them and, in their memory, to defend the old home from destruction.

The evidence indicates clearly that the combination of the foregoing tragedies carried John Carthy into a massive manifestation of his bipolar mental condition and, as already stated, introduced protracted violent conduct which he had never engaged in before. Defence of the old home against all-comers appears to have become the vehement objective of his behaviour. The arrival of the police and commencement of the siege added another dimension of distress and resurrected in John Carthy's mind his deep animosity towards the Garda Síochána arising out of the wrongful seizure of his gun and the goat mascot episode in 1998, including his allegation of physical assault by police interrogators at that time. The end result was readily apparent from his conduct in shooting frequently in the direction of garda officers and his negative response to the repeated efforts of Detective Sergeant Jackson, that John Carthy would not negotiate with the police and, in particular, that he would not surrender his gun to them or be seen to capitulate to the gardaí. Did the scene commanders, their superiors and the negotiator understand the realities of the situation as it emerged and how should they have responded to it?

SECTION F: — The Response of the Garda Síochána at Abbeylara

After the first few shots were fired by John Carthy (it seems at no particular target) he told his mother to go to her sister, Mrs. Nancy Walsh's house nearby. She did so and there met her sister, her niece Ann Walsh, and Ms Alice Farrell, her next door neighbour. All were much upset by John Carthy's conduct. It was decided that the aid of the police should be sought. Rose Carthy phoned Granard station and informed Garda Gorman of what was happening. Mrs. Mahon, another daughter of Mrs. Walsh, was also telephoned by the family. She notified Dr. Cullen and asked

him to come to the scene which he did shortly afterwards. Three gardaí then arrived from Granard, including two armed detectives. Detective Garda Campbell and Garda Gibbons. They parked their patrol car in the Carthy driveway, took cover and endeavoured to negotiate with John Carthy. His response was to fire at and damage the police car. No one was in it at the time. Garda Gibbons, one of the officers who had arrived at the scene, spoke to Dr. Cullen and was warned by him about John Carthy's animosity towards the police. He did not seek any further detail from the doctor relating to the warning but he did inform Superintendent Shelly, the scene commander, of what he had been told. The latter took no steps to obtain any further information from Dr. Cullen about his warning or regarding Mr. Carthy's mental state, or medical advice on how the situation might be dealt with.

When first informed of the incident by Mrs. Carthy, Garda Gorman contacted Superintendent Byrne, the area commander at Granard, who was then in Dublin attending a meeting in Garda headquarters. It was arranged that Superintendent Shelly, the area commander in Mullingar, would take charge, pending Superintendent Byrne's arrival later that night. The former agreed to do so and set about assembling a detachment of ten armed detectives recruited from various stations in the general area and also a group of unarmed uniformed gardaí. Superintendent Shelly's plan was to mount an armed cordon around the Carthy house to contain the gunman, and to use uniformed officers to set up roadblocks to prevent traffic from entering the area and also to patrol outlying fields to forestall members of the public from approaching the scene. Occupiers of houses in the immediate vicinity were also moved elsewhere for their safety.

The foregoing plans comprised an appropriate immediate response to the situation and were put in place. However, a practical difficulty was that neither Superintendent Shelly or Superintendent Byrne, who rotated as scene commanders, had prior experience of dealing with any form of armed siege or with dangerous conduct which was motivated by mental illness. The local armed officers had no such experience either. This problem was averted to by Chief Superintendent Tansey and Assistant Commissioner Hickey, the area superiors of the scene commanders. They decided that it was advisable to obtain the benefit of assistance from the Emergency Response Unit, a specialist body which is specifically trained in dealing with armed siege situations. However, the ERU also had no training in contending with a dangerous armed person motivated by mental illness. Detective Inspector (now Superintendent) Hogan of the ERU dispatched to Abbeylara a unit of six officers who were fully armed and equipped to deal with a siege situation. All had been already on duty elsewhere that day. The group comprised a tactical unit of four men under Detective Sergeant Russell; Detective Sergeant (now Superintendent) Michael Jackson as negotiator and Detective Garda (now Detective Sergeant) Sullivan whose function was to assist the latter as messenger and note-taker. Sergeant Jackson had no prior experience as a siege negotiator, but in the previous month had attended a two-week negotiation course organised by the London Metropolitan Police relating to siege situations involving armed criminals with hostages and crisis intervention. Garda Sullivan had no training in negotiation.

Superintendent Shelly, the original scene commander at Abbeylara, who had assembled the local armed officers and uniformed men and had set up the original cordons, was not consulted by his superiors about replacing his armed personnel by the ERU unit – nor was Superintendent Byrne. I do not criticise the decision to recruit the services of a specialist ERU unit to deal with what was obviously a difficult and unique situation, but the risk to morale through implicit criticism of local officers who were already in place should have been reduced by giving their own commander encouragement to prepare his men for the proposed change by an appropriate explanation for it. Evidence emerged subsequently of disquiet of at least one local armed officer, Detective Sergeant Foley, about the ERU performance.

The ERU unit arrived at Abbeylara circa 10:00 p.m. on 19th April. Superintendent Shelly accepted Sergeant Russell as tactical commander at the scene, subject to his (Superintendent Shelly's) overall authority and that of Superintendent Byrne as scene commanders. It was accepted that the primary tactical objective was to contain John Carthy in his house and to negotiate his surrender. The possibility was adverted to that he might elect to leave his home, armed with his gun in a threatening way, and proceed in a direction determined by him. In that event (which is what ultimately transpired) he would be the object of moving containment by the ERU tactical unit. How this would happen and how it would come to an end was never clearly defined in evidence.

It was also decided, apparently without any objection by Sergeant Russell, that the scene commanders' personal headquarters would be a police jeep which had been parked on the road between Burke's gate and the Carthy entrance by the ERU. Other police vehicles, such as the car in which Ms Marie Carthy, Dr. Shanley, Tom Walsh and Martin Shelly were sitting when John Carthy was fatally shot as he walked towards them, were also parked on the road in that area. From time to time, uniformed men and others came to view the scene in the vicinity of the command vehicle. Some were present there when Mr. Carthy vacated his house.

Soon after their arrival, the ERU tactical unit replaced the local armed officers around the Carthy house. The latter group when withdrawn seem to have been left largely to their own devices. They remained in the general vicinity with a vague instruction issued by Superintendent Shelly through Sergeant Foley that their function was to be on stand-by to assist the ERU if required, e.g., to replace any of the latter if injured or killed by John Carthy. If the local armed officers had any significant function at the scene after their replacement by the specialist unit, it was limited to the retention of three or four of them at most. On any view, the remainder had become superfluous. Furthermore, when three additional ERU officers arrived at the scene and took up tactical duty at circa 1:30 p.m. on 20th April, even allowing for rest periods, the requirement for continued retention of any local armed officer appears to have come to an end. All should have been withdrawn then. The continued presence of some of them on and about the road in the vicinity of the command vehicle near Burke's gate created a potential disaster situation which ought to have been adverted to by the scene commanders and by Sergeant Russell. The account which emerged in evidence about what took place when John Carthy walked up the road in the

Abbeylara direction carrying his gun in what was perceived to be a threatening manner before he was fatally shot, establishes that there was substantial confusion and some panic at that time. This was borne out by Sergeant Russell and others, who were well placed to see what was happening on and about the road in the vicinity of the command vehicle. It is evident that all concerned were taken by surprise and many local (armed and unarmed) and some ERU officers suddenly found themselves in what they perceived to be potentially dangerous situations and some of them appeared not to know what to do.

It is evident that the implications of a sudden emergence of John Carthy armed in a threatening way on the road outside his dwelling had not been thought out and no specific preparations were made for that eventuality. The situation at the scene which had pertained from the beginning was allowed to prevail and, as stated already, it had an obvious potential for disaster in the following respects:

- i. The command vehicle and those on the road in its vicinity were vulnerable to attack by Mr. Carthy. Superintendent Shelly, the scene commander, who had to run for cover was one of those exposed to potential danger.
- ii. Various armed and unarmed uniformed police on and about the road in the vicinity of Burke's and Walsh's properties were exposed to potential danger.
- iii. A possibility of a "blue on blue" situation existed as Mr. Carthy walked up the road and there was an obvious risk of it developing into a shooting involving a local gun or local guns on the Abbeylara side of the road and ERU men in the vicinity of John Carthy as he walked towards the village.
- iv. Sergeant Foley, who was with Garda Boland (both of whom were armed and on the road near the command vehicle), has stated in evidence that he feared for their lives. He drew his gun and was within an instant of firing at John Carthy when shooting by ERU men commenced and the deceased was fatally injured. Sergeant Foley stated when examined in the Culligan investigation, and repeated in evidence to the Tribunal, that he felt compelled to shoot John Carthy because the ERU were taking no action against him and he believed that the specialists had left it to Boland and him to defend themselves. He denied having fired at or in the direction of Mr. Carthy before the ERU opened fire on him. It is surprising to find a garda officer gratuitously criticising the conduct of other officers from a specialist unit in the course of their duties in a dangerous, difficult situation. On his own evidence the end result was that, although they were in his opinion dilatory, the ERU men did fire on John Carthy and one of them fatally injured him, thus obviating the need for him (Foley) to open fire. He offered no explanation for his apparent criticism.

On any view the incident described by Sergeant Foley and the evidence of Detective Garda (now Sergeant) McCabe that he shot John Carthy in the back because he feared that the deceased would shoot some officer in the vicinity of the command vehicle, establishes beyond doubt that the presence of Sergeant Foley, Garda Boland and others on and about the road in the vicinity of Burke's and Walsh's houses when

John Carthy appeared on the scene created the ingredients of a tragedy which in the event culminated in the deceased's death.

The scene commanders, in fairness, probably through inexperience and lack of sufficient training in dealing with the difficult situation with which they were confronted, did not appreciate the potentially grievous situation of danger which they allowed to prevail on and about the road to Abbeylara. It is evident also that they did not realise the implications of their failures in that regard. Surprisingly, the senior officers, Chief Superintendent Tansey and Assistant Commissioner Hickey also did not appreciate the potential gravity of the situation which was allowed to persist for many hours.

SECTION G: – Where the ERU is Engaged who should Command?

The fatality which was allowed to happen opens up another major shortcoming in the command structure at Abbeylara and casts serious doubt on the traditional hierarchy of command in the Garda Síochána. The scene commanders had little training in that capacity and no practical experience of an armed siege situation – far less one motivated by major mental illness. However, the tactical commander provided by the ERU did have experience of armed sieges and, by an ironic coincidence, he also had some experience of mental illness, having qualified as a psychiatric nurse before joining the police service. It is reasonable to assume that he should have realised the potential danger of siting the command vehicle and garda cars where they were on the Abbeylara road and in having various armed and uniformed police on and about the road in that general vicinity, including casual bystanders. Should he not have foreseen a potentially disastrous situation as eventuated when John Carthy left his house without warning and walked towards Abbeylara? It is not clear to what extent Detective Sergeant Russell appreciated the foregoing dangers and there is no evidence that he took any steps to have vehicles removed; to keep the road clear of police and other personnel and to have all unnecessary officers, in particular the local armed men, dispatched from the scene after arrival of his own reinforcements. However, in fairness to Sergeant Russell, it must be recognised that his superiors put him in a very difficult, if not untenable, situation. It surely must be extremely invidious to find oneself as a junior officer in the position of having to direct senior but inexperienced officers who are scene commanders on how they should do their work and cause them to change structures which they had already put in place at the scene – and all of that happening to the knowledge of local officers and, therefore, adding to the embarrassment of the scene commanders. That situation was liable to be further aggravated by any unhappiness there might be at local level about the introduction of the ERU to the scene and the way that had come about.

The evidence in this case clearly indicates that where it becomes apparent to the local police that one or more armed persons have embarked on continuing grievous violence in a siege situation and it is decided by the highest ranking officers in the area that, after discreet consultation with the local scene commander, to place the

event in the hands of an appropriate unit of the ERU then, in my opinion, command of the operation should pass to an ERU officer preferably of superintendent rank but at least one with the rank of inspector. It seems to me that he should have unfettered responsibility for the following primary matters:

- i. The control, placement and direction of all armed officers at the scene. Any local armed officer already at the scene and any other local police who are not required by the ERU commander should be withdrawn.
- ii. An instruction that all officers at the scene shall remain in places of safety which are concealed from the building and its environs where the subject is located should he choose while armed to vacate the property in a hostile way. The crucial importance of avoiding the disastrous situation which was allowed to exist and continue at Abbeylara should be impressed on all officers at the scene, including avoidance of any possibility of the happening of a “blue on blue” situation.
- iii. The concept of “moving containment” should be carefully planned by the ERU commander in the light of the particular circumstances, recorded in writing and then fully explained to all participating officers. The plan must include how moving containment may be ended. As pointed out by Superintendent Matthews of the New Zealand police in his report, it cannot go on indefinitely. Other supplementary aids, such as trained dog teams may be required.
- iv. If not provided by the ERU, the local area superintendent should appoint an intelligence officer to keep records and to interview and take statements from relevant witnesses. In a case such as John Carthy where there is the added complication that the subject is motivated not by criminal ideation but by major mental illness, that function would include an urgent consultation with the subject’s medical practitioner to ascertain:
 - (a) the nature and extent of his mental illness;
 - (b) relevant medical records;
 - (c) the identity of any specialist who is treating or has treated the subject;
 - (d) advice on how the crisis presented by the subject might best be dealt with and the reasons for it if known to the doctor;
 - (e) problems which the doctor perceives might cause difficulty for a negotiator – such as antagonism towards the police; and the reasons for it if known to the doctor;
 - (f) whether reasonable requests made by the subject, such as one for cigarettes by a heavy smoker, and a request to be put in touch with a solicitor, should, in the interest of calming the situation, be acceded to simply and without conditions, rather than using such requests as bargaining counters which might be appropriate when dealing with a criminal in a siege situation who is not mentally ill;

- (g) Whether the primary objective of the negotiator should be to calm the subject?
- (h) If so, how that might be achieved.
- (i) Whether a negotiating strategy designed to calm the subject by orchestrating apparent “victories” and “advantages” might be appropriate for him and might have a reasonable prospect of success.

All of these matters would have been of great interest to the negotiator in the instant case. Surprisingly, Superintendent Shelly, contrary to advice in the training as scene commander he had received, elected not to appoint a specific intelligence officer but to take on that role himself – even though in Inspector Maguire he seemed to have had a good role model for that task. Why neither he or Superintendent Byrne did not interview Dr. Cullen was an extraordinary omission. Even allowing for lack of prior experience, I am satisfied that basic common sense would point to the importance of meeting Dr. Cullen as soon as possible and seeking his advice on the foregoing matters. If that elementary step had been taken in the early evening of 19th April, Dr. Shanley’s involvement as psychiatrist would have been ascertained. It is probable that he could have been brought to Abbeylara before midnight. His advice at the scene on the foregoing points in conjunction with Dr. Cullen and Ms Marie Carthy (who was in a position to provide him with family information and details of recent difficult events in Galway) is likely to have been of great assistance to the negotiator.

It also would have been a matter for the intelligence officer to contact Mr. Regan, the Department of Justice psychologist, with a view to having him brought immediately to Abbeylara to speak to Dr. Cullen and Dr. Shanley in their own professional language and to raise the foregoing and other relevant matters with them which the negotiator and scene commanders as laymen probably would not appreciate. Detective Sergeant Jackson did have the foresight to contact Mr. Regan, a psychologist attached to the Prison Service, but he, probably through no prior experience of, or training in the context of a siege situation not associated with a prison, was unable to offer any assistance and he did not advert to the desirability of coming to Abbeylara or of contacting Dr. Cullen or Dr. Shanley.

Local Command

I envisage that an ERU officer having been appointed from garda headquarters to take charge of the operation, the function of the area superintendent would be to provide the uniformed outer cordon and traffic check points together with logistical support such as the provision of food etc. and other back-up services which the ERU commander might require.

Where the ERU is introduced as the primary component in a crisis situation, the experience at Abbeylara clearly indicates that a command structure on broadly the foregoing lines is most desirable in the interest of avoiding major problems such as those which happened at Abbeylara and led to the death of John Carthy. This is an

area which requires urgent radical attention. It is also dealt with elsewhere in this report (see Chapter 15).

SECTION H: – Criticism of the Garda Síochána Response

In fairness to the officers concerned, it is appropriate to preface my assessment of their response to the dangerous crisis situation presented by John Carthy at his home in Abbeylara on 19th/20th April, 2000 by emphasising the following points:

1. The police were called upon to deal with a volatile dangerous situation in a rural area presented by an armed man who appeared to be out of control and who was motivated by a manifestation of acute mental illness. The problem presented by Mr. Carthy was grave and also unique in Irish police experience.
2. Only one officer, Detective Sergeant Russell, the tactical commander of the ERU unit had any significant prior knowledge of mental illness. He had professional experience as a psychiatric nurse prior to entering the police service. There is no evidence that any advice in that regard was sought from him or was given by him during the event.
3. Neither of the scene commanders (Superintendents Shelly and Byrne) had any prior experience of dealing with an armed siege or of any event involving a dangerous armed person. Their training as scene commanders comprised one short course only at the time of promotion some years before the event. They had no training in or experience of dealing with violent conduct motivated by mental illness. The local armed officers at the scene were similarly inexperienced and none had had any prior occasion to use a firearm while on active duty.
4. Detective Sergeant (now Superintendent) Jackson of the ERU, whose function was to act as negotiator at the scene, had no prior experience in that role in an armed siege situation, and, as stated, his training in negotiation comprised a recent two week course which related primarily to negotiations in the context of sieges involving armed criminals. He also had no significant training in dealing with manifestations of mental illness.

The performance of the particular officers concerned should be considered in the light of the foregoing inhibiting factors.

The essence of my investigation of the police performance at Abbeylara and related matters has been to ascertain what was done; to consider whether the structure of the police response was appropriate; whether the scene commanders, the negotiator and other officers had sufficient experience and training to deal with the dangerous, unique situation presented by John Carthy which had no criminal ideation. Were all reasonable steps taken in an effort to diffuse the impasse with John Carthy? If not, what more ought to have been done? Should the circumstances have been avoided which lead to the fatal shooting of the subject? Did the scene commanders and the

negotiator have a sufficient number of appropriate trained personnel and equipment at their disposal and did they have the benefit of expert advice to deal satisfactorily with the situation? If so, did they avail of that advice? Are there lessons to be learned from the Garda Síochána response at Abbeylara? These are the issues which I am required to address in this report.

SECTION I: – The Scene Commanders

The officer primarily involved in that role was Superintendent Shelly, then stationed at Mullingar. Superintendent Byrne was the Granard area commander and, as already stated, on 19th April, 2000 he was attending a meeting at Garda headquarters in Dublin. In his absence Superintendent Shelly was deputed to go to the scene at Abbeylara and to act as scene commander until relieved by Superintendent Byrne at midnight. Thereafter the two superintendents alternated as scene commander. As already stated, Superintendent Shelly was responsible for assembling a group of ten armed detective officers in plain clothes from Granard, Athlone, Mullingar and Longford together with a group of unarmed uniformed officers. His immediate objective was to detain John Carthy in his house pending the outcome of negotiations with him. He deployed the armed local officers as an inner cordon at vantage points around the property. The uniformed officers were deployed to form road blocks for control of vehicle traffic in the area and as an outer cordon to prevent unauthorised persons approaching the Carthy property. An ERU police jeep was parked on the road between the Burke and Carthy entrances about fifty yards from the Carthy dwelling on the Abbeylara side. It was and remained at all times from arrival of the ERU the command post for the operation. Other police cars were parked in that area from time to time during the siege.

At or about the time of John Carthy's first armed confrontation with the police, they became aware that the subject suffered from mental illness; that he was on regular medication in that regard; that he had had in-patient treatment at St. Loman's psychiatric hospital, Mullingar and that his general medical practitioner was Dr. Cullen, who, at the behest of the Carthy family, was at the scene when the first garda officers, Gibbons and White, arrived from Granard. The doctor warned Garda Gibbons that John Carthy was antagonistic towards the police. He was not asked to elaborate on his warning. In fact what Dr. Cullen was referring to was the goat mascot episode which, as already stated, involved the arrest of John Carthy; his detention and interrogation at Granard garda station which resulted in complaints made by him to the doctor on the following morning about physical assault by the interrogators while in police custody.

As already referred to herein, another event occurred shortly before the goat mascot episode which fuelled John Carthy's antagonism towards and distrust of the gardaí, i.e., the taking and retention of his gun by the police.

As Granard station is a comparatively small garda unit, it would be surprising if the erroneous detention, arrest and interrogation of John Carthy regarding the goat

mascot burning and the obtaining of his gun by subterfuge was not known to most officers stationed there at the time. It is also surprising that the relevant gun licence file was not promptly referred to Superintendent Shelly or Superintendent Byrne as scene commanders bearing in mind that it disclosed the interest of Dr. Shanley as the subject's treating psychiatrist. In fact, the evidence is that the gun file did not come to light until the morning of 20th April when sought by Assistant Commissioner Hickey. Early contact with Dr. Shanley soon after the police involvement at Abbeylara would have been highly desirable. All of the experts who were questioned on the matter were of that opinion. It was also part of garda training to do so. All were agreed that when dealing with a subject activated by a manifestation of mental illness it is imperative for those endeavouring to deal with the situation, i.e., scene commanders and negotiators that they should as soon as possible consult with medical experts who are or have been treating the individual and obtain medical advice on how the situation might best be dealt with. Furthermore, Dr. McKenzie and Mr. Lanceley referred to the desirability of having an independent mental health professional at the scene who would have the benefit of "peer to peer" contact with the subject's own doctors.

At an early stage in the event, the situation presented by John Carthy at Abbeylara, and what was known about him, was reported to Chief Superintendent Tansey, the area commander. He arranged for Superintendent Farrelly, head of the Garda Press Office, to attend at the scene and to deal with the anticipated extensive media interest there. As previously stated, Chief Superintendent Tansey also consulted his provincial superior, Assistant Commissioner Hickey, and they decided that in all the circumstances it was appropriate to obtain the benefit of a team of officers from the Emergency Response Unit. Appropriate arrangements were made. A group of six ERU officers were dispatched to Abbeylara and arrived in the late evening. It comprised four tactical officers under Detective Sergeant Russell; a negotiator, Detective Sergeant Jackson, and Detective Garda O'Sullivan who had no training or experience as a negotiator and whose function was to act as messenger and occasional note-taker for Sergeant Jackson. The ERU tactical team replaced the inner cordon of local armed officers. The latter remained at a further remove from the Carthy house and some took up positions on or about the roadway at the Abbeylara side near the command vehicle parked between the Burke and Carthy entrances. Some uniformed officers were in that vicinity also. The purpose of having local armed officers in the area was not specified, other than a general instruction that they might be called upon to provide a back-up for Sergeant Russell's tactical team if events so required. They remained under local command. Superintendent Shelly and Sergeant Russell discussed what should be done if John Carthy emerged from his home in three particular circumstances. First, that he emerged without his gun; secondly that he emerged armed but immediately surrendered his gun when called upon to do so; or, thirdly, that he emerged with his gun and would not surrender his weapon. In the latter event it was decided that there should be a policy of "moving containment", i.e., the ERU tactical team would move with the subject in whatever direction was taken by him. They should endeavour to persuade him to surrender his gun and, failing success in that regard, follow him wherever he elected to go. The possibility that John Carthy might decide to leave his house and walk along the road towards

Abbeylara carrying his gun in a threatening way does not appear to have been considered by either scene commander or Sergeant Russell or any other police officer in any meaningful way. No plan was recorded and the implications of the subject's conduct as it subsequently happened was not considered by anyone in any detail. This was a fundamental mistake. Numerous armed and unarmed local officers were on and about the roadway in the vicinity of the command vehicle. All of them, including the scene commander himself, were at risk of being shot by John Carthy as he walked in their direction holding his gun in what was perceived to be a threatening way. Several of them feared for their lives and were regarded by some ERU officers as being in grave danger and this led to the fatal shooting of John Carthy. The command vehicle and other garda cars in the area should not have been where they were and none of the local gardaí, armed or unarmed, should have been visible to John Carthy and close at hand as he walked towards Abbeylara. If the road had been clear at the time there would have been no need to shoot the subject in the back. Furthermore, as previously stated, there was an unnecessary proliferation of officers, armed and uniformed, on and about the roadway, some of whom were bystanders who had no business being there.

SECTION J: – A Cover-Up?

The possibility that a local armed officer might have fired his gun at but missed John Carthy as he walked up the road was positively ruled out in evidence by all senior officers, i.e., Superintendent Shelly, Superintendent Byrne, Chief Superintendent Tansey and Assistant Commissioner Hickey although only two of them were present at the time – Superintendent Shelly and Chief Superintendent Tansey who ran for cover when John Carthy appeared on the scene. They all unreservedly accepted at second hand what each of the local officers were alleged to have said, i.e., that none of them had fired his gun. The veracity of that contention is called into question by the following:

1. Why did Detective Sergeant Foley make a crucial observation to Garda Boland (both local armed officers) which was critical of the ERU response to the crisis? In the event, if no local gun had been fired, the criticism was unnecessary as the ERU, though in Foley's opinion slow to do so, did fire at John Carthy and shot him dead thus removing the need for him or any local gun to fire at the deceased. The criticism of the ERU was first recorded by Sergeant Foley in his statement to the Culligan Inquiry, made soon after the event. It is remarkable to the point of being incredible to find one policeman gratuitously making a major criticism of other officers who comprised a specialist tactical unit. However, Sergeant Foley's contention would be credible if it was made in the context of laying the ground for his own defence or the defence of a local officer who had fired his gun at John Carthy – an action which he may have perceived would not have been necessary if the ERU officers had been prompt in taking action against the subject.

2. If the senior officers were in fact completely satisfied to accept that no local gun had been fired, then why not remove any possible allegation of a “blue on blue” shot by having all the local guns immediately taken in charge and ballistically examined and proved not to have been fired? This would have been a simple exercise which could have been promptly carried out by one of the ballistics experts.
3. The need for ballistic examination of the local garda guns was also pertinent in the context that, contrary to regulations, station records relating to weapons and ammunition brought to and from the scene by local officers were incomplete. In consequence there were insufficient records to account for all ammunition brought to the scene. In the light of this difficulty it is surprising that no senior officer adverted to the desirability in that context of having the local guns ballistically examined, and that they all concluded there was no need to do so.

The evidence on this issue is open to the interpretation that a senior officer may have had some concern that a local gun had been or may have been fired at the scene and, to avoid the risk of confirmation, the ballistics expert was instructed not to examine the local guns. However, that contention is denied and the evidence, though substantial, does not go far enough to establish that there was a cover-up on the part of the police regarding the possible firing of any local gun. However, the real issue about which there is coercive evidence relates to the failure of the scene commanders and Detective Sergeant Russell to advert to and prepare for the possibility that John Carthy while armed might leave his house and walk towards Abbeylara.

Whether or not a local gun was actually fired at or in the direction of John Carthy as he walked from his house towards the village is not, *per se*, a primary matter. The essence of this issue is that Mr. Carthy walked towards the command vehicle in the vicinity of which the scene commander was at that time and there were several local armed and unarmed officers on the roadway, including Sergeant Foley and Garda Boland. The subject is stated by several witnesses to have carried his gun in a dangerous threatening way which put some officers in fear of their lives. There were also three armed ERU officers on the road behind but close to John Carthy as he walked forward, and Sergeant Russell was standing nearby on the Carthy boundary wall. All the ERU men were ignored by the subject. Sergeant Foley's evidence indicates that he regarded the ERU officers as having failed to protect him and that he and Garda Boland were left with no alternative but to shoot at the subject. Sergeant Foley stated that he had aimed his gun and was within an instant of firing at his target when ERU officers commenced shooting at the deceased and it became unnecessary for him (Foley) to fire also. The foregoing evidence coercively establishes that a “blue on blue” situation had emerged, i.e., one which put the ERU and local officers who were on the road in the vicinity of the deceased in danger of being shot by one or more of the local armed officers who were facing them near the command vehicle or in the vicinity of the Burke property – a risk which was all the greater as none of the local officers had prior experience in firing their weapons

in course of duty in such circumstances and all had been caught unawares by Mr. Carthy and, it seems, most did not know what to do.

The root of the problem which was allowed to happen at the scene was the presence of the local officers, including the scene commander, on and about the road close by and in the direction where John Carthy was heading. Detective Garda (now Sergeant) McCabe, who fatally shot the deceased, believed that he was obliged to fire at him because it appeared to him that the local officers on the road were in danger of being shot by the subject. That situation would not have arisen if the Abbeylara road had been kept clear of vehicles, police officers and others at all times. There should have been no local officers or anyone else visible to the deceased and at risk of being threatened or shot by him if he elected to leave his house and do what he did. If there had been no vehicles or police or anyone else visible to John Carthy as he walked towards Abbeylara, there would have been no reason or justification for shooting him in the back. In those circumstances there would have been no one there who might have been threatened by the subject.

Assistant Commissioner Hickey and all of the senior officers concerned denied in evidence that the failure to have the local guns ballistically examined related to a cover-up of an active “blue on blue” situation as John Carthy walked towards Abbeylara, or that it was insurance against a possible discovery that a local gun or guns had been fired at that time. It is not in dispute that the immediate ballistic examination of the local guns would have ruled them out and would have established that in fact none had been fired at the scene, if that was the case. In the end result there is insufficient evidence to establish a “cover-up” relating to the firing of any local gun or a policy of insurance against the possible discovery that a local gun or guns had been fired at the scene. However, there are features to which I have referred which are surprising and cause disquiet.

Detective Sergeant Foley has provided coercive evidence, which has not been disputed, that an actual “blue on blue” situation was about to happen and that he was within an instant of firing at John Carthy when the ERU officers opened fire and fatally injured him, thus obviating the need for Sergeant Foley to carry out his intention. Furthermore, primary police negligence at Abbeylara was failure to prepare for the eventuality that John Carthy might emerge from his premises and do what he did. In particular, in not keeping the Abbeylara road clear of personnel and vehicles at all times in consequence of which a situation of major potential danger was allowed to persist. If a local gun had been fired in confusion or panic it would have been no more than an addition to an already grievous situation which should never have happened.

SECTION K: — Four Crucial Command Mistakes

(a) Investigating urgently Dr. Cullen’s potential importance

Superintendent Shelly’s negligence in not personally interviewing Dr. Cullen (the subject’s general medical practitioner) as a matter of urgency during the evening of

19th April or, alternatively, having him interviewed in depth at that time by an experienced senior officer, is extraordinary. (His explanation for not doing so, i.e., his belief that Garda Gibbons had obtained all information available from Dr. Cullen is patently untrue as the superintendent must have been well aware. Among other things, Gibbons did not enquire from the doctor whether the subject was under specialist care. He learned nothing about Dr. Shanley's involvement, nor did he ask for or receive any of the hospital records and reports in the doctor's possession and he sought no advice about dealing with the subject having regard to the nature of his mental illness. Garda Gibbons alleges that he sought no explanation for Dr. Cullen's warning about Mr. Carthy's antagonism towards the police.) Knowing as he did from very early in his involvement as scene commander at Abbeylara that John Carthy suffered from mental illness which had entailed periods of in-patient treatment at a psychiatric hospital, and that Dr. Cullen was his long-time general medical practitioner, it ought to have been apparent to Superintendent Shelly that in the interest of devising an appropriate negotiating strategy, urgent medical advice from Dr. Cullen and any specialist psychiatrist involved in the case was likely to have been of major importance. This point was emphasised by police and medical experts in evidence. As previously stated, it also was advice given in garda training. He, the scene commander, knew that an ERU strategic group and a negotiator had been dispatched to the scene from Dublin. It is hardly credible that he would not have realised the importance of providing the negotiator immediately on his arrival at Abbeylara with full medical information about the subject and his mental state – yet he failed to ascertain the requisite details in consequence of which Detective Sergeant Jackson, the negotiator, was deprived of a range of information, including the reasons for Mr. Carthy's vehement distrust of and antagonism towards the police, which was important to the establishment of meaningful rapport with the subject and the structuring of a viable negotiating strategy – neither of which in fact was ever achieved. It seems probable that if properly advised (on the basis of information available from Dr. Cullen but not obtained) Sergeant Jackson would have realised in the first few hours of his attempted negotiation with Mr. Carthy that, having regard to his distrust of and violent attitude towards the gardaí, the likelihood was that as a police officer he had little or no prospect of establishing any significant rapport with the subject and that an alternative strategy was required. Subsequent events made that very clear. Why was the negotiator deprived of crucial information by Superintendent Shelly's inaction in having Dr. Cullen fully interrogated by a competent senior officer? There appears to be only two possible explanations. First, the scene commander's failure was a product of gross negligence – which is hardly credible even allowing for the fact that he had no prior experience as a scene commander in a siege situation – particularly one involving a mentally ill man. The alternative explanation is that the superintendent learned at an early stage of his involvement at Abbeylara that Dr. Cullen's warning about John Carthy's antagonism towards the gardaí arose out of his arrest, detention and interrogation at Granard garda station when he was wrongly accused of having burnt the goat mascot in September, 1998. He had also alleged then that he had been assaulted by his interrogators and required medical assessment by Dr. Cullen on the following morning. The burning of the goat mascot at Abbeylara was a cause célèbre at the time. Granard is not a large police station. Mr. Carthy's arrest, detention and

interrogation there, having been wrongly accused of the crime by Detective Garda Bruen, is likely to have been well known to officers at Granard and it would be surprising if Superintendent Shelly was not told about it soon after taking on the role of scene commander. The goat mascot episode was obviously embarrassing for the Garda Síochána and, if he learned about it, which seems likely, Superintendent Shelly may have decided that, to avoid the risk of public disclosure at a later date, it was preferable not to go down that road and that the matter of Mr. Carthy's distrust of and antagonism towards the police should not be pursued with Dr. Cullen. An extraordinary decision made by the scene commander gives credibility to the latter explanation for failure to have Dr. Cullen properly interviewed. Although Superintendent Shelly had the pivotal role of scene commander in a difficult situation of which he had no previous experience, he decided, contrary to his training, to take on personally the important function of intelligence co-ordinator rather than to appoint Inspector Maguire, or some other experienced senior officer such as Sergeant Monahan, to perform that task. The unexplained and unnecessary decision to burden himself with a major additional chore which could have been performed by other competent officers, is credible if his motivation was to ensure as well as he could that embarrassing information was not obtained from Dr. Cullen by another intelligence co-ordinator if one had been appointed. That explanation, unlike the alternative, has a ring of credibility about it. Be that as it may, on any view Superintendent Shelly was negligent in not having Dr. Cullen properly interviewed in depth. Important information urgently required about the subject's mental illness and treatment was not obtained. As indicated already, experts who were questioned on this matter emphasised the important priority of obtaining all available medical information relating to a situation where a person's violent behaviour is likely to be the product of mental illness.

(b) Another failure as intelligence coordinator

It is pertinent to state also that Superintendent Shelly appears to have done very little, if anything, in his adopted role of intelligence co-ordinator. As far as the evidence goes, the only person who had meaningful contact with John Carthy during the entire of the siege was his friend, Kevin Ireland, who he phoned by mobile at about noon on 20th April, i.e., six hours before his death. The subject told his friend that he had no intention of shooting any garda officer or himself. He indicated that his purpose in firing his gun was to keep the ERU officers away from his house.

Superintendent Shelly and the negotiator learned about Mr. Carthy's telephone conversation with Mr. Ireland by way of an inaccurate and garbled fourth-hand version of it. Nothing was done about obtaining directly from Kevin Ireland a detailed account of his conversation as it ultimately emerged in evidence at the Tribunal. Mr. Ireland had phoned Granard garda station and had spoken to Sergeant Monahan. Unfortunately, the latter had not been involved in the Abbeylara siege situation at the scene and he did not interrogate Mr. Ireland as he might have done if he had realised the full significance of the phone call or if he had been specifically instructed to de-brief him in that regard. He failed to ascertain important information about the subject's motivation and intentions. Sergeant Monahan concentrated on another

aspect of the phone call, i.e., Mr. Carthy's request to his friend to contact on his behalf a solicitor called Finucane whose address or phone number was not specified by him. The end result was that the negotiator was not apprised of crucial information which emerged from the conversation between Mr. Carthy and his friend, Kevin Ireland — particularly his reason for requiring a solicitor at the scene (i.e., in the context of the possible negotiation of an end to the impasse).

(c) Preparing for the possibility that John Carthy might make an armed uncontrolled exit from his house

It ought to have been apparent to all concerned that Mr. Carthy's particular agitation and violent conduct within the house during the late afternoon of 20th April probably indicated that he regarded himself as being near the end of his tether at that time. Bearing that in mind, the possibility that he might leave the house armed with his gun became a more likely reality. That being so, the importance of clearing the road to Abbeylara of vehicles, including the command jeep, and all personnel, not only police but civilians also, ought to have been apparent to the scene commander and to the ERU tactical commander. During the afternoon there was plenty of time to take that course and to issue appropriate instructions to all concerned, including emphasising the particular importance that officers in the area should remain concealed and safely under cover at all times. In fact, the enhanced possibility that the subject might do what he did was not adverted to and very little was done to prepare for what actually happened. Members of the ERU inner cordon were not instructed in any detail on their function as moving containment in that event. It is clear that, like other officers at the scene, they were taken by surprise. It would have been of particular interest to members of the cordon and local gardaí that John Carthy had told his friend that he had no intention of shooting them — as was made abundantly clear by him when he subsequently emerged from his gateway and ignored several armed ERU officers including three on the road in his immediate vicinity. In the light of Mr. Carthy's assurance to his friend, Mr. Ireland, that he did not intend to shoot any police officer, allied to his conduct when he emerged onto the road and headed towards the command vehicle in ignoring ERU officers, the apparent risk in overpowering him by rushing him from the rear became less serious, though, of course, it still remained. For example (assuming that the foregoing steps had been taken to clear the road), it occurs to me that as Mr. Carthy walked past Burke's gate a distraction from the other side of the road might have facilitated rushing him from Burke's direction. These are no more than possibilities, but they appear to be realistic in the context of the Kevin Ireland conversation, the contents of which was not known to any of the officers at the scene, including Detective Sergeant Russell, the ERU tactical commander. It is likely that he would have been particularly interested in Mr. Ireland's information in the context of planning some credible means of terminating the intended moving containment if that strategy became necessary. This is a factor to which Superintendent Matthews of the New Zealand police has referred in evidence.

There is no doubt that the scene commander, the tactical commander, the negotiator, the ERU officers and other local gardaí, armed and unarmed, at the scene

were taken entirely by surprise when John Carthy suddenly emerged from his house without any prior warning. The consequent confusion and the negligence of those in command led to the tragedy of his death which would not have happened if the Abbeylara road had been kept clear of vehicles and all personnel, which ought to have been the case. Everyone at the scene should have been safely under cover and not visible to the subject. The possibility that John Carthy might leave his house with his gun and walk towards Abbeylara was not realistically planned for and, it seems, was not adverted to at all in a meaningful way. Having the command vehicle on the road near Burke's entrance and allowing local armed and unarmed uniformed gardaí to clutter the road in that area, whether required at the scene or not, amounted to a high degree of negligence. Detective Garda McCabe's evidence has established that there would have been no justification for him (or any other armed officer, ERU or local) to shoot the subject if no one had been visible to the latter and in apparent danger of being shot by him as he walked towards the command vehicle. Superintendent Shelly was primarily responsible for allowing that situation to happen. He indeed was one of those caught unawares who had to run for cover at Burke's gateway when Mr. Carthy emerged onto the road and walked in his direction.

The greatest Garda mistake at Abbeylara was not preparing for an uncontrolled exit by Mr. Carthy from his house as actually happened; in not keeping the road clear of vehicles and all personnel and in not ensuring that all officers at the scene remained safely concealed and under cover at all times. It is evident that the foregoing failures gave rise to the fatal shooting of Mr. Carthy by presenting him with apparent targets which should not have been there, i.e., allowing a situation to exist whereby exposed officers appeared to be in danger of being killed or injured by the subject, thus causing Garda McCabe to shoot him with fatal consequences in order to remove that risk. Superintendent Shelly and Superintendent Byrne as scene commanders had primary responsibility for the circumstances which lead to Mr. Carthy's death. Their failure to appreciate the risks involved, not least to the subject himself, if officers are exposed to potential danger underlines the major flaw in the command structure at Abbeylara in having a difficult, dangerous situation commanded by officers with minimal training and no prior experience of what was required of them or of the potential difficulties involved. Unfortunately, they did not receive sufficient guidance in that crucial area from the ERU tactical leader, Sergeant Russell. As already pointed out, major difference in rank and perhaps attitudes may have been a contributory factor in that regard.

(d) Failure to provide a solicitor for John Carthy at the scene as requested by him

The request made by the subject, and repeated by him about which he was insistent, relates to the provision of a solicitor at the scene. There is no doubt that he was confused about the identity of the person he wanted. He referred to a man called "Mick Finucane" but did not provide an address or phone number for him. It ultimately transpired that Mr. Finucane was at that time an apprentice solicitor working in Dublin who had never met Mr. Carthy and did not know him. Whatever about identity, the evidence indicates (particularly the Kevin Ireland phone call) that

contacting a solicitor was in John Carthy's mind in the context of ending the impasse. It seems to have been his primary purpose for phoning Mr. Ireland about noon on 20th April. If the scene commander had caused an inquiry to be made with the Law Society, it would have emerged immediately whether or not there was a solicitor called "Finucane" practising in this State at that time. If there was none, the next obvious step would have been to ascertain from Mrs. Carthy and/or her daughter, Marie, whether the subject had a local solicitor (which he had) or, if the latter could not be traced, the identity of the family solicitor. Mr. Carthy's local attorney, or if necessary the family solicitor, should have been contacted urgently and brought to the scene for attempted negotiation with the subject, preferably by mobile phone, or, if not, by megaphone. Before contact, the solicitor should have been briefed by the scene commander, or the negotiator, on the matter of obtaining co-operation from the local authority for postponement of the demolition of the old family home, pending further discussions after Mr. Carthy had received proposed medical treatment as offered by Dr. Shanley at St. Patrick's hospital. The solicitor should have been briefed also about anticipated co-operation from the DPP regarding postponing arrest pending the outcome of medical treatment and a subsequent report from Dr. Shanley, but subject to Mr. Carthy agreeing to leave his house unarmed and going forthwith to St. Patrick's for in-patient treatment there as offered by his psychiatrist. The backing and encouragement of a solicitor he trusted for ending the stand-off on the foregoing basis, without the humiliation of arrest at the scene, may have provided a catalyst for achieving success. It is surprising that so little was done to respond to John Carthy's apparently insistent request to provide him with a solicitor. It was patently negligent not to contact the subject's own local attorney or, failing that, the family solicitor, as a matter of urgency and to secure the assistance of that person at the scene. It is evident that the scene commander, the negotiator and both senior officers all failed to recognise the importance of responding to Mr. Carthy's efforts to obtain the benefit of a solicitor at the scene and none of them realised the potential for a breakthrough in ending the impasse which, appropriately orchestrated, that might have brought about. It is most unfortunate that none of those officers were made aware that Mr. Carthy had intimated to his friend, Kevin Ireland, that if he had the benefit of a solicitor at the scene he might end the impasse. Failure to have Mr. Ireland fully debriefed was a major mistake.

SECTION L: – The Performance of other Senior Officers

Superintendent Michael Byrne

This officer is superintendent for the area which includes Abbeylara and he is stationed in Granard. On 19th April, 2000 he was in Dublin at a meeting in Garda headquarters when Mrs. Rose Carthy phoned Granard station and informed Garda Gorman about her son's dangerous behaviour with a gun in his home at that time which was late afternoon. Soon afterwards, Superintendent Shelly, area superintendent in Mullingar, took over the situation as scene commander in Superintendent Byrne's absence. The latter attended at the scene in late evening and he succeeded his colleague as scene commander at midnight and remained on duty

in that capacity until relieved by Superintendent Shelly on the following morning. In short, they shared the function of scene commander, but the burden of that task as it transpired fell on Superintendent Shelly's shoulders. As previously stated, he was responsible for the siting of the command post in a garda jeep on the road between the Burke and Carthy entrances. Superintendent Byrne did not advert to any potential danger in the siting of the command vehicle, or having the negotiation point at the Carthy boundary wall and both continued in use during his period as scene commander. He ought to have realised each was inappropriate and potentially dangerous.

It is proper to observe that having, in effect, inherited a command structure at Abbeylara which had been established before his arrival at the scene, Superintendent Byrne was less culpable than his colleague for aspects of it which were mistaken. Furthermore, he too had no prior experience of an armed siege situation and had minimal training in that regard. He also had no experience of violent conduct by a person motivated by mental illness. Nonetheless, as joint scene commander he had responsibility for how command was exercised and for the structures which were in place at the scene, including the need for a planned response to the situation (recorded in writing) which would arise if John Carthy made an uncontrolled armed exit from his house and headed towards Abbeylara, as ultimately happened. No such response was planned in any real sense by either scene commander or by any other officer. There is no evidence that Superintendent Byrne considered that possibility or how it should be dealt with if it arose during his watch. He did not advert to the need for keeping the Abbeylara road free of vehicles and all personnel or the importance of instructing all officers at the scene to remain out of sight and in safe cover to avoid creating a possible crisis for Mr. Carthy in such circumstances. On the contrary, Superintendent Byrne expressed approval of uniformed unarmed officers being in the vicinity of the command vehicle on the basis that they would be a comfort to Mr. Carthy in contrast to the presence of armed, plain-clothes police. That reasoning indicates that he did not realise the potential danger of gardaí, whether armed or uniformed, confronting the subject and perhaps stimulating him into a violent reaction with his gun. It is evident that, like his colleague and other senior officers, he failed to appreciate that there ought not to have been any potential garda or civilian target visible to Mr. Carthy as he proceeded towards Abbeylara with his gun if he decided to take that course. Like the other senior officers, Superintendent Byrne appears to have given no thought to the implications of moving containment and of the event which happened.

In addition to the foregoing criticisms, Superintendent Byrne's conduct as scene commander was also at fault in the following respects:

- i. Failure to have Dr. Cullen interviewed in depth personally or by a competent, experienced officer. As area commander stationed at Granard (though I appreciate not at the time of the goat mascot episode or when Mr. Carthy's gun was obtained from him and retained by subterfuge), it seems likely that he would have learned on 19th April, if not earlier, from some officers stationed there what had happened on those occasions. Even if he was not so advised, he would have learned at the scene that

Garda Gibbons had patently failed to interrogate Dr. Cullen realistically and that a competent officer should have been detailed to do so as a matter of urgency. Was his failure in that regard evidence of negligence or did it indicate a reluctance on his part to have Dr. Cullen's warning of the subject's antagonism towards the police investigated?

- ii. Failure to examine Mr. Carthy's gun licence file and thus learn about Dr. Shanley's involvement and, in aid of the negotiator, to have him brought to the scene immediately.
- iii. Failure to appreciate the importance of calming Mr. Carthy by complying with reasonable requests made by him – such as the provision of cigarettes. In that regard, failure to instruct Detective Sergeant Russell to deliver a supply of them at the house when he went there to cut the TV cable during the night while Mr. Carthy was resting.
- iv. Failure to consult with Detective Sergeant Russell and have recorded in writing details of a moving containment strategy to be adopted by the ERU and others as preparation for the possibility that Mr. Carthy while armed might make an uncontrolled exit from his house and head towards Abbeylara.
- v. In preparation for the latter possibility, failure to have all vehicles, including the command jeep, removed from the Abbeylara road; to keep the road clear of vehicles and personnel and to have all officers at the scene specifically instructed to remain concealed from the road and in safe cover at all times.
- vi. Superintendent Byrne's attitude towards Ms Carthy, the subject's sister, while at the scene in the early hours of 20th April is the subject of comment elsewhere in this report. Failure to arrange for her to be interviewed in depth by a competent, experienced officer early on 20th April for the purpose of ascertaining her assessment of her brother's conduct, including what reasons he might have had for defending the old home; what ideas she might have on how the impasse could be resolved, and also her preparation by the gardaí for contact with her brother as part of the negotiation process, should have been put in hand.
- vii. Failure to appoint a competent, experienced officer with knowledge of what was happening at the scene as liaison officer with the Carthy family and for the purpose of interviewing each person separately to ascertain all relevant background information, including details about any negotiations with the local authority regarding the future of the old home which was being replaced.
- viii. Failure to take any action in response to Mr. Carthy's request to provide him with a solicitor at the scene; including ascertaining from the immediate family whether he had a local solicitor or, if not, the identity of the family solicitor.

Chief Superintendent Patrick Tansey and Assistant Commissioner Tony Hickey

The scene commanders were answerable to Messrs. Tansey and Hickey who between them had overall garda command of a large area which included Granard and Abbeylara. They both took an active interest in what was happening there, including spending significant time at the scene, but they did not make command decisions though entitled to participate in that regard if they considered that they should do so.

Chief Superintendent Tansey and Assistant Commissioner Hickey learned about the crisis at Abbeylara soon after the gardaí were notified about it. They ascertained that Mr. Carthy was dangerous and appeared to be motivated by mental illness. Without consultation with Superintendent Shelly or Superintendent Byrne they decided that it was an appropriate case to arrange for the ERU to provide a tactical unit and also a negotiator at the scene. That decision appears to have been well founded. As already stated, the ERU is a specialist unit having specific training and experience in siege situations, whereas the local armed gardaí had no such experience or training. However, it seems to me that three factors should have been taken into account by Messrs. Tansey and Hickey. First, the desirability of consulting the scene commanders and giving them an opportunity to explain to the local officers why they were being replaced as the inner cordon. Secondly, to arrange that the proposed ERU tactical commander should be of commissioned rank. It is difficult for a sergeant to find himself having to argue with an inexperienced scene commander of superintendent rank about decisions already made by the latter before arrival of the ERU which the tactical sergeant may consider to be unwise, e.g., the siting of the command vehicle; failure to reallocate local armed officers and the proliferation of armed and uniformed men on the road near the Carthy property in the vicinity of the command vehicle. Thirdly, they ought to have ascertained that Detective Sergeant Jackson had no prior experience as a negotiator in a siege situation and they should have realised that the event might continue for many hours or perhaps days. For those reasons it should have been apparent from the beginning that at least one experienced negotiator should have been provided to work with Sergeant Jackson.

In my opinion the senior officers ought to have adverted also to the following problems, though primarily the responsibility of the scene commanders:

- (a) The absence of a detailed plan recorded in writing to meet the possibility that Mr. Carthy might make an uncontrolled armed exit from his house.
- (b) Failure to appreciate the potentially dangerous positioning of the command vehicle.
- (c) Failure to appreciate the dangerous and unsuitable siting of the negotiation point at the Carthy boundary wall.
- (d) Failure to advert to the fact that the road in the vicinity of the command vehicle was frequently cluttered by armed and uniformed officers, including bystanders who had no business being there.

- (e) Failure to advise removal by the scene commanders of all or most of the original inner cordon of local armed gardaí.
- (f) Failure to advise that the Abbeylara road should be kept clear of vehicles and personnel up to the roadblock near the Church.
- (g) Failure to advise the scene commanders to ensure that all officers at the scene had good reason for being there and that they remained under safe cover and out of sight from the road and the Carthy property at all times.
- (h) Failure to appreciate the importance of avoiding the potential risk of a “blue on blue” situation between local armed gardaí and ERU officers in the vicinity of the Carthy property, and failure to realise (as Mr. Burdis stated in evidence) that both groups were far too close to each other in the event of a crisis situation such as that which occurred.
- (i) Failure to ascertain that no viable negotiating strategy had been devised and implemented.
- (j) Failure to advise the scene commander to have Dr. Cullen interviewed by a competent, experienced, fully briefed officer as a matter of urgent priority.
- (k) Failure to ascertain on the morning of 20th April or earlier whether appropriate steps had been taken to interview Mrs. Rose Carthy and Ms Marie Carthy to ascertain further information they might be able to supply for the benefit of the negotiator, and to prepare Ms Carthy for participation in negotiation with her brother.
- (l) Failure to ascertain that the garda officer provided for liaison with the Carthy family was a newly qualified recruit with no experience and who was given no instruction on what her function was in that regard.
- (m) Failure to advise the urgent debriefing of Mr. Kevin Ireland by a competent senior officer, who was familiar with events at Abbeylara, about Mr. Ireland’s phone conversation with the subject.
- (n) Failure to advise the scene commanders of the urgency of providing a solicitor for John Carthy at the scene in response to his repeated requests in that regard.

Assuming that the senior officers were told that John Carthy had expressed fear to Sergeant Jackson about receiving a long prison sentence for his dangerous conduct at the scene, either or both of them ought to have adverted to the possibility of using the subject’s fear of imprisonment to advantage by inviting the Director of Public Prosecutions to agree to postpone arrest of Mr. Carthy until conclusion of his hospital treatment under Dr. Shanley and receipt of a report from him on the outcome, provided that the subject vacated his house without his gun and agreed to travel immediately to hospital with Dr. Shanley for the proposed treatment. As Mr. Carthy’s conduct was not criminal in any real sense but was motivated by severe mental illness, there would have been nothing to be lost in taking that course. Without his gun, Mr. Carthy appears to have presented no risk. If that had happened it might have ended the impasse and, for the subject, it would avoid the humility of surrendering to the police. In fact, the only evidence about plans for the arrest of the subject relates

to a discussion between senior officers as to whether arrest should be made for a firearms offence or under the Mental Health acts. The idea of postponing arrest on the foregoing terms was not adverted to by anyone.

SECTION M: — The Negotiator

Soon after the police involvement in John Carthy's armed stand-off at his home, it was established that his violent conduct was probably the product of a severe manifestation of mental illness. Should Detective Sergeant Jackson have realised that his first priority as a novice negotiator with little knowledge of psychiatric disturbance was to be fully briefed by the subject's general medical practitioner and by a specialist psychiatrist if one had been involved? I am satisfied that the negotiator's first priority should have been to meet and have a detailed consultation with Dr. Cullen. Apart from providing valuable information on the nature and history of John Carthy's mental illness and an explanation for the doctor's warning about the deceased's antagonism towards the police, it would have led to the early discovery of Dr. Shanley's involvement. In that event Sergeant Jackson should have immediately contacted the latter and informed him of the gravity of the situation and the risk to life, including his own, which John Carthy presented. Arrangements should have been made to transport the doctor immediately to Abbeylara by police car. At the scene, Dr. Shanley, having consulted Dr. Cullen and interviewed members of the family, in particular Ms Marie Carthy (who would have been in a position to advise him about recent major difficulties which had occurred in Galway, including the ending of the relationship with Ms X), is likely to have derived some insight into his patient's motivation for violently defending the old home against all comers. The greatest advantage from Dr. Shanley's presence would have been that as a specialist in mental illness, with particular knowledge of John Carthy, he would have a far greater insight than a lay negotiator could have into the mind of his patient; in particular in discerning the likely motivation for his conduct and in deciding how that information might best be utilised to devise a scheme for resolving the impasse. I apprehend that Dr. Shanley would have advised the negotiator about the importance of creating a calming situation to defuse the subject's mania (advice which other medical experts have also confirmed in evidence). To that end he is likely to have proposed that the request for cigarettes should be complied with promptly and with no strings attached. It was patently counter-productive to allow the subject's severe mental state to be aggravated by nicotine withdrawal. (The subject was a heavy smoker and it is probable that he had run out of cigarettes.) As John Carthy's request for a solicitor was reasonable and was one to which he attached major importance as he had explained to his friend, Kevin Ireland, Dr. Shanley might have advised also that it would be potentially helpful to arrange for the presence at the scene of the subject's own solicitor (if his identity could be ascertained) or, alternatively, the family's solicitor — again as a gesture of cooperation and good will. Bearing in mind that several civilians were brought to the negotiation point to speak to John Carthy, there is no reason why a solicitor should not have been brought there also. One possible explanation for failure to respond to Mr. Carthy's request for a solicitor is that such a person, unlike the other civilians, could not be orchestrated by the police regarding

the line he should take with the subject and there was some risk that his participation could be discomforting for the gardaí. The dilatory response of the police to the repeated request by the subject is surprising.

Dr. Shanley, if his services had been availed of promptly, is likely to have learned about the significance for John Carthy of Holy Thursday and the tenth anniversary of his father's death, a person who had been intimately associated with the old home which was soon to be demolished.

Was there any possibility of creating a "victory" for the subject which might encourage him to end his stand-off? There is abundant evidence that he was an intelligent man and, notwithstanding the major exacerbation of his mental illness at the time, his capacity for reasoning does not appear to have been seriously impaired. His telephone conversation with Kevin Ireland supports that assessment. It seems likely he appreciated that he could not maintain his armed defence of the old home indefinitely. It is probable that there would have been strongly in his mind a conviction that he would not surrender to the police, but he had also expressed a fear of long-term imprisonment for what he had done. Bearing all of these factors in mind was there any possibility of orchestrating an apparent "success" which he would accept as a justification for bringing the siege to an end without personal humiliation? Such a possibility does not seem to have been addressed by the negotiator or the scene commanders or their superiors. It is probable that early collaboration between the negotiator, Dr. Shanley and Dr. Cullen would have been advantageous in devising a viable negotiating strategy.

Although he was involved in attempted negotiation with John Carthy for about sixteen hours, Sergeant Jackson failed to make any significant progress in that regard. He made very real efforts to achieve a resolution of the impasse, but lack of resources and experience militated against his prospect of success. Lack of background information which ought to have been available to him (notably the subject's vehement antagonism towards the police and his assurance to Kevin Ireland that he had no intention of shooting himself or anyone else) was also a crucial disadvantage. An assessment of the negotiator's performance indicates the following mistakes on his part:

1. Failure to ascertain and to understand the effects on John Carthy of his mental illness.
2. Failure to realise the importance of defusing the situation and calming the subject's mental state. In particular, not realising that reasonable requests made by him should be responded to positively, without delay and with no strings attached – notably the supply of cigarettes and the provision of a solicitor at the scene.
3. Failure to obtain expert medical advice from Dr. Cullen and Dr. Shanley as soon as possible on the foregoing matters and other points to which I have previously referred. He had no direct contact with either doctor, or any other medical person, and, apart from receiving documentation from Dr. Cullen at about 4:00 a.m. on 20th April per Detective Garda Campbell, he

had no medical assistance in dealing with John Carthy's major mental illness manifested by potentially lethal behaviour at the scene.

4. Dr. Shanley should have been brought to Abbeylara as soon as his identity became known which ought to have been before midnight on the first day.
5. Failure to take any part in arranging for Kevin Ireland to be fully debriefed about his telephone conversation with John Carthy which was the only known meaningful communication between the subject and any other person during the stand-off. It is proper to add that the fault in that regard primarily lies with the scene commander.
6. Persisting in the use of the external negotiating point at the Carthy boundary wall even though little or nothing of value was achieved there and one-way communication by megaphone was patently unsatisfactory. In so doing, a dangerous opportunity was given to John Carthy to amuse himself by causing Mr. Jackson and others to duck up and down at the wall over a period of many hours. That situation would have militated still further against the possibility of establishing a meaningful rapport with the subject.
7. Failure to devise and put into effect any meaningful strategy and plan to end the impasse successfully.
8. He placed an over-reliance on the rule of thumb that "no concession is made without getting something in return". That concept is inappropriate when dealing with a subject who is demonstrably affected by serious mental trauma – particularly failure to comply with a reasonable request from a heavy smoker to supply cigarettes. As already stated, it ought to have been readily appreciated that the subject's mental distress would be further aggravated by the deprivation of nicotine. Superintendent Byrne confirmed in evidence that Sergeant Jackson hoped to use the provision of cigarettes "*in a positive manner later on*". Assistant Commissioner Hickey informed the Tribunal in evidence that Sergeant Jackson in his report to the Culligan Inquiry had expressed an opinion that "*the giving of cigarettes may also entice him into giving something in return; maybe to throw out some ammunition or maybe even the gun . . .*". The negotiator ought also to have realised the futility of alleging to John Carthy, that in the interest of the safety of gardaí delivering cigarettes to the house, it would be necessary for the subject to put his gun down on the floor and display his hands at the kitchen window. He (Jackson) knew or ought to have realised at that stage that Mr. Carthy was greatly antagonistic towards and distrustful of the police. His conduct during the siege made that abundantly clear. Accordingly, that particular ploy was bound to fail. The strong probability is that the subject would be fearful that the true objective of that strategy may have been to create a situation which would enable a garda to jump through the kitchen window, or, having gained entry to the house unknown to Mr. Carthy, an attacker might burst into the kitchen while the gun was on the floor and in either event the subject would be overpowered before being able to retrieve his weapon. The explanation

given in evidence that in the interest of police safety it was in fact necessary to prevail on Mr. Carthy to put his gun down on the floor is, quiet frankly, absurd. I have no doubt that cigarettes could have been delivered by leaving them at the hall door at any stage during the siege while John Carthy was under observation in the kitchen where in fact he spent nearly all of his time. Furthermore, Detective Sergeant Russell could have placed the cigarettes on the windowsill while he was at the house during the first night for the purpose of disconnecting the television cable. He stated in evidence that he looked into the room and saw the subject resting on a couch. He expressed no difficulty about responding to Mr. Carthy's request by leaving cigarettes on the kitchen windowsill at that time.

An opinion has been expressed in evidence by Dr. Ian McKenzie, forensic psychologist, that a difficulty in connection with the delivery of cigarettes to the house (excluding any risk for the deliverer) was that it might be regarded by the subject as an unjustified invasion of his personal space and privacy. Dr. John Sheehan, consultant psychiatrist, who has advised the Tribunal on John Carthy's behaviour and mental illness, stated in evidence that he recognised the importance which the subject probably attached to his privacy and personal space during the stand-off, but he drew a distinction between an invasion of space by the police to achieve an advantage for them over the subject and an invasion of space consequent upon a response to a reasonable request made to them by the subject in his own interest. The essence of the distinction is that in the latter case, unlike the former, the benefiting party is the subject whose space is invaded. Dr. Sheehan indicated that the request by John Carthy for delivery of cigarettes at his house necessarily entailed, as he would appreciate, some invasion of his space. In his opinion that would have been acceptable to the subject as being appropriate in order to meet his request. The logic of Dr. Sheehan's opinion on this topic is very clear. I am satisfied that John Carthy would not have regarded delivery of cigarettes (probably urgently required) to his house in response to his request to the gardaí as being an unjustified invasion of his space. None of the other experts have advised otherwise.

9. Having been unable to make meaningful communication with the subject by house telephone or mobile phone, failure to advert to the possibility that written communication, if carefully constructed and orchestrated, might be the most effective way of laying the ground-work for a peaceful resolution of the impasse – one which had a much greater prospect of success than reliance on loud, one-way communication by megaphone.
10. Failure to appreciate that, having regard to the depth of John Carthy's antagonism towards the police and the negotiator's failure to achieve meaningful rapport with him, there was a strong probability he would never surrender to the gardaí. In these circumstances it was imperative to utilise Dr. Shanley and Ms Marie Carthy to the best advantage in negotiations with the subject bearing in mind that he had great respect for and trust in both, and in the case of his sister was particularly close to her

as subsequently emerged in his letter to Ms X of 26th February, 2000 (referred to earlier in this chapter). There is also a reference in the Culligan Report confirmed by phone records that he endeavoured to contact his sister by mobile phone on the afternoon of his death, after his call to Kevin Ireland, but was unable to do so because he had used an incorrect number which had been changed shortly before then.

11. On the morning of 20th April, or at any time, failure to have appropriate steps taken to prepare Ms Carthy for participation in the negotiation; to ascertain her assessment of her brother's conduct and whether she had any helpful advice to offer the negotiator. It would have been obviously useful to have her personally interviewed by an experienced policewoman who herself had been properly instructed on the facts. This was primarily a matter for the scene commander, but its importance is such that one would expect the negotiator to prompt his inexperienced superior if necessary. In fact there is no evidence that anything was done to derive benefit from the presence of Ms Carthy – particularly during the morning or afternoon of the second day.
12. Failure to respond to John Carthy's expressed fear of a long prison sentence by arranging with his (Jackson's) superiors to obtain a written assurance from the Director of Public Prosecutions that if the subject were to relinquish his gun it would not be necessary to arrest him, and that that course of action, if subsequently taken, could be postponed until after he had had immediate in-patient treatment at St. Patrick's hospital under Dr. Shanley (as offered by him) and a report had been received by the DPP from the latter regarding the outcome of treatment and the psychiatric assessment of the cause of the deceased's behaviour at Abbeylara, and whether, if his gun licence was withdrawn and he disposed of his weapon, he would cease to be a danger to anyone.
13. A crucial matter which John Carthy had on his mind during the siege as indicated to his mother, and which appears to have been the primary motivating factor that precipitated his violent conduct in apparent defence of the old family home, was his fear that it was about to be demolished by the local authority as the new dwelling provided by it had been completed – a fear accentuated by his association of the old home with his grandfather and father, the tenth anniversary of whose death on Holy Thursday, 1990 was at hand. It would have been potentially helpful to obtain as a matter of immediate urgency a letter from the county manager addressed to John Carthy confirming that the local authority was willing to postpone its decision about demolition of the old house until after his hospital treatment and he was in a position to consult his solicitor and to take up the matter again with the county manager. Such a postponement would not inhibit the local authority in its ultimate decision, but it would lay the groundwork for an apparent "victory" by John Carthy which, in conjunction with postponement of arrest might encourage him to accept it as such and end his stand-off.

14. Failure to appreciate that John Carthy's insistence on having the benefit of a solicitor at the scene might be turned to advantage by providing the subject's local solicitor, or if not traceable, the family solicitor, having first briefed him/her about possible postponement of the demolition of the old house by the local authority to allow further discussion after hospital treatment; also the question of a decision by the DPP to postpone Mr. Carthy's arrest if he agreed to leave the house without his gun and proceed immediately to hospital with Dr. Shanley for treatment and thus avoid humiliation of the subject. (This point is amplified elsewhere in this chapter).

The negotiator does not appear to have tried to look into the mind of the subject and to attempt to assess his possible motivation. Mr. Carthy's insistence on production of a solicitor at the scene appears to indicate that he was contemplating ultimate surrender and required advice and participation in the negotiation of terms. Such thoughts are reflected in the Kevin Ireland phone conversation six hours before the subject's death when he told his friend that "*he would give himself in if he got a solicitor*". He was described by Mr. Ireland as being "calm" and he appears to have been lucid at that time. It is most unfortunate that a major opportunity was not ascertained and pursued.

Having recited what I find to be the downside of Sergeant Jackson's performance as negotiator at Abbeylara, it is important to emphasise that anyone assessing his performance should also take into account the major difficulties in which he was working which are as follows:

- (a) He had no prior experience as a siege negotiator.
- (b) There were twenty-seven other experienced police negotiators in service in this jurisdiction at that time. One of them should have been provided to collaborate with Sergeant Jackson. Apart from the benefit of expert help and advice, this would have enabled both to have reasonable rest periods in succession and to carry out part of their work from an adjacent house, i.e., Farrell's or Burke's or the Carthy new house. With the benefit of some rest and an occasional modicum of creature comfort, both negotiators would have had also some reasonable opportunity to communicate with each other; to think and to plan meaningful strategy. In fact Sergeant Jackson was obliged to work on duty in the open for a total of about 20 hours from the evening of 19th April up to the time John Carthy was fatally shot at 6:00 p.m. on the following day. During that period he had two hours sleep and another two hours off duty having been on duty from 7:00 a.m. on the first day i.e., a total of 30 hours excluding rest periods. It is unfair and unreasonable to expect optimum performance in a unique situation from an inexperienced negotiator in those circumstances. This should have been apparent to the scene commanders, and to Chief Superintendent Tansey and Assistant Commissioner Hickey. From the beginning they should have provided a second trained negotiator to work

with him. If the need for such assistance was adverted to by any of the senior officers as ought to have been the case, there may have been some reluctance to introduce an experienced negotiator who was not a member of the ERU – a self-contained elite unit which may have regarded itself as being capable of resolving the situation without help from elsewhere. The ERU involvement in this case was high profile with the media. Failure to appreciate the obvious need for having an experienced negotiator to work with Sergeant Jackson is surprising.

- (c) Through serious failures in intelligence gathering by the scene commanders, Sergeant Jackson was not informed about John Carthy's allegation of garda assault while under interrogation after wrongful arrest in connection with the destruction of the goat mascot, or that his gun had been taken from him by the police through subterfuge without any corroborative evidence to sustain nebulous hearsay allegations made against the subject which he denied. The failure of Superintendent Shelly to have an in-depth consultation with Dr. Cullen soon after commencement of the siege led to the fact that Dr. Shanley's involvement was not known until circa 4:00 a.m. on 20th April. The psychiatrist's involvement would not have been discovered until many hours later but for Sergeant Jackson's initiative in having the doctor seen by Garda Campbell in the early hours of 20th April when he was asked for medical records in his possession. These included a report from Dr. Shanley.
- (d) As already pointed out, another serious failure in intelligence gathering was not having Kevin Ireland properly debriefed in detail about his telephone call with the subject at noon on 20th April. That call is the only evidence of what was in John Carthy's mind during the siege about use of his gun and his requirement for a solicitor. He made clear to his friend that he had no intention of shooting himself or anyone else and that his purpose in shooting at the police was to keep the ERU at bay.

Sergeant Jackson also would have learned from the Kevin Ireland phone call that John Carthy's purpose in phoning his friend was to obtain the benefit of a solicitor at the scene apparently in the context of negotiating possible surrender. If fully briefed in the matter, it is likely that the negotiator would have realised that providing a solicitor could have been of great importance in achieving success.

As already stated in the Introductory Chapter, the evidence has established that Sergeant (now Superintendent) Jackson preformed his duties to the best of his ability at Abbeylara. He demonstrated a high degree of dedication, humanity and a real effort to resolve the impasse created by John Carthy, who was a sick man. I note in particular that when the deceased emerged onto the road from his house; removed one cartridge from his gun and then commenced walking towards Abbeylara with his weapon apparently at the ready, Sergeant Jackson observed that the deceased had not threatened any of the nearby ERU officers and he (Jackson), who was first to fire, elected to shoot at John Carthy's legs and he was struck twice in that area. Unfortunately, both bullets passed through soft tissue. If a bone had been struck it is

probable that the subject would have fallen immediately thus removing any need for further shots. I commend Sergeant Jackson for his course of action in contending with the final difficult situation presented by John Carthy. I have no doubt that throughout the event he did his best.

SECTION N: — The Shooting of John Carthy by Detective Garda (now Sergeant) Aidan McCabe

Detective Garda McCabe was one of three ERU officers who arrived at the Abbeylara scene circa 1:00 p.m. on 20th April to reinforce the tactical detachment of four officers under Detective Sergeant Russell. His knowledge of John Carthy probably would have been limited.

When the subject made his sudden, unexpected exit from the house armed with his shotgun, Garda McCabe was on duty with Detective Sergeant Jackson and Detective Garda Sisk on the road in the vicinity of the negotiation point at the Carthy boundary wall. He was armed with an Uzi sub-machine gun. He saw John Carthy walk from his house with his gun broken open. He called on him to put the gun down. Other ERU officers in the vicinity shouted “*armed gardaí, put your gun down*” and this was repeated by the officers, including Garda McCabe, but there was no response from the subject. The witness also indicated in evidence that John Carthy was aware of the presence of ERU officers on the road in the vicinity of his gateway and elsewhere, but he did not threaten any of them. The evidence has established that he passed within a few feet of four or five officers before turning to proceed in the Abbeylara direction. It is likely that Mr. Carthy also would have seen Sergeant Russell standing on the boundary wall, near where the subject was when fatally shot. Sergeant Russell presented a spectacular target but was also ignored by Mr. Carthy.

Garda McCabe did not see the subject close his gun, but observed that he had done so before entering the roadway. He also stated in evidence that he saw Mr. Carthy stop on the road near his entrance; open the gun; remove one cartridge; throw it away and close the gun again. When the subject proceeded in the Abbeylara direction Garda McCabe saw local officers running in different directions and scattering on the road ahead in the vicinity of the command vehicle near Burke’s gate. He stated that he feared for their lives as John Carthy approached them with his gun held in what he perceived to be a threatening way. The subject did not raise the gun to his shoulder or point it at any particular officer. Nonetheless, in the opinion of Garda McCabe, Mr. Carthy constituted an immediate lethal threat to those gardaí as he was in a position to fire the gun instantly and was so close to the local men that it would not have been necessary to raise the gun to his shoulder to take aim at any particular target. Garda McCabe believed that the subject was about to pull the trigger and possibly kill or injure officers in proximity to the command vehicle. He decided that all other means of stopping John Carthy had been exhausted and that in the interest of saving the lives of local officers in the immediate area, he should prepare to discharge his own weapon at the subject. He was about to do so when Sergeant Jackson fired his first shot which Garda McCabe observed struck the

subject's upper leg. It did not seem to disable him. He took one or two further paces forward and was then shot in the same leg again by Sergeant Jackson – though on that occasion the witness did not know whether or not the bullet had struck its target. According to Garda McCabe it also seemed to have no effect on Mr. Carthy who took another one or two paces forward. (As already stated, it emerged subsequently at post-mortem that both the Jackson bullets had caused soft tissue injury only in the upper leg.) At that point Garda McCabe decided that his duty was to fire at John Carthy in accordance with the instructions and training he had received as an ERU officer which included a direction that, where possible, the target should be the central body mass or torso of the subject. The first Uzi bullet fired by Garda McCabe struck John Carthy's lower back. The witness stated that it also did not seem to have an effect on him and he was not sure whether the bullet had hit the target. For that reason he then fired a second shot which struck the subject at a higher point in the back. This caused him to collapse on the road mortally wounded and he died almost immediately afterwards.

The Tribunal heard an amount of expert medical testimony from Professor Phillips, neurosurgeon, and Professors Harbison and Milroy, pathologists (see section D in Chapter 5) on John Carthy's body position at the time when the fatal shot was discharged and the probable effect of the other three bullets which had struck him. The experts were in broad agreement that when considering John Carthy's response to the shots an important factor was the effect of his highly charged mental state at the time. It is likely that he would not react as a normal person would to the injuries inflicted on him and to the grievous pain which would have been caused by the third bullet in particular. The opinion was expressed that his mental state may have caused his responses to have been significantly delayed. In the light of that evidence it follows that Garda McCabe's description of the effect on John Carthy of the first three shots is credible and I accept the veracity of his testimony in that regard.

The crucial issue is whether in all the circumstances Garda McCabe was lawfully justified in firing two shots into John Carthy's back, the probable consequence of which would be the death of the subject as actually happened. The law provides that a garda officer may shoot an armed subject only as a last resort to save the life or bodily integrity of some person or persons who are in immediate danger of grievous attack by the subject and are liable to be killed or seriously injured by him. Garda McCabe stated in evidence that he shot the deceased because he believed that the latter was about to shoot and possibly kill or injure some of the local officers who were on the road in the vicinity of the command vehicle as the subject, carrying his gun in what was perceived to be a threatening attitude, walked towards them. He believed that all other means of stopping John Carthy had been exhausted and that he had an immediate duty to protect the local officers from death or personal injury. (There is no doubt that there were at least five local armed detectives and also unarmed uniformed officers on or about the road in the general vicinity of the command vehicle near Burke's entrance as John Carthy walked towards them carrying his gun in what was perceived to be a threatening way. They were vulnerable to being shot by the subject if he decided on that course of action).

When Sergeant Jackson shot Mr. Carthy twice in the leg and failed to stop his progress forward, Garda McCabe then decided that he had no alternative but to shoot the subject in the back in accordance with his ERU training. He would have known that such shots, if they struck the intended target, were likely to have fatal consequences for Mr. Carthy.

There are two exceptional factors for consideration in reviewing whether Garda McCabe was justified in firing potentially fatal shots at the subject. First, the fact, known to the witness, that Mr. Carthy did not threaten any of the armed ERU officers (including McCabe himself) who he had encountered at close quarters after leaving his house. If his intention was to shoot a police officer the rhetorical question is posed why did he not shoot one of several armed ERU men who were in his vicinity initially and at close quarters? Having ignored them, why would he shoot a local officer as he walked towards Abbeylara in their direction? Was it not reasonable to take into account that he may have regarded possession of his shotgun armed with one cartridge as being essential for protecting himself from being overpowered by the police and that it was not his intention to use it, at least without provocation. Most unfortunately, Garda McCabe, like all the other officers at the scene, was not aware that a few hours earlier Mr. Carthy had informed his friend, Kevin Ireland, in a phone call that he did not intend to shoot anyone. That information, allied to Mr. Carthy's conduct in not threatening any of the ERU officers he encountered after he left the house, might well have caused Garda McCabe to reconsider whether the subject did in fact constitute a real threat to the life or safety of anyone. If Mr. Ireland had been properly de-briefed by an experienced intelligence gatherer the foregoing information would have been available to all concerned, including the local armed officers at the scene. In all the circumstances it may have coloured their response to Mr. Carthy and their assessment of the actual threat he posed to others as he walked towards Abbeylara.

The second factor which was known to Garda McCabe was that his superior, Sergeant Jackson, the ERU negotiator, was first to fire at the subject and had elected not to aim at his torso but to shoot him in the leg. In doing so he had thereby indicated that he did not regard it as necessary to kill Mr. Carthy but simply to disable him. In the circumstances should the witness have consulted his superior, who was close to him at the time, before deciding to fire potentially fatal shots into John Carthy's back?

There is also another factor which requires consideration. Was Garda McCabe fearful that he and his ERU colleagues who were on the road near John Carthy were at risk of becoming victims of an imminent "blue on blue" situation caused by local armed officers on the road ahead of them in the vicinity of the command vehicle who were likely to shoot at the subject. Sergeant Foley has stated in evidence, and I accept, that he had aimed his gun and was within an instant of shooting at John Carthy when Sergeant Jackson opened fire on the subject. Protecting himself and others from the possible consequences of a "blue on blue" situation would not, *per se*, have been a sufficient ground for fatally shooting Mr. Carthy. There is no doubt that if the road from the Carthy to the Walsh properties and beyond had been kept clear of vehicles

and all personnel there would not have been a potential “blue on blue” situation as all vehicles and personnel would have been cleared from the road before Mr. Carthy emerged from his house and there would have been no possible garda target for him in the vicinity of the command vehicle or further along the road towards Abbeylara.

In reviewing the culpability of Garda McCabe and the legality of what he did in fatally shooting John Carthy, one must decide the issue on the basis of the nature of the crisis situation which the witness was obliged to contend with and his state of knowledge at that time. Although Mr. Carthy had not threatened any of the ERU officers he had encountered after leaving his house, objectively he constituted a potential real threat to local police on the road in the vicinity of the command vehicle which was close by. The training which gardaí receive is that it is a matter for the individual armed officer to decide in each case whether the subject constitutes an immediate threat to the lives of others. Garda McCabe was not aware of what Mr. Carthy had said to his friend, Kevin Ireland, a few hours before he vacated the house that he had no intention of killing anyone. Sergeant Jackson’s shots had not stalled the subject. The risk he presented had then become acute and immediate. In those circumstances it was not unreasonable for Garda McCabe to decide that his duty was to shoot Mr. Carthy. The witness denied that he had been motivated by possible personal risk from a “blue on blue” situation. Bearing in mind that there is no evidence that a shot had been fired at the scene by any local officer at that time and also the apparent urgency and gravity of the situation which the witness felt obliged to resolve, he may not have been aware of, or actuated by, personal risk from a “blue on blue” situation. In all the circumstances it is proper to conclude that there was insufficient evidence which might establish that Garda McCabe, on the basis of the information available to him and the circumstances he had to contend with, acted unlawfully in shooting John Carthy. I am satisfied that responsibility for his death rests primarily with the scene commanders and to a lesser extent with the ERU tactical commander for reasons stated elsewhere in this chapter.

SECTION O: — A Summary of Command Failures at Abbeylara

Failures by the scene commanders and others which contributed to the disaster at Abbeylara are briefly summarised as follows:

- (a) Failure to have Dr. Cullen interviewed in depth by a competent, experienced, fully briefed officer as a matter of urgency early in the first evening of the siege.
- (b) Failure to ascertain promptly the involvement of Dr. Shanley, Mr. Carthy’s psychiatrist, and to have him brought to the scene as a matter of urgency to advise the negotiator and scene commanders, i.e., circa midnight on 19th/20th April or earlier.
- (c) Failure to have Mrs. Rose Carthy, Ms Marie Carthy and other friends and close family of the subject interviewed individually as a matter of urgency by competent experienced officers, who were themselves properly briefed on the known facts, for the purpose of ascertaining information about the

health, family background and history of Mr. Carthy and to ascertain why he told his mother that he intended to defend the old home against all-comers, which appears to have been his primary motivation for doing what he did. It was also important to ascertain whether there had been any negotiations with the county manager about the old house.

- (d) Failure to have the Longford county manager interviewed about the intended demolition of the old house and about any negotiations there may have been with the Carthy family regarding retention of it, and also to negotiate postponement of demolition pending further discussion with Mr. Carthy and his solicitor after hospital treatment.
- (e) In response to the subject's fear (expressed to Detective Sergeant Jackson) that his violent conduct would result in a prison sentence of ten years, failure to arrange with Assistant Commissioner Hickey to request the Director of Public Prosecutions to agree to postponement of the arrest of the subject pending completion of the in-patient psychiatric treatment offered by Dr. Shanley at St. Patrick's hospital and a report on its outcome, provided that Mr. Carthy vacated his house without his gun and was brought to hospital by the doctor forthwith. (It is noted that an ambulance was available at Granard.)
- (f) Failure to have Mr. Kevin Ireland promptly and competently debriefed about his telephone conversation with the subject.
- (g) Failure to provide as a matter of urgency an experienced negotiator to act with Sergeant Jackson.
- (h) Failure to advise that the negotiators should operate from Farrell's house, Burke's house or the Carthy new house and to negotiate from there.
- (i) Failure to appreciate that it was unsafe to negotiate from the Carthy boundary wall having regard to the subject's violent conduct with his gun and that persevering with use of that place afforded him continuing opportunities to humiliate the gardaí by forcing them to duck up and down behind the wall. Apart from the risk of garda injury, this undermined the possibility of establishing rapport with the subject. Police experts were highly critical of the use of the selected negotiation point.
- (j) Having regard to the importance in the mind of the subject of having the benefit of a solicitor at the scene as expressed by him to Mr. Ireland, and to be derived also from his earlier requests for a solicitor, failure to ascertain the identity of the Carthy family solicitor, or the subject's own local solicitor, and to bring such a person to the scene for the purpose of speaking to Mr. Carthy by mobile phone or megaphone there as a matter of urgency. Failure to appreciate that a solicitor probably could secure, if necessary, the co-operation of the DPP (if not already obtained by the gardaí) regarding the arrest of the subject; and of the county manager in postponing demolition of the old house pending further discussion after medical treatment – thus opening the door to a real possibility for ending the impasse without humiliating the subject by having to surrender to the police

and face arrest and detention by them. Failure to appreciate that his repeated requests for a solicitor might indicate that the subject may have been contemplating the ending of the siege on negotiated terms.

- (k) In the interest of calming the situation and of avoiding a further escalation of distress for a person already suffering from an exacerbation of serious mental illness, failure to respond to the subject's request as a heavy smoker for cigarettes.
- (l) Locating the vehicle used as the command post on the Abbeylara road a short distance from the Carthy property.
- (m) Permitting the vicinity of the command vehicle to be a focal point where local armed officers and uniformed men gathered from time to time, including some spectators who had no purpose in being there.
- (n) Failure to maintain a sterile area between the ERU inner cordon and the local uniformed outer cordon free of personnel and vehicles at all times, save only gardaí having a specific official purpose for being at the scene.
- (o) Failure to reassign all armed local officers when replaced by the ERU tactical unit.
- (p) Failure to instruct all officers in range of the Carthy property and those within the sterile area between cordons to remain safely under cover at all times and to keep the Abbeylara road free of vehicles and personnel.
- (q) Failure to devise with Sergeant Jackson and put into operation a viable strategy for negotiating with the subject for the purpose of bringing the siege to a successful conclusion.
- (r) Exposing Ms Marie Carthy, Dr. Shanley, Mr. Martin Shelly and Mr. Tom Walsh to the risk of danger while waiting in a police car parked on the Abbeylara road near the Walsh property at the time when the subject, armed with his shotgun, vacated his house and headed in their direction.
- (s) Failure to devise with Detective Sergeant Russell, the ERU tactical commander, and have recorded, a detailed, viable plan for moving containment if the subject, while armed with his gun, made an uncontrolled exit from his house.
- (t) Failure to park the command vehicle in the curtilage of a house over the brow of the hill near the Abbeylara Church and have it fitted with (i) CCTV equipment to provide comprehensive views of the old Carthy dwelling, and (ii) radio equipment for contact with all officers at the scene (ERU and local). Alternatively, failure to utilise accommodation in Walsh's or Burke's house, or other appropriate location, as a command centre and fit it with similar TV and radio equipment. (See evidence of Mr. Bailey and Mr. Burdis in Chapter 6, section A3, part 2).
- (u) Failure to appoint a full-time log keeper to have and maintain logs, for the benefit of the scene commanders and others, of information obtained and decisions made.

- (v) Failure to have and maintain a comprehensive negotiator's log.
- (w) After the event, failure to have the guns and ammunition which local armed gardaí had at the scene, collected and examined by ballistics experts.

I have no doubt that the garda management of the siege at Abbeylara and related matters were defective in the foregoing respects and fell far short of what was required to contend with the situation successfully and to minimise the risk to life.

SECTION P: — What might have been done at Abbeylara

As already stated, the focal point of John Carthy's violent behaviour appears to have been a decision on his part to defend the old family home against all comers, including the Garda Síochána. It seems clear that he had what his mental state at that time caused him to perceive to be a coercive reason for taking that course, i.e., the imminent demolition of the old house which was intimately associated in his mind with his late father. That situation was aggravated by the fact that his father had died on Holy Thursday and the tenth anniversary of his death was at hand. Holy Thursday, 2000 was the second day of the impasse. John Carthy's fear after his father's death that he had failed him was a factor which cropped up in some manifestations of his mental illness over the years. It also emerged that, as his mother's scribe, but more likely on his own account, he had endeavoured in 1998 without success to persuade the local authority to sanction retention of the old home in addition to the provision of a new dwelling. In the end these facts appear to have coalesced in John Carthy's mind around what he perceived to be a central tragedy waiting to happen, i.e., destruction of his father's home. No one can know what exactly was in his mind. Arising out of his mental state he may have perceived having a duty towards his father's memory to defend the old home and this has some degree of confirmation from his explanation to his mother of having an intention to defend it against all comers. There is no doubt that the accumulation of serious adverse events in the life of John Carthy at that time led eventually in the days immediately before Holy Thursday, 2000 to a major escalation of his bipolar disorder and a manifestation of violent conduct which had never happened previously. The arrival of the police, although anticipated by the subject on 19th April in an observation to Ms Alice Farrell, was a seriously aggravating factor in the light of his apparently pathological antagonism towards them. His violent conduct *vis à vis* the gardaí from the beginning clearly points to the fact, which probably would have been apparent to the negotiator if he had been properly instructed, that the subject would not voluntarily surrender his gun to the police. Protracted efforts made by Detective Sergeant Jackson also established the probability that John Carthy would not negotiate with him or any other police officer.

It emerged during the siege that two important factors were on the subject's mind which might have been utilised by the negotiator to good effect. First, as already indicated, his fear of the imminent demolition of the old family home and, secondly, a fear that his conduct in carrying out his stand-off would result in receiving a long prison sentence. These points allied to obvious difficulty in communication, and what

should have been a realisation by the negotiator that it would be advantageous that the police should be seen by the subject as apparently dropping out of the negotiating equation and being replaced by others in whom he had confidence, trust and respect. It is evident that it was desirable to utilise an alternative means of communication and to create a scenario in the nature of a “victory” for John Carthy. The evidence indicates that he appeared to have remained capable of constructive thought – vide his communication with Kevin Ireland. He knew that he was low in cartridges and probably realised that he could not continue the stand-off indefinitely. It is likely that he was aware in the afternoon of the second day that time was running out for him and that possible capitulation to the police was beginning to loom large – a situation he would have abhorred. I apprehend that by the afternoon of 20th April, if not before, John Carthy may have become amenable to meaningful negotiation – in particular if structured in the form of a “victory” which he might regard as justifying to himself his violent conduct.

It seems to me that two steps should have been taken to deal with the subject’s fears. First, I apprehend that there would have been no difficulty in obtaining the cooperation of the county manager in writing a letter to John Carthy stating that the local authority would not demolish the old home but would await further consultation with him and his solicitor after hospital treatment. As indicated already, this would not commit the authority to anything more than temporary postponement of the proposed demolition. I also apprehend the likelihood that the Director of Public Prosecutions would be prepared to assist in defusing the situation by writing a letter to Assistant Commissioner Hickey (or to arrange with the State Solicitor for County Longford to write on his behalf) informing him that if the subject agreed to abandon his gun and to take up immediately Dr. Shanley’s offer of treatment at St. Patrick’s hospital, the director would postpone any action in the matter pending the outcome of hospital treatment and a report from Dr. Shanley on John Carthy’s future. Accordingly, there would be no need to arrest or charge the subject with any offence pending the outcome of medical treatment and Dr. Shanley’s report. Bearing in mind that the subject was not a criminal in any real sense and that his conduct was motivated by serious mental illness, I apprehend that in the interest of humanity the DPP probably would have agreed to postpone arrest on the foregoing terms. He would lose nothing by so doing and might save life.

The advantage of having the foregoing major problems in John Carthy’s mind dealt with in correspondence is that letters may be read and re-read before the subject decides how he will respond. Viva voce communications, even by private phone, may trigger an immediate negative response which might not happen if there is time for reflection as would be the case where writing is utilised as the means of communication. I have in mind that, the foregoing letters having been obtained, Dr. Shanley would write to John Carthy expressing his understanding of the two crises on his patient’s mind and explaining that there had been an encouraging response from the county manager and from the Director of Public Prosecutions. He would enclose the letters from both of them and comment that the subject’s fear of imminent demolition of the old home had been met and nothing would be done until a further consultation was held by the manager with John Carthy and his solicitor

after conclusion of his treatment at St. Patrick's. Furthermore, his fear of arrest and of a prison sentence had been defused. Dr. Shanley would go on to confirm his offer of immediate treatment at St. Patrick's hospital and end by recommending his patient to avail of what had been achieved by leaving his house without his gun at an appointed time; meet the doctor and his sister on the road at his gateway and then travel with them to St. Patrick's hospital to commence treatment there. I have in mind also that, if Dr. Shanley approved, Ms Carthy would write to her brother telling him how happy she was about what he had achieved and encouraging him about his future after treatment at St. Patrick's.

As already pointed out, an alternative way of presenting the foregoing scenario would have been through the provision of an appropriately briefed solicitor at the scene as required by the subject. As already stated, the advantage of so doing does not appear to have been adverted to by the negotiator, the scene commanders or their senior officers.

It seems likely that a negotiating strategy on the foregoing lines would have had the following positive aspects in John Carthy's mind:

- (a) It would achieve at least a postponement of the demolition of the old family home and open the possibility of persuading the county manager to permit the family to retain the old house. (A concept it is probable in the end he would not wish to pursue assuming that the proposed in-patient treatment by Dr. Shanley was successful).
- (b) He would avoid immediate arrest and detention by the police.
- (c) After hospital treatment and, if successful, a favourable report from Dr. Shanley, the DPP might decide that, if his gun licence was withdrawn and he disposed of his weapon, John Carthy would not present a future risk and that his conduct at Abbeylara was the product of mental illness and was not criminal in nature. In those circumstances it would not be unreasonable for the subject to hope that no criminal charge would be brought against him.
- (d) It would avoid the humiliation of the surrender of his gun to the police or any need to negotiate with them.

In the context of the foregoing scenario, it seems likely that if Dr. Shanley had been brought to the negotiating point and had briefly explained to John Carthy by mobile phone or by loudhailer what had been achieved with the county manager and the DPP, he would have accepted delivery of the letters at his hall door, or at some other convenient part of the house, and would not regard it as an unacceptable invasion of his privacy. The letters would have been confirmation of important advantages which had been obtained and, therefore, factors which were positively in his favour and perhaps, in his mind, justification for his conduct.

As already stated elsewhere in this chapter, John Carthy's repeated insistence on obtaining the benefit of a solicitor at the scene, and particularly his statement to Kevin Ireland that he would give himself up if he got a solicitor, were factors that

had potential for being turned to major advantage which ought to have been realised and explored by the scene commander and the negotiator. Provision of a solicitor at the scene – if necessary the family solicitor – should have been regarded as a matter of urgent priority. It seems to me that postponement of arrest and also demolition of the old home, if presented and recommended to the subject by a trusted solicitor, is likely to have had a reasonable prospect of opening the door to a successful ending of the impasse – particularly as Mr. Carthy’s mind may have been moving towards the possibility of a negotiated settlement at that time.

Sadly, it is not possible to do more than speculate on whether or not there may have been a successful outcome to any plan on the foregoing lines. In the event, no realistic negotiating strategy had been devised or attempted. Essentially all that had been done was to bring several close friends of the subject, one by one, to the negotiating point with instructions to try to persuade him to surrender. None of them had any success – probably because that ploy was naive. It gave the subject nothing in return. In the end, John Carthy took matters into his own hands by leaving his house and walking towards Abbeylara with only one cartridge in his gun and having ignored the armed ERU men around him. Was his intention simply to buy cigarettes or perhaps to meet Dr. Shanley and his sister who he knew were at the scene and surrender his gun to them or had he some other motive in leaving the house? We will never know the answer to those questions either. For reasons which I have already expressed, his death should not have happened.

SECTION Q: – The Confiscation and Return of the Gun – Dr. Shanley’s Letter

I have referred to the evidence on this topic earlier in this chapter in the context of informal complaints made by Mrs. Evelyn McLoughlin to gardaí at Granard station (see Section B). However, there are other aspects of it, and related matters which require consideration regarding the confiscation and return of John Carthy’s firearm in 1998. My observations thereon are as follows.

The first issue with which I am concerned is whether it was appropriate for Dr. Shanley, the subject’s psychiatrist, to write a letter to Superintendent Cullinane of Granard supporting the return of Mr. Carthy’s shotgun to him. As already stated, in August, 1998 Garda Cassidy, acting on instructions from a superior, caused Mr. Carthy to hand over his shotgun for an alleged reason which was untrue, i.e., a garda directive that all licensed guns in the area were to be taken in for examination. Garda Cassidy’s instruction arose out of a complaint made by Mrs. McLoughlin about Mr. Carthy. She had been a near neighbour of the Carthy family for many years and is the wife of Brendan McLoughlin, a local building contractor, who had employed John Carthy in 1998. They had had a “*falling out*” which had led to the ending of Mr. Carthy’s employment and subsequently a claim by him for wrongful dismissal. Mrs. McLoughlin had known the subject all his life and was aware that he had a history of mental illness. On 11th August, 1998 she made an informal complaint about the subject to Garda Newton at Granard station where she was a casual employee. She

expressed concern that the subject was in her view “*mentally unstable*”. She had a fear that the dispute with her husband might cause Mr. Carthy to harm both of them with his shotgun. She was invited to make a formal complaint but declined to do so because of the long relationship as neighbours between the two families. She was also concerned that any formal complaint might appear to be “*in retaliation*” for Mr. Carthy’s threat of legal proceedings regarding the employment dispute. I do not doubt Mrs. McLoughlin’s *bona fides* in expressing her fears to the gardaí. She raised the topic separately with two officers. Mr. McLoughlin gave evidence that the subject had never made any threats to him. His wife also informed the Tribunal in evidence that in 1998 “*somebody*” had mentioned to her that Mr. Carthy “*was supposed to have gone down to the local handball alley and threatened the children*”. She agreed that that allegation was third-hand information. There was no evidence that her own children, who were occasional users of the handball alley, had made any such complaint to her. In consequence of the allegation made against Mr. Carthy, it was decided by Station Sergeant Nally that pending completion of investigations into it, the subject’s shotgun should be taken into custody and his licence should not be renewed. Garda Cassidy was instructed to recover the gun. He feared that Mr. Carthy might not voluntarily hand over the weapon and for that reason, he (Cassidy) resorted to the subterfuge that all licensed guns in the district were required for checking. That explanation was accepted by Mr. Carthy and the gun was voluntarily handed over by him. Garda Cassidy did not inform the subject about the allegations made against him by Mrs. McLoughlin. Although, in a strict sense, subterfuge should not be resorted to by the gardaí in their dealings with members of the public, nonetheless, it is reasonable that practical realities should be taken into account. Garda Cassidy’s fear that there might be difficulty in persuading Mr. Carthy to hand over possession of the gun on the basis of the alleged complaints about him was understandable and what he did to surmount the difficulty was not unreasonable in all the circumstances. The subsequent obtaining of a letter of support from Mr. Carthy’s psychiatrist was also an appropriate factor in persuading Superintendent Cullinane to direct return of the gun to the subject and the renewal of his licence. However, it is also pertinent to note that the superintendent, or any other garda officer, did not contact Dr. Shanley or Dr. Cullen then or at any time before events on 19th/20th April, 2000, and also that no subsequent complaints were made against Mr. Carthy until 19th April of that year at the commencement of the fatal event.

Mr. Carthy called to Granard garda station and raised the issue of the return of his shotgun on numerous occasions. It appears that he was not told the true reason why the weapon had been taken from him. Eventually on 6th October, 1998 he had a meeting with Superintendent Cullinane, since retired. It appears that he learned from him for the first time about the allegations which had been made against him. He denied to the superintendent that he had ever threatened anyone and that, while he did have depression in the past, he had attended a psychiatrist in Dublin and was then in good health. Superintendent Cullinane explained to him that before the firearm could be returned he had to be satisfied that he would not pose a danger to anyone if he possessed a gun. In the light of the foregoing requirement, Mr. Carthy’s first move was to contact Dr. Cullen, his general practitioner, to obtain a letter of support from him. His response to him was that “*in the event that he became unwell*

and the gardaí needed to get the gun back . . . what would he feel about that?" The reply he received was that *"the gardaí would have to take the gun off him"*, i.e., that he would not hand it over voluntarily in those circumstances. Dr. Cullen stated in evidence that he didn't refuse to support his patient but indicated that he would postpone a decision in the matter. This caused Mr. Carthy to raise the requirement with his psychiatrist, Dr. Shanley, when seen by him for treatment on 8th October, 1998. There was no evidence of depression or elation found at that time. He explained to Dr. Shanley that a letter was required to indicate that he (the psychiatrist) was of the view that Mr. Carthy was fit to possess a firearm at that time. Dr. Shanley was not aware until then that his patient had a gun. He was told by the subject that the police had taken in all the guns from *"all over the county for a routine check"*. (It will be noted that by then the subject had been made aware by Superintendent Cullinane of the true reason for obtaining possession of his gun. He did not inform his doctor of the allegations made against him, nor that he had been arrested shortly before then in connection with the burning of the goat mascot). Dr. Shanley's letter of 13th October, 1998 addressed to the Superintendent at Granard garda station is in the following terms:

Dear Superintendent,

Mr. John Carthy has given me permission to write to you. He is a patient of mine for some years and in my opinion is fit to use a firearm. When last seen on 8th October, 1998 he was very well. He has been treated for depression and elation in the past and should the situation change his general practitioner will be in touch with your office.

Yours etc.

This letter was not copied to Dr. Cullen. Dr. Shanley accepted in evidence that he should have done so. Before writing the letter of support he did not contact the general practitioner or the gardaí in Granard. He was not aware of Dr. Cullen's view about John Carthy's fitness to hold a firearm at that time.

Dr. Shanley stated in evidence that he *"gave this letter of support on the basis of knowing John over a number of years; on the basis that he had been stable from a psychiatric point of view; on the basis that he was conscientious about coming to see me which involved long distance; on the basis that he took his serum of lithium regularly and that it was always within therapeutic range"*. He stated that if he had been aware on 8th October, 1998 of the allegations of threats allegedly made by Mr. Carthy involving possible use of the shotgun his action would have been to see his patient again and make a further assessment.

On 30th October, 1998 John Carthy completed his application for a firearms certificate. It was accompanied by a letter of consent from his mother to the holding of the firearm in her house. On 13th November, 1998 the shotgun was returned to Mr. Carthy together with the requisite firearms certificate. No further complaints were made to the gardaí and the certificate was renewed in the following year in the ordinary way.

In all the circumstances was it reasonable for Dr. Shanley to write the letter to Superintendent Cullinane in support of Mr. Carthy's application to have his shotgun returned? The expert psychiatric opinions on this topic are divided.

Dr. Sheehan's opinion was that, in the light of the evidence which ultimately emerged, he would not have supported the application for return of the gun to Mr. Carthy. However, he agreed that, given the information available to Dr. Shanley at the time when he wrote the letter, his assessment and the factors which he took into account when deciding to support the application for return of the gun were appropriate. He believed that the letter should have been copied to Dr. Cullen and that if that had happened it probably would have led to a pooling of their information and perhaps a different assessment by Dr. Shanley.

Dr. Kennedy stated in evidence that he would not have written the letter of support if he had known the true reason why the gun had been obtained by the police, i.e., the allegations of threats made by Mr. Carthy (though ultimately unsubstantiated).

Professor Fahy's opinion was that as John Carthy had a history of bipolar affective disorder and of episodic alcohol abuse, such reasons alone should on medical grounds, have disqualified him from holding a firearm. In his opinion such conditions place an individual at risk of erratic, aggressive or uninhibited behaviour. There is at least a ten per cent risk of suicide which is increased by alcohol abuse. He expressed the opinion that if such an individual has possession of a gun he/she has a convenient method of suicide available that increases the overall risk. He stated that he would have had "*little hesitation*" in refusing to supply a letter of support in the circumstances. He was critical of Dr. Shanley's reasoning for writing the letter.

Professor Malone expressed the opinion that most psychiatrists, having the information that was available to Dr. Shanley, would have come to the same view and would have provided the letter of support. He commented that Dr. Shanley had taken into account the subject's past history – the absence of any suicidal behaviour; the fact that he was stable from a psychiatric point of view and compliant with his treatment regime. He believed that John Carthy had a degree of insight and understanding into his condition and was motivated to attend Dr. Shanley and to adhere to his treatment. Professor Malone concluded that that was indicative of the therapeutic alliance that existed between Dr. Shanley and his patient. He thought that Dr. Shanley was probably the person best placed to make the assessment he made in October, 1998, having regard to his in-depth understanding of his patient and his expertise.

It is noted that Professor Malone emphasised the importance of the therapeutic alliance which he stated was the essence of the doctor/patient relationship: "*It involves empathy, basic trust present in a non-judgemental, unconditional, positive regard . . .*". He considered that the letter of support from Dr. Shanley was a vote of confidence in his patient and he felt that if the psychiatrist had failed to provide the letter of support it may well have fractured the therapeutic alliance, which could have the consequence of John Carthy being less inclined to reach out when he was

in difficulty. Professor Malone's conclusion as expressed to the Tribunal in evidence was that:

"based on all the clinical evidence that Dr. Shanley had in his possession in 1998, [he] made a recommendation to the gardaí that there was no medical contraindications to Mr. Carthy having a gun licence at that time . . . obviously Dr. Shanley was factoring primarily the suicide risk, and in this regard Mr. Carthy had never made a suicide attempt previously during which time he experienced several severe depressive episodes. With regard to the homicidal risk, Mr. Carthy had not been involved as far as Dr. Shanley was aware, or I am aware, in any significant interpersonal violence, nor had he made any threats of a homicidal nature to anybody at the time of assessment in October, 1998 . . .".

In reviewing the foregoing evidence, it is important to appreciate that Dr. Shanley's decision to write the letter of support for return of the shotgun to Mr. Carthy must be assessed in the context of the information available to him in October, 1998 and not that which has since emerged. He was not aware of allegations made against Mr. Carthy at third-hand which the police were unable to substantiate on investigation. He had substantial experience at that time of treating his patient over a period of three years; he had no evidence suggesting a suicide attempt previously; there was no evidence that he had been involved in any significant interpersonal violence previously and, though in possession of a shotgun for the previous seven years, there was no evidence, known to Dr. Shanley, that there had been threats to anyone of a homicidal nature by Mr. Carthy. It seems to me that Professor Malone's concern for preservation of the therapeutic alliance between doctor and patient which he regards as being the essence of their relationship, is a factor of particular significance. In the light of the information available to him when being asked to write the letter of support, was it reasonable for Dr. Shanley to take into account the preservation of the therapeutic alliance between him and his patient, including its importance in the interest of the latter. In my view it was appropriate to do so and to furnish the requisite letter of support. There is one other aspect of the matter, i.e., not copying the letter to Dr. Cullen. Dr. Shanley accepts that he should have done so. However, there is no evidence that if he had received a copy of the letter, Dr. Cullen would have sought to influence a change of opinion on the part of the specialist.

Finally, one other matter regarding the confiscation of Mr. Carthy's gun should be considered. The garda investigation appears to have established that there was no substance to the fears expressed by Mrs. McLoughlin for her own safety and particularly that of her husband arising out of Mr. Carthy's possession of a gun and the dispute he had with Mr. McLoughlin about alleged wrongful dismissal from employment. As already stated, the latter gave evidence that he had received no physical threats from the subject. The other contention about possible threats to children also appears to have had no foundation. It follows, therefore, that there was no apparent justification for obtaining possession of Mr. Carthy's gun and for retaining it. The facts indicate that having learned about the fears expressed by Mrs. McLoughlin, the local gardaí were premature in immediately securing possession of the subject's gun by subterfuge before investigating the matter. Ultimately, it

emerged that the only possible justification for taking the gun was that Mr. Carthy had previously suffered from mental illness and that step was taken without seeking any medical information or opinion to justify it. An important consequence of the garda conduct is that the creation of one cause for Mr. Carthy's distrust of and antagonism towards the gardaí (which loomed large at Abbeylara) would not have arisen. That might have improved the possibility of successful negotiation with him.

The evidence of Mr. Patrick Reilly establishes that the garda recovery of the gun by subterfuge, prior to the investigation of alleged complaints, had a major lingering effect on Mr. Carthy. Mr. Reilly, a neighbour of the Carthy family who had known the subject all his life, was also a member of the same gun club and had experience of shooting with him. He gave evidence on two matters. First, that John Carthy was a person who was very careful with his firearm and was not one who would take chances with his gun (evidence which was supported by Mr. Bernard Brady also). Secondly, he stated that Mr. Carthy told him about the gun being taken from him by the police and he believed that his friend had "*a lingering sore*" about what had happened. He stated that Mr. Carthy's pride was seriously injured and that the taking of the gun was a big issue for him. Mr. Reilly thought that Mr. Carthy bore a grudge against the gardaí and blamed them for wrongly taking his gun. It was a topic mentioned to him several times by the subject.