CHAPTER 9

The Media

SECTION A: — RTÉ ''Five/Seven Live'' Broadcast on 20th April, 2000

Background

The siege at Abbeylara was a major item broadcast soon after the commencement of the ''Five/Seven Live'' news and current affairs radio programme on 20th April, 2000. ''Five/Seven Live'' is a programme on RTÉ (Radio Telefís Éireann) Radio 1. RTÉ is the national broadcaster. The programme included, for the first time on RTÉ (or in any other broadcast), publication of John Carthy's name. It also included interviews about him with Fr. Fitzpatrick, the Abbeylara parish priest and two local people, Mr. Michael Heaney, a neighbour, and Mrs. Mary McDowell. The latter provided details of an intimate personal relationship between Mr. Carthy and a young woman which had been recently terminated by her. Mrs. McDowell was also asked in course of her interview by Niall O'Flynn, the RTÉ reporter concerned, ''*If you could talk to John now, have you a message for him*?'' She replied: ''*Well, John, John, if I was you, John, come out. Everybody loves you and everybody is thinking about you and worrying about you, and you are a good friend and you have lots of friends here. So, please, John, please, come out*''. A similar question was put to Mr. Heaney and he also urged Mr. Carthy to surrender to the police.

Ruling by the Chairman on 9th July, 2004

The propriety of the foregoing ''Five/Seven Live'' broadcast is an issue which the Tribunal is required to consider. In response to an application made by counsel for RTÉ, the parameters in that regard were specified by the Tribunal in a Ruling made on 9th July, 2004, in the following terms:

> *''Counsel for RTÉ has made an application to the Tribunal seeking clarification of its Terms of Reference regarding investigation of broadcasts made by RTÉ on 20th April, 2000 concerning events at the home of the late John Carthy at Abbeylara on 19th/20th April and related matters.*
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> ***Brief Background Facts***
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> *At the relevant time there were two dwellings on the Carthy family holding at Toneymore, Abbeylara, i.e., the original single-storey building where generations of the family had resided for upwards of sixty years and a new house. The original was in generally poor condition and required to be replaced. The local authority recognised that fact and built a new dwelling nearby which on 19th April, 2000 was almost ready for occupation. The intention was that John Carthy and his widowed mother, Rose, the only regular*

occupants, would transfer to the new home and the original building would be demolished by the local authority.

For upwards of ten years John Carthy had suffered from a bipolar mental disorder which from time to time had required in-patient psychiatric treatment. His condition had deteriorated in the weeks prior to his death and he had arranged to consult his psychiatrist at St. Patrick's Hospital, Dublin on 20th April. Mr. Carthy was unhappy about the proposed demolition of the old home which had strong family associations for him. In the months prior to his death he had also other stressful circumstances in his life which appear to have added to his general distress at that time.

On 19th April John Carthy indicated that he proposed to occupy and defend the old house against all comers. He was armed with a shotgun and a substantial quantity of ammunition. During the afternoon he sent his mother to her sister's house nearby and he commenced firing the shotgun in the air. The family were very concerned for his safety and the safety of others. The matter was reported to the police at Granard. Officers came shortly afterwards to investigate and further shots were fired by Mr. Carthy. Substantial police reinforcements were sent to the scene, including armed officers, under Superintendent Shelly. It was decided to obtain the assistance of the Emergency Response Unit (ERU). A detachment of ERU officers arrived at the scene at about 10.00 p.m. on 19th March. They included a trained negotiator. Thereafter occasional shots were fired by John Carthy and protracted efforts were made by the negotiator to have a meaningful dialogue with him. Chief Superintendent Tansey, the divisional officer, requested that Superintendent John Farrelly, national press officer of the Garda Síochána, attend at the scene as a large media presence was anticipated. He duly arrived later that evening and acted as Garda spokesman with the media. A substantial number of journalists attended at the scene. RTÉ was represented by Mr. Paul Reynolds, its chief crime reporter, who came with a television crew. He was responsible for news broadcasts about the event. Mr. Reynolds has not yet given evidence, but it appears that he was requested by Superintendent Farrelly not to publish Mr. Carthy's name or personal details about him. The police do not have power to prohibit the media from publishing such details but in the interest of saving life and/or property and/or in the interest of the common good such requests are frequently made to the media and in the case of RTÉ it appears to have been their practice to comply when asked to take that course. In subsequent news bulletins up to the death of John Carthy Mr. Reynolds did not publish the deceased's name or personal details about him.

As it transpired, RTÉ was doubly represented at Abbeylara as from the morning of 20th April. By coincidence Mr. Niall O'Flynn, a senior member of the Current Affairs section and editor of the programme entitled 'Five/Seven Live' which is broadcast each weekday evening on RTÉ Radio 1, was driving to work in Dublin from Sligo. While listening to the radio, he heard his colleague, Mr. Rodney Rice, referring to what was happening at Abbeylara but without

mentioning Mr. Carthy's name or personal details about him. Mr. O'Flynn was near Granard at the time and realised that he was in the immediate vicinity of the event which he regarded as one of substantial public interest. He decided that it would be advantageous to investigate it with a view to preparing an appropriate item for inclusion in the 'Five/Seven Live' programme to be broadcast that evening. He obtained authority from a superior in RTÉ and drove to Abbeylara where he met Mr. Reynolds and had the benefit of the television crew which he already had at the scene. Mr. O'Flynn interviewed a number of local people. His intention was to arrange vox pops for inclusion in the programme. Two of those interviewed were a neighbour of the Carthy family, Mr. Michael Heaney, and a casual friend of John Carthy's, Mrs. Mary McDowell, who gave him lifts to or from work at Longford from time to time. Each described their impression of the deceased and their association with him over the years. Each was asked if they could talk to John Carthy now had they a message for him. Both responded and, in effect, urged him to surrender to the gardaí. Mrs. McDowell referred to certain intimate personal details in the light of the recent break-up of a relationship with a girlfriend and the alleged reasons why that had happened. The latter topic had not been raised by the Garda negotiator, though known by him, as he had been advised by the Carthy family that it would be stressful for Mr. Carthy to do so and he had been asked by them not to introduce that subject. He had complied with the request.

Mr. O'Flynn did not give Superintendent Farrelly, or any member of the Garda Síochána, prior notice about the content of the proposed item on Abbeylara which he had devised for inclusion in the 'Five/Seven Live' programme. He intended that it would be the first feature after the usual news headlines and that he would also participate in the broadcast which was to be presented by Mr. Myles Dungan. It was intended to name Mr. Carthy and to publish substantial personal details about him, including the recently terminated intimate relationship which he had with his girlfriend.

Having regard to the present state of the evidence it is not entirely clear when Mr. O'Flynn became aware of the Garda request not to publish Mr. Carthy's name or personal details about him. Suffice to comment presently that he would have been aware from the item broadcast by Mr. Rodney Rice that no personal details were given by him about Mr. Carthy. Was it reasonable to assume that that arose out of a Garda request? It is also not in dispute that minutes before the 'Five/Seven Live' broadcast Mr. O'Flynn had a meeting with Superintendent Farrelly who then learned for the first time that it was intended to publish Mr. Carthy's identity and personal details about him. He expressed strong disapproval but Mr. O'Flynn pointed out that it was then too late to change the programme which was on the point of broadcast. It proceeded as planned without any alteration.

The Tribunal's Terms of Reference

The Tribunal was established in April, 2002 on foot of resolutions by both Houses of the Oireachtas which resolved that a Tribunal be established under

the Tribunal of Inquiry (Evidence) Acts, 1921 – 2002 to enquire into the following matters of urgent public importance:

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

The RTÉ Application

In course of my ruling on 24th March, 2004 in response to an application by RTÉ that although John Carthy had the benefit of a radio in his kitchen which was frequently turned on during the siege, there was insufficient evidence to establish that he had listened to the 'Five/Seven Live' broadcast, or even if he had done so, that he had been affected by it. Having considered all relevant evidence I accepted that submission and held as follows:

> 'The end result would appear to be that even if John Carthy heard the 'Five/Seven Live' broadcast, it would be very difficult indeed to be satisfied as a matter of probability that it significantly influenced his subsequent conduct in leaving the house.
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> However, that is not the end of the matter. Mr. Hanratty [counsel for RTÉ] concedes that there are two other issues which his clients must address. First, whether RTÉ personnel were asked by Superintendent Farrelly, or anyone on behalf of the Garda Síochána, not to broadcast John Carthy's identity or personal details relating to him in course of the siege. In all the circumstances was it reasonable for such a request to have been made to RTÉ and other interested media? Should it have been complied with?
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> Secondly, what was the purpose of Mr. Dungan's broadcast on 20th April regarding the siege of John Carthy at Abbeylara? Why were Mr. Heaney and Mrs. McDowell recruited to address personal messages to John Carthy, one of which included a statement on air of intimate personal details regarding a romantic relationship which had been terminated by the other party concerned?
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> Was the purpose of the broadcast to reach and influence John Carthy? It appears from the transcript of it that RTÉ, and in particular its correspondent at Abbeylara, was aware that throughout the siege Garda negotiators were endeavouring to establish a rapport and meaningful contact with Mr. Carthy.
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> The motivation of RTÉ as to the 'Five/Seven Live' broadcast requires to be investigated by the Tribunal regardless of whether or not the broadcaster was successful in reaching John Carthy. Furthermore, the issue as to whether the conduct of RTÉ amounted to an unjustified interference with An Garda Síochána in their efforts to negotiate with John Carthy also requires consideration.

The foregoing are the issues which will be addressed, inter alia, in the media module in due course. They will not include the question as to whether John Carthy is likely to have heard the 'Five/Seven Live' broadcast.

Having quoted the foregoing extract from the Tribunal's Ruling, the written submission furnished on behalf of RTÉ continues as follows:

'20. Perhaps, again for the avoidance of doubt, it is important to emphasise that RTÉ fully accepts that the matters described in the Sole Member's ruling fall properly within the Tribunal's Terms of Reference. . . .' *However, it was urged that:* 'The present submission is limited to the proposition that the ethics or propriety of RTÉ's journalism falls outside the Terms of Reference of the Tribunal. Nor is it correct to suggest that an inquiry into the full range of issues already enumerated by the Tribunal would be banal, mechanical or trite in the absence of a further ''*ethical propriety of RTÉ's editorial and journalistic decision-making*'' module. It need hardly be said that RTÉ cannot and does not contend that in respect of those matters that concern it within the Tribunal's Terms of Reference, it is entitled to immunity from criticism.'

RULING

Having considered all of the submissions furnished by various parties on the RTÉ application and all relevant evidence introduced to date, I am satisfied that the facts and circumstances surrounding the fatal shooting of John Carthy as specified in the Tribunal's Terms of Reference include matters which add to or could have potential for aggravating the deceased's apparently serious mental distress which became progressively more severe as the episode at Abbeylara continued (vide the evidence of Dr. John Sheehan and other psychiatrists given at the Tribunal), and in consequence the potential for undermining the possibility of successful dialogue between the Garda negotiator and John Carthy which might have avoided the circumstances that gave rise to his death. In that regard details, particularly those relating to the recent termination of an intimate personal relationship, could lead to significant additional harm — a matter specifically drawn to the attention of the Garda negotiator by members of the Carthy family. Their advice had been accepted by the negotiator and acted on by him.

There are a number of questions which it is proper for the Tribunal to consider in the context of the media module — the net issue being whether Mr. O'Flynn's conduct in orchestrating the 'Five/Seven Live' broadcast in the form in which it was made was reasonable and appropriate in all the circumstances.

The questions which require to be addressed are as follows:

> *Was Mr. O'Flynn, or any other senior RTÉ person at the scene, requested by Superintendent Farrelly not to broadcast John Carthy's identity or personal details? Ought Mr. O'Flynn have been aware of any such request? If such a request was made was it reasonable in all the circumstances and should it have been complied with? Was Mr. O'Flynn aware, or ought he to have been aware from reasonable enquiries, of the following facts:*
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> *(a) that John Carthy suffered from mental illness and that his conduct at Abbeylara was likely to have been motivated by that condition;*
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> *(b) that from arrival of the ERU negotiator on the evening of 19th April there had been ongoing efforts to have meaningful dialogue with John Carthy directed towards ending the impasse;*
>
> *(c) that a successful outcome of such negotiations was of crucial importance in bringing the event to the desired conclusion.*

Should Mr. O'Flynn have informed Superintendent Farrelly of what was intended by him regarding the proposed 'Five/Seven Live' broadcast so that he might consult with the Garda negotiator and the scene commander. It is noted that Mr. O'Flynn appears to have been unaware of the Carthy family concern about the harmful effect on the deceased if his severed intimate relationship had been referred to in course of negotiations. It follows that the effect on John Carthy would have been substantially more serious if the information in question was made public by RTÉ and he had heard the broadcast. It is probable that if Mr. O'Flynn had consulted Superintendent Farrelly and the latter had referred information about the proposed broadcast to the negotiator and scene commander, he, Mr. O'Flynn, would have been then informed about the potential risk of aggravating Mr. Carthy's mental state if his personal details were made public by RTÉ. If Mr. O'Flynn had been so informed by Superintendent Farrelly and had been specifically requested by him not to broadcast the proposed vox pops would he, as editor of the programme and the orchestrator of its contents about events at Abbeylara, have had an obligation on behalf of the national broadcaster to accede to Superintendent Farrelly's request and to delete the proposed vox pops in the light of all relevant circumstances? What objective did Mr. O'Flynn have in including the vox pops in the Abbeylara item? Had he known, or ought he to have ascertained, that John Carthy had the benefit of a radio which he played frequently during the siege? Was he genuinely hopeful that Mr. Carthy might listen to the proposed 'Five/Seven Live' programme and hear the vox pop messages to be broadcast by Mr. Heaney and Mrs. McDowell? Alternatively, was Mr. O'Flynn's primary objective to inject personal drama and interest into the Abbeylara story for the benefit of the listening public at large? Did Mr. O'Flynn confide in Mr. Paul Reynolds as

to what his intentions were regarding the content of the proposed 'Five/Seven Live' broadcast? If not, should he have done so as Mr. Reynolds was a senior broadcaster with long experience of dealing with the police? Was Mr. O'Flynn aware that Mr. Reynolds had received a request from Superintendent Farrelly not to divulge Mr. Carthy's identity or personal details? If not, should he have been aware of that fact? Should he have ascertained what the attitude of the police was regarding the publication of details about John Carthy? On the basis of information which Mr. O'Flynn had or ought to have known, did the 'Five/Seven Live' broadcast constitute a significant risk of aggravating John Carthy's mental distress if he heard the broadcast, and/or of undermining Garda negotiations with the deceased?

As already specified in the Tribunal's Ruling on 24th March, 2004, the fact that an analysis of evidence which has subsequently emerged relating to the activities of John Carthy at or about the time of the 'Five/Seven Live' broadcast indicates the probability that he did not listen to it, does not determine the issue which the Tribunal is required to address. The essence of the latter is an analysis of Mr. O'Flynn's state of mind and decisions made by him in the knowledge that his programme when broadcast might reach John Carthy and appears to have been intended so to do.

I am satisfied that all of the foregoing matters should be investigated and ruled upon by the Tribunal and that they are properly within its Terms of Reference.

Finally, I wish to state that I do not regard the Tribunal's Terms of Reference as including a requirement to investigate RTÉ's statutory obligations under Section 18 (1B) of the Broadcasting Act, 1960 as amended in the context of the Abbeylara item in the 'Five/Seven Live' broadcast on 20th April, 2000 or a general investigation of editorial policy or internal rules regarding the conduct of RTÉ personnel. Basically the Tribunal's concern is to investigate in the context of RTÉ broadcasts what happened at Abbeylara on 19th/20th April, 2000 relating to such broadcasts and whether anything different should have happened in that regard in the light of all relevant circumstances.''

''Five/Seven Live'' broadcast — the circumstances

John Carthy's name was not broadcast until the Abbeylara item in the ''Five/Seven Live'' radio programme on RTÉ 1 shortly after 5:00 p.m. on the second day of the siege. Although his involvement in the event was well known to people in Abbeylara and in the locality where he lived, Superintendent John Farrelly, the Garda Press Officer and in charge of the Garda Public Relations Office (also known as the Garda Press Office), explained in evidence that the reason why the gardaí did not wish to have the subject's name disclosed publicly was that once that detail emerged it would tend to open a floodgate of personal information by elements in the media.

Although the disclosure of identity in Mr. O'Flynn's broadcast had potential for harm as explained by Superintendent Farrelly, it was not a serious matter *per se* in the context of the particular broadcast. Disclosure of his identity would seem to have been unlikely to have caused significant distress to John Carthy if he had heard the disclosure in the context of a news bulletin concerning events at Abbeylara. However, it is probable that the promulgation of intimate personal details about his love life by Mrs. McDowell in her vox pop is likely to have caused him substantial distress if he had heard the broadcast and also distress for his family who had requested that such information should not be the subject-matter of Garda negotiations with him. That topic clearly had the potential to interfere with the negotiations and would have been a source of embarrassment for the negotiator with the subject and with Ms Marie Carthy, with whose request for non-disclosure he had complied.

The Garda Press Office and the Garda Code

The relevant Garda obligations as to press relations, are contained in the Garda Code, chapter 18.3.e, which provides:

> ''*(e) When an incident occurs which is likely to attract national or international media attention, the Garda Public Relations Office will be contacted immediately so that this office can arrange to liaise with press representatives, arrange press briefings and organise press conferences. Where it is decided to hold a press conference, the public relations officer present will take charge of the arrangements and conduct the conference. Divisional and District Officers, in particular, should ensure that the Garda Public Relations Office is promptly notified in all appropriate cases and kept informed on developments. It is the responsibility of local personnel to give all available information to the Garda Public Relations Office, where the staff shall in turn be responsible for the dissemination of the information to the media.''*

The Garda Press Office operates on a daily basis between 7:30 a.m. and 11:00 p.m. At the relevant time it had 16 staff comprising Superintendent Farrelly as officer in charge, one Inspector, four Sergeants, nine gardaí and one civilian office administrator. Gardaí in this office work on a shift basis. Approximately four members of staff are in the office at any given time. Superintendent Farrelly was on call 24 hours per day, seven days a week.

On 19th April, Garda Ronan Farrelly was on duty in the office from 3:00 p.m. to 11:00 p.m. At approximately 6:55 p.m. he received a call from Chief Superintendent Tansey, the Divisional Officer for Longford/Westmeath, who gave him certain information about the incident which was unfolding at Abbeylara. He was informed that a man had fired a number of shots at gardaí and that he was in a house which was surrounded by police.

Garda Ronan Farrelly informed his colleagues, who were working with him, of the incident. At 7:50 p.m he contacted Superintendent Farrelly, who was at his home. He informed him that Chief Superintendent Tansey had reported an ongoing incident at Abbeylara where a man in his 20s was ''*holed up*'' in a house with a shotgun. Superintendent Farrelly was informed that the man had had an altercation with his mother at around 5:30 p.m. that day. She was out of the house and no one else was present. The gardaí had been called to the scene earlier and a number of shots had been discharged by the man, one of which damaged a patrol car. Superintendent Farrelly could not recall when he received information regarding John Carthy's mental illness. He was told that the media were aware of the situation. It was agreed that a verbal statement would be given informally to media personnel who requested information. It would not be distributed in the form of a press release. The initial information which it was agreed could be given out was ''*probably in line*'' with a document discovered to the Tribunal which read:

> ''*Siege in Longford, Wednesday 19th of April, 2000. Gardaí called to a house in Abbeylara near Granard County Longford following an altercation there around 5.30 p.m. Man aged in his late 20s. Has a shotgun. On his own in the house. Has discharged a number of shots. Nobody reported injured. Area surrounded by gardaí and road closed off to traffic*''.

This information was ''*put on a clipboard, so another officer would take the call and he would repeat what was on this without having full knowledge of what was going on*''.

Superintendent Farrelly immediately drove to Abbeylara.

Media contact with the Garda Press Office

Prior to Superintendent Farrelly arriving in Abbeylara in the late evening of 19th April, a number of journalists contacted the Press Office seeking information. Sergeant Farrelly confirmed to the callers, what he described as, ''*basic facts only*''. Calls were logged, kept in clipboard fashion and were available to all members in the Press Office (numbering between three and five at any one time). He recalled having obtained the name of the person at the centre of the incident, John Carthy. However, the identity of individuals in such cases is not information which persons in the press office issue, or would issue, to callers. Mr. Carthy's identity was not disclosed to anyone.

Portion of a TV3 News item concerning the incident which was broadcast between 7:12 p.m. and 7:13 p.m. on 19th of April was played to the Tribunal. Garda Ronan Farrelly agreed that it was possible that confirmation of the circumstances of an incident emanated from his office. However, he had no specific recollection of speaking to anyone. He had no recollection of discussing a request to see a doctor and he certainly would not have given out that information had he had it in his possession.

The evidence indicates that from a very early stage, perhaps within the first hour, the media, including national organizations, were aware of the incident and soon afterwards many were represented at the scene.

With regard to the Garda policy on how journalists deal with identities, Garda Ronan Farrelly stated that from his experience, journalists would know or ought to know immediately that the Garda Press Office would not be naming the person concerned ''*in this particular type of situation*''. If a journalist asked him to identify the individual, that would signify to him that a very inexperienced journalist was dealing with the matter. The question of naming John Carthy did not arise during the series of initial phone calls to the press office. He believes that he did not record details of the subject's medical condition, or the fact that a doctor had been called because ''*we would not have been issuing those details*''. He has no recollection of Chief Superintendent Tansey informing him that the man involved had manic depression.

The Garda Press Office was updated subsequently on 19th April (probably before 10:00 p.m.) and learned that the area had been sealed off, that a trained negotiator was at the scene; and that about 20 shots had been fired from the house.

Garda Ronan Farrelly confirmed that he did not contact the media in an unsolicited way nor was he aware of any of his colleagues so doing. He confirmed that the Press Office would be proactive if required. In this case, nothing was issued or volunteered.

The Press Office did not handle many inquiries after Superintendent Farrelly arrived at the scene as most were addressed to him there. Garda Ronan Farrelly did not recall receiving any queries to the press office on the morning of 20th April seeking confirmation of the name of the individual. He did not see the newspapers that morning and stated in evidence that if he had received a request from the media to confirm Mr. Carthy's identity, he would not have complied with that request. He also stated in evidence that he was satisfied, from experience, that this was not an appropriate case in which to name the individual at the heart of the ongoing operation.

Media blackout

The Garda Síochána has no power to direct the media to maintain a blackout on information on a particular matter which is the subject of police investigation or to refrain from publishing details which are regarded by the police as being sensitive, e.g., the name and state of health of a person under siege. However, up to the Abbeylara event the practice had been that there was an informal arrangement between the Garda Press Office and the media that in relevant cases particular information would not be published where it was intimated that the police believed that it would not be in the public interest so to do. Previously, such requests had been almost invariably complied with by the media: an effective *de facto* voluntary arrangement was in being which worked satisfactorily in practice.

During the course of his evidence to the Tribunal, Mr. Paul Reynolds, an RTÉ journalist who specialized in crime reporting, confirmed that in cases where human

life was at stake, such as a kidnapping, the police might request a complete news blackout. It was his experience that all such requests would be referred either to senior management or editorial personnel and were normally complied with. From time to time, however, circumstances may arise where it is considered that public news overrides other considerations and that therefore people might be named. Overall, Mr. Reynolds confirmed that the ethos and tradition in RTÉ is to comply with any reasonable requests made by the gardaí, while retaining the station's overall independence and editorial discretion. Mr. Tom Maguire, who was the daytime editor of Radio 1 in April, 2000, confirmed in evidence that where a formal request is made for a complete media blackout, such a request could go to the Director General, ''*who is our editor in chief*''; it could go to one of the output heads being the director of radio, director of news, director of television or a duty editor, and in that way a formal request makes its way down through the system to each of the programme producers. According to Mr. Maguire it is the practice within RTÉ that if such a formal request is made, then, generally speaking, it will be complied with. When asked whether it was a matter for the producer of each programme to decide whether or not to comply with such requests, he confirmed that the decision was in fact made at a higher level. However, the decision is subject to review during the course of the day.

With regard to less formal requests for sensitivity, Mr. Maguire confirmed that whether such a request is complied with depends on the circumstances. Generally speaking, the producer or the editor of a programme will be guided by the person on the ground, i.e., the person who is in possession of the information and who is running with the story.

Chief Superintendent Tansey stated in evidence that Superintendent Farrelly would not have regarded the Abbeylara incident as one which would warrant a request for a media blackout. Nevertheless it was an incident in which the evidence indicates that Superintendent Farrelly called for sensitivity by the media.

It is not part of my remit to consider the general nature of the relationship between the Garda Síochána and the media regarding the publication of information in conjunction with potentially sensitive events; or whether there should be specific statutory power to control media publication in such circumstances. My function on this issue is limited to a review of the structuring of the RTÉ ''Five/Seven Live'' broadcast on 20th April relating to the Abbeylara item and its content. Suffice to reiterate in passing that the evidence which I have heard establishes that although the police have no power to prevent media publication of information, there is a *de facto* arrangement between the Garda Press Office and the media whereby, *inter alia*, the latter may be requested not to publish certain sensitive details in connection with a police investigation of an incident and it is normal practice to comply with such requests on a voluntary basis.

Superintendent Farrelly's attendance at the scene

On his arrival in Abbeylara, at 9:30 p.m. on 19th April, Superintendent Farrelly went into a local shop to seek directions. While there he met Ms Ann Walsh, cousin and neighbour of John Carthy. He agreed in evidence that Ms Walsh may have said something to him about the presence of the media, but had no specific recollection of what she said. Ms Walsh, in evidence, said that she told Superintendent Farrelly that the media presence was not going to be of any help to John Carthy; he told her ''*that was what he was there for . . . to keep them at bay*''.

Superintendent Farrelly then proceeded in the direction of the local church. A television satellite broadcast van was parked in its vicinity. Approximately five members of the media were present at that stage. He spoke briefly to them. They sought interviews but he informed them that he would not give an interview until he was fully briefed and that he would return to them in due course.

He received his first on scene briefing from Chief Superintendent Tansey and from Superintendent Shelly, the scene commander. It was agreed between them that Superintendent Farrelly would handle all media related issues from that point on until the incident was concluded. It was also agreed that he would control information flow to the media, insofar as that was possible.

In evidence, Superintendent Farrelly stated that meetings which he had with Superintendent Shelly or Chief Superintendent Tansey were of short duration. He was very conscious of time, which was a huge element with the media. In evidence, he stated that he did not have the luxury of lengthy briefings because of his awareness of the media time constraints as to broadcasting and print publication.

Superintendent Farrelly informed Chief Superintendent Tansey that it was not his intention to give the media details of the contents of ongoing negotiations with John Carthy. The reason for not so doing was that he did not wish to invite a running commentary by the media on every aspect of what was happening. He accepted in evidence that there is a practice/policy within the Garda Press Office to liaise with the police at the scene before releasing statements to the media.

He returned to the vicinity of the church at approximately 10:00 p.m. He spoke to a number of media people ''off the record''. He informed them that he would not be giving them details of the contents of negotiations. There were between ten and twelve media people present at that stage. He informed them that there was a possibility that the subject could be listening to radio or watching television broadcasts. He stated that members of the media present already knew John Carthy's name, but he requested them not to publish it. He informed them that John Carthy had depression and that from a safety point of view he did not want anything broadcast or published which would exacerbate the situation. According to Superintendent Farrelly, the media agreed to this: during the course of the next 24 hours, when different media personnel arrived at the scene, he repeated his request to them.

He was first approached by Ms Jenny McCudden of TV3 on the night of 19th April. She was about to go live on air. She requested Superintendent Farrelly to participate in the broadcast, which he did. During the course of his interview he confirmed that it was not his intention to broadcast details of the negotiations. He left the scene shortly after midnight and returned on the following morning at 8:00 a.m. During that morning he participated in a number of live television and radio interviews. He took part in another live television interview with Ms McCudden and was interviewed also on the ''Pat Kenny Show'' (which on that morning was being hosted by Mr. Rodney Rice). Superintendent Farrelly was interviewed by Mr. Paul Reynolds, RTÉ crime correspondent; he also participated in many other radio interviews during that day. Up to 25 journalists were present at Abbeylara during the morning of 20th April.

RTÉ personnel at the scene

There were two senior RTÉ persons present at the scene:

(a) Mr. Paul Reynolds, Senior Crime Correspondent who arrived at Abbeylara on the morning of 20th April having had phone contact with Superintendent Farrelly on the previous night. The news division did not, at any stage prior to the death of John Carthy, publish his name or any significant personal information about his health, employment or personal relationships.

(b) Niall O'Flynn, a senior editor and series producer of the ''Five/Seven Live'' programme which is part of a separate current affairs division in RTÉ and not attached to the news section.

John Carthy's name and certain intimate personal details were broadcast on the ''Five/Seven Live'' programme.

Mr. Paul Reynolds

Mr. Reynolds was appointed Crime Correspondent with RTÉ in December, 1996. The job entails the reporting on crime for all RTÉ outlets, radio and television. His primary responsibility is to the RTÉ newsroom. He researches, writes, files and broadcasts crime stories for news and also current affairs programmes such as ''Five/Seven Live'', which have news content. He broadcasts hourly radio bulletins for both RTÉ 1 and 2FM, when necessary. He also works for the radio news programmes ''Morning Ireland'', ''News at One'' and Sunday's, ''This Week''. It is part of his function to contribute or report, when requested, to other RTÉ radio and television programmes such as the ''Pat Kenny Show'', ''Live Line'', ''Five/Seven Live'', etc. In many instances, these programmes also use their own contributors. Generally speaking, information which Mr. Reynolds gathers is put on an internal RTÉ news system known as ''Newsstar''. Information on this system is available to all authorized RTÉ personnel.

Mr. Reynolds confirmed that when dealing with an Abbeylara type incident, there are no written guidelines in RTÉ as to how personnel should deal with the Garda Síochána. Nevertheless, under newsroom custom and practice, the coverage of events such as sieges or kidnapping is informed by a number of factors including

past experiences of similar incidents, a clearly defined path of editorial reference upwards for advice and guidance, and common sense. There is a defined chain of editorial command within the newsroom up to the Director of News and ''*higher*'' if necessary. According to Mr. Reynolds, factors which are taken into account include potential interference with Garda investigations. In evidence, he stated that he was perhaps ''*more aware than most*'' of the need for sensitivity to ensure that information which was placed in the public domain would not have the effect of interfering with a Garda operation or investigation. Such awareness is borne from his experience and position and the high level of contact which he has with members of the Garda Síochána and its Press Officer.

Mr. Reynolds had access to Superintendent Farrelly's mobile phone number and he confirmed that the superintendent was very accessible. It was his practice to respect requests from Superintendent Farrelly not to use certain information of a confidential, or off the record nature, when so requested.

Mr. Reynolds first heard of the Abbeylara incident while watching the early evening news on Wednesday, 19th April, 2000. He telephoned the Garda Press Office which confirmed the basic details of the incident. He was subsequently interviewed for RTÉ television news by phone from his home. Prior to that broadcast, Mr. Reynolds spoke to Superintendent Farrelly on his mobile phone. This conversation took place some time before 9:00 p.m. Superintendent Farrelly stated that he had no recollection of having had a discussion with Mr. Reynolds prior to the 9:00 p.m. news on Wednesday, 19th April. However, in evidence, he accepted that Mr. Reynolds may indeed have contacted him by phone. He is certain that other media outlets rang him while he was on his way to Abbeylara. Mr. Reynolds believes that Superintendent Farrelly told him at that time, ''off the record'', that John Carthy was suffering from depression. From an early stage, he was satisfied that there was not a criminal motivation as such for the incident and that it looked more like a ''*domestic incident*''. Mr. Reynolds stated that he regarded information concerning John Carthy's depression as being ''*for guidance*''. He also received information from the Garda Press Office that the subject had had a dispute with his mother and that he had ordered her out of the house. It was clear to him that the man was agitated, upset and volatile. The fact that the subject had ordered his own mother out of the house, ''*set off alarm bells in his head*'' that this was some kind of domestic incident. Mr. Reynolds confirmed in evidence that ''*we would be particularly sensitive in reporting domestic matters*'' and that Superintendent John Farrelly had stressed that the gardaí were taking a ''*softly softly*'' approach.

During the course of his television news interview on the 9:00 p.m. News on 19th April, Mr. Reynolds reported that the subject had requested to see a doctor whom he knew and that the doctor was on his way. He reported that there was a question as to whether the gardaí would actually allow the doctor into the house on the grounds of safety. Superintendent Farrelly has no recollection of imparting such information to Mr. Reynolds. Mr. Reynolds has no recollection of speaking to any member of the Garda Síochána other than Superintendent Farrelly and the Press Office. The Tribunal has not had any other evidence to suggest that John Carthy did

in fact make such a request prior to 9:00 p.m. on that evening or indeed that he made such a request at any stage. Nevertheless, it is clear that from early on the evening of 19th April, it was reported that John Carthy is alleged to have asked to see his doctor. Mr. Reynolds was also aware that the subject was suffering from depression, a point which was generally known to the media from an early stage. Ms Noeleen Leddy, a reporter with Shannonside Radio, a local station for the Longford area confirmed that she was aware from the night before his death, that John Carthy had depression.

Mr. Reynolds did not attend the scene on Wednesday night. He believes that he made further inquiries of Superintendent Farrelly overnight by telephone. He filed reports for morning bulletins on Radio 1 and 2FM from his home and stated that the subject was in an agitated state. Prior to attending at Abbeylara on the following day, Mr. Reynolds was not aware of the seriousness of John Carthy's depression.

When he arrived at the scene on the morning of 20th April, Mr. Reynolds spoke with Superintendent Farrelly in the presence of other members of the media. According to Mr. Reynolds a briefing took place at which approximately ten journalists were present. Superintendent Farrelly was the principal source of information.

There is an element of doubt as to whether Superintendent Farrelly may have specifically asked Mr. Reynolds not to name John Carthy or to broadcast personal details about him, though it is to be noted that a news broadcast made by Mr. Reynolds at 6:00 p.m. on 20th April (following the fatal shooting of John Carthy) specifically confirms Superintendent Farrelly's recollection of events. Mr. Reynolds does not dispute the evidence of the latter but he does not now recall the request being made to him. There is no doubt that the Superintendent did spell out to other members of the media at the scene (particularly those with whom he had no previous dealings) that the gardaí were anxious that John Carthy's identity and personal details would not be published. While Mr. Reynolds had no recollection of any discussion with Superintendent Farrelly about not naming John Carthy, he confirmed in evidence that this was never an issue between them because he, Mr. Reynolds, would have known from the outset not to name him. He gave evidence to the effect that he would have been aware that the gardaí would not have wanted him named because it was a volatile situation and the man was upset and agitated. Mr. Reynolds stated that he made the decision himself not to name John Carthy. Nevertheless, he accepted that Superintendent Farrelly may have said something in conversation to the effect *''you know, we are not going to name him''*. He could not recall such conversation but agreed that perhaps the reason why he did not expressly recall it was that it would not have been a matter of great significance in his mind, as he assumed that such was the Garda approach to the case. He further confirmed that once he became aware of Mr. Carthy's name he did not divulge it because he did not think it was appropriate to report it. According to Mr. Reynolds, it did not add to nor was it a *''necessary part''* of the story.

Despite the lack of specific recall on Superintendent Farrelly's part, I am satisfied that the evidence indicates that he made it clear to all media persons to whom he spoke,

including Mr. Reynolds, that the garda policy and desire was that Mr. Carthy should not be named. It is evident that Mr. Reynolds understood from the beginning what the police attitude was in that matter.

During the course of his interview on Mr. Gerry Ryan's radio show on 2FM, on the morning of 20th April Mr. Reynolds reported that there was no question of the gardaí storming the house. The police were adopting a ''*softly softly*'' approach and that ''*the message that the gardaí wanted to get across to this man was that he was safe; and that they* 'wanted to stop him from harming himself and they wanted to stop him from harming anyone else' ''. It was reported that no damage had been done; that the garda car had been hit the day before but that this was ''*no big deal*''. No one was injured and no long term damage was done. When conducting this interview, Mr. Reynolds was conscious that John Carthy may have been listening to the broadcast. He was asked by Mr. Ryan whether the man had made any demands and he replied that he had not. During the course of that interview, Mr. Ryan brought up the question of the subject of the siege being on medication for a psychiatric illness. Mr. Reynolds was taken a little bit off guard by this question and did not really wish to discuss it in any great detail with Mr. Ryan. Although the report in a newspaper that Mr. Carthy had been seen by a psychiatrist did not surprise him, it was not an area into which he wished to go. He also did not dispute the evidence of Ms Noeleen Leddy of Shannonside Radio that it was common knowledge among journalists at Abbeylara that John Carthy suffered from depression.

Mr. Niall O'Flynn

Mr. O'Flynn is a senior journalist with over 20 years experience. In evidence, he stated that a great deal of that time was spent as a reporter. He worked as a full-time journalist in both local and national newspapers. He was a news editor in a national newspaper and also has been a news editor in RTÉ. He has held the position of Head of News 2FM in RTÉ. Mr. O'Flynn was the series producer of the ''Five/Seven Live'' radio programme, from June, 1999 to May, 2000. As such, his job was to lead a team of reporters, producers, researchers, broadcast assistants and presenters in publishing and broadcasting the news and current affairs programme for two hours a day, five days a week. Mr. O'Flynn stated in evidence that the ''Five/Seven Live'' programme was specifically organised in such a way that everyone involved could carry out a variety of functions including interviewing. As series producer, Mr. O'Flynn had overall charge of the editorial content of the programme; he made the decision as to what should be included in the broadcast on 20th April. At that time the ''Five/Seven Live'' programme was part of the radio division and was separate from the news division.

It was by chance that Mr. O'Flynn attended at Abbeylara on 20th April. He had been at a funeral in Longford on the previous day and had stayed in Sligo overnight. When returning to Dublin in his car he listened to the ''Pat Kenny Show'', which on that day was presented by Mr. Rodney Rice. He heard Mr. Rice's interview with Superintendent Farrelly. As he was near Longford, he stopped and listened to the interview. He then contacted Mr. Tom Maguire, the daytime editor of Radio 1. It was agreed that he, Mr. O'Flynn, would visit Abbeylara and cover the story. No details

were given regarding John Carthy's identity or personal background during Superintendent Farrelly's interview with Mr. Rice.

Mr. O'Flynn arrived at Abbeylara at approximately 11:00 a.m. He introduced himself to Superintendent Farrelly. According to Mr. O'Flynn this was one of at least three occasions that day prior to the ''Five/Seven Live'' broadcast that he met Superintendent Farrelly — once in the morning, once in the afternoon and once before commencement of the broadcast. With other press journalists and cameramen, he was taken to observe the scene by Superintendent Farrelly. On arrival at the scene he also met Mr. Reynolds.

Mr. Reynolds had no advance knowledge that Mr. O'Flynn would attend the scene. He had no recollection of briefing Mr. O'Flynn and indeed in his evidence stated that it was not his function to brief other reporters. He could not recollect Mr. O'Flynn asking him any particular question. There may have been a general discussion and he may have offered or volunteered information to Mr. O'Flynn but any discussion between them was of a general nature. He accepted that Mr. O'Flynn informed him of his intention to go around the locality and talk to local people and to get some background information to use as material for a feature piece.

Mr. O'Flynn stated in evidence that he discussed with Mr. Reynolds how the news programmes would report the incident, and, he stated that they had agreed to ''*split roles*''. Mr. O'Flynn knew that Mr. Reynolds' priority, as correspondent, would be the 6:00 p.m. and the 9:00 p.m. news. While Mr. Reynold's role was to contribute to news bulletins on an hourly basis, Mr. O'Flynn had six hours to prepare his programme before its deadline. Mr. Reynolds was operating on a quarter to half hour deadlines. Mr. O'Flynn, in evidence, stated that it was agreed with Mr. Reynolds that he (Mr. O'Flynn) would take one of the two cameramen who were at the scene; that he would canvass local opinion and see what he could ascertain, and that it was agreed that he would carry out interviews for both radio and television. All interviews would be available to both media. While Mr. Reynolds accepted that there was a discussion with Mr. O'Flynn regarding the latter fulfilling a complementary role, he would not classify this as involving the ''splitting of roles''.

It is clear from the evidence that Mr. Reynolds was not given any information ascertained by Mr. O'Flynn prior to 4:55 p.m., i.e., five minutes before the ''Five/Seven Live'' programme went on air. Mr. Reynolds indicated that he was not focusing on what Mr. O'Flynn was doing. He stated that whatever he broadcast would have been made available to Mr. O'Flynn. He presumed that Mr. O'Flynn may have listened to what he was broadcasting and may have ''*taken a cue from him*''.

It appears to be common case from the evidence of Mr. O'Flynn and Mr. Reynolds that there was no express discussion between them regarding the newsroom's approach to the naming of John Carthy or the publishing of intimate personal details, prior to 4:55 p.m. It did not occur to Mr. Reynolds to discuss this, as he stated in evidence, he was too busy and Mr. O'Flynn was the senior producer and reporter who was making his own decisions for his own programme. He did not tell Mr.

O'Flynn that he was not naming John Carthy in his bulletins. He did not consider doing so, as he presumed that Mr. O'Flynn was already aware of that fact. This presumption arose from the way in which he had been broadcasting from the previous evening, but he did not make any inquiries as to whether Mr. O'Flynn had heard any news bulletin. He presumed, however, that he would have heard at least one of the broadcasts. I refer to the following question to Mr. Reynolds:

> ''*Q. Was it your view that given that you had not named John Carthy that it was reasonable for him (Mr. O'Flynn) to assume that that was the stance that was being adopted by the news room?*
>
> *A. I would have said it was reasonable for him to conclude that*''.

Mr. Reynolds had no editorial responsibility or authority over what Mr. O'Flynn was doing. He understood that his colleague was going to carry out a vox pop and he presumed that those recordings would be transmitted in an edited package form. He did not believe that he informed Mr. O'Flynn of any confidential information which he received from Superintendent Farrelly (in relation to John Carthy's depression). Mr. Reynolds did not have an expectation that Mr. O'Flynn would discuss the vox pops before they were broadcast. It was suggested to Mr. Reynolds that in those circumstances it was important that Mr. O'Flynn be absolutely aware of the information which he had regarding depression and other related details. However, Mr. Reynolds disagreed with this because he did not have editorial responsibility for what was being broadcast by Mr. O'Flynn. He thought it was obvious from the manner in which he was reporting that anybody who had listened to his reports would conclude that the person was agitated and that there was ''*enough information there to put two and two together*''.

The vox pop interviews

Vox pops have been described in evidence as pre-recorded interviews with people in the locality of a reported event.

It appears that without any prior discussion of any detail with Mr. Reynolds, Mr. O'Flynn set about interviewing a number of local people in the area and he conducted vox pops with, *inter alia,* Fr. Fitzpatrick, the parish priest; Mrs. McDowell and Mr. Heaney. He obtained information from Mrs. McDowell regarding a recently ended intimate personal relationship between Mr. Carthy and Ms X in Galway. Both Mrs. McDowell and Mr. Heaney were asked what they would say to John Carthy if they had an opportunity to speak to him. Both intimated that they would urge him to leave his house and surrender. There is some controversy over the time at which these interviews with Fr. Fitzpatrick, Mrs. McDowell and Mr. Heaney took place.

Mrs. McDowell resides at Renroe, Granard. On the afternoon of 20th April, she was approached by what she described as one of three people who asked her to indicate whether she knew anything about John Carthy. She was asked whether she would like to say something on the radio. She thought it might help. According to Mrs. McDowell, the man who spoke to her did not identify himself or the radio station that he was with. This person was Mr. O'Flynn. Mr. O'Flynn disputes that he did not

identify himself. Mrs. McDowell stated that she did not ask who he was. She was unaware that Mr. Carthy had a mental illness. The entire of Mrs. McDowell's vox pop as broadcast is as follows:

''Mary McDowell: *Actually John Carthy, he is a really nice bloke. I picked him up a couple of times from Longford, you know, he was hitchhiking a lift and I picked him up.*

Niall O'Flynn: *He works in Longford, isn't that right?*

Mary McDowell: *Yeah, he works in Longford. He is a very, very easygoing lad, he's a smashing person.*

Niall O'Flynn: *So, no doubt, you are very surprised to hear about all this?*

Mary McDowell: *I am very, very shocked actually, because John, you know, he is so easygoing it is unbelievable, you know.*

Niall O'Flynn: *Did he have any problems in his life?*

Mary McDowell: *No, no, he was always laughing and joking, you know.*

Niall O'Flynn: *What did he do for a living?*

Mary McDowell: *Well, when I spoke to him like, I picked him up last week on the way from Longford and he was telling me that he was working on a building site or something, you know. He was up in Mayo, he was going out with a girl in Mayo and he split up from the girl or something, because the girl — he smokes and he has a drink. The girl says if he packed in the drinking and packed in the smoking, they would get back together again.*

Niall O'Flynn: *So is it still on maybe?*

Mary McDowell: *Yeah, it is still on, but he was going to go back this week actually, he was going to go back up.*

Niall O'Flynn: *If you could talk to John now, have you a message for him?*

Mary McDowell: *Well, John, John, if I was you, John, come out. Everybody loves you and everybody is thinking about you and worrying about you, and you are a good friend and you have lots of friends here. So, please, John, please, come out.''*

It is pertinent to point out that in fact the family had informed the gardaí that to raise with John Carthy his recent personal relationship with Ms X would probably upset him and would be counter-productive. They were asked not to raise that topic with him; the negotiator agreed and did not do so.

Mr. Heaney is a native of Abbeylara. He resides opposite the parish church. He knew John Carthy all of his life. He became aware of the incident at approximately 7:20 p.m. on Wednesday 19th April. Mr. Heaney states that he was approached, outside his house, by an RTÉ reporter between 12:30 and 12:45 p.m. In evidence, he stated

that he was asked would he like to say a few words about John Carthy. He did not recollect Mr. O'Flynn introducing himself by name. However, he did recall that Mr. O'Flynn indicated that he was a reporter from RTÉ. As with Mrs. McDowell, Mr. Heaney did not receive advance notice regarding the questions he might be asked. Mr. Heaney did not understand that the interview would be broadcast and he thought that it was just for the general knowledge of the reporter. He did not have any specific understanding that the broadcast might be presented in a way that it might be heard by John Carthy, but had he known that it was to be so broadcast, it would not have changed what he did or said.

The interviews were played to the Tribunal. One of the questions which Mr. Heaney was asked by Mr. O'Flynn was if he had a chance to talk to John Carthy what would he say to him. The question, as phrased by Mr. O'Flynn to Mrs. McDowell, was ''*if you could talk to John now, have you a message for him?*'' Mr. O'Flynn described this in evidence as a standard journalistic question. He did not concede that the interviewee might regard it as an invitation to address John Carthy if he listened to the broadcast. Having listened to the interview, and noting the content and tone of Mrs. McDowell's response, I find it surprising that Mr. O'Flynn was not prepared to concede that Mrs. McDowell appeared to have made a direct plea to John Carthy. It is also of note that while Mr. O'Flynn had no details of the negotiations, he presumed that the ERU negotiator was attempting to communicate with the subject.

Mr. Reynolds obtained information between 3:00 p.m. and 4:00 p.m. that a psychiatrist had been called by the gardaí and that he was on his way to the scene. He had been told by Superintendent Farrelly that there was ''*a psychiatrist who was known to John Carthy on the way*''. He thought that the Superintendent may also have said something about St. Loman's hospital in Mullingar. He confirmed that he had a good working relationship with Superintendent Farrelly and that the latter was not the type of person that ''*I would have to drag information out of*''. The reference to the psychiatrist coming down to the scene was not information which was imparted in confidence or ''off the record''. Mr. Reynolds also confirmed that it would have been quite obvious to any person following the story (on television, radio or in the newspapers) that the person at the centre of the siege was not well and that there was something troubling him. The information regarding the psychiatrist was broadcast on Radio 1 news bulletins at 4:00 p.m. and 5:00 p.m.

Mr. O'Flynn did not disclose the content of the vox pops or the nature of the proposed ''Five/Seven Live'' broadcast to either Mr. Reynolds or Superintendent Farrelly until two or three minutes before its commencement. At about 4:55 p.m., while passing the open door of the broadcasting caravan Mr. Reynolds by chance overheard part of Mrs. McDowell's vox pop and learned for the first time that John Carthy's name was being disclosed. He was surprised. He informed Mr. O'Flynn that the news room was not identifying John Carthy by name. According to Mr. Reynolds the conversation which he had with Mr. O'Flynn was in or near the satellite van. Mr. Reynolds stated to Mr. O'Flynn ''*you are not going to name him, are you?*'' to which Mr. O'Flynn replied, ''*yes, why not?*''. Mr. O'Flynn, according to Mr. Reynolds, informed him that Mr. Carthy had already been named in the newspapers, that the

package was now in Dublin and that it was too late to change it. Mr. Reynolds appears to have taken the view at that time that a different editorial decision had been taken by the ''Five/Seven Live'' programme.

About two minutes later, Superintendent Farrelly entered the broadcast area, as he was scheduled to be interviewed on Radio 1 shortly after the 5:00 p.m. news bulletin, and learned from Mr. O'Flynn that it was intended to name John Carthy and that a vox pop had been conducted which would be played as part of the package. (Superintendent Farrelly had no specific recollection of requesting Mr. O'Flynn not to name John Carthy at any point earlier in the day.) Superintendent Farrelly in evidence stated that he was ''*very annoyed*''. He asked in a surprised manner ''*you're not going to name him, are you?*'', which he thought was sufficient as a protest bearing in mind that realistically the broadcast was not going to be altered and that it was going to be made. In evidence he stated that he said to Mr. O'Flynn that everybody else, including RTÉ news, was respecting the request not to broadcast his name. He gave evidence that Mr. O'Flynn's response was that an editorial decision had been taken to broadcast it and that this was now done. Mr. O'Flynn, in evidence, stated that while Superintendent Farrelly was unhappy ''*and even annoyed*'' he made no attempt to dissuade him from broadcasting and that nothing of significance was said. It was intimated by Mr. O'Flynn that it was then too late to stop the broadcast.

Superintendent Farrelly was upset about what had happened. He described himself as being:

> ''*caught in a trap, that either I could walk away and leave it or continue on in the vein that I was doing the interviews, in the hope that it would not be a significant departure from what was happening, but then when I heard the vox pops afterwards I was quite annoyed then, on top of that.*''

Mr. O'Flynn stated in evidence that he would not have broadcast personal details about John Carthy — in particular about his recent relationship with his girl friend — if he had known the difficulties which might ensue if the subject heard the broadcast. He was unable to explain why he did not consult Superintendent Farrelly earlier, or even his colleague, Paul Reynolds, who was aware of the garda attitude regarding non-disclosure.

It is not credible that Mr. O'Flynn, the series producer of ''Five/Seven Live'' from June, 1999 and a long-time experienced news and current affairs reporter who had spent six hours at the scene investigating events at Abbeylara, did not learn from any of the large number of media personnel present or from locals who he interviewed in connection with his proposed programme, that John Carthy was suffering from depression. He stated in evidence that he did not know if he knew it that day at all: ''*I don't believe I did*''.

Mr. Donal Byrne

Mr. Donal Byrne was one of two news editors attached to the RTÉ news division. His job involved assigning reporters, correspondents and other journalists on a day-to-day basis in the course of preparation of news programmes. In evidence he stated

that there were two editorial conferences each day; one at 10:00 a.m. and the second at 2:30 p.m. In the context of such a meeting, he had a telephone conversation with Mr. Reynolds on the morning of 20th April. Mr. Byrne did not recollect specifically how the issue of the naming or non-naming of John Carthy arose. Nevertheless, it was his view that John Carthy should not be named. Having heard the background to the siege he felt that this was not a critical detail of the story. If it was a bank robbery, a different decision might have been taken. The incident at Abbeylara was also extensively covered on the Radio 1 ''Morning Ireland'' programme on 20th April. He was aware that John Carthy's name was not disclosed in that programme. Mr. Byrne felt that the situation in Abbeylara was not conventional. There were no demands or hostages. There was no message emanating from the house. At that time he was of the view that the shots discharged by the subject were more random or in anger than with purpose. Although he had no specific knowledge of John Carthy's medical situation, he formed the opinion that he was dealing with a troubled individual and he had his suspicions that he may have had a psychiatric illness. In evidence, he stated that Mr. Reynolds made the journalistic decision not to name John Carthy and that he concurred with him. He was unaware of any discussion between Paul Reynolds and Superintendent Farrelly. He was unaware of any requests made by the Garda Síochána not to name John Carthy. As far as Mr. Byrne was concerned, this was an internal decision within the RTÉ news division not to name the subject. He confirmed that if a decision was to be made to reverse the original intention, that was most likely to have been made in consultation with a person in a more senior position. In any event such a decision would not have been taken without consulting the reporter at the scene. This was especially so when there was a ''*fairly senior correspondent*'' present.

The evidence establishes that no request of a formal nature was made directly to RTÉ headquarters not to broadcast John Carthy's name or personal details. Had a request been made to the RTÉ news division by the garda press office, this would have been dealt with immediately and it would have been placed in large block capitals on the ''Newsstar'' system. He further confirmed that any division was answerable to their own chain of command. The fact that John Carthy's name appeared in the ''Irish Independent'' newspaper that morning would not have influenced Mr. Byrne's decision. However, it possibly crossed his mind in making such a decision that John Carthy may not have had access to the newspaper but could have had access to the broadcast media. There was no discussion about reviewing that decision during the course of the day as nothing had occurred which prompted a change. Further, there was no discussion between Mr. Reynolds and Mr. Byrne as to what the other arms of RTÉ were doing in relation to the naming of the subject.

Mr. Myles Dungan

Mr. Dungan, the presenter of the ''Five/Seven Live'' programme, in course of his evidence confirmed there had been a reference to a psychiatrist in the Abbeylara item at the commencement of the 5:00 p.m. news. Although a reference to ''*a psychiatrist known to John Carthy*'' did not ring any bells with him at that time, he

accepted that ''*a psychiatrist known to John Carthy was on the way*'' is very different to ''*a psychiatrist is on the way to assist the gardaí*''. However, he did not analyse it in that way at the time. He had limited time and did not have editorial responsibilities. Mr. Dungan felt that if he or any of his colleagues had been aware that John Carthy was suffering from serious mental problems, that their approach would have been different. The fact that he was suffering from mental illness was not something which was communicated to Mr. Dungan by any of his colleagues.

Mr. Tom Maguire

Mr. Tom Maguire, the daytime editor of Radio 1 in April, 2000, also gave evidence. He expressed the opinion that:

> ''*Mr. O'Flynn's broadcast was reasonable given the information he had at the particular time. But never would we want to broadcast to someone in a siege situation, or in a crime situation without full consultation with the authorities involved.*''

Should Mr. O'Flynn have broadcast personal details about John Carthy, including aspects of his intimate private life, without prior consultation with the police?

I am satisfied that the answer is an emphatic ''No'' for the following reasons:

(a) Mr. O'Flynn had been at the scene for about six and a half hours prior to the ''Five/Seven Live'' broadcast. He had met various media personnel there, including his colleague, Paul Reynolds, and had also interviewed numerous local people. I believe that in all probability he knew or, at the very least, ought to have ascertained that John Carthy's protracted violent conduct may have been motivated by mental illness. It was well known among the journalists present that he was suffering from depression. They had been told so by Superintendent Farrelly at a briefing on the previous night and it emerged in the 4:00 p.m. news bulletin on RTÉ that a psychiatrist, known to John Carthy, was coming to the scene. It was also generally known that the motivation for his violent behaviour was not of a criminal nature and did not appear to have any rational explanation. Mr. O'Flynn, as a senior experienced reporter and broadcaster ought to have investigated as a matter of priority why John Carthy was patently distressed and upset; why he was behaving violently and irrationally over a protracted period since the afternoon of the previous day and why he was not responding to the garda negotiator but was persisting in his violent conduct. That apparently irrational behaviour pointed to mental illness as a likely cause of his distress. A competent experienced journalist/investigator ought to have come to that conclusion and to have borne it in mind in completing his investigations and in preparing his broadcast.

(b) He was aware of ongoing negotiations between the gardaí and John Carthy which after 16 hours had failed to resolve the situation.

(c) Although Mr. O'Flynn maintained in evidence that he was unaware whether John Carthy had a radio in his house, I am satisfied that he was aware, or ought to have been aware, that the subject had the benefit of a radio and, therefore, might listen to the proposed ''Five/Seven Live'' broadcast. This was a factor which he should have taken into account.

(d) In the light of John Carthy's mental illness and dangerous violent behaviour, otherwise unexplained, Mr. O'Flynn should have realised the importance of not inadvertently inflaming the situation by introducing any matter which might aggravate the subject or which could potentially interfere with difficult negotiations which the gardaí were endeavouring to conduct with him.

(e) Bearing in mind the foregoing, it was imperative for Mr. O'Flynn, as orchestrator of the programme, to apprise Superintendent Farrelly in good time as to the content of the broadcast and the line which it was proposed to take — in particular regarding intimate personal details which it was intended to introduce through Mrs. McDowell's vox pop. Superintendent Farrelly in turn would have consulted the scene commander and/or the negotiator and would have learned, *inter alia*, about the apprehension expressed by the family regarding the danger of referring to the recent termination of an intimate personal relationship which John Carthy had had with Ms X, and Detective Sergeant Jackson's agreement with the family not to raise that topic in the course of negotiations. Mr. O'Flynn conceded in evidence that if he had had the latter information he would not have touched that particular topic in the broadcast ''*with a barge pole*''.

Evidence regarding John Carthy's violent conduct at and about the time of the ''Five/Seven Live'' broadcast indicates a strong probability that he did not in fact hear it and, therefore, was not motivated by it to leave the house, as he did, at about 5:45 p.m. that evening. However, in considering Mr. O'Flynn's conduct the issue is not whether John Carthy heard the broadcast and might have been motivated by it to leave the house, but whether in preparing the broadcast Mr. O'Flynn should have taken into account that it might be heard by the subject and harmful consequences could be influenced by it, not least the possible or potential fracture of, or interference with, on-going negotiations which Sergeant Jackson was endeavouring to conduct with a man who was motivated by serious mental illness. I have no doubt that the latter matters should have been taken into account by Mr. O'Flynn. He should have advised Superintendent Farrelly as to the proposed format and content of the broadcast in sufficient time for the latter to respond, having consulted the garda scene commander and/or negotiator, and thus bring about a radical restructuring of the Abbeylara item. I am satisfied that there was adequate time to do so before commencement of the broadcast. Even if there was insufficient time to devise a new structure for that item prior to 5:00 p.m. it is highly unlikely that there would have been any real difficulty in postponing it until later in a two-hour programme.

The purpose of the broadcast

Regarding the purpose of his proposed broadcast, Mr. O'Flynn emphasised in evidence that it was a story of national interest: ''*'Five/Seven Live' was there to augment the news room reports as is normal in any major news event*''. He denied that there was any ulterior motive for broadcasting Mrs. McDowell's vox pop. He regarded it as an opportunity to portray the human side of John Carthy. It was not the purpose of the broadcast to reach and influence him — although, as the subject had the benefit of a radio, it was conceded that that possibility was present. He did not think that the broadcast would damage Garda negotiations even though he did not know what form they were taking or what decision may have been made by the negotiator regarding any particular topic. He assumed that the gardaí were endeavouring to establish a rapport with John Carthy. Surprisingly, Mr. O'Flynn stated in evidence that he was quite certain he had not heard the news headlines at 4:00 p.m. on Radio 1 where reference was made to the subject's psychiatrist at the scene. He agreed that if he had been aware of that information it might have put him on further inquiries as to why a psychiatrist was required. He denied specifically that it was his objective to inject personal drama and interest into the story for the benefit of the listening public, though he did concede that he wanted to give a rounded picture and to refer to the human side of John Carthy. He rejected the suggestion made by Superintendent Farrelly in evidence that there was an element of dramatisation in the broadcast. Surprisingly, he did not regard it as a feasible proposition to advise Superintendent Farrelly in advance about the structure of his proposed ''Five/Seven Live'' broadcast to ensure that it did not contain any information which might exacerbate an already difficult situation involving a man who was suffering from mental illness. It is also of interest that he does not seem to have been aware of the Gerry Ryan radio broadcast on the morning of 20th April in which reference was made to the subject being on medication for a psychiatric illness.

Mr. O'Flynn conceded that it was at the back of his mind that the proposed broadcast might be heard by John Carthy, but, on the basis of information available to him at the time, he did not think that its contents might bring anything other than comfort to the subject if he heard it. Mr. O'Flynn was asked whether he considered a person in a siege situation should be asked in a radio broadcast to surrender and come out of his house while police were down at the front line trying to do the same thing in a controlled way, and whether such a broadcast might create a serious difficulty. He responded that he had no concerns about it at the time but he reiterated that had he been aware of John Carthy's mental illness then, there would have been a different decision taken. He also confirmed in evidence that it would have been possible, though difficult, to postpone comment on the Abbeylara incident until later in the ''Five/Seven Live'' programme — to facilitate, if necessary, the restructuring of that item.

Mr. O'Flynn's conduct seems to indicate the likelihood of a desire on his part to steal a march on his news colleagues in RTÉ and the media generally by titillating his ''Five/Seven Live'' audience with some details of John Carthy's recent, unhappy love life and to suggest that a lost intimate relationship might be revived. If that was in his

mind then it would explain why he was loathe to consult with Superintendent Farrelly, or even his colleague, Paul Reynolds, in sufficient time to restructure the proposed broadcast if it had emerged that that should be done. It also explains why in six hours at Abbeylara he appears to have failed to address one of the major issues emerging from the event, i.e., what was the probable cause of John Carthy's irrational violence and behaviour throughout the siege. However, I make no specific finding in that regard.

Criticism of TV3

It has been submitted on behalf of RTÉ that as TV3 broadcast John Carthy's name and some personal details about him in course of their news bulletin at 5:30 p.m. on 20th April, their broadcast also should have been investigated and reviewed by the Tribunal. I do not accept that submission for two reasons. First, prior to commencement of the Media investigation the only complaint about the media made to the Tribunal relates to the ''Five/Seven Live'' broadcast and, secondly, the TV3 item was first raised on behalf of RTÉ at a late stage in the hearing of the module at which TV3 were not represented. I am satisfied that it was then too late to open up any allegation against that organisation and it would have been unfair to do so in all the circumstances.

In so observing I am also conscious of and accept the evidence of Superintendent Farrelly and of Ms Leddy that once one news organisation discloses information others may feel free to do the same.

Conclusion

I have no doubt that in the circumstances which prevailed at Abbeylara prior to the ''Five/Seven Live'' broadcast and in particular the information available to the media about John Carthy's mental health and the likely connection between it and his violent conduct over a protracted period (all of which was or ought to have been known to Mr. O'Flynn long before the proposed broadcast), he had a clear duty to consult with Superintendent Farrelly in good time and to radically restructure his programme in the light of the probable response he would have received from the police. The ''Five/Seven Live'' Abbeylara broadcast as orchestrated by Mr. O'Flynn was irresponsible and should not have happened.

SECTION B: — The *Sunday Independent* Published on 31st October, 2004

An article stated to be an exclusive story written by Maeve Sheehan was published on the front page and page 3 of the Sunday Independent of 31st October, 2004. It appeared under a banner headline ''***Dramatic New Evidence in Abbeylara Case***'' with beneath it a subsidiary headline ''***Abbeylara family row over land may have affected siege victim Carthy's state of mind prior to his death***''. Beneath that are pictures of the late John Carthy and of his sister, Marie. The four-column article is continued on page 3 under another large bold type caption which reads ''***Dramatic***

new evidence in Inquiry into Carthy death''. Under that is a colour picture of the old Carthy home with beneath it a caption in block bold type ''***Family Friction?***''

The article purported to be based upon information furnished to Ms Sheehan which suggested that, *inter alia*, the relationship between Ms Marie Carthy and her mother with her late brother, John, was contrary to evidence in that regard adduced at the Tribunal. The article, and in particular the circumstances surrounding its publication and the source of the information from which it was derived, was the subject matter of a substantial investigation by the Tribunal.

The primary thrust of the story was derived from a written statement furnished by a woman who had terminated in February, 2000 an intimate relationship which she had had with John Carthy, consequent upon his behaviour towards her which emanated from an outbreak of his mental illness. Her statement contains the following passage: ''*John gave out about his sister saying his mother wanted him to sign over some of his land that he inherited from his uncle. He was outraged*.'' Ms. Sheehan's story includes the following passages:—

> ''*The former girlfriend of John Carthy, the Abbeylara siege victim, has given dramatic new evidence to the Barr Tribunal which gardaí claim could shed new light on his mental state in the months before his death. The woman known as* [Ms X] *claims that Carthy had a dispute with his family over land and had as a result a strained relationship with relatives.*''
>
> ''*Her account is regarded as hugely significant by gardaí because it apparently conflicts with testimony given to the Tribunal that there was no friction between Carthy and his relatives. The family could not be contacted.*''
>
> ''*In her new statement* [Ms X] *is understood to suggest that Carthy and his sister, Marie, had a dispute over a plot of land which John had inherited from a relative and was allegedly under pressure from relatives to share. His former girlfriend suggests that the alleged disagreement was a source of distress to him. This is strenuously denied by the Carthy family.*''

Further investigation and documents of title established that the land in question never had been the property of John Carthy and at all material times was owned by his mother, Rose Carthy. The Tribunal was informed that it had been her intention to leave the land to her son on her death and he had been informed of what she had in mind in that regard. Mr. Carthy's observations to Ms X about the land may have been the product of delusion arising out of the exacerbation of his mental illness at that time (a conclusion referred to in expert testimony). What he said was untrue and had no basis in fact.

Solicitors acting for various parties, including the respective garda interests at the Tribunal, were aware of the foregoing information. Prior to publication of Ms Sheehan's story they had been furnished with copies of the statement made by Ms X and of the title to the land in question. They were provided on a daily basis with copies of the transcript of evidence given at hearings of the Tribunal. Ms. Sheehan's article also contained other information apparently favourable to the garda case that

the connection between the deceased and his sister, Marie, was not the close caring relationship indicated in evidence by various witnesses.

Ms Sheehan and Independent Newspapers refused to divulge the source of her information but it was conceded her informant did not tell her that the Tribunal had conclusive evidence (disclosed to the garda parties) that Mr. Carthy's contention that he owned the land in question was untrue and that it was at all material times the property of his mother who had told her son that she intended to leave the land to him on her death. Ms Sheehan was not informed either that statements from Mrs. Carthy and her daughter had been obtained by the Tribunal (and also furnished to interested solicitors) that there had been no dispute between John Carthy and any member of his family about land.

Having reviewed the evidence and considered the matter in detail, the Tribunal came to, *inter alia*, the following conclusions:

(a) That the article was probably orchestrated by an unidentified member or members of the Garda Síochána or a person or persons close to them, who deceived Ms. Sheehan and caused her to write in the Sunday Independent a story the essence of which was untrue, incomplete and misleading; the purpose of the deception being to provide information supportive of the case the gardaí wished to establish about what they alleged was the actual relationship between the deceased and his sister, Marie, (whose services had not been availed of by them in negotiations with Mr. Carthy). It also appeared that another purpose in orchestrating Ms Sheehan's article probably was, contrary to the specific directions of the Tribunal, to publicise the statement made by Ms X.

Although, having regard to the content of the story, the Tribunal was satisfied about probable garda involvement in the matter of furnishing to Ms. Sheehan information on which it was based, there was insufficient evidence to establish beyond reasonable doubt complicity of either garda party, or any of them, or of the garda representative bodies who instructed Mr. Murphy on behalf of his clients.

(b) In the light of the foregoing details the Tribunal did not consider that there was a likelihood of any useful purpose being served in devoting time and funds in pursuing the matter any further.

Ms. Sheehan's story in the Sunday Independent on 31st October, 2004 is the subject matter of a detailed ruling by the Tribunal made on 19th November, 2004 which is contained in Appendix 7.K. A preliminary ruling made on 3rd November, 2004 is contained in Appendix 7.J.

By way of postscript, it is noted that a libel action brought by Ms Marie Carthy against Independent Newspapers arising out of Ms Sheehan's story was settled prior to trial and an apology to the plaintiff relating to the story was published in the Sunday Independent of 21st May, 2006.

CHAPTER 10

Rank and Structure in the Garda Síochána and the Role of the Emergency Response Unit

1. Rank structure within the Garda Síochána

Chapter 3 of the Garda Code provides a structure of command within the Garda Síochána which is rank based. The Commissioner is in overall command and is responsible for the direction and management of the organisation. The Commissioner is appointed by the government and is directly responsible to the Minister for Justice, Equality and Law Reform. The Commissioner is assisted in the management of the force by a team of senior officers comprising two deputy commissioners and ten assistant commissioners.

The organisation is divided into two sections for management and administrative purposes. One deputy commissioner is responsible for operational matters and the other for strategic and resource management. In addition to these functions, deputy commissioners advise the Commissioner on policy matters.

At the time of the events at Abbeylara, the Deputy Commissioner Strategic and Resource Management co-ordinated the activities of Assistant Commissioner ''A'' branch (responsible for Finance, Services & Community Relations) and Assistant Commissioner, ''B'' Branch (responsible for Human Resource Management and Research). The Deputy Commissioner Operations co-ordinated the activities of the Assistant commissioner ''C'' Branch, (responsible for Crime, Security and Traffic), and each of the Assistant Commissioners in charge of a region. The Assistant Commissioner ''C'' Branch was responsible for the ERU which was part of the Special Detective Unit based in Harcourt Street, Dublin. Since 2000 the activities of ''C'' Branch Crime Security and Traffic have been divided into two parts, presided over respectively by the Assistant Commissioner, Crime and Security and Assistant Commissioner National support services.

The state is divided into six regions: the Dublin Metropolitan, Eastern, Northern, Southern, South Eastern, and Western regions. Each region is commanded by a regional assistant commissioner. Each of the regions is divided into divisions commanded by a chief superintendent (divisional officer). In turn the divisions are divided into districts commanded by a superintendent (district officer).

District officers act as the operational and administrative commanders of their district. They have overall charge and responsibility for all serious incidents which occur within their district. In addition, they have a number of specific functions under law, such as the issuing of firearm certificates. A district officer is assisted by a number of

Inspectors. Every district has a Detective Unit and a Traffic Unit attached to it; all under the command of the district officer.

The districts are divided into sub-districts which are the responsibility of a Sergeant. Each sub-district usually has one garda station. The number of officers attached to each station may vary from three to 100.

Rank structure, as a matter of practice, has been confirmed in evidence by a number of senior officers. Thus, in his evidence to the Tribunal, Chief Superintendent Tansey stated:

> ''*the system structure/structure of command in An Garda Síochána is rank based. In a siege situation, the Superintendent/District Officer, as siege commander, has overall charge and responsibility for the management of the scene as the incident unfolds. He/she implements a strategy of the Assistant Commissioner and Chief Superintendent and develops their own strategies at the scene as circumstances dictate. The overall siege strategy was formulated jointly by the Assistant Commissioner and Chief Superintendent. The strategy employed was the strategy established by the Commissioner of An Garda Síochána for resolving incidents of this nature. The goal was one of peaceful resolution by isolation, evacuation, containment and negotiation with the subject. The strategy was not committed to writing.*''

Prior to the appointment of regional assistant commissioners, it was the responsibility of the divisional officer, being the chief superintendent, to establish strategy. However, Chief Superintendent Tansey observed that now regional assistant commissioners have overall responsibility for the operations in their particular region.

The strategy is devised by the divisional officer. It is based on consultation between the divisional officer and the assistant commissioner. In the event of any disagreement, the senior officer's view will prevail.

At Abbeylara, the Emergency Response Unit provided assistance but at all times it was directly accountable to and under the control of the scene commander, Superintendent Shelly or Superintendent Byrne, as district officers.

2. Emergency Response Unit — origins

In an extensive report to the Tribunal, Detective Superintendent Hogan related the origins of the ERU. He said that:

> ''*On 15th December 1977, the Commissioner of An Garda Síochána authorised the formation of the Special Task Force, STF. This decision followed an agreement between member states of the EEC requiring each state to maintain a specially trained group, capable of responding to terrorist incidents, such as hijacking and hostage taking. During 1977 garda officers visited special police groups in Germany, (GSG9), and Belgium (Gendarmerie), where selection, training and operation methods were observed. Their report formed the basis on which the STF was established and developed throughout the following*

decade. Core skills included physical fitness, enhanced firearms training and driving skills.

Duties were performed in support of regular garda units and consisted of operations to suppress armed crime, through ground/air patrols along with anti-subversive initiatives, conducted in border regions. In conjunction with these deployments, a response element was maintained to major incidents throughout the State''.

He also told the Tribunal that:

''In 1984, personnel from within STF underwent additional training with the army ranger wing, the specialist intervention unit of the Irish Defence Forces. From this process, the Anti-Terrorist Unit was established and later renamed the Emergency Response Unit, in 1987. This Unit operated under the control of the Detective Chief Superintendent, Special Detective Unit and was based at Harcourt Square, Dublin. An emphasis was placed on dedicated training and development of the core skills and operational tactics. During this phase the methodologies relevant to hostage rescue and siege incidents were introduced to the unit's projected development.

Common within the international fraternity of specialist units, the development of response techniques was initially derived from the military experience. This was due to the indigenous availability of expertise, training facilities and political support in maintaining dedicated resources capable of responding to terrorist actions''.

During its formative years, emphasis was placed on military experience, however:

''The situation changed in the early 1980s, when an emphasis was placed on a police rather than a military response to major incidents. From within this historic context, the principles of siege management and negotiation emerged. Training and development of Emergency Response Unit personnel was orientated towards providing a primarily police response to such incidents''.

Superintendent Hogan explained to the Tribunal that the Emergency Response Unit developed in the context of anti-subversive activity and issues surrounding the security of the State. He stressed that the Garda Síochána does not have a military role, nor are they based on military structures. This is contrasted with units in some other countries, such as Italy and Spain. Between, 1978 and 1984, the tactics and skills of the STF (Special Task Force) were developed and there was considerable contact with other European units. At that time, the Garda commenced to break away from military training and moved towards police orientated training and response.

The duties of the Emergency Response Unit were set out in a report of a Working Group established in 1998 to review its operation. Such duties included:

i. Armed support during criminal/subversive operations;

ii. Specialist search techniques, including forced entry;

iii. To assist in the execution of high risk warrants;

iv. To provide regional ground/air patrols;

v. To provide specialised patrols within the Dublin area as directed by the Assistant Commissioner;

vi. VIP protection;

vii. Skills training and development.

Since 1998, the Emergency Response Unit has developed its capabilities in a number of fields including:

i. Intervention, including hostage rescue methods;

ii. Emergency medical response;

iii. In-house training (the unit possesses its own instructors in firearms, tactics etc.);

iv. Cold breaching entry techniques;

v. Observer marksmanship.

3. Composition and membership of the Emergency Response Unit

The ERU is part of the Special Detective Unit under the command of the Detective Superintendent of Operations. The Tribunal was informed that the full strength of the unit is 49 members, broken down by rank as follows:

- One detective inspector;
- Eight sergeants;
- 40 detective gardaí.

The unit is divided into four working groups of two sergeants and ten gardaí. It works a two relief system from 7:00 a.m. to 3:00 p.m. and from 3:00 p.m. to 11:00 p.m.

ERU personnel are serving members of the Garda Síochána. Applicants are required to have completed at least three years service following attestation. As in other areas of the Garda Síochána, members who are promoted to sergeant rank are required to serve at least one year in a uniformed staff section before being eligible for return to the unit.

4. Pre-selection, pre-allocation courses and training

The selection of applicants to be members of the Emergency Response Unit is based on a two week selection course, conducted by the specialist school at the Garda College. An ERU member of supervisory rank participates in the selection process. Successful candidates then undergo an induction training course at the specialist school. This induction/training course, which is known as the pre-allocation course, is six weeks in duration. The core content consists of two weeks' firearms training,

two weeks' tactical training and two weeks' driving instruction. Members, who successfully complete their induction training, when allocated to the Emergency Response Unit, are further assessed for a period of six months, followed by an eighteen-month probationary period before appointment as detective.

Training is described as being a vital and significant element of ERU operations. The unit is required to achieve and sustain a high level of physical fitness. Each unit is required to dedicate one working week in four, to training. In addition, each unit is required to attend the Garda College for bi-annual training.

Members are required to qualify three times yearly in all firearms that are on issue to the unit. They must maintain proficiency in five firearms and the Tribunal was informed that there is considerable time spent in training in achieving minimum standards. Firearms training is undertaken in two modules which are: (1) in-house tactical training on an ongoing basis from the ERU's own firearms instructors; and (2) refresher range practice. Practical training is undertaken at the specialist school utilising a purpose-built building and structural designs for scenario training. According to information submitted to the Tribunal, a substantial portion of each training week is dedicated to tactical procedures which include operational planning, containment of armed situations and barricaded incidents and hostage rescue methods. The unit utilises FX Simunition, a marker system for simulated scenarios during tactical training.

A number of members of the unit have received specialist training at overseas centres. Some have participated in a 16 day tactical and firearms training course at the training camps of the FBI hostage rescue team in Quantico, Virginia, USA.

5. Operational support/training role

Superintendent Hogan told the Tribunal that, in the Irish context, the operational support of regular garda units is a primary function of the Emergency Response Unit.

The Tribunal was also informed by Superintendent Hogan that another source of knowledge and experience is ''*the participation of (the) Emergency Response Unit in the training and development of the various garda ranks, from Inspector to Chief Superintendent, in the role of siege management and negotiation*''.

Since its establishment, the Emergency Response Unit has participated regularly in siege scenario training in the Garda specialist school. Exercises have required ERU command elements to liaise with scene commanders, advise on tactics and perform intelligence gathering functions including aid, delivery and primary containment duties. Surrender and arrest scenarios and training in the resolution of hostage situations are undertaken in training.

6. Emergency Response Unit — rank structure

When called to an incident, the Emergency Response Unit operates under the scene commander. In many situations, the scene commander is unlikely to have the same level of experience or training in relation to such incidents as members of the ERU.

7. Evidence of Detective Inspector John Gantley

Detective Inspector Gantley, the detective inspector in charge of the ERU, gave evidence to the Tribunal in relation to the Garda Hostage Negotiation Course which he delivered in 2001. The purpose of his lecture on this course was to provide officers with knowledge of the part the ERU plays in a siege type situation or firearms incident. With regard to command and control, he informed the Tribunal that the district officer (being the superintendent of the district) must be responsible for all aspects of policing within his or her area. He stated that following the general guidelines within the Garda Síochána, at an incident such as that at Abbeylara, a member of the operational team is answerable to the district officer, who in turn is answerable to the appropriate divisional officer who is a chief superintendent.

8. Role or rank based responsibility — other jurisdictions

In certain respects the rank and role structure within the Garda Síochána approximates to structures which have been adopted in other jurisdictions, such as the United Kingdom, where a rank and role system known as Gold, Silver and Bronze is applied. There are, however, differences. In that jurisdiction, the system is as described in the ''Manual of Guidance on Police use of Firearms'' prepared in January, 2001 by the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), which provides that the division of responsibility is ''*role and not necessarily rank based*''. Operational responsibility rests always with the Silver Commander. The arrival of a more senior officer to the scene does not remove or shift that responsibility. In relation to the role carried out by the Gold Commander, Inspector Gantley agreed that the function of the divisional officer, or chief superintendent, is analogous to that of the role performed by the Gold Commander in the UK system. That officer retains strategic responsibility.

United Kingdom

In the United Kingdom the ACPO Manual deals with command structure as follows:

> ''*In normal circumstances an effective command structure has three levels: strategic, tactical and operational. These command functions are commonly referred to as gold, silver and bronze respectively and the commanders performing these roles need to be carefully selected, trained and updated on a regular basis.*
>
> > *Gold — strategy — the overall intention to combine resources towards managing and resolving an event or incident;*
> > *Silver — tactics — the way that resources are used to achieve the strategic intentions within the range of approved tactical options;*

Bronze — action — organises the groups of resources to carry out the tactical plan.

The structure can be used for both pre-planned events and spontaneous incidents and can offer the degree of flexibility required to cope with a varied and developing range of circumstances. It relies on the paramount principle of flexibility and as such is ***role-specific****,* ***not necessarily rank related****.* [emphasis added]

In particular a gold, silver and bronze command structure requires that each participant understand the parameters of their own role whilst accepting the relationship with others in the command team. Officers of senior rank cannot assume primacy solely on the basis of rank or territorial responsibility, without taking up the appropriate role within the command structure. This change should be discussed before it is undertaken and it should be documented should it occur.

Similarly, if an officer senior in rank to the gold commander, quality assures an operational plan, offers advice or makes decisions, they are likely to be held accountable for all actions taken under the plan.

There is a need on protracted operations for command resilience to be addressed — suitable, qualified replacements should be identified and briefed in good time.''

Victoria, New Zealand and Canada

In Victoria command of an incident such as that at Abbeylara vests in the Scene Commander who is the local superintendent having overall responsibility for resolving the crisis with the minimum use of force. In New Zealand such responsibility rests with the local Inspector or Superintendent, as Scene Commander, depending on the scale of the incident. In Canada the command structure at an incident is not designated according to the rank of the officers but reflects their roles within the team; the command structure is role based and not rank based — suitability, more than rank, is the determining factor. A detailed discussion of the experience in these jurisdictions is set out in Chapter 12.

9. The decision to deploy the Emergency Response Unit to the scene

No criticism was expressed by the international policing experts who gave evidence to the Tribunal of the decision to deploy the Emergency Response Unit to the scene at Abbeylara. Similar firearms response teams would have been engaged in other countries. Mr. Bailey told the Tribunal that in light of international comparison it was appropriate to deploy the ERU as a specialist firearms team to Abbeylara. Most police services have such a unit. They bring specialist skills and equipment to firearms situations. There is a higher level of shooting accuracy required from ERU members than other gardaí. This higher level of shooting skill is, he observed, one reason to deploy the ERU to higher risk operations, such as at Abbeylara. They must also be able to devise and use tactics to resolve incidents and also to make judgments about the appropriateness of discharging a weapon. Team tactics may be required to

enhance the safe resolution of an incident. Mr. Bailey noted that although local officers may work in the same geographical area, they may not have trained together; nor might they have responded to firearms incidents as a team. It is often the case that a specialist firearms unit is deployed to the scene to provide personnel who are trained and experienced as a team. The increase in level of skill required from firearms team officers reflects the more difficult task that that team may be asked to fulfil. In order to deal with such tasks, officers are trained to work in concert. Further, he believed that as a matter of practicality, given normal policing demands, it would not be possible to train local officers to such a high level of skill in shooting, tactics and judgement.

Mr. Bailey also observed that specialist firearms units may have access to equipment which is rarely required, expensive to purchase and which entails practice in usage. He believed that this was a further reason to deploy a specialist unit. In this regard it is to be noted, however, that the evidence to the Tribunal indicates that specialist equipment possessed by the Garda is available to the force as a whole through the Technical Support Unit.

One other typical reason why specialist firearms teams are deployed to incidents, is to release local first responders to resume normal policing duties. In this regard Mr. Bailey observed that there was a lack of clarity about whether this had been the intention at Abbeylara when the ERU were deployed. Nevertheless, he expressed the opinion that supplying additional personnel from headquarters to support the local officers was an appropriate reason for the deployment of the Emergency Response Unit to Abbeylara.

10. Summary

The structure of duty and responsibility within the Garda Síochána is rank rather than role based. Command of an incident is the responsibility of the district officer. Members of the Emergency Response Unit who are detailed to provide assistance at a scene come under the overall control of the district officer, regardless of the extent of their respective experience or training. While the system of command at an incident such as that at Abbeylara approximates to the Gold, Silver and Bronze system operated in the United Kingdom, it differs in at least one significant respect; responsibility in that jurisdiction is not necessarily rank based but is role specific.

In other jurisdictions similar specialist firearms response teams would have been deployed in an Abbeylara type incident. In Victoria and in New Zealand, overall command is retained by the equivalent of the scene commander. In Canada, when called to an incident, the inspector in charge of the Emergency Response Team assumes control of that incident; local responsibility effectively ''*lapses*''.

CHAPTER 11

Less lethal options[1]

Introduction

Part of the remit of the Tribunal is to consider whether alternative measures could have been taken to deal with the threat posed, either when John Carthy was in his house, or when he emerged from it. This involves an examination of what are known as ''less lethal'' options and particularly, in the first instance, what options were available to the Garda; and secondly, what options, if any, were available internationally in April, 2000. Section A is a consideration of less lethal ''devices''. The potential use of dogs as a tactical option at a firearms incident is considered in section B. This includes an examination of the availability of appropriately trained dogs to the Garda Síochaná.

SECTION A: — Less Lethal Devices

The Tribunal heard evidence on this topic from Detective Superintendent Hogan, the officer in charge of the Emergency Response Unit.

Issues relating to less lethal options have been exhaustively considered in Northern Ireland by the Independent Commission on Policing for Northern Ireland, whose report entitled ''A New Beginning: Policing in Northern Ireland'' was published in September, 1999. This Report and the Commission are referred to herein as the ''Patten Report'' and the ''Patten Commission'', the names by which they are more commonly known.

The Patten Commission in its initial report made two recommendations in connection with alternative measures to the use of firearms. They can properly be described as ''less lethal options'' rather than ''less than lethal options'', in that no weapon is without risk of injury, including fatal injury.

The Patten recommendations include the following:

> Recommendation 69 states that *''an immediate and substantial investment should be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the Plastic Baton Round (PBR)''*.

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[1] The Tribunal wishes to thank the Northern Ireland Office for permission to use the Patten Report; The Police Scientific Development Branch of the Home Office in the United Kingdom for permission to utilise the Donnelly Review and Evaluation; the Association of Chief Police Officers in England, Wales and Northern Ireland for permission to use its ''Manual of Guidance on Police Use of Firearms''; the Police Complaints Authority of England and Wales for permission to use its ''Review of Shootings by Police in England and Wales from 1998 to 2001'', and the Royal Canadian Mounted Police for permission to use its ''Major Case Management Task Force Report''.

Recommendation 70 postulates that *''the police should be equipped with a broader range of public order equipment than the RUC currently possess, so that a commander has a number of options at his/her disposal which might reduce reliance on, or defer resort to the PBR.''*

In the summer of 2000, the then Secretary of State for Northern Ireland, having consulted with Cabinet colleagues and others, ''*established a UK wide Steering Group to lead a research project aimed at establishing whether a less potentially lethal alternative to the Baton Round is available; and reviewing public order equipment which was then available or could be developed in order to expand the range of tactical options open to operational commanders*''.

The implication in the recommendations is that they relate primarily to public disorder involving groups of individuals, but, as made plain in the Patten Report, such an examination overlaps with incidents involving single individuals who are armed with a firearm or other offensive weapon. It is therefore of relevance to the Tribunal.

Interestingly the Patten Report stated at paragraph 9.14 that:

''In view of the fatalities and serious injuries resulting from PBRs and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative. We were able to discover very little research work being done in the United Kingdom (except in the development of more accurate PBRs), by contrast, we were impressed by the efforts being made and commitment to develop non-lethal weaponry alternatives in the United States, particularly at the Institute for Non-Lethal Defense Technology at Pennsylvania State University and the National Institute of Justice in Washington. Nevertheless, although this work appears to hold some promise, we are advised that as yet, no non-lethal alternative to the PBR exists which can effectively intercept the petrol bomber while protecting the police and the public from injury.''

The first steering group paper was published in April, 2001. The group comprised representatives of Her Majesty's Inspectorate of Constabulary, the Home Office, the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), the Ministry of Defence, the Police Authority for Northern Ireland, the Police Scientific Development Branch of the Home Office (PSDB), and the Royal Ulster Constabulary (RUC). The steering group was chaired by the Northern Ireland Office. At the stage of the first report, the group had concentrated on Phase I of the terms of reference and in accordance with Recommendation 69 of the Patten Report, addressed the following specific areas:

i. Acceptability,

ii. Effectiveness, and

iii. Lethality in minimum force.

The importance of the first report, from the point of view of the inquiry conducted by this Tribunal, is that it sets out what the state of literature and research was at its establishment in June, 2000 and the completion of Phase I in mid-February, 2001, i.e., broadly speaking the literature and research that would have been available internationally at the time of events at Abbeylara in April, 2000.

The steering group took steps to ensure that its work was consistent with the approach adopted by ACPO. In addition it made contact with a range of other bodies with relevant experience and expertise, including, for example, the National Institute of Justice in the United States, a body which comes under the aegis of the United States Department of Justice, and Pennsylvania State University.

In relation to the first topic reviewed i.e ''acceptability'', three aspects were considered by the steering group; the human rights and legal requirements; the ethical and cultural grounds, and the medical issues.

While the consideration of the group was primarily directed towards the possible alternative to baton rounds, or what are colloquially but rather inaccurately called ''rubber'' or ''plastic bullets'', a number of operational requirements were considered in the context of providing a means of keeping at a safe distance those posing a serious threat to life which would otherwise require the intervention of police officers at close quarters, potentially placing them at great risk. These requirements included repelling an individual attacker with potentially life-threatening weapons — and in certain circumstances, incapacitating temporarily those intent on violent attack.

The United States National Institute of Justice has described less lethal options as:

> *''Devices or agents used to force compliance with law enforcement personnel without substantial risks of permanent injury or death to the subject''.*

Importantly the steering group contended that the performance data on commonly available products provided in their paper originated from manufacturer's data which had not yet been verified by a PSDB testing programme. It also cautioned that little evidence of independent medical assessment was available for much of the commercially obtainable equipment covered by that review.

The technologies then available were divided by the steering group into the following categories:

- Chemical
- Diversion and Distraction
- Electrical
- Impact
- Mechanical.

Chemical Agents

CS (O-Chlorobenzylidene Malononitrile), OC (Oleoresin Capsicum), CN (Chloroacetophenone) and CR (Dibenz(b.f.)-1:4-oxazepine), and PAVA (Pelargonic Acid Vanillylamide) delivered by grenade or projectile, or used as a personal incapacitant spray together with olfactory agents were considered. The various agents were analysed in depth in the report.

Diversion and Distraction Devices

Diversion and Distraction devices include agents intended to utilise methods of overloading the senses by sound, light, smell or a combination of these to promote a distracting or disorienting effect. In this category the group considered sound and flash grenades, and smoke grenades.

Sound and flash grenades include ''stun grenades'' that emit one or more loud bangs or flashes of bright light. They are hand thrown and are typically used in rapid entry situations where police officers need to gain access or apprehend individuals before they can injure themselves or others. The ERU at Abbeylara were in possession of ''two bang'' and ''nine bang'' distraction devices. These were the only such devices available to the Garda in April, 2000.

As entry of the Carthy house had been ruled out by the scene commander and the ERU tactical commander, it appears that the potential use of these devices was not considered. It seems that that was reasonable in all the circumstances.

Light devices which use distraction or disorientation by virtue of dazzle effect were considered by the steering group but concerns existed on the question of eye safety. Additionally in bright sunlight, the power needed for such devices to be effective could lead to exposure above safe or admissible limits, and on that account those devices were eliminated from consideration by the group.

Electrical Devices

Electrical devices include any weapons which use the effects of electricity to incapacitate the subject or target. There were a variety of different devices available in the year 2000 but their principle of operation was the same. They are battery powered and use a low current, high voltage shock for incapacitation. The electrical stimulus delivered by the device temporarily interferes with the normal electrical signal generated by the human nervous system. Incapacitation by electrical means appears to be a virtually instantaneous method with almost instant recovery, although some questions remained on delivery methods and on health effects.

The most widely used electrical device, at this time, was the Taser. This was first used in l976 and has been used by hundreds of police departments in the United States for many years. Taser is an acronym for ''Thomas A. Swift Electric Rifle''.

Put in simple terms, a cartridge attached to the front end of the weapon contains two barbs, each of which is fixed to a coiled length of wire. The barbs are fired at the target and attach themselves to the skin or clothing of the individual. They are propelled by a small cylinder of compressed gas which is ruptured by a pyrotechnic mechanism within the cartridge. When the barbs strike a subject, a current can be sent down the wires and through a person's body between the two barb points. This current interferes with and overrides the body's neuromuscular system and thus voluntary muscle control is lost between the two dart points, which usually results in the subject falling to the ground or ''freezing'' in place.

The maximum range of a Taser is 21 feet (6.4 metres), with some devices having a maximum range of only 15 feet (4.6 metres).

There were a number of potential problems with the Taser in its then original design and tests have shown its effectiveness to be between 55% and 86 %. There are a number of potential reasons for this which are summarised below:

i. One of the wires failing to attach or falling out would render the device ineffective;

ii. Poor contact with the barbs;

iii. Excessively thick or insulating clothing;

iv. Flat batteries (batteries need replacing and are vulnerable to extreme cold) or other electrical problems;

v. Operator difficulties (missing target, failing to hold down button or discharge current);

vi. Abnormal physiological resistance to the electric shock. Some individuals have been found to have a potential to fight through the effects of the Taser.

Over and above this, there are concerns about the effect of the Taser current on the body with potential for a number of secondary injuries occurring. This matter is dealt with at some length in the First Steering Group report.

The use of Taser guns was widely publicised in the media in July, 2005 in connection with the capture of a suspected suicide bomber as he fled from the police in the city of Birmingham. Its use in that particular case was criticised on the grounds that the incidence of success is less than 86% at best and, even if successful, the potential bomber, though disabled, might not be prevented from detonating his bomb. (In the event it transpired that the subject was not in possession of a bomb at the time.)

However, in an Abbeylara type situation, use of a Taser gun, if available to the ERU officers who were close to John Carthy when he vacated his house, would seem to have given them good prospects of success in disabling and apprehending him without resort to a lethal option. In fact no such weapon was available to the Garda Síochána at that time.

Impact Devices

The first steering group report also considered the effect of Impact Devices, such as bean bags, soft rounds, powder filled rounds, sponge grenades or rubber ball rounds, the fin stabilised rubber projectile, multi-ball rounds and baton rounds.

That report summarised the effect of these as follows:

> *''This type of equipment probably comprises the majority of commercially available less lethal products and includes bean bag rounds, sock rounds, sponge grenades and baton rounds (polymer, plastic, rubber or wood). There are many different manufacturers producing different types of round — for instance, there are at least twenty different types of bean bag round — and product accuracy, range and quality differed tremendously. Recent tests in America have shown more than half of various types of impact rounds on the market are unable to hit an 18'' (455 mm) diameter target at 25 yards (23 metres). In assessing impact rounds, a complex balance between effectiveness and unintended consequences is likely to have to be taken into account. It is currently believed that, in order to be effective, the impact is such that striking vulnerable areas of the body runs a risk of causing serious injury or death. To be effective and safe requires control of the impact point. Hence, accuracy is one of the most important attributes of these types of round, if unintended injuries are to be minimised. For example, the manufacturers of one type of round recommend that it is not fired at the head, neck, heart or spine; if the round is inaccurate it may be impossible to do this with certainty. Recent innovations in baton round design and delivery systems have produced greater consistency at longer ranges, whilst reducing injury potential, particularly at closer ranges. This is a significant development. Some types of impact rounds attempt to spread the energy and impact; sponge grenade, sock round and liquid filled rounds are examples. This could reduce the seriousness of injuries but the accuracy, effectiveness and other attributes of these rounds needs to be verified''.*

The steering group commissioned the Police Scientific Development Branch of the British Home Office to carry out extensive examination and research by way of review of the then commercially available and near market, less lethal technologies.

The steering group thought it essential to distinguish between systems that might have potential for use in the UK and those that were judged not to be suitable. The group and ACPO identified three separate categories arising from their research. This analysis was based substantially on the review carried out in February, 2001 by the Police Scientific Development Branch referred to as the Donnelly Review. It has been summarised in the second report of the steering group published in December, 2001 and provides a good overview of the benefits and drawbacks of the various technologies:

"3. Category A

Devices, which may be subject of immediate, more in depth research:

(i) Medium-Range (5-20m) to Long-Range (over 20m) Devices

(a) Kinetic Energy Rounds

This generic category includes sponge grenades, beanbags, sock rounds and single and multiple ball rounds. (Note — the L21A1 [plastic baton round] *has not been included in this study as extensive testing has already been carried out for this round.)*

(b) Discriminating Chemical Delivery Devices/Rounds

These devices/rounds can be used to deliver a quantity of chemical irritant (e.g. CS) to a target at an extended range, i.e., further than is possible using conventional hand held sprays (10-14ft). These tend to combine kinetic impact effects with chemical irritant effects to produce incapacitation of the target. The degree of each effect varies with each system and is dependent on the velocity, size, shape, material etc. of the round and also the quantity of irritant contained within it.

(ii) Water Cannon

Conventional vehicle mounted water cannon are in use throughout Europe and in other parts of the world. Work has been carried out by the Home Office between 1981 and 1987 but was discontinued by the then Home Secretary. A review of all currently available vehicle mounted and portable water cannon is underway to identify those systems which most closely meet the operational requirements of the UK police.

(iii) Electrical Devices (e.g. Tasers)

Electrical devices include any weapons that use the effects of electricity to incapacitate the target. There are a variety of different devices but their principle of operation is the same. They are battery powered and use a low current, high voltage impulse shock for incapacitation. The electrical stimulus delivered by the device interferes with the normal electrical signals generated by the human nervous system. Incapacitation by electrical means appears to offer a virtually instantaneous method of incapacitation with almost instant recovery, although some questions remain on delivery methods and on health effects. Priority has been given to those devices that can be used at an effective range, for example the Taser.

(iv) Laser/Light Devices

The effects of bright light/laser devices can range from dazzle or glare to image formation, flash blindness and irreversible damage. Generally, these devices do not incapacitate a person, although there may be some deterrent effect as the target becomes aware that he/she has been picked out. A device that dazzles at large

distances may cause irreversible damage at close range. These devices are considerably less effective in daylight or in the presence of strong artificial light.

(v) Noise Generating Devices

The potential of loud noise to distract and disorient is well known and can be incorporated into devices that are either hand thrown or fired from weapons. The requirement is for a non-fragmenting and non-pyrotechnic device that will provide a potentially less injurious alternative to the more traditional stun grenade.

4. *Category B*

Devices warranting further research over a more extended time frame:

(i) Malodorants

Malodorants may be of assistance in dispersing crowds although they are unlikely to prevent a determined assailant at short range. There may be issues about decontamination following deployment, especially in residential or heavily populated areas. The possibility of developing malodorous devices appears not to have been fully explored and exploration of this technology will necessarily be longer term. There may also be toxicological considerations for these types of device.

(ii) Tranquillisers

It has been suggested in some quarters that in a broadly similar way to that in which vets and game wardens are able to tranquillise animals, the police should have the capability to tranquillise subjects. However, the speed of reaction to any anaesthetic or drug will be an important factor in its use, as will the possibility that different people will react differently to it and the dose required to incapacitate one person may prove harmful to another.

5. *Category C*

Devices, which presently do not require further research:

(i) Stun Grenades

These devices could be considered to be too indiscriminate and potentially dangerous.

(ii) Smoke

These devices could be considered to be too indiscriminate and potentially dangerous.

(iii) Acoustic Devices

This is not yet a mature technology and there is a lack of scientific evidence on the effectiveness and risks of infrasound and acoustic shock wave devices.

(iv) Electromagnetic Waves

This device is still subject to further development. It may also be potentially easily countered by adequate protection by the subjects.

(v) Nets and Wire

Potentially injurious due to the indiscriminate nature of the necessary weights attached to the devices.

(vi) Glue, Foam and Grease

Problems would appear to exist with respect to potential suffocation of subjects, decontamination and exclusion of emergency services as well as disorderly/dangerous individuals.''

The Donnelly report indicates that the United Kingdom experience is significant. A major driving force in research in the UK has been the Patten Commission and ACPO operating through the PSDB.

It can be seen that at the end of 2001, CF spray, which had been introduced in l996, was in use in 41 of the 43 constabulary areas in England and Wales. Its use is more appropriate to police officers on the beat or patrol, its effective use being at close quarters. Interestingly, the second report prepared by the steering group, published in December, 2001 makes the following points at paragraphs 95 and 96 under the heading ''Armed and Violent Individuals'':

95. *The threat posed by individuals armed with sharp and bladed weapons was one of great concern to officers who were interviewed in the study both in Great Britain and Northern Ireland. Unarmed officers considered this one of the most hazardous threats to deal with. Whilst armed officers have the re-assurance that ultimately they could utilize their firearms to defend themselves from lethal attack, there is both a desire and requirement to have a viable less lethal alternative. Such an alternative would need to be effective in bringing about immediate incapacitation at ranges out to 10 metres.*

96. *Officers considered the maximum range of the personal incapacitant sprays to be too restrictive in these situations and they wished the ability to maintain a distance of in excess of 7 metres. They also realized the importance of being at a distance which enabled effective verbal negotiation to take place.*

This report found that sprays require to be used at relatively close quarters (1-3 metres) and are not 100% effective.

In the third report prepared by the steering group, published in December, 2002, it referred to the fact that PSDB had recently become a member of the European Working Group on Non-lethal Weapons and also continued to strengthen relations within Europe itself. In the US there was little consideration of the evidence from Europe concerning any detailed evaluation of less lethal technologies or weapons prior to their introduction in that jurisdiction. The European Working Group was

impressed by the UK methodology and expressed particular interest in the results that were being obtained by the PSDB research.

Police in Europe are generally armed, as they are in the US. In Europe and the US the introduction of less lethal weapons may be seen primarily as an attempt to defer resort to firearms. This may explain why the public and governments in those countries are prepared to accept a less structured and researched implementation of these weapons. The police here, as in Great Britain, are generally unarmed and any additional weaponry, even less lethal weapons, may be seen by some as an erosion of that concept.

Accordingly it would seem that from the Irish perspective caution should be exercised in adopting technologies that have been embraced more readily in some police forces in North America and in Europe.

Paragraphs 21 and 22 of the third report of the steering group under the general heading of ''An overview of this Report'' deal with the fact that the search for a safe and effective alternative to the baton round then in use in Northern Ireland, the L21A1, had not identified at that stage any suitable round, despite an extensive review and evaluation of commercially available and near market products.
Paragraph 22 went on to state that:

> *''The Steering Group is aware that in Europe, North America and elsewhere, a wide range of commercial products, including impact and chemical delivery rounds, is used. Often the only testing for safety and medical purposes is that reported by the manufacturer which we do not believe is a sufficiently thorough test for the acceptance and deployment of use of less lethal options. The criteria are set high in the United Kingdom — the accuracy threshold (described again in detail in Chapter 6) in the independent medical evaluation are exacting by any standard. The Group does not consider it could credibly recommend at this stage any existing commercial round as they have not yet been shown to have met our criteria. One impact round — a 12 gauge sock round — is being further evaluated against medical (and effectiveness criteria); but its range limit of 25 metres is a significant limitation. Moreover the sock round is fired from a shotgun; there may be issues relating to the use of conventional firearms to fire a less lethal projectile in a public order situation.''*

The third report of the steering group also makes the point that there is less public resistance to the use of less lethal options fired from weapons in the US and Canada because police forces there are armed and that concept is widely accepted in those jurisdictions.

The Taser is the weapon most frequently referred to by the public when speaking of issues such as that at Abbeylara. It has been adopted by a large number of police forces world-wide, particularly in the United States and Canada and studies of the experience in those jurisdictions is set out in the steering group's third report.

The Taser is now being researched in England and Wales and year-long operational trials are in progress in Northamptonshire, Lincolnshire, the Metropolitan Police, North Wales and the Thames Valley Police, which are being backed by the Home Office in Britain. A considerable volume of research and development information, together with experience in the use of the Taser, is referred to in great detail in the Steering group reports.

The Commissioner of the Garda Síochána undertook in the report that he submitted to the Minister concerning the events at Abbeylara, to carry out a review and evaluation of ''less than lethal'' weapons and to this end established a Working Group to make recommendations on their use. This was established in September, 2001 and on 14th September, 2001 various companies that produce less lethal devices came to Dublin and a one-day demonstration took place. A report was submitted to the Commissioner on 1st November, 2001. The working group focused on the following weapon types or categories:

i. Physical — blunt impact from projectiles.

ii. Chemical — gas aerosol projectors.

iii. Electrical — Taser.

iv. Non-lethal entanglement technology (Nets).

An implementation team was established by the Commissioner of which Detective Superintendent Hogan was a member. This team completed its work and reported on 10th June, 2002. The report was sent to the Minister on 30th July, 2002. The Commissioner sought Government approval for the implementation of the recommendations therein contained.

The following options were recommended in the original Working Group report:

- 12 gauge 2 × 2 Square ''Bean Bag'' shot, shotgun and cartridges (Fin Stabilised);
- 12 gauge Ferret 12 gauge OC/CS shotgun cartridge;
- OC/CS Multi-purpose Grenade.

In Chapter 8 of the Working Group Recommendations these devices are described as follows:

> ''***12 gauge 2 × 2 square ''Bean Bag'' shot, shotgun cartridge***
>
> *12 gauge 2 × 2 square ''Bean Bag'' shot, shotgun cartridge is a high energy, single target round for incapacitation or the distraction of a non-compliant, armed aggressive suspect. The ''Bean Bag'' round is widely used both in the U.S. and Europe. It has been successfully used against a broad range of individuals and in a variety of scenarios. A 12 gauge ''Bean Bag'' is intended to be direct fired. The* [sic] *must be adequately trained in the use of Specialty Impact Munitions and have a thorough understanding of the round and*

considerations for selecting shot placement such as level of threat, target distance, size and clothing.

12 gauge Ferret 12 gauge CS/OC shotgun cartridge

The 12 gauge Ferret 12 gauge CS/OC shotgun cartridge is a fin-stabilised, frangible projectile filled chemical agent. It affords stand off distance for safety. It is used primarily by tactical teams. It is designed to penetrate barriers, such as windows and hollow core doors. On impacting the barrier the small chemical is released inside a structure or building. It is primary [sic] *used to dislodge barricaded suspects from small confined areas. Shot placement and trajectory are important considerations for use.*

OC/CS Multi-purpose Grenade

OC/CS Multi-purpose Grenade is designed for indoor or outdoor use. The Grenades can be hand-held or launched. A variable delay mechanism for either two or five seconds allows the user to effectively discharge the chemical within the target area. It is used primarily by tactical teams . . . to dislodge suspects from confined areas. Shot placement and trajectory are important considerations for use.''

The implementation team availed of the opportunity to revisit the preferred options in light of additional information which became available since the original report. It recommended the acquisition of:

- A Bean-Bag cartridge incorporating a ''drag stabilised'' projectile. This is considered to be aerodynamically superior to its square counterpart, thereby providing greater accuracy.
- 12 gauge Ferret 12 gauge OC/CS shotgun cartridge.
- DEFTEC, MK-21 Aerosol Projector. It comprises a pressurized aluminum canister (rechargeable and refillable) equipped with a nozzle which allows for the directional, high volume discharge of Oleoresin Capsicum (OC) to a target at distances of up to 25-30 feet. Its target-specific stream allows for controlled delivery, whilst minimising the effects of wind and rain on accuracy. It is more discriminating than other options.

The net effect of these reports is that the Commissioner proposed to the Minister that the three devices recommended by the implementation team be introduced. The Minister approved their introduction in November, 2002.

Conclusion

The Tribunal's remit is not to investigate current effectiveness and safety of ''less lethal'' weapons but to examine what was available in April, 2000; whether any such weapon then widely available could have been used at Abbeylara; and whether they would have been safe and effective from an operational point of view.

Detective Superintendent Hogan told the Tribunal that 25 yards is the effective range of the most common police firearms. If a subject is armed any activity within such a distance from him or her leaves both the subject and the armed police officer in a very dangerous position. He also told the Tribunal that the use of less lethal options against a firearm is not regarded in every case as an appropriate first choice bearing in mind the right to life of the officer and his right to protect either himself or the public.

No instrument of force is 100% effective each time it is used. The response of an individual depends not only on physiological but also on psychological conditions. Therefore the only available comparisons of various weapons are generalisations. When a police organisation considers adopting a certain type of instrument it must check medical data and consult experts to make sure that all relevant aspects and issues involved are known and considered.

It seems clear from the evidence of Detective Superintendent Hogan that the less lethal equipment now authorised for use by the Garda Síochána was not available to it in April, 2000 and was not then generally available to other European Union police forces. Some of the devices were used by certain North American police forces, but it appears from the reports available to the Tribunal, and particularly the first and second Steering Group reports of the Patten Commission, that at the time of their publication no less lethal weapon then available had passed safety and medical considerations which would have been acceptable in this jurisdiction.

The Tribunal does not regard itself as being sufficiently informed to have an authoritative opinion on whether the three options in the area of less than lethal weapons recommended by the Commissioner and authorised by the Minister in November, 2002, are likely to have been effective in disarming John Carthy after he left his house on the evening of 20th April, 2000 and headed towards Abbeylara. It appears that all of them could have been advantageous in achieving that purpose, but the Tribunal has insufficient information to assess the prospect of success in each case.

The fourth less than lethal option, the Taser gun, referred to earlier in this chapter would seem to have had a greater prospect of success than any of the other three options if available at Abbeylara. It is of particular interest that use of the Taser weapon is presently being researched in depth by five police forces in the UK under the auspices of the British Home Office. I recommend that the Garda Síochána should carry out similar research with a view to deciding whether the Taser should be adopted as part of the armoury of the ERU and the inclusion of instruction in its use in their training regime.

SECTION B: — The Potential Use of Dogs at the Scene

There were in fact no police dogs at Abbeylara. Should a team or teams of specialist dogs and handlers have been available to the ERU and, if used, what benefit (if any) is likely to have ensued?

The following expert witnesses gave evidence on this subject: Sergeant David Lee, a police dog specialist supervisor attached to the West Mercia Constabulary in the UK; Mr. Alan Bailey, former superintendent of the West Mercia Constabulary and an expert in the police use of firearms who is also familiar with the use of dogs; Mr. Michael Burdis, former detective chief superintendent of the South Yorkshire Police; Superintendent Neville Matthews of the New Zealand police; Mr. Ray Shuey, former assistant commissioner of the Victoria police, Australia, and Superintendent Aidan Reid who is the officer in charge of the Operational Support Unit of the Garda Síochána which includes the specialist dog unit. The following conclusions are drawn.

General Background

Broadly speaking there are two types of police dog — known as compliant and non-compliant. All are under the individual direction of police officers who are specialist dog trainers and handlers. There are three categories of compliant dogs. The first are general purpose dogs (usually Alsatians) which in Ireland are used for beat patrols; crime prevention; tracking criminals; searching for missing persons; and, pursuit of fleeing criminals. The second category (usually Labradors) are used for tracing drugs. The third category (usually Spaniels) are for tracing explosives. All compliant dogs are under the strict control of their handlers. They work in collaboration with other police units, such as the ERU in this jurisdiction. Where a compliant general purpose dog is used to pursue and overpower a fleeing criminal, the concept is that it will be faster than the subject who is running away and also faster than pursuing police officers. Through training the dog is aware that it will reach the fleeing subject first and that its function is to jump on and overpower him or her. However, if the subject stops, or walks rather than runs from the scene a problem arises. The dog is trained not to attack in such circumstances but to stand off and leave it to police officers to apprehend the subject. Superintendent Reid has indicated in evidence that if the fleeing subject walks from the scene and does not run, a compliant dog may not attack the person because such a situation does not accord with its training. In practical terms this problem does not arise in many instances because criminals fleeing from the scene on foot usually do so by running away as fast as they can in order to avoid capture.

Non-compliant police dogs (usually Alsatians or Dobermanns) are specially trained as firearms support dogs. They are taught to bite or attack people on command. Sergeant Lee explained that the objective is to make the dog aggressive and to achieve a situation where it will attack and bite a person when instructed to do so even if he/she is standing still and making no noise. Once the non-compliant dog is instructed to overpower a subject, it will attempt to do so whatever the conduct of that person. It is common practice in most parts of the UK, in New Zealand and in Victoria, to avail of firearms support dogs and to provide a minimum of two with handlers for use at firearms incidents such as that at Abbeylara. Where a criminal attempts to escape from the scene, non-compliant dogs are often successful in bringing about the capture of the subject, thus avoiding the use of lethal force. There are some problem areas, but the general experience in the foregoing jurisdictions appears to be that the use of firearms support dogs is a valuable less lethal option

with a substantial incidence of success in an Abbeylara type situation. All of the experts were of opinion that use of non-compliant dogs would have been a valuable less lethal option for contending with John Carthy when he made an armed uncontrolled exit from his house and failed to respond to officers who called on him to surrender his gun. However, in the context of events at Abbeylara, it is very unlikely that compliant general purpose dog teams (being the only type then available to the gardaí) would have been of practical value. John Carthy at no stage ran on leaving his house but at all times walked in an apparently normal way. The evidence indicates that compliant general purpose dogs would not attack him unless he had appeared to them to be running from the scene. However, non-compliant dogs would have attempted to attack and overpower him whatever course of action he might have taken. If two such dogs were available at the scene, as postulated by Sergeant Lee, Mr. Carthy, having a single cartridge in his gun after discarding the other one, could have shot only one dog if he had been attacked by two. It seems likely that in such circumstances either the uninjured dog would have overpowered him or he would have been overpowered by one or more of the nearby ERU officers as some of them were aware that he had only one cartridge in his gun having discarded the other one on reaching the road. In the light of the foregoing, it will be appreciated that potentially in the future it is likely to be of great value for a scene commander and an ERU tactical unit to have the benefit of two non-compliant firearms support dogs and handlers in close proximity to the stronghold for use in the event of an uncontrolled armed exit by the subject from the premises.

Conclusion

The expert evidence received by the Tribunal on the use of police dogs establishes beyond doubt that the ERU should have the benefit of non-compliant firearms support dogs and handlers for use in contending with armed criminals and also dangerous persons who may be motivated by mental illness. The training of such dog teams should include regular work with the ERU officers so that all may learn to operate successfully together and to create the ''pack'' concept referred to by Sergeant Lee in his evidence. I also apprehend that the use of firearms support dogs might well be of crucial importance in the context of ''moving containment'' which arises if the subject makes an uncontrolled armed exit from the stronghold. Such dogs could be invaluable in bringing ''moving containment'' to a successful conclusion without resort to lethal violence.

CHAPTER 12

Police Practice in Other Jurisdictions

Introduction

The Tribunal has had the benefit of expert reports and oral testimony from eight senior police officers (serving or retired) from other jurisdictions, all of whom have had particular experience and expertise in the area of siege situations, i.e., Mr. Alan Bailey, Dr. Ian McKenzie, Sergeant David Lee and Mr. Michael Burdis (UK); Mr. Frederick Lanceley (US — FBI); Mr. Ray Shuey (Victoria, Australia); Mr. Robert Leatherdale (Royal Canadian Mounted Police), and Superintendent Neville Matthews (New Zealand). Messrs Bailey, Burdis, McKenzie and Lanceley have commented on particular problems encountered by the Garda at Abbeylara and relevant practice in their own jurisdictions. Their opinions are already stated elsewhere in the report (see, in particular, Chapters 5 and 6) and it is not intended to reiterate them here. Sergeant Lee gave evidence regarding the use of police dogs as a less lethal option at firearms incidents and how such dogs would be utilised in the UK in an Abbeylara type situation; his comments are incorporated in Chapter 11.

Messrs Shuey, Matthews and Leatherdale have based their evidence on how an Abbeylara type situation would be dealt with in their respective jurisdictions and they have also commented on other related matters. Their testimony is referred to hereunder in sections dealing with police practice in Victoria, New Zealand and Canada respectively.

SECTION A: — Victoria

1. Mr. Ray Shuey

Mr. Shuey retired from the Victoria police force in July, 2003 after 41 years service. He held the position of assistant commissioner for the last 14 years of his service. During that time he also performed the role of acting deputy commissioner in operation, policy and standards for a cumulative period of two years.

Mr. Shuey holds a Batchelor of Arts (police studies) and a diploma in criminology and police studies. He is a fellow of the Institute of Public Administration Australia and the Australian Institute of Police Management. He is a member of the International Association of Chiefs of Police; the International Police Association and the Australian Police Education Standards Council. He is also a member of the Australian Sporting Shooters Association. He is currently a director of his own company ''Strategic Safety Solutions Property Limited''.

As Assistant Commissioner, Mr. Shuey had overall responsibility for the Special Operations Group (the Victoria equivalent of the Emergency Response Unit) and acted as operations commander for numerous siege/barricaded persons incidents. He had direct responsibility for the establishment of a specialist training facility and initiated the establishment of an operational safety training and tactics facility at the police academy.

In September, 1994, Mr. Shuey was appointed to lead Project Beacon (discussed below) and to coordinate the Victoria police response to critical incidents. In 1996 he was awarded the Australian Police medal for distinguished police service. He also has been awarded, at national and state level, medals for diligent and ethical service. In 1996 he undertook an eight week overseas study tour examining best practice in ten police organizations including the Royal Canadian Mounted Police, Hong Kong, the Netherlands, The London Metropolitan Police and Scotland. He has also been conferred as ''senior adviser'' to the Liaoning Institute of Public Security and Judicature Management Cadre during an official visit to China in 1998. In 2002, in conjunction with Superintendent Peter Marshall of the New Zealand Police, he undertook a review of the New Zealand police operational safety and tactics training and provided advice in respect of operational best practice.

Mr. Shuey played an extensive role in furthering the understanding between police forces and persons with mental illness. He was the police representative on the National Mental Health Crisis Intervention Ad Hoc Advisory Group and the Interdepartmental Liaison Committee. He has also played an important role in the promotion of Crisis Assessment Treatment Teams (discussed below). He told the Tribunal that *''liaison is seen to be critical with psychiatric services and the understanding of psychology involved in dealing with the mentally ill''*.

Mr. Shuey has undertaken extensive research in relation to less lethal options and was responsible for the introduction of Capsicum spray and the extendable baton to the Victoria police force. He identifies himself as a strong proponent for the use of the Air Taser by police forces. He described his professional aim as being *''to achieve the best possible equipment, facilities and training for operational members, so they have the confidence and competence to deal with critical incidents and the dynamics under which they unfold''*.

2. Structure of the Victoria Police

The Victoria Police has 10,800 sworn members and 2,000 public service support staff. There is one chief commissioner, two deputy commissioners and six assistant commissioners. There are 323 police stations and a significant number of these are within the city of Melbourne. Mr. Shuey thought that this was not dissimilar to Ireland in structure. The Victoria police is an armed force where weapons are openly displayed. All members are trained to carry arms and do carry them as a matter of course during their daily duties. Officers also carry a range of equipment including less lethal options such as the extendable baton, O.C. spray and handcuffs. *''They are not allowed just to take out a firearm and say that is good enough,''* Mr. Shuey

explained, ''*they must have the range of less lethal options with them, so they are able to tactically respond to any incident as the need arises*''. The use of such weapons is part of ongoing training.

The Special Operations Group (SOG) is similar in structure and numbers to the ERU. It operates from a central base in Melbourne deploying to any regional location where a critical incident involving a firearm is taking place.

3. Project Beacon

The establishment of Project Beacon followed a number of shooting incidents involving the use of firearms by the Victoria police. Between 1987 and 1994, officers were involved in operational incidents which resulted in the deaths of 29 offenders or suspects. Police were required to attend 15 to 20 incidents per day where use of force was employed and up to three ''critical incidents'' per week. A critical incident is defined as ''*any incident requiring police management which involves violence or a threat of violence and is, or is potentially, life-threatening*''. By mid-1994 this trend became the catalyst for fundamental change in operational safety tactics and training within the Victoria police. Expert analysis revealed that a number of factors may have contributed to this increase; namely, a feeling of vulnerability within the police force, a desire on the part of the community for instant solutions and a belief within the force that ''*there was no one else to solve these problems*''.

It was also felt that this trend was in part contributed to by the de-institutionalisation of patients with mental illness in Victoria in the early 1990s. Six of nine fatal shooting incidents in 1994 by police (and one in 1995) involved persons with a mental illness. Statistics revealed that such persons were involved in 44% of all critical incidents reported to Project Beacon between October, 1994 and December, 1995. It was further noted that persons with mental illness were involved in approximately 4% of all ''use of force'' incidents, i.e., where force is used or threatened by or against the police. Emotionally disturbed persons attempting suicide and/or self-mutilation constituted a further 3.5% of use of force incidents. In general, a significant number of emotionally disturbed persons and people with behavioural problems, who may not have had histories of mental illness, regularly came to the police attention.

A number of reviews, both internal and with the assistance of international policing experts, were undertaken in an attempt to identify solutions. On 6th April, 1994, the Commissioner of the Victoria police, Mr. Neil Comrie, wrote to all commissioned officers emphasising the philosophy that ''*the success of an operation will primarily be judged by the extent to which the use of force is avoided or minimised*''.

On 19th September, 1994, Project Beacon was established and involved the standardisation of training so that all officers were trained to the same level of competence. The core principles of Project Beacon inform the response to every incident and the planning of operations which may involve any potential use of force. These core principles may be summarised as follows:

''***Safety First*** *— the safety of police, the public and the offender or suspect is paramount.*

Risk Assessment *— is to be applied to all incidents and operations.*

Take Charge *— effective command and control must be exercised.*

Planned Response *— every opportunity should be taken to convert an unplanned response into a planned operation.*

Cordon and Containment *— unless impractical, a cordon and containment approach is to be adopted.*

Avoid Confrontation *— a violent confrontation is to be avoided.*

Avoid Force *— the use of force is to be avoided.*

Minimum Force *— where the use of force is to be avoided, only the minimum amount reasonably necessary is to be used.*

Forced Entry Searches *— are to be used only as a last resort.*

Resources *— it is accepted that the ''safety first'' principle may require the deployment of more resources, more complex planning and more time to complete*''.

The primary principle of Project Beacon is ''safety first''. The safety of the police officer is paramount, followed by the safety of the public and the safety of the subject. Mr. Shuey utilised the example of a doctor attending a collision to treat a patient: ''*the doctor wouldn't stand in the middle of the road to do the treatment of the patient because he would be exposing himself to the risk of being run over by a car*''. If the police officer is in a position of security, he or she will be more competent and capable of handling the situation. If a police officer is not involved in anything which is unsafe, he will have a clearer perspective of what is happening and be able to deal with the situation accordingly. If you expose a police officer to a ''kill or be killed'' situation, the risk of a fatal confrontation increases.

A significant objective of Project Beacon was to assist police in dealing with persons with mental illness, emotionally disturbed individuals and persons with behavioural problems. Project Beacon, in collaboration with the Victoria Department of Health and Community Services, developed a comprehensive integrated approach for dealing with such persons which was incorporated into police training courses. The training involved video scenarios and role-playing and in December, 1995, a video called ''*Similar Expectations*'' was produced. It offered a range of methods for dealing with persons with mental illness, and provided advice from mental health experts. The video received widespread acceptance in law enforcement and mental health agencies and was automatically incorporated into every police officer's training; it was not confined to the training of those who participated in dedicated negotiators courses. Further training programmes were developed by persons with expertise in psychiatric mental health with the assistance of a police psychologist.

8,500 police officers, student and operational, were placed on an initial, five day training course complemented by mandatory two-day refresher training every six

months. It is now part of ongoing training of police officers in the state of Victoria. Training for the Special Operations Group is rigorous and ongoing, taking place on most occasions when its members are not involved in operational response duties.

A ''use of force register'' is now maintained by the Victoria Police. Use of force incidents range from the forcible obtainment of fingerprints and handcuffing, through to riot situations. All such incidents are recorded in the register. This enables the police force in Victoria to track the number of incidents where force is a factor, and enables trend analysis in relation to the type of force and weapons that are used. This acts as a ''*catalyst*'' for the next six months of training. The information is analysed and if there is an excessive increase in crimes involving firearms or knives etc., the training in the following six months will be highlighted in that direction.

4. Special Operations Group (SOG)

The Special Operations Group of the Victoria Police is the equivalent operational unit to the Emergency Response Unit in Ireland. It is a full-time unit and is centralised in Melbourne. It has been in operation since 1977. The SOG has a responsibility to respond to, and assist in, critical incident resolution for all matters ranging from domestic violence (including life-threatening siege situations) to full counter-terrorist response. Given the size of the state, Victoria Police has three helicopters and fixed-wing services available to enable it to deploy quickly.

In Victoria, the structure system within the police force is rank based. In a siege situation, overall command is vested in the operations commander (i.e. the local superintendent) who has ultimate responsibility in resolving a crisis situation with the minimum use of force. Once deployed, a member of the SOG will act as the forward commander taking charge of the inner cordon. The operations commander will also have ultimate responsibility in respect of the actions of the forward commander. From a central base, the officer in charge of the deployment of the SOG, being the assistant commissioner, will provide a SOG team to assist in resolving the situation.

As with the Emergency Response Unit, considerable emphasis is placed on training both at home and abroad. Special Operation Group members must go through a psychological profile every few years. Psychologists are engaged in the selection process of Special Operation Group members.

5. Negotiators

Negotiators do not form part of the SOG, but are members of the Force Response Unit. However they undergo a considerable amount of training with the SOG. Negotiators undertake other policing activities unless and until they are called upon to negotiate. They are effectively part-time force negotiators, attending incidents as required. They operate on a 24 hour basis on-call system. Negotiators, generally speaking, are based in Melbourne; there are also a number of regional negotiators. General members of the force receive training in tactical communications such as

the need to talk calmly and softly to persons with mental illnesses, but do not receive training as one-to-one negotiators.

The negotiator works under the control of the tactical commander who is a member of the Special Operations Group. The tactical commander reports to the operations commander (the local scene commander).

Negotiator training focuses on crisis intervention rather than hostage negotiation as incidents involving hostages are minimal in Victoria compared to incidents requiring suicide intervention and crisis intervention. It is essential that negotiators are proficient in communication, cognitive, and relationship skills, and have personal and professional competence. Newly qualified negotiators are not normally used as primary negotiators in Victoria. Initially they are teamed with a person who has previous experience in acting in that capacity. They may be used as the secondary negotiator or as the fourth person in the team in order to gain experience and confidence.

6. Critical Incident Response Team

Melbourne has 24 hour response capability consisting of two teams known as Critical Incident Response Teams (CIRT). These teams are distinct from the Special Operation Group. Generally speaking, they will respond to non-firearm incidents, for example, they may attend at knife incidents. They ''*basically take the pressure off SOG in terms of responding to those incidents*''. If a firearm is involved, the SOG will be called in to assist. The CIRT may attend at a scene with a negotiator and will be responsible for providing cordons and containment. There are usually four members in a CIRT team, including the negotiator who attends alongside local, uniformed police officers. They possess a number of less lethal options including O.C. spray, batons and shields etc., as well as their standard issue firearm.

7. Crisis Assessment Treatment Teams

In the years prior to the establishment of Project Beacon, as stated above, the issue of the de-institutionalisation of patients with mental illness was becoming a significant contention for the police force. A number of responses and options were considered and attempted. The first was to place a police officer and a psychiatrist on duty in a dedicated car, to attempt to facilitate a joint response to critical incidents. This was available on Thursdays, Fridays and Saturdays in some suburbs of Melbourne. However, it was found to be prohibitively expensive. Further, incidents did not necessarily occur in the locations where the service was available. It also raised questions in relation to where the responsibility lay in dealing with persons with mental illness.

There was a general concern in society in relation to a perceived lack of community care from a mental health perspective. The increase in the number of critical incidents involving persons with mental illness in 1994 raised the *ante* in the health area as well as in the police environment. Further consideration was given in relation to

the establishment of a 24 hour response team from the Department of Health and Community Services. The result was the establishment of the Crisis Assessment Treatment Team. They were created to treat people in the community who had serious mental illness, as an alternative to psychiatric in-patient admission, where such treatment would be appropriate. The CAT teams' primary role is in relation to the welfare of clients in their area. One such responsibility is to deal with any situation involving critical risks. CAT teams comprise a number of psychiatric nurses who are generally funded by the Department of Health and Community Services. They are on-call on a 24 hour basis.

CAT teams have been involved in numerous situations, including those where the subject is known to have a mental illness and a prior history of violence, is known to have been a threat to the safety of another, or has shown significant self-neglect or a high level of distress. Alternatively, it may be a person who presents with a history of, or displays a current threat of, deliberate self-harm or attempted suicide and who is behaving in an erratic manner.

In 1995, a National Crisis Intervention Ad Hoc Advisory Group was established by the Commonwealth Minister for Health to provide expert advice to the Australian police on good practice approaches to liaison between police and mental health services in the management of critical incidents involving people with mental illnesses. The primary recommendation was that the safety of all parties involved is paramount. According to Mr. Shuey, the relationship between police and mental health authorities has improved dramatically since formalising the interface between the agencies and focusing attention on the issue of safety first; a principle also at the heart of Project Beacon.

To further strengthen the interface between the police and the mental health services, an Interdepartmental Liaison Committee was established. Representations were received from the Chief Health Officer, the head of psychiatry, assistant commissioner of operations and assistant commissioner of training; the police medical officer and the head of CAT services. According to Mr. Shuey, this proved very effective in establishing the necessary rapport between the various agencies, streamlining progress and providing a professional service to those most in need of care and attention.

As a consequence of the workings of the Interdepartmental Liaison Committee, a series of protocols were established between the Victoria police and the Department of Health and Community Services Psychiatric Services Division in that State. Under these protocols, CAT teams attend at the scene of high-risk, mental health crisis situations and provide consultation to police members as soon as practicable. In certain high-risk situations, trained police negotiators, Special Operations Group members or police psychologists might also be involved. Responsibility for management of the situation remains with the police at all times. CAT teams do not perform a face to face assessment until given clearance from the police and they do not act as negotiators. If a CAT team is requested to provide assistance in such situations, the police, at the time of request will provide as much information as

possible. The CAT team service staff may need to clarify a number of matters with the police, namely (a) procedure for gaining access if the scene is secured; (b) how to identify themselves to the person in command of the scene; (c) where they should position themselves at the scene; (d) expectations about their role, and (e), where the individual is charged with an offence, the advice of the forensic medical officer.

Mr. Shuey told the Tribunal that CAT teams had proven to be highly beneficial as a service in both high-risk and routine matters requiring the professional intervention of a CAT team and the police. In non-life-threatening situations strong rapport and co-operation has developed between the local police and the CAT teams. Thus, for example, in the context of a domestic situation where there was a ''*hint*'' that somebody may have a mental difficulty, the police would automatically request the attendance of the on-call CAT team to assist them, resulting in positive early intervention. In life-threatening incidents, CAT teams have attended in conjunction with the police to provide background advice to negotiators or forward commanders on such matters as the emotional and psychiatric history of a subject or patient known to them; such information may be invaluable in assisting in the peaceful resolution of an incident.

The team may have had a prior involvement with the patient before any incident occurred or they may be in a position to access case histories due to their participation in the health area; even though they may not have particular or specific involvement with the individual in question. In circumstances where the subject may not be known by the health authorities prior to the incident, CAT teams may also attend on request. They may be of assistance in analysing behaviour and may arrive at the conclusion that such behaviour is symptomatic of a psychiatric problem. Such analysis may assist the negotiator to get a ''*better feel for what is happening at the scene*''. They will also provide advice to the negotiator as to how to deal with the behavioural manifestations of the subject. In addition the CAT team might ascertain information regarding medication which the subject is taking. A simple but useful example is where a particular tablet is mentioned; the nurse will know its purpose and may be able to deduce whether the subject is likely to have been in psychiatric care. Members of the team may also contact the subject's own general practitioner, or treating psychiatrist and act as a conduit for any information received. They may also act in conjunction with the police psychologist.

CAT team psychiatric nurses have been involved in the training of members of the police force.

CAT teams may also be valuable in providing follow-up assistance in circumstances where the conclusion of an incident necessitates a mental health response rather than a law enforcement response. Where an offender was committed to a mental institution, and is due for release, CAT teams will work on a rehabilitation programme in conjunction with the local station commander to ensure effective re-introduction into the local community; thereby hopefully preventing the recurrence of a similar incident.

In praising the resource that the CAT team provides, Mr. Shuey told the Tribunal that the real benefit in a siege type situation is that there is ''*a mix of expertise provided to the forward commander and the tactical commander, again just an option, it may not work, but it is seen that it is best to have all the resources at your disposal rather than not have them*''.

8. Structured call taking

The Victoria police has a centralised command and control call taking facility. In Melbourne it is part of an outsourced contract for emergency services while in rural areas it is manned by police personnel. There is a high focus on eliciting all relevant information from the caller in a structured way so that the first responders are not exposed to unnecessary risk when attending a critical incident. As such, the taking of the initial call is part of the early stages of risk assessment and intelligence gathering; it captures quality information which police need in order to safely and effectively attend emergency situations.

9. Deployment of Special Operations Group and Negotiation Team

Authority to call out the SOG rests with the assistant commissioner. However, in an emergency situation, the unit may self-activate, obtaining endorsement from the assistant commissioner while en route to the incident. Before deployment is authorised the assistant commissioner will go through a checklist with the operations commander at the scene to ensure that the call-out of the SOG is justified. In certain circumstances deployment will be automatically justified (where an offender has been discharging his weapon), however, the assistant commissioner will ensure that the local commander has carried out an adequate risk assessment of the incident. Explaining the role of the assistant commissioner in charge of the SOG, Mr. Shuey said: ''*you are more likely to withhold authorisation until the justification was completely provided to your satisfaction*''. He further explained that the assistant commissioner would not normally offer advice at the incident: ''*if you have not been there for the totality of the incident, then you have not got a full appreciation of what is happening there at the time. It would be unusual to provide any critical advice*''.

Mr. Shuey told the Tribunal that in the Abbeylara type situation, in Victoria, negotiators and the Special Operational Group would have been rapidly deployed to the scene. A minimum of fourteen Special Operation Group members would be deployed. In addition a team of four negotiators and two to three dog teams would be deployed, according to availability. Given the rural location, a regional negotiator may have been available to attend and the balance of the team would be deployed from a central location in Melbourne. If this were not the case then a full team of four negotiators would have deployed from the capital city to the location. A qualified police psychologist would also have been requested to attend to provide expert advice to the team and the forward commander, together with a member of the local mental health Crisis Assessment Treatment Team. A specialist Technical Support Unit would also attend to assist the SOG in containing and observing the premises by setting up monitors and cameras as appropriate. A relief team would be

automatically provided owing to the duration of the siege, and a roster programmed accordingly.

En route to the incident the SOG commander would provide advice to the local superintendent. The negotiator would also be available to give advice. On arrival a full briefing would be undertaken. An ''officer's checklist'' is used in order to obtain a full briefing. This checklist is a written pre-prepared document based on likely scenarios and likely resources that will be required. Logging is regarded as a critical part of the operation. Mr. Shuey observed: ''*we work on the premise that the shortest note is better than the longest memory*''. All incidents will be recorded, including the logging in and out of every member from the scene. Therefore there is total accountability in terms of the participation of each member.

Upon arrival at a critical incident, the police officers, whether they be first responders, or a Special Operation Group member, will employ a strategy, similar to that employed in Ireland of isolation, containment, evacuation and negotiation. Emphasis is also placed on the conclusion of the incident and rehabilitation of the area to its original order.

The negotiation team consists of the primary negotiator, secondary negotiator, team leader and a fourth person as assistant. Mr. Shuey told the Tribunal that the complexities of an incident, such as at Abbeylara, would have made it very difficult for one member to do the job of negotiating on his own. Accepting that resourcing is an issue in any jurisdiction, Mr. Shuey explained that the Victoria police had adopted resourcing as one of the ten core principles of Project Beacon which led to appropriate resources for negotiating teams creating a ''*team approach*'' to negotiations. He could not say, however, whether the outcome would have been any different at Abbeylara had a full team of negotiators been used.

In Melbourne, there is a psychology unit comprising, at varying times, between four and six qualified psychologists. They are full-time employees of the police department. They provide for the police a range of services including advice on welfare matters. If an incident occurs involving a person with a mental illness or behavioural problem, they are automatically requested to attend. In some remote locations, other psychological services are available to the police on an on-call basis.

The role of the police psychologist at a critical incident is primarily to provide support to the negotiation team. However, it is important to note that they have no role in direct negotiations with a subject; they are there in an advisory capacity only. They may advise the principal negotiator on the highs and lows of what is happening. They may also advise in relation to particular tactics which may be beneficial in the context of negotiation. They consult with medical personnel who may be looking after the subject and would act as a contact and conduit to other medical services. They also provide an oversight function to the welfare of individuals at the scene, and are responsible for psychological debriefing following an incident, particularly where it

has been traumatic. The police psychologists are involved with negotiation teams to a high degree, providing input into training courses by way of lectures and briefings.

10. Isolate, contain, evacuate and negotiate

The response of isolate, contain, evacuate and negotiate is the core principle of siege management in Victoria. Upon arrival at any critical incident, police officers, whether they be first responders or members of the Special Operations Group, are trained to isolate or secure the incident site and to ensure that the stronghold or premises used by the subject is completely contained and escape is not possible. The area will also be evacuated whereby all civilian bystanders will be removed from within the inner and outer perimeters. Negotiation may then commence.

The basic concept is to isolate the offender from an external environment, said Mr. Shuey: ''*that means that you cut off their supply of electricity, gas, water, phone lines, television, anything at all whereby the person that is causing the problem has creature comfort facilities so to speak and access to communicate with the outside world. You are basically providing both physical and psychological isolation*''. However, Mr. Shuey noted that this requirement is not rigid and inflexible but more a guiding principle for the management of operations. Telephone communication can be isolated on a one-to-one basis both in terms of land lines and mobile phones. The assistant commissioner effectively has the power to provide a warrant to the telecommunications company to provide such isolation; it does not require a legal request through a court process.

The Victoria police do not force confrontation as a matter of policy. They take all steps available to negotiate a peaceful resolution to an incident.

11. Time, distance and cover

Mr. Shuey referred to the taking of protective action in the context of ''time, distance and cover''. These are strategies which are operationally employed to minimise risks. It is, he said, a simplistic approach to incident resolution which is drilled into members.

In the context of time it is probable that, if the offender is affected by drugs or alcohol, time may help in the resolution of the incident; the longer the time the greater the advantage the police officers have of obtaining a peaceful resolution. In the context of distance it is necessary to maintain a distance from the immediate threat, e.g., if it is a knife incident, the minimum distance required is 21 feet. The police officer must make sure that he or she is not in that minimum distance and must assess any barriers such as a chair or table that may impact on that distance. In the context of cover, members are trained as to what is appropriate ballistic cover and how not to position oneself as a target for the offender to shoot at.

12. Mobile command centre/command post

The SOG establishes a command centre (or post) at the scene. There are a number of designated command caravans available in metropolitan areas that are fitted out specifically for this purpose. In other areas a police vehicle such as a ''booze bus'' may be commandeered. These are vehicles available locally that are used in roadblock checks to intercept people driving under the influence of alcohol. They have automatic generators and provide a good working environment.

13. Cordons

In Victoria two cordons are put in place: an outer cordon which looks outwards and an inner cordon which looks inwards in order to monitor and contain the stronghold. A sterile area is maintained between the two areas. The circumstances of the incident will dictate the distance between the cordons. It will depend on whether it is an ''edged weapon incident'' or a ''firearms incident'' with cordons being placed appropriately. Any person coming in or out of either cordon is formally logged on and off the cordon.

Mr. Shuey told the Tribunal that when the Special Operations Group contain an incident, an armed offender is not allowed to exit through the inner perimeter, which is seen as the proverbial ''line in the sand''. A conscious decision is made that will ensure the safety of all persons outside the inner perimeter; namely, that the subject not be permitted through the inner cordon. If the subject approaches at that point, they must be challenged by the police tactical operations team and if violent confrontation results, as a matter of last resort, it is met with lethal force. Therefore an important part of any incident is the devising of an emergency action plan which necessarily includes an unexpected exit from the stronghold. Such a plan will be discussed between the various commanders, committed to writing and signed off. The plan is based on a thorough risk assessment of the possible tactical options in relation to an unexpected exit by the subject, to forcible entry of the stronghold, to the utilisation of less lethal options.

14. Negotiations

Mr. Shuey told the Tribunal that in Victoria a negotiating cell consists of four persons, namely a primary negotiator, a secondary negotiator, a team leader and an assistant. It is usually located outside the inner cordon in a specially designated vehicle or a house, as appropriate. It is important that the negotiations are not carried out in ''*an area of compromise*.''

The primary negotiator's function is to establish negotiations with the subject by establishing and maintaining rapport and working towards a peaceful resolution. The secondary negotiator acts as back-up to the primary negotiator. He or she may take over negotiations if the primary negotiator requires a rest break. The secondary negotiator will also be responsible for feeding intelligence to the primary negotiator; it is felt that primary negotiators should never have to source that information themselves. The team leader is responsible for co-ordinating the activities within the

negotiation cell. He or she is in the role of supervisor and observer. The team leader's responsibilities include ensuring that a proper log is maintained and will also include overseeing the welfare of the officers in the cell. He or she also acts as the interface between the negotiation cell and the other commanders, providing briefings as appropriate. The role of the fourth person is one of assistant to the negotiation effort. He or she will be responsible for the recording and maintenance of the negotiation log and the recording of the negotiations. Communications may be recorded within the negotiation cell. Negotiators have a responsibility to brief and debrief at various stages during their engagement. This is especially important at the end of an incident where they are expected to do an "*honest debrief about what worked and what didn't work*" with the focus on continuous improvement.

Mr. Shuey accepted that the practicality of life is such that if you have face to face negotiations you have better communication, but he stated that the safety first principle usually overrides this. Not placing the negotiator in the front line is the result of a safety first policy that supersedes every operational objective:

> "*We wouldn't put anybody in a position where they are subject to a threat, a serious threat to life and again, working on the concept of taking somebody from a position of safety to a position of risk, would not be seen to be the best way to do it from our point of view, so the negotiation cell would be placed by the tactical commander in a location that was safe but* [from which] *they are able to do the communications effectively*."

The face to face concept "*wouldn't be undertaken unless there was a reduced threat*" from the individual and particularly not if they had possession of a firearm; with a firearm "*you can't get the safety factor*". Mr. Shuey told the Tribunal that, in principle, he did not have a difficulty with the idea of face to face negotiations where there is ballistic cover and where other attempts at communication have failed. Ballistic cover is any situation where the member was protected by buildings or any other intervention material such as a safety rescue vehicle — "*any situation where basically it was impossible for them to be injured*".

If the subject has already built up a rapport with a local member of the police by the time the negotiator arrives, the local member will be permitted to continue negotiating. However, the trained negotiator will always be responsible for controlling the negotiations.

In Victoria, when the subject is not receptive to negotiations, a number of appliances are used, such as the landline, mobile phone or field phone, until such time as the subject responds. In circumstances where there is difficulty in communication, an armoured vehicle with a loudhailer may be used and in this way safety is maintained. However, if the offender fired shots at the vehicle it would be removed as it is seen as a "*pointless exercise*" in that it provides another target of aggression for the individual.

The principles of negotiation are based on gaining empathy, providing feedback and developing rapport. A core principle of negotiation is trust building and that

therefore, as a rule, one would not allow a situation where the negotiator misleads the subject.

Negotiators are considered operational police members. They are armed in the normal course of their duties, but will not be placed in a position where they might be required to discharge their firearm.

15. Negotiator rest breaks

Mr. Shuey stated that, in Victoria, the timing of rest breaks depends entirely on the circumstances of the incident as they unfold. If one were at a critical stage of positive negotiation, a break would not be contemplated. On the other hand, if there was an element of ''down time'' in the negotiations then it might be considered appropriate to provide for extended breaks. The responsibility of the negotiator is to establish and continue a rapport with the individual; from that perspective, a rest break may become irrelevant. However, Mr. Shuey stressed the overriding consideration of the welfare of all members during the siege, including the negotiator. Members of a negotiation cell would be relieved from duty in a staggered fashion so that there is always an element of continuity to the cell and impetus is not lost. ''*It is a matter of degrees and a matter of assessing the situation at that particular time,*'' Mr. Shuey explained.

16. Third party intermediaries (TPIs)

The experience of the Victoria police is that the use of third party intermediaries is fraught with danger as the results are unpredictable. Sometimes, they have been the catalysts for a dramatic ending to an incident. Every situation is viewed on its merits and the value of TPIs adjudged accordingly. He explained:

> ''*Family members tend to think that they can negotiate effectively with the subject/individual and the reality of life is that they can't . . . Colleagues may also think they have a good rapport with the individual and, again, the reality of life says that they are not good at negotiating; they don't necessarily do what they are told. They are probably what I classify as a* ''loose cannon'' *in the context of what gains may have been made; you sometimes get a setback with introducing a third party*''.

However, all third parties are automatically interviewed for the purpose of obtaining advice, opinions and recommendations. This information is examined and an assessment made as to whether it is more beneficial to simply utilise the intelligence gleaned rather than introduce the individual into the negotiating process. TPIs have an important role, Mr. Shuey told the Tribunal, but they are most effective as providers of intelligence rather than being involved in direct negotiations.

In circumstances where there is difficulty communicating with the subject, the use of non-police persons to speak to the subject is given serious consideration. They are assessed in relation to their demeanour, and the benefit they may be in resolving the situation is also analysed. Mr. Shuey agreed with counsel for the Commissioner that

it is probably better to try something rather than nothing and that, if nothing else is working, TPIs are an option that may be considered. However, particular concern is exercised for their safety.

17. Cigarettes and solicitors

Mr. Shuey was aware that John Carthy had requested cigarettes and a solicitor. He told the Tribunal that in Victoria these would have been considered ''*irrelevant*'' in a physical sense but would be viewed in a positive light as a means of building trust; they would be seen as ''*negotiable avenues*''. However, the safety aspects of the operation would have primacy over a response to any such requests.

Mr. Shuey explained that there is no drama in providing the cigarettes so long as they may be delivered without compromising the safety of any of the individual members. Delivery would be an exercise of goodwill on behalf of the negotiator to assist in rapport building. In normal circumstances a controlled delivery is carried out. Mr. Shuey was asked if it would be necessary to communicate with the subject in relation to such delivery. He replied that the more communication you have with the subject, the better it is in the context of rapport building: ''*it really does not matter what the context of the conversation is or the constructive delivery, whether it is clothing or equipment or a meal or whatever, that does not matter; as long as you have communications going on effectively then you are in a positive line*''.

He accepted that having a solicitor available, when requested, indicates that ''*at least you have gone to the extent of showing good faith and it may be a position where you can get to the bottom of whatever is causing the trouble*''. Where a specific solicitor was not known or available, Mr. Shuey expressed the opinion that any solicitor may have assisted, at least for the purpose of showing that the police were trying to help. However, he was adamant that a solicitor would not be permitted within a stronghold; no one would be permitted within the stronghold.

Mr. Shuey thought that the benefit of the negotiation cell in Victoria, with its four members, may have influenced the manner in which these requests would have been considered by the Victoria police. He observed:

> ''*While it is an easy comment to make in hindsight, the provision of a team to handle this situation may have allowed for these requests to be provided rather than rely on one qualified member assisted by an untrained member who had to take over when the primary member needed rest*''.

18. Intelligence gathering

Mr. Shuey told the Tribunal that intelligence is gathered as a means of supporting decision-making in relation to the best tactics to resolve the situation. As a first means of gathering information the police in Victoria look at a number of background matters relating to the subject, for example, whether he was known to the police or had any criminal history record or mental health record. They also gather information to try and assess what had happened in the preceding days or weeks which is causing

or contributing to the behaviour of the individual. As discussed above, potential third-party intermediaries are a helpful resource in this regard.

19. Line in the sand and moving containment

As already stated, in Victoria, that an armed offender, once contained, will not be permitted to exit through the inner perimeter. This is what he described as a proverbial ''line in the sand'':

> ''*A conscious decision is made that will ensure the safety of all persons outside the inner perimeter. No offender will be permitted to exit through the cordon. Should the suspect approach that point they must be challenged by police tactical operators and if a violent confrontation results, as a matter of last resort, it will be met with lethal force.*''

A subject exiting the house and acting in a bravado fashion may not necessarily be regarded as a breach of the inner cordon. However, if the subject made a deliberate attempt to breach a line in the sand, which may be fifty or one hundred metres away from the house, then an officer has ''*automatically a responsibility to make sure the offender didn't breach that area*''. The situation has then changed from one of a reasonable degree of control over the subject to a situation which is completely unknown. The risk level is raised dramatically by the offender's action.

In Victoria, the concept of moving containment is not considered safe or effective in circumstances where the subject is armed with a firearm. Mr. Shuey classified such a moving containment situation as ''*high risk*'' and ''*fraught with danger*''. If it arises you have to attempt to communicate in a dynamic environment in a situation where the outcome is totally unknown — ''*so from our point of view, the moving containment is not really an accepted practice*''. It is something which may happen when you are following, rather than trying to contain; for example, where an offender is on the loose with a weapon and you have not already contained the individual. Mr. Shuey told the Tribunal that the SOG do receive some training in moving containment ''*in terms of the hypothetical and the risk assessment*''.

20. Warning

In Victoria, the warning which is used is either: ''*police, don't move*'', or ''*police, drop your weapon*''. The subject is not warned that he is likely to be shot if he does not drop his weapon or if he moves, but Mr. Shuey was certain 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*''.

21. Training in relation to where to shoot

Mr. Shuey explained that as a firearm is used as a weapon of last resort, officers in Victoria are trained to shoot at the central body mass, so as to cause instantaneous incapacitation and stop the immediacy of the threat to life.

The decision by an officer in Victoria to discharge or not to discharge a weapon is an individual one and does not involve a situation of a junior officer following the direction or lead of a more senior officer.

22. ''Use of force'' models

Use of force models are used by police forces to provide guidance to the appropriate response in any given situation and to ensure that only force which is necessary to resolve a situation is used. Mr. Shuey told the Tribunal that there were a number of such models which have been considered in the past by the Victoria police. Three categories or models were considered: namely, incremental, situational and tactical.

The traditional use of force model which was developed in the United States was ''*incremental*'' in nature. Effectively, this dictates that the required police response is one level higher than the threat posed. For example, if an offender draws a knife, the police respond with a firearm. This concept was rejected in Victoria on the basis that it had the capacity to escalate a situation; once a firearm is drawn the incident automatically becomes a firearms incident and it is difficult for an officer to then de-escalate or change that dynamic.

The ''*situational*'' model involves police choosing a tactical response based on a consideration of the circumstances confronting them. Mr. Shuey noted, however, that this model was not satisfactory and did not take into account all options that may be employed, such as the continuous use of communications as a primary response to incidents.

The Victoria Police elected to adopt a ''*tactical*'' options model, following closely the experience of the Canadian police. This model allows for a range of different tactical responses to be attempted, in an effort to resolve an incident. Its attraction lies in its simplicity and emphasis on effective communication as an ongoing requirement throughout an incident. The need to constantly assess and reassess the risks involved in incidents is a priority in this model. As circumstances change throughout the incident, so may the appropriate response:

> ''*the police response is not a one way continuum . . . de-escalation, including tactical disengagement, is just as necessary as escalation in response to the evolving nature of the incident. The options refer to a range of competencies such as an appreciation of command and control principles, communication skills, conflict resolution skill, less than lethal equipment and firearms as a very last resort . . . there is no hierarchy in the whole exercise because you could at one minute have your firearm drawn, the next minute, you could be back into a resolution situation without any hurt or any sort of threat.*''

23. Less lethal options

Mr. Shuey gave evidence that the less lethal options that have been considered and used in Victoria are not always suitable when responding to a subject armed with a firearm. Although the Victoria police are trained to always try and avoid a direct

''*firearm approach equals firearm response*'' model, the practicality is that often the only way to resolve such a situation may be police use of firearms. Commanders are trained to employ continuous risk assessment throughout an incident looking at all tactical options that are available, and if less lethal options may be deployed then they should be.

SOG members have a number of less lethal options available. At an incident such as Abbeylara, they would have the use of a safety rescue vehicle. Such a vehicle has complete ballistic cover and may have O.C. sprays (both foggers and streamers) attached to it. There have been circumstances where it has been driven at the offender and O.C. spray released or dogs deployed from it.

In a non-firearm incident they have a range of less lethal options to deploy, including bean bags and O.C. spray canisters. In the context of a firearm incident, less lethal options are generally speaking not employed because they are ''*not seen to be effective in the concept of counteracting a firearm*''. This is generally because of the distance involved and the dangers associated with a firearm incident. However, they are not discounted from consideration and the SOG are trained to always consider less lethal options as a primary response together with the use of police dogs. Less lethal weapons are usually operated in conjunction with other such weapons and often in conjunction with a safety rescue vehicle. However if the subject is going through the inner cordon, and is perceived as a threat to life, and there are no other means available of reducing or minimising that threat, then lethal force may be used to resolve the situation.

At the time of giving evidence to the Tribunal, Mr. Shuey reported that the Victoria police were in the process of introducing the Air Taser which he believes to be a highly effective less lethal option. However, he noted that it has the same limitations as other less lethal options in being unsuitable for dealing with firearms incidents involving confrontation with an armed offender. The Taser was not in use in Victoria in 2000.

24. Dogs

Dog teams automatically attend all incidents involving siege or siege/hostage situations. Dogs are not part of the SOG team. They are an additional operational response unit to assist members in the field to handle whatever situation arises. However, once deployed, the dog unit comes under the control of the Special Operations Group officer. Dog units and the SOG regularly train together.

In Victoria, there are a number of dogs that are used in various applications. They are housed in a domestic environment with children so that they respond to orders rather than to natural aggression. Siege dogs are classified as ''grade 3 dogs'' and receive extra specialist training. There are 21 operational, general purpose canine teams (five of which are rated as grade three dog teams) in Victoria.

Mr. Shuey noted that there are problems with deploying police dogs in firearm incidents including the risk to the dog, the risk to the handler, the inability of the dog

to penetrate locked or closed door situations, and a difficulty in getting the dog close enough to the subject to attack without exposing the handler to the subject's weapon. Dogs are not foolproof and cannot always be relied upon to achieve a desired result. Provided the dog handler gets the dog to appreciate that the individual is a threat, a dog may be advisable. Dogs are trained to react to fleeing or rapidly moving subjects who will automatically be a target for a dog, or two dogs as the case may be. However, if the subject is quiet or is walking in a measured way then it might be difficult for the handler to persuade their dogs that such a person should be attacked. In such circumstances the deployment of dogs is a low option and may not be appropriate. Much depends on the distance between the handler and the subject, whether a line of sight can be obtained, whether the dog can be distracted and whether there is a possibility that the subject might have time to close his gun and discharge it at an officer. The practicality is that the tactical commander enquires of the dog handler if, in his view, the dog could be used to take down the offender. A judgement is then made within what may be a very short time-frame. On any risk assessment, one goes for the least high risk response and if deploying a dog might escalate the situation or provoke a reaction it would be discounted.

In the context of the Abbeylara situation, he noted ''*the fact that ERU members were calling out to drop the weapon and this would be a confusing situation for the dog because the dog really responds to a reaction and is trained to work in that way*''. Therefore, the dog may act in an unpredictable fashion and one could not guarantee that the dog would automatically go for the offender. It is the function of the tactical commander to assess the value of deploying dogs at any given time.

In Victoria, the two dog approach has been proven to be ''*extremely successful*''. The dogs may be sent from two separate locations at the subject creating an element of surprise that makes this approach successful.

Victoria police also have the use of a ''dog cam'', that is, a camera which is secured to the top of the dog's head. The dog can be commanded to enter a designated building or environment and the camera may be operated and viewed from a remote location. These dogs are frequently used for searches but they can, if necessary, be deployed in high risk situations for surveillance purposes. Dogs are trained to bite on command.

25. Media officers

There are a number of full-time media officers in the Victoria police. They automatically attend an incident such as Abbeylara. A media liaison individual leader is appointed. He or she would assist the operations commander in the preparation of a plan to make sure that the media did not create a problem at the scene.

There is a general policy within the Victoria police to provide limited and controlled access for the media to a particular incident. They are also provided with information by way of briefings which are the responsibility of the media liaison officer. Where necessary an exclusion zone may be declared. This may involve a request from the

operational commander to the air safety authority, for example, to establish a no-fly zone. If it is breached, a pilot may lose his licence. However, Mr. Shuey told the Tribunal that they *''would very rarely get any situation at all where there is even a hint of a breach of that declaration''*. To direct the media not to report certain matters, goodwill is relied upon.

26. Welfare officers

Unit leaders oversee the welfare of their members and are responsible for rostering and providing appropriate rest periods. However, the operations commander has overall responsibility for the welfare of all personnel at a scene.

27. Police helicopter

The Victoria police have a helicopter based in Melbourne city which can be used in the context of extended sieges within close proximity to Melbourne. Such helicopters are equipped with thermal imaging and lighting capabilities. Whilst such equipment may not necessarily be beneficial to resolution of the incident, it is at the operational commander's disposal if required. It provides another strategic option. It may prove to be particularly useful in intelligence gathering in relation to topography and an assessment of possible escape routes available to the offender. Further, the thermal imaging provides that images can be relayed from the air to the command vehicle in circumstances where an incident is occurring within a 100km. radius of Melbourne.

28. ''Suicide by Cop''

Mr. Shuey told the Tribunal that the concept of ''suicide by cop'' is something that the Victoria police have been aware of for the last ten years or so and that that awareness has been heightened by some of the work that is being done in this area in the United States.

29. Ethical Standards Department

If a fatality occurs as a result of an ''in-custody'' incident it is automatically investigated by the police homicide squad and the ethical standards department. In-custody incidents include all situations where the police have some form of control or intervention in the circumstances and would include a siege situation such as occurred at Abbeylara. The ethical standards department is a group of personnel operating within the police environment whose task is to conduct internal reviews and internal investigations as the need arises. This body investigates all incidents from allegations of assault, adverse behaviours of police officers, corruption and anything at all involving death or injuries to civilians. It is a body which has a responsibility to report incidents through to the State Ombudsman. A critical incident review of any in-custody incident is automatically conducted by an assistant commissioner and all information is furnished to a Coronial Inquiry as appropriate.

SECTION B: — New Zealand

1. Superintendent Neville Matthews

Superintendent Matthews is a serving member of the New Zealand Police Force. At the time of his evidence to the Tribunal he had served as a member of the force for 32 years, in the last ten years of which he held the position of National Manager Operations and National Commander of the Special Tactics Group. As the National Manager Operations, Superintendent Matthews had national responsibility for issues relating to the uniformed branch of the police force. His areas of responsibility included emergency management, counter terrorism exercises; tactical groups including the Armed Offender Squads, the Special Tactics Group and the Police Negotiation Team; police firearms and related equipment; and, community liaison. As National Commander of the Special Tactics Group he had command responsibility for serious criminal incidents involving firearms, acts of terrorism, hostage taking or any incident beyond the capability of the Armed Offender Squads. He has commanded the Special Tactics Group in a number of such operations and terrorist exercises.

Superintendent Matthews is also the leading New Zealand police expert in less lethal weapons. In 1996, he prepared a paper entitled ''*Less Than Lethal Weapons, A Study of Current Weapons and Recommendations for Enhancement*''. The paper resulted in the introduction of O.C. spray as a defensive tool for all front-line officers. In May, 2003, he completed a research and evaluation paper on current less lethal weapon technology entitled ''*Project Lincoln: a review of less lethal weapons and related issues*''. It considered not only less lethal weapons but also armoured protected vehicles for police, police firearms and an enhanced differential response to critical incidents involving dangerous weapons.

At the time of giving evidence to the Tribunal, Superintendent Matthews was the only New Zealand police officer qualified as a United Nations Training Team Adviser. He has been awarded the New Zealand Operation Service Medal; the East Timor Medal and the New Zealand Police Long Service and Good Conduct Medal. In 2000, he was awarded a Commissioner's Commendation for work done with the first New Zealand Police Deployment to the United Nations Mission in East Timor. In 2002, he was awarded an FBI Certificate of Appreciation for exceptional service in the public interest. In March, 2004, Superintendent Matthews was appointed the police liaison officer at the New Zealand Embassy in Washington, USA. He is a Colonel Commandant of the Royal New Zealand Military Police and holds the rank of Honorary Colonel in the New Zealand Army.

2. The New Zealand Police Force

New Zealand has a population of 4.1 million people. The New Zealand police force consists of 9,500 staff of which 7,400 are sworn and 2,100 non-sworn. The police force is headed by a police commissioner who is supported by two deputy commissioners. There are four assistant commissioners. The next rank is that of superintendent; the rank of chief superintendent no longer existing in the New Zealand police force.

New Zealand is divided into 12 policing districts, each under the command of a superintendent with a number of additional superintendents operating from headquarters.

The New Zealand police force is, in general, an unarmed force. However, up until the early 1960s its detective branch carried firearms as a matter of course. In 1962, an incident occurred where two officers went to a domestic dispute. They were unarmed. Both were shot by an offender who discharged a rifle from the house. As a result of an inquiry, ''Armed Offender Squads'' were established in each police district. With the creation of the Armed Offender Squads, general duty officers (including detectives) do not carry firearms as a matter of course.

3. Armed Offender Squads (AOS)

Armed Offender Squads operate on a part-time basis with members of the squads holding full-time positions within the New Zealand police force. They are called together as and when necessary to deal with incidents involving firearms. There are 17 squads throughout the country. They have a total of approximately 250 officers. Members of the squad receive training additional to that received by the general police in New Zealand. Candidates must go through a selection process, conducted in their local area. Initially, they will be used in non-forward roles until such time as they have attended an AOS national training course. This course is of 17 days' duration and at the end of the course officers qualify as AOS members.

4. Special Tactics Group (STG)

The Special Tactics Groups developed from the Anti-Terrorist Squad formed in 1978 in response to a government requirement for police to have a capability to deal with armed and barricaded terrorists. At this time there were a number of high profile airplane hijackings around the world. The function of the STG is to provide a tactical response, including command, control, intelligence, information technology, tactical operators, including snipers, for the most serious critical incidents which may involve heavily armed and barricaded offenders, hostage taking or any other such incident that is beyond the capability of Armed Offender Squads. The Special Tactics Group has 39 members. As at July, 2003 it is a full time force within the New Zealand police. Given the geographical size of the country, the Special Tactics Group is divided into three units based in the cities of Auckland, Wellington and Christchurch. Units train locally, with all coming together three to four times per year for national training. There are also a number of specialist courses. Officers are required to return to general policing duties for a minimum of three weeks each year.

5. Police Negotiation Teams (PNT)

Superintendent Matthews advised the Tribunal that approximately 70% of all armed offender situations in New Zealand are resolved through negotiation. The role of the police negotiator is to establish contact with the subject and, using negotiation tactics and experience, to resolve incidents with as little risk to all parties as possible. The

training of New Zealand police officers in crisis negotiation is based on the principles taught at the FBI academy.

Police Negotiation Teams comprise a supervisor, a primary negotiator and a secondary negotiator. Sometimes a fourth negotiator is employed as a log keeper. The Police Negotiation Team works on a part-time, on-call basis. Even in domestic siege type situations, where there are no hostages and perhaps just one person in the house, it is policy to have three members of a negotiation cell present; all are trained negotiators.

The role of the supervisor is to ensure that the primary and/or secondary negotiators are negotiating in a proper manner. He or she develops the negotiation tactics based on the strategy decided by either the forward commander or the operation commander and is responsible for overseeing its appropriate implementation. This will include attending tactical meetings that are held by the operation commander to provide updates as to what is occurring. The supervisor is also responsible for overseeing the welfare of the other members of the negotiation cell. If a fourth person is not available to the negotiation cell, the secondary negotiator will be responsible for keeping a log. Primary and secondary negotiators work closely as a team and they may in fact swap roles during the course of an incident if it is considered advantageous to do so.

Members of the Police Negotiation Team are not armed.

PNT members are recruited and trained in the following way. When a vacancy arises, local PNT members will normally approach a particular officer and invite him or her to train as a PNT member; it is ''*a local, self-selection process*'' that matches negotiators to the requirements of the AOS. Normally a non-commissioned officer, such as a constable or a detective, will be selected. The officer then undergoes a police negotiation course, at the National Police College, of 14 days' duration. He or she continues training locally, at least one day a month. Some of this training consists of working alongside the Armed Offender Squad. At the time of giving evidence to the Tribunal there were approximately 45 trained police negotiators in New Zealand.

6. Police training in use of firearms

All members of the New Zealand police force are trained in the use of firearms and are required to re-qualify each year in the use of such weapons. While all officers are trained in the use of firearms, they do not carry them unless there is a particular requirement. Further, no officers carry firearms while they are wearing general duty uniform. Members may carry police issue firearms on their person if there is clear and specific evidence that there is a risk of encountering a firearm type incident; thus a principle of minimum personal carriage and minimum visibility is applied. Firearm carriage is usually authorised by a commissioned officer. District commanders may also authorise the carriage of approved firearms in police vehicles, where appropriate, to ensure members have ready access to firearms should circumstances

dictate. As part of the initial response, general duty police officers will attend, equipped with arms, pending the arrival of the Armed Offender Squad.

Under Section 62 of the Crimes Act, 1961 a police officer is criminally liable for excessive use of force. By statute, members are prohibited from using firearms save in the following circumstances:

- To defend themselves, or others, if they fear death or grievous bodily harm to themselves or others, and cannot reasonably protect themselves, or others, in a less violent manner.
- To arrest an offender if they believe, on reasonable grounds, that the offender poses a threat of death or grievously bodily harm in resisting arrest and the arrest cannot be reasonably effected in a less violent manner; and the arrest cannot be delayed without danger to others.
- To prevent the escape of an offender if it is believed, on reasonable grounds, that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large); and he or she takes flight to avoid arrest, or he or she escapes after arrest and such flight or escape cannot reasonably be prevented in a less violent manner.

In each and every case, the offender is not to be shot until called upon to surrender (unless impracticable to do so) and it is clear that he or she cannot be disarmed or arrested without first being shot; and in the circumstances, further delay in apprehending the offender would be dangerous or impracticable.

7. Warnings

AOS members are trained to use very clear and distinct warnings which simply say ''*Armed police. Put your firearm down now*''. This will be repeated as many times as necessary until there is compliance or until such time as some other overt action is taken. It is not the policy of the New Zealand police to follow up such warnings with a further warning of ''*or you will be shot*''.

8. Training — shooting to incapacitate

The New Zealand policy is that when it is necessary to shoot a person, the shots are to be placed to incapacitate that person as quickly as possible and thereby neutralise the threat. Incapacitation is best brought about by shots to the chest area or central mass. It is also the easiest place to hit. There is no policy of shooting to wound.

9. Project Lincoln

Project Lincoln was established to review less lethal technology and related issues in New Zealand. It also included a review of resources such as armoured, protected vehicles for police, police firearms and enhanced differential responses to critical incidents involving dangerous weapons.

Project Lincoln was initiated for two main reasons. First, it was felt that a thorough review of the use of O.C. spray was required to see if it was the most appropriate less lethal option for officers; it had been introduced into the force in 1998 for all front-line officers to carry while on duty. Second, an incident occurred in which a police officer shot a person who was armed with a golf club which led the Commissioner to believe that it was appropriate for the overall response to armed or potentially armed incidents to be reviewed.

In relation to the use of O.C. spray the report analysed its use on 4,186 occasions over a period of 21 months. On some of these occasions it was used on persons with mental disabilities. The report found that the use of O.C. spray is an effective tool in appropriate circumstances and that it is usually effective on persons with mental disabilities. In general, officers are provided with a small canister of O.C. spray which they carry on their belts as a matter of course. Superintendent Matthews told the Tribunal that it is as much a part of their uniform as their handcuffs. If an officer considers that a subject poses a threat to the officer or a member of the public and there is no less violent means available to protect them from that threat, then O.C. spray may be used to provide the necessary protection. Superintendent Matthews was of the view that the New Zealand police use the spray quite liberally, by world standards, because the officers have no ability to fall back on lethal options as they are not armed with firearms. He informed the Tribunal that the effective range of the spray is between one and five metres, with three metres being the most effective and safest range for use. It is released at the subject's face and results in involuntary closure of the eyes and the subject feeling overwhelmed, as a consequence of which they will normally be unable to take any offensive action. In these circumstances the officer may then approach the person and secure the situation. The only decontamination that is required with O.C. spray is the application of water to clear the eyes. The spray is not designed to deal with armed subjects.

Superintendent Matthews told the Tribunal that it is his view that ''*there is no less lethal weapon that is designed to be used against an offender carrying a lethal option, firearm*''.

Project Lincoln considered the use of 42 less lethal weapon options that could be available to the police. The report concluded that five of these were worthy of further consideration by the Commissioner, namely O.C. spray, the Taser, the drag stabilised beanbag or sock round, encapsulated rounds (similar to a paintball gun that can fire little ball-bearings filled with O.C. or some other substance) and large capacity O.C. sprays for use by tactical groups to debilitate more than one offender at a time.

Project Lincoln also considered the use of Armoured Protected Vehicles. These are used more in relation to recovery operation (perhaps of persons injured close to the scene) than as a less lethal option. They provide protection for officers to enable them to move closer to the scene and to provide a rescue and/or recovery capability. Such vehicles may have other potential uses such as acting as a means to move negotiators closer to the subject (depending of course on the specific capability of the vehicle).

As at May, 2004, at the time of giving evidence, the O.C. spray and the AOS rated dog unit were the only less lethal options actually in use within the New Zealand police force.

10. Call out and deployment to an incident involving firearms

The response to an incident involving, or potentially involving firearms, will depend on the severity of the incident and may involve any or all of the following:

- Unarmed police response;
- Armed, general duties police response;
- Armed Offender Squad response; and/or
- Special Tactics Group response.

It is important to note that this is not a continuum of response. Where a firearm is suspected the usual response is initially for armed, general duties officers to respond, to cordon and contain while waiting the arrival of the Armed Offender Squad.

All incidents reported to the police go to one of three call communication centres. There is a set procedure to follow when taking the call. The person receiving the call must take all applicable information, especially the number and the type of firearms, any injuries, details of a safe approach point and rendezvous point. This is assisted by the use of a computerised checklist.

The communications centre will take initial command of the incident until local command is established. If a firearm is involved the call taker will automatically notify his or her supervisor. The supervisor then contacts the Armed Offender Squad supervisor in that area. The AOS supervisor, based on the advice given, will activate the AOS or decide that it is not a case for the AOS. However, in circumstances where the incident involves, or potentially involves, a firearm, the AOS will be deployed. For safety and tactical effectiveness AOS squads should have a minimum of 12 members. However this does not always prove practical, with some smaller squads having only eight members and some larger squads having 25. The recommended minimum number of 12 excludes any police negotiation team members and AOS rated dog handlers. The local fire brigade and ambulance services are also alerted.

In circumstances where the situation is beyond the capability of the AOS to provide a tactical resolution, the Special Tactics Group will be called out. Such instances include hostage situations or circumstances where there are multiple subjects with high-powered weaponry. However, the Special Tactics Group have been deployed to domestic sieges where the need is warranted. A decision to call in the Special Tactics Group is based on a consideration of the tactical resolutions necessary to achieve a peaceful outcome. Superintendent Matthews explained that it is the ''*tactical resolution of that incident and how that is going to be achieved, which is the issue*''. The Special Tactics Group is primarily an assault body as opposed to a containing body. If the Special Tactics Group is activated, the AOS remain and are

responsible for maintaining inner cordon duties. The Special Tactics Group then gather and plan tactically to resolve the situation ''*usually by an assault on the stronghold*''. Assault on a stronghold requires the authority of the Deputy Commissioner Operations. If he or she is unavailable, the authority of an assistant commissioner is required. Having Special Tactics Group and AOS officers together at an incident occurs probably no more than once or twice a year.

The AOS in conjunction with a Police Negotiation Team resolve most of the critical incidents involving firearms without the participation of the Special Tactics Group. It is now almost automatic that PNT will be called out as part of the AOS response. Any situation where there is a person in a location requiring some form of communication will result in the PNT being called out.

In New Zealand, the AOS are trained in ''voice appeal'' techniques. This enables them to communicate with the offender in the absence of the negotiation team, and to undertake rudimentary negotiations. Voice appeal techniques essentially are those which enable the AOS to make it known to the person in the house that there are armed police surrounding the property and that it is in their best interests to put down their firearm and to come out in a manner that is appropriate to the AOS arrest procedures. The AOS may also be used to inform the offender of actions he or she must take when surrendering; this may be done by way of a loudhailer. This is not viewed as a negotiation capability within the AOS, but as a means of informing the subject what the police intend to achieve and why they are at the scene.

The Armed Offender Squad also operates in conjunction with AOS rated police dogs. It is policy to call out AOS dog teams to all armed incidents. These dogs are trained to deal with armed offenders and are used extensively to resolve such incidents.

If the incident is minor in nature and does not involve a siege type situation, the AOS commander may take charge of the entire operation. If, however, the situation is in the nature of a siege, the New Zealand police are moving towards a command model where the AOS commander will be solely responsible for the inner cordon and an operation commander will be appointed separately to command the overall operation. In areas such as Auckland, Wellington or Christchurch, the AOS commander may hold the rank of inspector. An operation commander may in some circumstances be a non-commissioned officer, depending on the availability of members. A larger operation would invariably come under the command of an inspector and in rare circumstances, a superintendent.

In an incident, such as that at Abbeylara, the AOS would have been automatically deployed together with a Police Negotiation Team and an AOS rated dog team.

11. The principles of dealing with an armed incident

In New Zealand, the overriding principle in dealing with an armed offender is the principle of ''cordon, contain and negotiate'' for as long as is necessary or possible, to bring about a peaceful resolution.

The applicable principles to be used when dealing with an armed offender are contained in a ''Manual of Best Practice''. However, Superintendent Matthews emphasised that each incident is different, with its own dynamic, and that commanders are required to modify their approach depending on the circumstances. Command of incidents is more of an art than an exact science, he told the Tribunal, and the experience of the commander plays a large part in determining the outcome.

The Manual states that when dealing with an armed offender:

- *''It is better to take the matter too seriously than too lightly;*
- *Treat all armed suspects or suspects believed to be armed as dangerous and hostile unless you have definite evidence to the contrary''*.

The Manual also states that ''*caution is not cowardice*''. According to Superintendent Matthews, this highlights the conservative approach that the New Zealand police take to armed offenders. Thus, rather than satisfying themselves that the person is armed, the officer is required to satisfy himself that the person is not armed; police should never go unnecessarily into danger. However, if the suspect is acting in a way that makes casualties likely, the police must take immediate action to prevent this. Any force used should be the minimum necessary to achieve the objective, and be reasonable in the circumstances.

The officer commanding the scene must determine what is known as a ''safe arrival point'', and establish an outer cordon manned by uniformed staff. The safe arrival point will not be visible to the offender and will not be in close proximity to the scene. The police will not directly approach the stronghold. Superintendent Matthews told the Tribunal that it has been a long established practice, as a result of two police officers being shot and killed in the early 1960s, that officers do not park outside an address if there is any concern; rather, they park away and approach on foot. On arrival, the AOS will set up a mobile command post inside the outer cordon and establish an inner cordon which they will maintain and control. Only AOS or Police Negotiation Team personnel, or others specifically authorised by the office of commander of the AOS, may operate within the inner cordon. Persons operating in the inner cordon must be logged and accompanied at all times by an AOS member. The outer cordon may or may not be armed, depending on the circumstances; its role is to keep people from entering the scene. The inner cordon is invariably armed and serves to contain the subject.

In most scenarios the operation commander will establish a command post somewhere between the inner and outer cordon. It is distinct and separate from the AOS command post. The operation commander will approve a tactical plan. However, the principles of ''cordon, contain and negotiate'' are given the utmost priority — together with the requirement to evacuate the area as appropriate.

A direct assault on the stronghold will not be contemplated unless life is at risk and there is no alternative. If direct assault is a possibility, the Special Tactics Group is activated (as discussed above).

The AOS commander prepares action plans to provide for eventualities such as surrender; the offender attempting to leave the inner cordon; the offender firing on police; stronghold clearance after the surrender, and suicide within the stronghold. The operation commander must approve any such plans. The plans may be verbal but are usually written down in a brief format. The operation commander will commence a written log on arrival which would be taken over by the AOS on their arrival and carried on by them until the incident was resolved. The AOS have a dedicated log keeper available to them.

12. Negotiations

In New Zealand a negotiation team will be placed close to, but separate from, the AOS command centre, in a house, police vehicle or other suitable accommodation. This facilitates direct communication between the negotiation team and the AOS commander, allowing for immediacy in the relaying of information from one to the other. Intelligence gained by the negotiation team while dealing with the subject is automatically passed to the AOS and operation commander. No negotiations are attempted until the AOS inner cordon is established.

A high priority of any negotiated incident is for the negotiator to establish communication with the subject through a dedicated telephone link. In New Zealand, there is a policy of isolating the subject from the outside world, especially in relation to communications. If the subject has access to a landline it will be captured to ensure that the only communication that he or she can have is with the police negotiator. Similar action will be taken in respect of a cellphone with necessary technical measures being carried out by the telephone service provider at the request of the police. If these forms of communication are not possible, the insertion of a direct hard-line telephone link, or field phone, will be attempted. All of these methods require some co-operation from the subject. If there is no co-operation forthcoming they must revert to reliance on a loudhailer, or what has been developed in New Zealand as a loudspeaker system which is easier to use and a little more powerful than a straightforward loudhailer. One of the disadvantages of the loudhailer system is that there is little opportunity for spontaneous conversation between the two parties. Further, it may be difficult to hear any responses from the subject. It also may place the PNT members within the inner cordon and may therefore place them at risk. In such circumstances the PNT usually would not be permitted within the inner cordon, and the loudhailer would be utilised by a member of the AOS in a ''voice appeal'' role.

Superintendent Matthews told the Tribunal that the New Zealand police have never allowed face to face negotiations as part of the resolution of a critical incident as it places whoever is doing the face to face negotiations at an unacceptable risk from the offender. The New Zealand police force operate a doctrine of ''*maximising safety and minimising risk*''.

There are no fixed or firm rules in respect of the length of time that a negotiation team should continue to operate and remain on duty at an incident. One of the first

considerations of the operation commander is the relief of staff. That applies to all members of the PNT and AOS. After eight hours, they will look to bring in other resources to relieve the members on the ground. At the twelve hour mark *''we would certainly be replacing both AOS — PNT'',* Superintendent Matthews told the Tribunal. Issues such as the amount of rapport built up between the negotiator and the subject will always influence the decision. The operation commander ultimately makes the decision to change the negotiator, based on the advice of the negotiation supervisor.

13. Use of Third Party Intermediaries (TPIs)

As a general rule, the New Zealand police do not use TPIs to communicate with subjects mainly because there is little control over what they may say and the police do not know how the subject may react to the third party. As TPIs have no training in negotiations they may unwittingly inflame the situation by saying the wrong thing. However, Superintendent Matthews was of the opinion that notwithstanding this caveat, it has become more acceptable to utilise third parties if it is considered that they may assist in the resolution of the incident. He told the Tribunal that an operation commander may give careful consideration to their use especially in circumstances where the subject has a mental illness, as the use of persons known to the subject may be beneficial. However, the safety of the TPI is a priority and they will not communicate from within the inner cordon on a loudhailer, especially if that is a point that has come under fire from the subject. Therefore, unless the TPI can communicate from an area that does not involve such risk, which invariably will involve the use of a dedicated phone line, it is unlikely that they will be used.

The PNT supervisor will speak with the proposed TPI to ensure that the parameters of the conversation are very clearly laid out.

14. Intelligence gathering

The primary purpose of intelligence gathering is to assist the operation commander and others in dealing with the incident from a tactical perspective. On arrival at the scene, initial responders will speak with family, associates and neighbours in an attempt to gather as much information about the incident, the firearms involved, the state of the subject's mind and other relevant factors.

If a police psychologist is available to the operation commander he or she will be requested to attend the scene. The operation commander will consider the need to speak to a subject's treating psychiatrist as a high priority in circumstances where information in relation to a mental illness comes to light. The police psychologist is considered to be a helpful conduit for this sort of information.

15. The subject exits the stronghold

Superintendent Matthews was asked how the New Zealand police would respond to a subject exiting the stronghold with a shotgun broken open in circumstances where there was an inner cordon in place around the house. He told the Tribunal

that the first thing that would happen is a repeated appeal from the AOS to the subject: ''*armed police, put the firearm down now, armed police, put the firearm down now*.'' AOS rated dogs would be at the scene ready to be deployed. If there was no response to the above appeal, very quickly after the subject had left the house, two dogs would be released by way of a ''two dog attack'' from different directions in the hope of resolving the situation without recourse to other tactics.

Superintendent Matthews said that, if such dog units did not exist within the New Zealand police, the only means of resolving the incident that would be open and available to them is lethal force. Officers in New Zealand are trained to continually assess the situation and to determine the varying levels of threat. A decision by an officer to use lethal force is an individual decision and is not dependent on any other officer.

Superintendent Matthews also told the Tribunal that in New Zealand an offender is not allowed to leave the inner cordon because to do so ''*places a whole lot of other people at risk*''. The tactic of ''moving containment/moving cordon'' is not used. It is considered to give rise to a risk of crossfire and to place officers at unnecessary risk:

> ''*The other principle that would concern me in respect of the moving cordon is once you have started the moving cordon, where do you stop? So no, we don't train it and we don't employ it*''.

16. Dogs

There are approximately 30 Armed Offender Squad rated dogs in the New Zealand police force. The dog units train with the AOS on a regular basis. All dog handlers have undergone the full training for every AOS member and the dogs have gone through particular training — over and above the training given to a general duties dog — to ensure that they are capable of dealing with somebody who is armed with a firearm. Accepting that there is always a degree of unpredictability associated with the use of dogs, Superintendent Matthews stated that in his experience the dogs are extremely focused provided the dog handler sets them up correctly and ensures that the dog knows who is the offender to attack. If the inner cordon has been properly controlled then there should be no extraneous people or other things to distract the dog or interfere with the deployment of a dog as a tactical solution. In Superintendent Matthew's experience the subject would not have to be fleeing or behaving in an erratic way for the dog to attack provided the above conditions are in place. Tactical police dogs of that sort have been trained in New Zealand for the past 20 years.

17. Media officers

The New Zealand police have designated media relation officers. In any incident that might attract media interest such an officer is deployed and forms part of the operation command. He or she will facilitate any reasonable needs of the media and will organise press conferences at appropriate intervals. Press conferences are usually fronted by the operation commander or the second in command. Any statements that are given to the media will usually be prepared by the media officer and

approved by the operation commander. In a prolonged siege, negotiators may have an input into the content of such a statement if they believe it may further the negotiation effort in some way. The media is not permitted inside the inner cordon but may, in certain circumstances, be allowed within the outer cordon. ''*We find it easier to manage the media than not manage them,*'' Superintendent Matthews explained.

18. Exclusion zone

As in Victoria, the New Zealand police may place an exclusion zone around a particular critical incident site. This exclusion zone may apply to aircraft or helicopters. In such circumstances it will be established in conjunction with the Civil Aviation Authority and there are sanctions for breach of the order.

19. Mental health professionals

In the past, the police have employed full-time medical doctors and full-time psychologists who were primarily responsible for any internal medical or psychological issues that arose within the police force. However, the psychologists were used on occasion to provide profiles of offenders and to give advice to the Police Negotiation Team on the likely reactions of an offender to a particular tactic. They were also involved in training exercises in this regard. Though the role of the psychologist was viewed, over time, as a benefit to a tactical commander in the resolution of incidents, resource issues brought about a change. Cost analysis showed that it was more cost-effective to buy whatever expertise was required on the open market, rather than to retain persons with such qualifications within the organisation. In New Zealand, it has not generally been a requirement to call in the assistance of a psychiatrist or psychologist in dealing with incidents. The last full-time psychologist left the New Zealand police force in 2003. Superintendent Matthews told the Tribunal that his understanding of the current position is that there are a number of psychologists in private practice who may be called upon, if necessary, for use internally or for use in a tactical situation, but that their deployment as a tactical option for a commander at the scene of an incident has not been developed further since the last full-time psychologist left the force.

Superintendent Matthews was familiar with the Crisis Assessment Treatment Teams that operate in Victoria, Australia. The New Zealand health services have also developed a similar response to the treatment of persons with mental illness in the community. As in Victoria, this was initiated by way of response to the move to de-institutionalise many persons with mental illness. The New Zealand teams may attend incidents with the police or they may attend on their own. Police officers will usually be requested to attend where there is a concern that the person may be violent. The use of a crisis assessment treatment team in a firearms incident had not been developed within the New Zealand police force as at May, 2004. ''*That is not to say it is not a good idea,*'' he told the Tribunal, ''*it is just something we have not currently addressed*''.

SECTION C: — Canada

1. Mr. Robert Leatherdale

Mr. Robert Leatherdale is a former assistant commissioner of the Royal Canadian Mounted Police (RCMP). He joined the RCMP in 1962 and thereafter gained varied investigational experience in municipal, provincial and federal areas of responsibility. He progressed through the force in rank and responsibility in areas such as general investigation, commercial crime, drug enforcement, policing for aboriginal communities and a variety of criminal investigations.

He was in charge of a number of detachments before being commissioned as Inspector to Officer Commanding Labrador Sub-division at Goose Bay, Labrador. This was a three-year posting with administrative and operational responsibility for eight remote and isolated detachments and three support services, the most critical of these being air services, as travel to all detachments and outposts was almost exclusively by air. Another major responsibility which he had was ongoing liaison with military air forces from Canada, the United States, the United Kingdom and West Germany.

In 1985 he was transferred to Red Deer, Alberta as Assistant Officer Commanding, holding the rank of inspector. This entailed having responsibility for operations in a sub-division that stretched from British Columbia to Saskatchewan incorporating the central portion of the province and having over 400 employees. He was responsible for large support units such as drugs, general investigation, national crime intelligence and the federal unit, all of which conducted sensitive, high profile and undercover operations. In 1985, he also underwent a commander course and a hostage/ barricaded persons course in the Canadian Police College in Ottawa. Mr. Leatherdale was Operations Commander for the Emergency Response Team located in Red Deer. The Emergency Response Team is, in Canadian terms, broadly equivalent to the Emergency Response Unit in Ireland. He held that position for approximately five years.

He was the lead venue commander for security at Calgary airport during the Winter Olympic Games in 1988 as well as being the co-commander for the opening and closing ceremonies. He was the alternate commander for the Emergency Response Team for the Olympic contingent in Calgary.

He was promoted to the rank of Superintendent, Officer Commanding of the Peace River Subdivision in 1990. This is the northwest portion of Alberta from Beaverlodge and Grande Prairie on the west to the North West Territories in the north.

He was promoted to the rank of Chief Superintendent in 1993 and assumed the position of Officer In Charge of criminal operations for the province of Saskatchewan in that year. This involved responsibility for the overall management of all aspects of operational issues within the RCMP jurisdiction in the province.

Mr. Leatherdale represented the Royal Canadian Mounted Police in 1994 as part of the review of the ''Use of Force'' by the Victoria Police in Melbourne, Australia. Mr. Leatherdale is the co-author of a report which, with other input, ultimately led to the retraining of the majority of members of the Victoria Police in the use of force and firearms. This review was part of the preliminary work that led to the introduction of Project Beacon, which is dealt with in detail in the evidence of Mr. Shuey. In 1997 he was promoted to the rank of assistant commissioner with responsibility for the Major Case Management Task Force (discussed below) which he managed from 1997 to 2000. Mr. Leatherdale retired from the RCMP in June, 2000.

2. The Royal Canadian Mounted Police (RCMP)

The RCMP is the Canadian National Police service. It is unique in the world in that it is a national, federal, provincial and municipal policing body. The RCMP provides a total federal policing service to all Canadians and policing services under contract to three territories, eight provinces, 198 municipalities and, under 172 individual agreements, to 192 First Nation Communities. In short, aside from Ontario and Quebec (which have their own provincial police forces) the RCMP is in effect the provincial policing service for Canada. However, the RCMP has the responsibility for enforcing federal statutes in all states, including Ontario and Quebec. The RCMP is headed by a Commissioner who is under the direction of the Solicitor General of Canada.

In 1996 the RCMP moved towards a more regional management system under the direction of deputy commissioners. Four new regions were developed — Pacific, Northwestern, Central and Atlantic — to ensure greater grass-roots involvement in decision making and to allow more investment in front-line services. The force is divided into 15 divisions with its headquarters in Ottawa. As at May, 2001, the force was 20,866 in number. There is one commissioner, seven deputy commissioners and 23 assistant commissioners. Chief superintendents (of which there are 52) have operational responsibility for their divisions and superintendents (of which there are 122) have geographical responsibility for their relevant subdivisions. A superintendent of a sub-division equates, broadly speaking, with a superintendent or district officer in Ireland.

The RCMP is an armed police force.

3. Major Case Management Task Force (MCMTF)

In 1997, Mr. Leatherdale was appointed by the Commissioner of the RCMP to form and manage a task force to evaluate the ''state of readiness'' of the RCMP. Its brief was to review the RCMP's approach to managing a major or critical incident, including command, negotiation and emergency response. The task force was called the Major Case Management Task Force or MCMTF. It was established in response to a request by the then Commissioner Mr. Philip Murray, following an incident which took place in British Columbia**,** involving a major confrontation between police and an aboriginal group over rights to perform traditional ceremonies on privately

owned land. Some 16 emergency response teams were engaged in the confrontation over the course of a number of months culminating in an exchange of gunfire between the aboriginal group and the police. The RCMP had encountered problems in obtaining required resources and difficulties were encountered in attempts to carry out negotiations. The Commissioner thought that a review of the state of readiness of the RCMP was required to assess whether the policies that were in place and the abilities and skills of the members were adequate to deal with what they were presently being confronted with and what they might be confronted with in the future.

The MCMTF examined best practices then in existence within and external to the force. They assessed the strengths and weaknesses of their existing contingency plans, available resources (both material and human), and conducted a complete review of recent major incidents, existing contingency planning apparatus, methods of operation and organisational structure. As part of the brief, Mr. Leatherdale researched best practice in other police forces in England, Scotland, Northern Ireland, the United States and Canada and liaised with various experts in the relevant fields.

Following the publication of the task force report a permanent group was immediately established to implement its recommendations. This group is still in existence and continues to implement and update the work of the task force; the state of readiness of the RCMP is seen as a ''*constant evolution*''. Many of the recommendations relate to the administration, training, information management and operations of the RCMP's critical incident responders who are identified as incident commanders, negotiators, major crime investigators and emergency response teams.

Mr. Leatherdale emphasised that one of the goals of the MCMTF was to disseminate the information on the role of the task force to all those interested in its work. A copy of the task force report was sent to all police forces that were contacted in relation to the work of the task force so that its benefits might be considered in a wider context. Mr. Leatherdale stressed the need for ''*a spirit of continuous learning*''.

4. Emergency Response Teams

An Emergency Response Team of the RCMP is comprised of an assault group, a sniper group (used primarily as an intelligence gathering source), negotiators, a dog master and dog and a technical person (proficient in intercepting or cutting telephone wires and the use of field phones and other such equipment). All the members of the Emergency Response Team are police officers who are ordinarily engaged in other functions, either plain-clothes or uniformed police duties. They operate on an on-duty pager system.

An incident commander has overall responsibility for an Emergency Response Team. The most senior member of the team is likely to be the team leader at an incident. The nomenclature of ''gold, silver and bronze'' for levels of command is not recognised in Canada. However, for ease of reference Mr. Leatherdale described the incident commander as being the equivalent of a gold commander with the team

leader being the equivalent of a silver commander. A bronze commander may be the senior sniper or the assault group leader. It is important to note that such command positions are not designated according to the rank of the officer but are reflective of their roles within the team. In this regard, the command structure of an incident in Canada is role based and not rank based; suitability, more than rank, is the determining factor.

5. Call out/deployment of the Emergency Response Team

When a call reporting a critical incident is received, it is up to the operations commander to decide whether the Emergency Response Team should be deployed to the scene. The request to deploy an Emergency Response Team usually comes from a superintendent of the relevant sub-division, but Mr. Leatherdale told the Tribunal that rank was not a consideration and that the request could come from ranks of a lower level. It was preferable, he noted, if the request came through the local rank structure as this provided for some form of filtering or assessment.

Ideally, there are twelve members in an Emergency Response Team. However, not all people are available on every occasion. If an appropriate number is not available another Emergency Response Team is deployed. Normally, the incident commander goes ahead of the team to the incident. The team members gather at sub-division headquarters to collect appropriate attire and equipment before proceeding to the incident.

On arrival, the incident commander and/or the team leader will meet the local unit commander or the person who is in charge of the situation on-site for a full briefing. Overall command of an emergency response incident rests with the incident commander.

6. Command and control: isolation and containment

Immediately on arrival, the Emergency Response Team establishes a cordon around the site. Also, it is responsible for the establishment of a command post. As the majority of the Emergency Response Team's call-outs are rural the command post may be a nearby barn, the back of a car or even a car seat, depending on what is available; ''*you don't always have an ideal situation*'', Mr. Leatherdale reminded the Tribunal. In certain areas such as Edmonton and Calgary, the police have specially designed vehicles which may be utilised as command posts but they are more likely to be utilised for negotiations and telecommunications.

From the moment of arrival at the incident, the Emergency Response Team assumes command of the situation and the local personnel ''*back off*''. Local personnel become a resource and are available to the Emergency Response Team to assist in any peripheral issues such as intelligence and information gathering. Overall responsibility for the tactical and negotiation element of the incident resides with the Emergency Response Team.

The team leader of the Emergency Response Team puts together an immediate action plan and, from there, a further plan is developed as to how the incident may be resolved; such plans may be developed in conjunction with the incident commander who must ultimately approve and sign off on every plan. Therefore, it is the role of the incident commander to assess the incident priorities, determine the incident's strategic goals and tactical objectives and develop and/or implement an action plan. Also, he or she develops an incident command structure appropriate to the incident and assesses and deploys the resources needed. The incident commander is responsible for coordinating overall emergency activity, coordinating with outside agencies and making information releases available to the media. He or she will also serve as the ultimate safety officer at the scene.

The MCMTF established operating guidelines to ensure high quality command during a critical incident. These guidelines ensure that when an incident occurs the incident commander and relief incident commander are identified and that the relief incident commander takes over the duties after a period of 8 to 12 hours. Following an incident, the incident commander will participate in operational and critical incident stress debriefing.

7. Negotiations

The objective of the RCMP in barricaded incidents is to achieve a negotiated resolution.

Negotiators would probably be armed in Canada as all officers carry arms, but, in Mr. Leatherdale's experience, negotiators would remain outside the inner cordon and would not be at risk. Consequently, they would not be in a position where they may find themselves having to draw their weapons.

An aide-mémoire, in the form of a handbook prepared by a psychologist associated with the Canadian Police College, is a resource that negotiators are encouraged to bring to the scene of any incident. It serves as a valuable checklist for the negotiator.

8. Intelligence gathering

As mentioned above, the role of information and intelligence gathering is usually delegated to local officers as they "*know the people that are involved — at least they would probably know them better than us and they certainly know the community and the feelings in the community and all those things that you have to take into account*", Mr. Leatherdale explained.

9. Log keeping and the written plans

All information and activities are logged. One person is designated as being responsible for this function. Such a person may be the secondary negotiator — "*if we were fortunate enough to have one*" — or a technical person. They would have a flip chart somewhere in the command post, preferably next to the negotiator. This will also be in view of the commander so that he or she is in a position to outline

and highlight some of the developments and the decisions made. Certain individuals are expected to keep personal notes. The information that is required to be documented, or logged, is information relating to occurrences at the scene, developments that are taking place and plans that are made. Although much of an incident may be taped, particularly telephone and radio communications, there is an emphasis on the requirement for written documentation of what is happening at the scene.

The immediate action plan, designed at the outset by the tactical aspect of the Emergency Response Team, must be signed off by the incident commander before it is implemented. The same procedure occurs in relation to other plans formulated throughout the incident or regarding any alteration made to the immediate action plan. Actions therefore are documented and accountability arises.

10. Mental health professionals

Mr. Leatherdale told the Tribunal that there are no standing arrangements between the RCMP and public or private health services in relation to the attendance of mental health professionals at an incident. He stated that if such a person were considered to be of assistance at an incident then it would be the responsibility of the incident commander to call them to the scene. The RCMP does have psychologists attached to their health service directorate but they are exclusively for such matters as psychological debriefings and do not engage in on-site duties at an incident.

11. Use of force

Questioned on whether a ''line in the sand'' approach was adopted by the RCMP in relation to a subject breaching a police cordon, he replied that ''*philosophically speaking, the line in the sand is probably there. It is crossed, I suppose, when the police officer's life is put in danger or another individual's life is put in danger or where there becomes a danger to someone in the area, which cannot be stopped another way*''.

There is no standard warning procedure adopted by the RCMP when the use of force is to be used, but Mr. Leatherdale explained that the use of deadly force would undoubtedly be preceded by warnings to drop a weapon or to stop or to surrender, or something of that nature.

Mr. Leatherdale told the Tribunal that the decision to use lethal force is an individual decision for each officer.

12. The Media

In major incidents a media relations officer is appointed to liaise with the media. Mr. Leatherdale explained that information is usually released to the media that may be helpful to them but which will not interfere with the incident itself; it is disseminated to them in a controlled and managed fashion.

13. Training

Much of the training undertaken by members in the Canadian Police College is by way of computer-based simulation which allows those in command roles to explore complex issues associated with critical decision making in crisis situations. The situational stimuli occur in real time and have real-time consequences as well as the automatic triggering of subsequent actions based on prior decisions or in some instances, the failure to make decisions.

By way of example, Mr. Leatherdale explained that one of the many tasks that must be dealt with in a major crisis is the media. Should the commander not take steps to address this issue at the appropriate time, the computer will simulate a major incident involving the media that will affect not only his or her command, but will adversely affect other units such as the negotiator and the Emergency Response Team personnel. The further benefit of such computer simulated training is that it allows for constant refresher courses without the associated cost of running large-scale practical on the ground exercises on a regular basis. However, it was acknowledged that the start-up costs of such a ''virtual training'' training environment may be significant. Members are selected for training based on their skills and experience rather than their rank. The selection, administration, training and mentoring of commanders and negotiators is overseen by a National Co-ordinator.

Certain criteria have been established for selection of an incident commander. First, the member must want to participate at this level; secondly, he or she must have no physical or mental health restrictions (psychological assessments are carried out); thirdly, he or she must have appropriate experience with incidents, prior training, self-study or have participated in a mentoring programme; and finally, the agreement of the Criminal Operations Officer is required before the member may be put forward for selection.

Incident commanders are categorised and trained as either Level I divisional commanders with responsibility for such incidents as hostage or barricaded incidents or Level II national commanders who are responsible for major incidents such as air crashes or national disasters. The MCMTF identified in particular the need for a mentoring programme for incident commanders. Such a mentoring programme envisaged a Level II commander (i.e., a commander who is utilised for an incident other than a local incident, such as a major airline crash or hostage incident) requesting that another Level II commander be brought in to observe the operation at a high level. By so doing, the second commander gains experience in how to run such an incident. Mr. Leatherdale described such a person as being in the role of an ''*understudy*''. This was especially valuable if a trained Level II commander had not had an opportunity to be involved in such an incident before.

The MCMTF noted that there were no national standards or programmes for negotiators and therefore developed administrative initiatives such as national standards for negotiators, selection procedures, national coordination and refresher courses. An audit or ''skills inventory'' was carried out of existing negotiators. A crisis negotiators refresher course was established to standardise the skills and training of

all negotiators. An important focus of this training was to ensure that criteria were developed so that only suitable personnel were selected to train as negotiators, and that, after initial training, these would be exposed to further training on a regular basis to refresh their skills.

Emergency Response Team training focuses primarily on shooting and activities surrounding tactical entry. Such training takes place at least once a month. However, at least once a year a full training seminar takes place where all members of the team, including negotiators, are involved in decision-making and training scenarios.

The RCMP incident management intervention model is another valuable resource in training first responders to an incident such as occurred at Abbeylara. Mr. Leatherdale described it as one of the "*core building blocks*" in training given to cadets or trainee officers in the Training Academy. This model focuses on training the cadets to choose the appropriate means of intervention in any given incident by assessing the level of risk to the public and themselves and the potential for preventing or reducing it through a range of tactical options. At the core of this training model is the overriding principle of officer safety: "*The role of the police in an intervention is to ensure that the public is safe. Police safety is essential to public safety. If harm comes to the police officer, they will not be able to help others.*"

A member is not trained to view options in a linear way, starting at the least lethal and working their way up. Instead, a range of options is considered based on the subject's behaviour and the situational factors viewed in their totality. The member must assess the risk and select the best option in an attempt to control the situation as quickly as possible. Risk assessment is stressed as being a continuous process for each officer during the course of an incident. Such decisions are often difficult to make, Mr. Leatherdale explained; the more adept the officer is at assessing risk the more readily and appropriately he or she will respond under operational circumstances.

Officers are taught that for the use of force or intervention to be justified the following criteria must be considered:

i. *"Did the subject have or reasonably appear to have the ability to behave as the officer perceived?*

ii. *Did the subject demonstrate intent. Did words and/or actions lead you to believe that the subject had the intent to behave as perceived?*

iii. *Did the subject have the means to demonstrate or deliver the perceived behaviour?"*

CHAPTER 13

Gun licensing Law and related matters

Introduction

This chapter comprises a review of gun licensing law in this State and a comparison with the law in certain other comparable jurisdictions. It entails, *inter alia*, consideration of proposed improvements in our law. Much assistance has been given by a wide range of interested professional and sporting organisations in Ireland which have furnished submissions and in several instances details have been amplified by oral testimony. The Tribunal also has had the benefit of reports and expert testimony relating to the law and the experience of the police in the area of licensing and control of guns held by members of the public in the United Kingdom; Canada; the State of Victoria (Australia) and in New Zealand. In addition, a range of important reports, police guidelines and other related documentation has been furnished to the Tribunal. The expertise, generous support and assistance provided by police and others in the foregoing jurisdictions have been of outstanding value to the Tribunal and are much appreciated.

Existing Irish law and comparable law in other jurisdictions

The following acts and statutory instruments contain the relevant Irish statute law regarding sporting gun licences granted to members of the public and the renewal thereof.

1. **Firearms Act, 1925**
2. **Customs-Free Airport (Extension of Laws) Regulations, 1962, S.I. 186 of 1962**
3. **Firearms Act, 1964**
4. **Firearms (Proofing) Act, 1968**
5. **Firearms (Proofing) Act, 1968 (Commencement) Order, 1969, S.I. 64 of 1969**
6. **Firearms (Shotguns) (Proofing Methods, Marks and Fees) Regulations 1969, S.I. 65 of 1969**
7. **Firearms Act, 1971**
8. **Firearms (Temporary Custody) Order, 1972, S.I. 187 of 1972**
9. **Firearms (Dangerous Weapons) Order, 1972, S.I. 251 of 1972**
10. **Wildlife Act, 1976**
11. **Criminal Law (Jurisdiction) Act, 1976 (Commencement) Order 1976, S.I. 112 of 1976**
12. **Firearms Regulations, 1976, S.I. 239 of 1976**

13. **The Wildlife Act 1976 (Section 44) (Recognised Bodies) Regulations, 1977, S.I. 335 of 1977**

14. **The Wildlife Act 1976 (Section 44) (Recognised Bodies) Regulations, 1980, S.I. 233 of 1980**

15. **Firearms and Offensive Weapons Act, 1990**

16. **Firearms and Offensive Weapons Act, 1990 (Part II) (Commencement), Order, 1990, S.I. 313 of 1990**

17. **Firearms and Offensive Weapons Act, 1990 (Offensive Weapons) Order, 1991, S.I. 66 of 1991**

18. **European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations, 1993, S.I. 362 of 1993**

19. **Wildlife Act, 1976 (Firearms and Ammunition) Regulations, 1977, S.I. 239 of 1997**

20. **Firearms (Temporary Provisions) Act, 1998**

21. **Firearms (Temporary Provisions) Act, 1998 Continuance Order from 1999, S.I. 189 of 1999**

22. **Wildlife (Amendment) Act, 2000**

23. **Firearms (Firearm Certificates for Non-Residents) Act, 2000**

24. **Firearms Certificates for Non-Residents Order, 2002, S.I. 48 of 2002**

25. **European Communities (Acquisition and Possession of Weapons and Ammunition) (Amendment) Regulations, 2002, S.I. 49 of 2002.**

A summary of the relevant provisions is as follows:

1. Sporting guns and related ammunition in the lawful possession of members of the public resident in the state require to be licensed by the Garda Síochána. Firearm certificates are renewable annually. Certificates are issued by a Garda superintendent for the area where the applicant resides pursuant to section 3 of the 1925 Act. It provides that the superintendent of any Garda district may, subject to the limitations and restrictions imposed by the Act, upon the application of any person residing in such district and on payment of the fee (if any) for the time being required by law, grant to such person a firearm certificate. The issuing of firearm certificates is a function conferred on Garda superintendents who are area officers as *personae designatae*. Separate provisions apply to the granting of firearm certificates to persons not ordinarily resident in the State (See paragraph 12 hereunder).

   Section 3 (4) of the 1925 Act (as amended by section 16 of the 1964 Act) provides:

   > *Every firearm certificate shall be in the prescribed form and shall operate and be expressed to authorise the person to whom it is granted:*

(a) to have in his possession, use and carry the particular firearm described in the certificate, and

(b) to use ammunition in the firearm and to have in his possession at any one time and carry so much ammunition for the firearm as shall be specified in the certificate.

2. Section 12 of the 1964 Act states that where the firearm described in a certificate is a shotgun the certificate may be expressed, and in such case shall operate to authorise such firearm to be used only for killing animals or birds (other than protected wild animals or protected wild birds within the meaning of the Wildlife Act, 1976 as amended by section 65 of that Act) on land occupied by the person to whom such certificate is granted or on land occupied by another person. In the latter event, it shall not be granted unless the occupier of the land has given the applicant a nomination in writing for holding the certificate as provided for in section 12 (2). Where such a nomination is revoked, the limited certificate to which it relates shall not, if it is then in force, be capable of being renewed.

3. The power vested in the issuing superintendent to grant a certificate is subject to his/her being satisfied as to the requirements of section 4 of the 1925 Act which provides that:

Before granting a firearm certificate to any person under this Act the superintendent of the Garda Síochána or the Minister (as the case may require) shall be satisfied that such a person —

(a) has a good reason for requiring the firearm in respect of which the certificate is applied for, and

(b) can be permitted to have in his possession, use and carry a firearm without danger to the public safety or to the peace, and

(c) is not a person declared by this Act to be disentitled to hold a firearms certificate.

4. Section 8 of the 1925 Act (as amended by section 17 of the 1964 Act) sets out an exhaustive list of persons declared by the act to be disentitled to hold a firearm certificate. They include, *inter alia*, any person of intemperate habits, any person of unsound mind and any person who is subject to the supervision of the police. A person of ''unsound mind'' is not defined in the firearms legislation. However, it is referred to (rather than defined) in the Mental Treatment Act, 1945 as a person who requires detention for protection and care and who is unlikely to recover within a six month period. The Mental Health Act, 2001 does not utilise the term ''unsound mind''.

5. Section 5 of the 1925 Act provides that the superintendent of the Garda Síochána of the district in which the holder of a firearm certificate resides may revoke the certificate at any time if he/she is satisfied that the holder:

(a) has no good reason for requiring the firearm to which the certificate relates, or

(b) is a person who cannot, without danger to the public safety or the peace be permitted to have a firearm in his possession, or

(c) is a person who is declared by this Act to be disentitled to hold a firearm certificate, or

(d) where the firearm certificate limits the purpose for which the firearm to which it relates may be used, is using such firearm for purposes not authorised by the certificate.

6. Section 9 of the 1964 Act provides for the renewal of a firearm certificate. It may be renewed by a member of the Garda Síochána not below the rank of sergeant in the district in which the holder resides if he or she is so authorised in writing by the superintendent of the district. The power of renewal conferred by the section shall be subject to such reservations (if any) which may be specified in the written authority of the superintendent. The refusal to renew is ultimately a matter for the superintendent, as the delegated officer cannot refuse to renew a particular firearm certificate unless he or she is authorised by the superintendent of the district to refuse renewal. Therefore, in relation to renewals the Garda superintendent is again *persona designata* subject to a right of delegation.

7. Section 23 of the 1925 Act provides that a court may order the forfeiture of firearms or cancel a firearm certificate in circumstances where a person is convicted of an offence under the Act, is convicted of any crime for which he or she is sentenced to penal servitude or imprisonment, is ordered to be the subject of police supervision, or is ordered to enter into a recognisance to keep the peace or to be of good behaviour, a condition of which is that the offender shall not possess, use or carry a firearm. Where the court causes a firearm certificate to be cancelled under this section notice of the cancellation shall be sent to the Garda Síochána for the area in which the certificate was granted.

8. Under section 4 of the 1964 Act the Minister may, on the grounds of public safety, or public security (see also Regulation 12 of S.I. 362/93) make an order requiring every person in a specified area to surrender a particular class of firearm or ammunition to the Garda Síochána. On foot of such an order the police may seize any firearm to which the order relates and retain it in their possession. The Garda Síochána has no other statutory right to confiscate licensed firearms pending revocation of the relevant certificate.

9. Save for the exception referred to hereunder, there is no statutory right of appeal under existing Irish law against a refusal by an issuing superintendent to grant or renew a firearm certificate, or a decision to revoke a firearm certificate. The only relief open to a person who has been refused a certificate or whose licence has been revoked is to seek an order of certiorari in the High Court by way of judicial review. This is a limited remedy which relates to fairness of

procedures. However, a right of appeal to the District Court applies in the case of licences granted under the Wildlife Acts, 1976 to 2000 — see paragraph 12 hereunder.

10. The Firearms Regulations, 1976 (S.I. 239 of 1976) set out the form of application for and renewal of a firearm certificate and the form of the certificate to be issued by the Garda Síochána. The garda officer signing the application form must be satisfied about the requirements set out at section 4 of the 1925 Act. The applicant does not need to verify compliance with these requirements, and that omission should be remedied by statute and in the application form for a new licence or a renewal thereof. The renewal form does not require the issuing Garda officer to state that he or she is satisfied that the conditions stipulated by section 4 remain applicable, and I recommend that that omission also should be remedied.

11. An interesting comparison arises in relation to applications for driving licences. These are governed by the Road Traffic (Licensing of Drivers) Regulations, 1999 (S.I. 352 of 1999). Pursuant to article 15 the application form for a driving licence contains a health and fitness 'checklist' which the applicant is obliged to complete and sign by way of declaration. This is in contrast to an application for a firearm certificate where the applicant is under no such obligation. In an application for a firearm certificate it is the Garda officer dealing with the application who must sign the document that he or she is satisfied that the applicant is not a person who is disentitled to a gun licence under the Firearms Acts.

    Article 42 of the driving licence regulations provides that if the application does not contain the foregoing health and fitness declaration, it shall be accompanied by a report from a registered medical practitioner indicating that the applicant meets the minimum health standards set out in Schedule 6 to the regulations. This article also contains a provision that the registered medical practitioner shall state that the applicant does not appear to require medical review during the period in respect of which the licence is sought.

12. In relation to non-residents, the appropriate superintendent of the Garda Síochána may grant a firearm certificate pursuant to section 2 of the Firearms (Firearm Certificate for Non-Residents) Act, 2000 where the firearm is intended only for hunting or sporting purposes or for shooting species the shooting of which is not proscribed by law. If the intended use is for other purposes the application is to the Minister for Justice, Equality and Law Reform. Such a certificate authorises the licensee to:

    i. have in his or her possession, use and carry the particular firearm described in the certificate for the purpose specified in the certificate,

    ii. purchase and use in such firearm during the currency of such certificate such quantity of ammunition as shall be specified in the certificate, and

    iii. have in his or her possession at any one time and carry so much ammunition as shall be specified in the certificate.

The issuing authority must be satisfied regarding compliance with the conditions stipulated by section 4 of the Firearms Act, 1925 before granting the firearm certificate in question.

It is of interest to consider the factors which the Minister or the issuing superintendent shall have regard to in the issuing of firearm certificates to non-residents pursuant to the Firearms (Firearm Certificates for Non-Residents) Act, 2000. A superintendent or the Minister, may only grant a firearm certificate pursuant to section 2 of the 2000 Act. Section 2 (5) provides that an applicant shall furnish to the issuing person the information requested in the standard application form together with such further information as the issuing person may request for the purpose of his or her functions under that section, and if the applicant fails to comply with the subsection the issuing person may refuse to grant the firearm certificate. He/she must be of the opinion that the application is bona fide and that there is no good reason to refuse it. Section 2 (9) of the 2000 Act provides that the issuing person may make such inquiries as he or she considers appropriate regarding the suitability of any applicant for a firearm certificate under that section. Under section 2 (10) the issuing person may attach such conditions as he or she considers necessary to a firearm certificate granted under that section. There is no right of appeal from a decision of the Minister or a superintendent under section 2 of the Act.

The Minister for the Environment, Heritage and Local Government has the power to grant a licence to hunt and kill with firearms to Irish residents and also to persons not ordinarily resident in the State under section 29 (1) of the Wildlife Act, 1976 as amended by section 4 of the Firearms (Firearm Certificates for Non-Residents) Act, 2000. Under section 29 (3) (*a*) of the 1976 Act the Minister, before granting a licence or renewing a licence, ''*shall be of the opinion that the application is* bona fide *and that there is no good reason to refuse to grant the licence or renew it*''. Under section 29 (3) (*c*) the Minister may make such inquiries as he or she considers appropriate regarding the suitability of any applicant for a licence.

A person who applies to a superintendent for a firearm certificate under section 3 of the 1925 Act, section 2 of the 2000 Act or a renewal under section 9 of the 1964 Act, and who makes the declaration required by section 29 (1) of the 1976 Act, as amended by section 4 of the 2000 Act, is entitled by virtue of section 29 (8) of the 1976 Act to an endorsement on the certificate entitling the person to hunt prohibited wild birds and hares.

Unlike other comparable aspects of the gun licensing code, section 29 (7) of the Wildlife Act, 1976 (as amended) provides that a person aggrieved by a decision of the Minister to refuse to grant or renew a licence to hunt with firearms may apply to the District Court in the area to which the appellant ordinarily resides or, where he or she is ordinarily resident outside the state, temporarily resides. See order 89, rule 2 of the District Court Rules 1997.

13. There are no guidelines in this jurisdiction for the assistance of issuing superintendents on the exercise of their discretion under the firearms

legislation. The absence of guidelines militates against consistency and uniformity in the processing and granting of gun licences and renewals thereof.

14. There is no provision in the application form for a firearm certificate for furnishing any information regarding the applicant's mental or physical fitness.

Superintendent Philip A. Lyons, who gave evidence on behalf of the Garda Síochána, told the Tribunal that in exceptional cases issuing superintendents will require some medical information from an applicant's medical advisor. There is nothing in the current application form or in the gun licensing code for the provision of consent by an applicant that his or her medical advisor may be consulted by the issuing authority. As already stated, this is in contrast to the position regarding an application for a driving licence.

15. An exhaustive examination of respective gun licensing systems has been carried out in the United Kingdom and New Zealand. They are contained in the Report of Lord Cullen[1] regarding the shooting dead of eighteen people at Dunblane primary school in Scotland on 13th March, 1996 and the report of the Inquiry carried out by Judge Thorp,[2] being an independent review of firearms control in New Zealand following two police shootings in September and November of 1995.

An examination of procedures in the United Kingdom, Victoria and Canada establishes that comprehensive application forms are utilised which contain certain safeguards in requiring applicants, *inter alia*, to answer questions regarding their mental and physical health, thus identifying cases which may cause concern in that area. The latter provision is supported by a system of referees, generally two in number. In the United Kingdom the referees must be of good character, and, in general, neither can be a member of the applicant's immediate family. In Victoria the application provides for one referee, who should come from within certain categories of persons in good standing in the community, and who should not be a family member. In Canada, two referees are required, neither of whom can be the applicant's spouse. By way of comparison, in New Zealand two referees are required, one being the applicant's spouse/partner or next of kin, and the other unrelated. The referees are obliged to complete forms containing a series of questions regarding the applicant's fitness to hold a firearms licence, and their state of knowledge about his/her mental and physical health, demeanour and disposition. Underpinning the foregoing safeguards is the provision in those jurisdictions of detailed guidelines, some statutory, regarding the interviewing of applicants, referees and other involved persons, by suitably experienced and trained police officers.

In the United Kingdom, Victoria and Canada the application forms also give the applicant's consent to the licensing authority to contact his or her medical advisors for such further information as may be required in connection with the

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[1] The Public Inquiry into the Shootings at Dunblane Primary School on 13th March 1996 [The Scottish Office. Cm 3386, presented to Parliament in October 1996.]

[2] Review of Fireams Control in New Zealand, Report of an Independent Inquiry commissioned by the Minister of Police [June 1997].

applicant's mental or physical health. The position in New Zealand is also referred to at paragraph 16 (d) hereunder. The Tribunal is of opinion that the application form currently used in this jurisdiction requires radical amendment. A proposed revised draft is contained in Appendix 8.

Each of the foregoing jurisdictions has rejected the introduction of a requirement that an application for a firearm certificate or licence shall be accompanied by a medical certificate or report as a matter of course. Such a requirement has been criticised also by the various legal and medical organisations who have furnished submissions and/or have given evidence to the Tribunal. It is perceived to be unworkable from an administrative point of view. Mental health organisations object to it also on the ground that it stigmatises persons with mental health difficulties or illness. Shooting organisations in their submissions were also of the view that such a process would be unworkable administratively. The point was strongly made by various medical organisations that if any future amendment of the existing law made provision for the furnishing of medical certificates or reports that the contents thereof should be limited to factual matters concerning the applicant's health rather than the expression of an opinion by the medical advisor on whether or not in the context of his or her state of health the applicant was a fit and proper person to hold a firearm certificate. The medical bodies were of the opinion that the decision to grant or refuse a gun licence should remain one for the licensing authority only and medical advisors should not be required to participate in that function. The opinion was also expressed that if any such requirement was introduced into our law, it would have significant potential for damaging the therapeutic relationship between the applicant and his or her medical advisor. On this issue it is noted that the ''Firearms Law Guidance to the Police, 2002'' issued by the Home Office in the United Kingdom makes the point strongly that it is for the police to make the decision on an application for a gun licence or renewal thereof and in particular the applicant's medical advisor ''*should not be asked to either endorse or oppose applications, though it is open to them to do so*''.[3]

The Irish College of Psychiatrists furnished a submission to the Tribunal dated 29th June, 2004 in which it is stated:

> ''*In summary it is the view of the college that the role of medicine, and psychiatry in particular, should be limited to providing advice on a selected minority of cases. The issuing of firearms* [certificates] *is primarily a matter for political and social policy makers*''.

The college submission refers to difficulties relating to the time required by a psychiatrist to make an appropriate risk assessment in the context of a patient's application for a gun licence or renewal thereof. Objections expressed are similar to difficulties adverted to by Lord Cullen in his Dunblane report referred to hereunder. The college is of the opinion that psychiatric assessments in

[3] Firearms Law Guidance to the Police, 2002 [Home Office, United Kingdom], paragraph 10.22.

relation to gun-licence applications as a statutory requirement are not appropriate. I share that view.

The issue about whether British statute law should be amended to provide for the furnishing of a medical report from a general practitioner in respect of each application for a gun licence was considered by Lord Cullen in his Dunblane Report at paragraphs 8.84 to 8.87 in the following terms:

> ''***8.84*** *It was submitted that a significant improvement in the elimination of the unsuitable applicants could be achieved by the following as a matter of routine:*
>
> *(i) a report on the applicant by his general practitioner, with or without the disclosure of his or her medical records; and*
>
> *(ii) the carrying out of a psychiatric examination or a psychological test of the applicant.*
>
> ***8.85*** *I am entirely satisfied that general practitioners cannot reliably assist in the identification of those who pose a risk of violence and those who do not. There is at present no scientific evidence which would allow this to be determined. It is clear that forensic psychiatrists and clinical psychologists doubt their own ability to predict violent behaviour. A generalist such as the applicant's doctor, who lacks specialist expertise, is even less able to reach soundly-based judgment as to his potential for violence. As regards mental illness, it was pointed out by the Royal College of Psychiatrists in their submission that this of itself does not indicate the risk of violence since only a small proportion of those who suffer from such illness commit such offences. Severe mood disturbance or instability or alcohol abuse or a history of violence might suggest that the patient should not be permitted to possess a firearm, but this is based on common sense rather than on scientific grounds. Quite apart from these considerations there are cases, of which Thomas Hamilton is an example, where the general practitioner has no adequate personal knowledge of the individual patient. There may, of course, be cases in which a doctor is under the duty of disclosure in the interests of others. Such cases are covered by paragraph 18 of the Guidance on Confidentiality issued by the General Medical Council which states: ''Disclosures may be necessary in the public interest where a failure to disclose information may expose the patient, or others, to risk of death or serious harm. In such circumstances you should disclose information promptly to an appropriate person or authority''. For such cases a confidential telephone advice and information service is offered to doctors by the DVLA. In his letter to the Home Affairs Committee dated 24 May 1996, which formed part of the BMA evidence to the Inquiry, the Secretary, Dr. E. M. Armstrong, stated: ''Our conclusion, sadly, is that until*

such time as methods are developed to provide reliable predictions, firearms policy needs to be based on the understanding that, from time to time, unpredictable behaviour will occur''.

8.86 *As regards carrying out of a special examination or test, essentially the same considerations apply. The carrying out of risk assessments by psychiatrists and clinical psychologists who were trained for this type of work would involve considerable expense, and the use of resources which are in short supply. Such assessments would require to be carried out at least annually. On the basis that firearm certificates have a life of 5 years approximately 35,000 applications require to be dealt with each year. The corresponding figure for shot gun applications is 145,000. Professor Cooke in his evidence said that it would be possible to identify individuals who had a propensity to violence but that this would require 2 days' work interviewing the applicant, seeking to build up rapport and trust and using collateral information. However, there would always be errors, which would tend to be errors on the side of regarding the person as unsuitable rather than the other way round. Extreme violence was very rare and was virtually impossible to predict. Mental illness, as distinct from traits of personality, could come about rapidly and unexpectedly; and accordingly it could not be taken that this would be picked up in an examination. The remarks which Professor Cooke made about a psychological examination applied also to psychometric testing. In any event there is a danger that applicants would discover what were the ''right'' answers.*

8.87 *In the light of the above I am satisfied that neither of these approaches is practicable. In each case there are grounds for considerable reservations as to its effectiveness''.*

Questions posed on issues raised in the Sixth Module specified in the Chairman's Opening Statement on 7th January, 2003, and certain proposed amendments to Irish law.

16. Five questions relating to the existing gun-licensing law and practice in Ireland were raised by me and are as follows:

(a) Whether or not there should be a statutory requirement that applicants for gun licences shall furnish medical certificates concerning their fitness to possess and use the type of firearms for which application is made.

The submissions and evidence on this issue from a wide range of experts to which I have already referred, when considered in conjunction with Lord Cullen's opinion in his Dunblane Report (with which there appears to be general agreement) establishes that there should not be any statutory requirement for the mandatory provision

of medical certificates by applicants for gun licences or renewals thereof. In the light of the evidence presented on this topic, it is evident that there are major practical difficulties in implementing such a statutory requirement. These include the fact that in many instances a gun licence applicant's general medical practitioner may not have sufficient knowledge of his or her patient, or specialist expertise to make an appropriate assessment and the time factor (and expense) involved in making a realistic psychiatric specialist assessment of the applicant. In my opinion it is not a workable proposition.

However, the position of an issuing superintendent should in my view be strengthened by adoption of the provision in the UK as specified in the ''Firearms Law Guidance to the Police, 2002'' referred to in paragraph 15 hereof that the consent of an applicant to the licensing authority regarding contacting his or her medical advisors should be an ongoing and enduring one.

(b) The second question posed concerns a provision for the withdrawal of gun licences where the issuing authority has reasonable grounds for believing that a licensee is temporarily or permanently unfit to hold a licence and to possess a firearm by reason of mental or physical disorder or other such disability.

The general consensus of the submissions and evidence received by the Tribunal on this issue indicates that sufficient powers at present exist. I agree with that view. (See in particular section 5 of the 1925 Act.)

(c) The third question posed in my Opening Statement concerns whether the licence holder's medical or legal advisor should have an obligation to inform the police or other appropriate authority of his or her belief that a licensee is temporarily or permanently unfit to hold a licence or possess a firearm by reason of mental or physical disorder in circumstances where the advisor has good reason to believe that such a situation exists and may constitute a danger for the licensee or others. The submissions and evidence from all of the medical and legal organisations which appeared at the Tribunal was strongly against the introduction of any such specific statutory requirement. Their concern was that it would undermine the confidential relationship that exists between solicitor and client, and the confidential and therapeutic relationship between a medical advisor and patient. It seems, however, that an informal guideline such as that contained in paragraph 18 of the ''Guidance on Confidentiality'' issued by the British General Medical Council is acceptable to medical practitioners in Ireland. It is in the following terms:

> ''*Disclosure may be necessary in the public interest where a failure to disclose information may expose a patient, or others, to risk of death or serious harm. In such circumstances you*

should disclose information promptly to an appropriate person or authority''.

In course of his evidence to the Tribunal Dr. John Hillery, consultant psychiatrist, who is president of the Irish Medical Council, elaborated on a report furnished by him on its behalf. He stated that the Council publishes an Ethical Guide for the benefit of all medical practitioners. Section E of the 6th edition, published in 2004 deals with confidentiality and consent. It contains, *inter alia*, the following directions:

> *''**16.1 Confidentiality***
>
> *Confidentiality is a time-honoured principle of medical ethics. It extends after death and is fundamental to the doctor/patient relationship. While the concern of relatives and close friends is understandable, the doctor must not disclose information to any person without the consent of the patient, subject to paragraph 16.3.*
>
> ***16.3 Exceptions to Confidentiality***
>
> *There are four circumstances where exceptions may be justified in the absence of permission from the patient:*
>
> 1. *When ordered by a judge in a court of law or by a Tribunal established by an act of the Oireachtas.*
> 2. *When necessary to protect the interest of the patient.*
> 3. *When necessary to protect the welfare of society.*
> 4. *When necessary to safeguard the welfare of another individual or patient''.*

Dr. Hillery indicated that Irish medical practitioners have obligations similar to those of their colleagues in the United Kingdom in the area of patient confidentiality and public duty. For example, in circumstances where a doctor has good reason to feel that his or her patient who possesses a firearm has become a danger to himself or others in that regard by reason of mental illness, he or she has an obligation to the patient and/or members of the public to report such concern to the appropriate authority.

Dr. Hillery stated that in the area of confidentiality medical practitioners have an ethical duty to their patients and to the public. If such duties are in conflict, the doctor must balance the interest of the patient and of the public and make his or her own judgement on where their duty lies in the particular circumstances. The Medical Council believes that such decisions should be left to the judgement of the individual practitioner rather than to the introduction of statutory obligations in that area. It seems to me that that opinion is well founded. I do not believe that there is a reasonable case for introduction of a mandatory requirement having regard to the stated

difficulties involved. However, it occurs to me that in the interest of clarity it is desirable that the Medical Council should elaborate on section E of its Guidelines by including an explanation of the need for disclosure in particular circumstances on lines similar to that in paragraph 18 of the British General Medical Council's ''Guidelines on Confidentiality'' to which I have already referred.

A point of significance, in Ireland, in the context of any possible exception, formal or informal, to a health professional's obligation of confidentiality to his or her patient is that the State of Victoria has in place legislative protection for health professionals who voluntarily advise the gun licensing authorities (though under no specific statutory obligation to do so) that they believe that a person who is in possession of a firearms licence and to whom they have been providing professional service is not a fit and proper person to possess, carry or use a firearm. The law in Victoria provides that in so advising the licensing authority, the health professional is not subject to any civil or criminal liability in that regard if the advice is given in good faith.

A statutory provision on the foregoing lines was one which Dr. Hillery, on behalf of the Medical Council, believed would be desirable in the interest of health professionals in Ireland. I agree with that opinion and recommend the introduction of such statutory protection for health professionals.

(d) The next question in the Opening Statement relates to consideration of whether or not an obligation should be placed on the immediate adult family of a licence holder to seek the removal of a firearm where there are reasonable grounds for believing that a licensee is unfit to possess such a weapon and that it may constitute a danger to him/her or to others.

All of the organisations who commented on this issue thought that it would be unworkable to introduce a statutory requirement of that nature. It is regarded as an unreasonable imposition to impose on family members. Inspector Green of the New Zealand Police touched on the essence of the problem in his report, where he expressed the opinion that ''*any criminal culpability would be near impossible to establish given the emotional and family dynamics existing in such situations . . .*''.

Inspector Green went on to state that:

> ''*I suggest it is preferable that the licensing and other authorities establish credibility so that family members, and others, trust the processes that might be applied in such situations.*
>
> *As part of the licensing process the spouse/partner/next of kin of the applicant are interviewed. This is the person who will be closest to the applicant and will know them best. New Zealand Police have found these people to be quite forthcoming with*

any concerns they might have about the fit and proper status of the applicant.''

In New Zealand the underpinning of this process is provided by a combination of the Declaration in the application form for a firearms licence, and the comprehensive Vetting Guidelines issued to police officers who deal with applications. They comprise an impressive, helpful yardstick for the benefit of such officers. I recommend that similar ''Vetting Guidelines'' should be introduced in this jurisdiction.

I agree with the general opinion that it is not practicable to impose a statutory obligation on adult family members to inform the police or other authority if they have reason to believe that a family member who possesses a licensed gun is unfit to have possession of it by reason of mental illness or other such disability and may be a danger to himself/herself or others. In my opinion it would be unfair and unworkable to do so. In practical terms it seems that it must be left to the good sense of an adult family member to report to the police or other authority in such circumstances.

(e) The final question on this module raised in my Opening Statement is whether in the event of an amendment of statute law to provide that a gun licence and right to possess a firearm may be revoked by the issuing authority in circumstances where the holder is believed to suffer from mental illness or disability, should the licensee have a statutory right of appeal?

In the course of submissions and evidence on this issue it was broadened and consideration was directed to whether there should be a general right of appeal by an applicant against any decision by the licensing authority either to refuse or revoke a gun licence.

As already stated, the present position is that in the event of refusal to grant or renew a gun licence the only possible right of redress which an applicant or licensee has is to pursue expensive judicial review proceedings in the High Court which of their nature are limited to an assessment of the fairness of procedures rather than an examination of the merits of the application or the decision.

The four comparable jurisdictions all provide a mechanism for an appeal in such circumstances; in England and Wales to the Crown Court; in Scotland to the Sheriff's Court and in Northern Ireland to the Secretary of State. In New Zealand the appeal is to the District Court; in Victoria to the Victorian Civil and Administrative Tribunal and in Canada to the Provincial Court for a Reference Hearing.

In the United Kingdom (other than Northern Ireland) it has been specifically provided by statute that such an appeal shall be determined on the merits, and not by way of review, and that the court may consider any evidence or other relevant matter, whether or

not it was available when the decision of the deciding officer was made.

In Northern Ireland on appeal from a decision of the Chief Constable to the Secretary of State, he may make such order as he thinks fit having regard to the circumstances.

As to the Canadian position, Mr. William Baker, Commissioner for Firearms, indicated in his report to the Tribunal that in making a determination the Provincial Court judge will hear evidence which may include hearsay and opinion. The applicant must prove to the satisfaction of the judge that the decision at issue was not justified based on the information available to the Chief Firearms Officer in making his/her decision to refuse or revoke a firearms licence.

Regarding the current situation in this jurisdiction, it was urged on behalf of the National Association of Regional Game Councils that the right of appeal should be to a tribunal which includes in its membership a medically qualified person. In my opinion that would be an unnecessarily cumbersome appeal court. It has not been established that the inclusion of a health professional as a member of it is necessary — even in cases where the matter at issue is the health of the applicant. I believe that the most desirable approach is to provide a right of appeal to the District Court, which already hears appeals from the decisions of other bodies and authorities in the granting of statutory licences. I recommend that the ambit of such appeals should be similar to that in the United Kingdom (other than Northern Ireland). It is desirable that they should be determined on the merits and not by way of review.

I appreciate that the remit of this Tribunal concerns possible amendments in law relating to applicants and licensees who are alleged to suffer from mental illness or disorders which may give rise to licensing problems for the issuing authorities. However, it might well be regarded as unreal to limit a right of appeal to those who have been refused gun licences or the renewal thereof because of perceived mental illness or disorder. The probability is that if a statutory right of appeal is provided in respect of refusal of a gun licence or renewal thereof by the issuing authority it will include all refusals for whatever reason. Gun licences may be refused or revoked on many grounds which have no connection whatever with mental illness. Constitutional justice would seem to indicate that if a statutory right of appeal is granted it should be against the refusal of a gun licence or renewal thereof by the issuing authority for whatever reason. It would be surprising if the Oireachtas did not recognise the parameters of that right.

I note that in his submissions on this module, counsel for the Minister indicated that consideration is being given at present to the introduction of a statutory right of appeal in relation to the refusal of gun licences or renewal thereof for

whatever reason. It was intimated that appeals to the District Court in the first instance and then to the Circuit Court are in contemplation. I support that proposal.

Other proposed changes in the existing Statute Law and Procedure in Ireland relating to sporting firearms.

17. In addition to the foregoing issues which were raised in my Opening Statement, the Tribunal also considered other proposed amendments of the existing statute law and procedure. They are as follows:

    i. That there should be a revised detailed application form (in accordance with the specimen contained in Appendix 8 to this Report) to be completed by the applicant for a new or renewed gun licence in which he or she is asked questions about, *inter alia*, medical history, including mental health. Where information in that area is revealed, the applicant is required to furnish the names and addresses of his or her general medical practitioner and specialist responsible for the provision of relevant treatment (see existing procedures in New Zealand, Victoria and the United Kingdom). The applicant may be requested to obtain a medical report from a doctor who treated or is familiar with his or her condition.

    A difficulty in adopting the foregoing method of obtaining relevant information (as opposed to a requirement to furnish a certificate of fitness from a general practitioner or other medical advisor) is that the applicant may not disclose medical or other such information which he/she perceives may militate against obtaining the required gun licence.

    ii. The evidence indicates that the foregoing apparent weakness may be a rarity in practice and that it can be avoided in many instances by a further requirement that the applicant shall furnish two referees' reports, one from an adult close relative and the other from a person over thirty years of age resident in Ireland who has known the applicant for upwards of five years and is a person of good standing and repute. (See the specimen form in Appendix 8. It includes a part referable to referees.) It is anticipated that this requirement is likely to inhibit the applicant from omitting relevant medical details which may be known to a referee.

    In view of the provisions in the specimen form relating to declarations by the applicant and the referees, I recommend that the proposed application form in Appendix 8 be supported by an amendment to the licensing code to provide that the provisions of section 3 of the Firearms (Firearm Certificates for Non-Residents) Act, 2000, relating to penalties for any person who knowingly gives false information in connection with an application for a firearm certificate sought by a non-resident, be extended to all applications for firearm certificates and renewals thereof.

iii. Consistency in the operation of the gun licensing code is of fundamental importance. Mr. Desmond Crofton, Director of the National Association of Regional Game Councils, (NARGC) the primary body representing the public in the area of game shooting gave evidence (on behalf of NARGC and also the Irish Shooting Association and the National Rifle and Pistol Association of Ireland), that a practical difficulty which exists presently is an occasional lack of uniformity in approach by licensing superintendents, in consequence of which there are unexplained inconsistencies in rulings on licensing applications, perhaps in adjacent Garda areas, which gun clubs and others may regard as unfair and difficult to understand.

iv. In the interest of avoiding inconsistency in rulings on licensing applications I recommend that appropriate formal guidelines should be devised for the benefit of superintendents who have responsibility for issuing new gun licences and renewals thereof. The guidelines should be reviewed regularly and revised when necessary. They should be published, and thus become available to interested parties. The guidelines presently in operation in New Zealand and the United Kingdom comprise valuable models in this area.

v. It is also desirable that an officer of Chief Superintendent rank or higher should have overall Garda responsibility for the scheme relating to the issuing and renewal of gun licences to members of the public, including the preparation and revision of guidelines. I envisage that it would be his or her responsibility to liaise with the issuing superintendents and with NARGC, representing the public interest in this area, including that of local gun clubs.

Regarding the proposed guidelines; the judgement of the Supreme Court in Dunne and others-v-Donoghue and others [2002] 2 IR 533 does not appear to inhibit promulgation of guidelines which are intended to assist issuing superintendents in the performance of their functions and, where possible, to avoid inconsistencies in decision making. I note that the relevant concern expressed by the Supreme Court is that issuing superintendents should not be directed on how they shall carry out their functions. It seems to me that there is a fundamental difference between direction and recommendations which do not impinge on the issuing superintendent's function to decide each case as he or she sees fit in the light of its own particular circumstances. It is highly desirable that there should be consistency in the performance of the issuing authorities and it seems that this is best achieved by appropriate guidelines. As to the content thereof: it is pertinent to indicate that several of those envisaged (e.g., the desirability of regular meetings between superintendents and representatives of gun clubs in their areas) do not relate to the superintendent's licensing function as issuing authority in individual cases.

vi. Another practical difficulty of some importance which, it is submitted on behalf of NARGC exists currently, is the absence of consistent public relations between the issuing superintendents and the local gun clubs which represent interested members of the public. It has not been contended that that difficulty exists in all areas. It has been specifically stated by Mr. Crofton that some issuing superintendents (including Superintendent Lyons) are concerned to maintain good relations with gun clubs in their areas and to consider any problems the latter may indicate from time to time. The difficulty is a contention that some superintendents are not disposed to liaise with local gun clubs or to collaborate with them in dealing with problems which are perceived to exist. It occurs to me that it would be helpful to expand the proposed guidelines to include a recommendation that each issuing superintendent shall meet, not less than twice each year, representatives of all gun clubs in their respective areas for the purpose of considering any problems which there may be regarding gun licensing in the relevant district.

vii. At a higher level, it is desirable that the Chief Superintendent or superior officer who has overall Garda responsibility for gun licensing, having consulted with the issuing superintendents, shall meet, at least once a year, a delegation from NARGC, which as already indicated, is the primary body representing gun clubs in Ireland and members of the public who are interested in shooting as a sporting activity. It is noted that gun clubs already have statutory recognition and, therefore, their umbrella association is the appropriate body to liaise with the Garda Síochána in the matter of gun licensing. For example, it may emerge from time to time that NARGC and the Garda Síochána agree that a certain change or changes are desirable in the existing statute law. The strength of the case for change in the context of presentation to the Minister would be much enhanced if it had the combined support of the association and the police.

viii. Another area in which there is a coercive case for the restructuring of Irish statute law in the area of gun licensing is the introduction of a requirement that before a full licence is issued to an applicant who has not had that benefit previously, he or she shall satisfy the issuing authority that he or she is competent in the use of the type of gun and ammunition for which the licence is sought and generally regarding its maintenance and storage. There is presently no such statutory requirement and a new applicant may have no experience whatever in the proper handling, use and maintenance of his or her gun and ammunition.

Mr. Crofton has stated in evidence that the great majority of gun clubs are affiliated to NARGC. Many clubs and also the association provide training courses, and/or operate a probationary system, for new licensees. His organisation has 27 qualified instructors/examiners

throughout Ireland which include 17 experts who are qualified up to the highest European standard. NARGC believes that there would be no difficulty in providing novice gun-applicants with appropriate professional instruction; to subject them to independent expert examination and, where appropriate, to certify the novice as being up to a minimum standard of proficiency acceptable to NARGC and the issuing superintendent. I envisage that a novice applicant who is deemed to be a person suitable to hold a gun licence shall be issued with a provisional licence for, say, six months which would entitle him or her to shoot the gun for which a full licence is sought only when under the direction and guidance of a qualified gun club instructor or NARGC examiner. In due course, if competence is certified on behalf of the latter to the satisfaction of the issuing superintendent, a full licence shall thereupon be issued to the applicant.

If following consultation between the Minister, the Garda Síochána and NARGC, it is decided to adopt the foregoing recommendation and introduce a limited provisional licence for novice applicants pending certification of his or her proficiency in the use, maintenance and storage of their firearm and ammunition, it will be necessary to amend question 12 in the proposed revised application form to include reference to a supplementary application form for a temporary provisional licence with limited user pending certification of the applicant's competence to the satisfaction of the issuing superintendent.

In my opinion it is imperative that the Garda Síochána and NARGC should collaborate in establishing an appropriate firearms safety course of instruction, including safe storage of guns and ammunition. Applicants for gun licences should be obliged to attend and pass such courses and be duly certified as having done so.

In this area there is a real need for a fundamental improvement in Irish law which can be brought about by meaningful collaboration between the Garda Síochána, NARGC and the Minister. Mr. Crofton has made it clear in evidence that his body is ready and willing to play its part and that it has the resources and expertise to provide the requisite structure.

ix. Sporting guns are vulnerable to robbery by criminal elements. It is important that licensed weapons are securely stored by the owners. It is desirable that all licensed guns should be examined annually *in situ* on behalf of the licensing authority to ensure that they are maintained in good condition and securely stored in an appropriate place. It is noted that section 30 of the Criminal Justice Bill, 2004 proposes to amend section 4 of the Firearms Act, 1925 by adding a requirement that the applicant shall satisfy the issuing superintendent that he or she has secure accommodation for the firearm at the address where it is to be kept. It is recommended that section 30 should also provide for an annual inspection of the licensed firearm and of its secure accommodation.

Conclusion

The reports and other documentation furnished to the Tribunal and the evidence which I have heard on this module indicate that a review of statute law on gun licensing and the creation of a revised administrative structure in that area, as outlined herein, are matters which require urgent consideration by the Minister and the Garda Síochána in collaboration with the various interested parties in Ireland, in particular NARGC whose assistance has been of great value to the Tribunal. It is hoped that the proposals which are made in this chapter will provide the framework for a viable revised structure which will resolve the problems in existing law.

CHAPTER 14

Victim Provoked Police Shooting — ''Suicide by Cop''

SECTION A: — Background

1. Origins

Mr. Frederick Lanceley, formerly of the FBI stated in evidence that he coined the term ''suicide by cop'', in response to a situation he witnessed where he believed that individuals who were clearly suicidal were demanding that the police kill them and were manipulating situations to the point where the police had no choice but to use deadly force. He explained to the Tribunal ''*the instrumentality of their deaths was not drugs, a gun, a rope or jumping from a bridge but the police. The incident was not a suicide by gun or suicide by jumping it was a suicide by cop.''* In his view, suicide by cop refers to a suicide where the person wants to die but prefers to have the police kill him or her as opposed to killing himself or herself.

2. Definitions and terminology

Dr. Ian McKenzie found that the various definitions described in the literature on this phenomenon to be, in his view inadequate. He instanced definitions such as ''victim precipitated homicide'', ''police officer assisted suicide'', ''law enforcement forced assisted suicide'' as being unsatisfactory in that these definitions did not take into account non-lethal events. The term suicide by cop, he thought, should be avoided in that in its ''*crude vernacular form, it carries strong emotional overtones.*''

Dr. McKenzie preferred the term ''police involved victim provoked shooting''. Whereas in some cases the term ''suicide'' may be appropriate, in that there is a degree of intentionality on the part of the victim, the term becomes more problematic when the victim's actions derive from emotional confusion.

During the course of evidence to the Tribunal the phenomenon was most frequently referred to by experts and others by its colloquial term, ''suicide by cop'' and is accordingly referred to as such in this chapter.

3. Incidence of suicide by cop

Studies in the United States suggest that suicides by cop account for at least 10% of police involved homicides. Dr. McKenzie, in his analysis of current available literature, suggested that the true figure may be as high as 46%.

Prior to 1998 suicide by cop in the United Kingdom was sporadic, with only one or two suspected cases per year. Dr. Douglas Turkington, consultant psychiatrist, gave

evidence that currently the United Kingdom experiences some 10-12 incidents of victim precipitated shooting per annum.

4. Suicide by cop and behaviour

In 2003 the then Police Complaints Authority of England and Wales conducted a review of 24 police shootings there between 1998 – 2001, and stated the following:

> ''*in as many as 11 of the 24 cases included in the review, there are behavioural indicators that some element of deliberate self-harm may have been involved. For several, this was linked to significant mental health problems, while the factors that led to this suicidal objective may also have included some combination of domestic disputes, alcohol or illicit drug consumption, and an interest in or obsession with firearms. In other words their behaviour may have been rendered irrational by life stress factors that exacerbated pre-existing and underlying mental health problems such as depression or psychosis*''.

Dr. McKenzie in evidence to the Tribunal, concluded that the presence of mental illness, a history of substance abuse and contemporaneous intoxication, were key factors in circumstances where individuals become the subject of a police involved victim-provoked homicide. Dr. Turkington agreed that factors co- relating with suicide by cop include domestic violence; relationship breakdown; the prospect of lengthy imprisonment; alcohol and drug misuse, and history of psychiatric illness and suicidal attempts.

5. Suicidal intent

Presence of intent

Dr. Turkington stated that, in his view, it is important to bear in mind that although suicidal intent is a necessary ingredient in cases of suicide by cop, high suicidal intent is present in only a small percentage of cases. He stated that most suicides by cop, and indeed cases of suicide generally, are not planned in advance. In contrast, Dr. John Sheehan, consultant psychiatrist, was of the view that whereas occasionally suicide can be a spontaneous event, most genuine attempts are planned events.

Communication of intent

In the past a suicide attempt was usually accompanied by a written note which served to communicate the victim's suicidal intent. According to Dr. Turkington suicide notes are becoming less frequent and are now present in only about 30% of cases. Other forms of communication are now more common such as text messaging and verbal communications. This change adds to difficulty in recognising the presence of suicidal intent, or gauging the level of that intent, so as to understand the motives driving a victim's behaviour.

The evidence adduced at the Tribunal indicates that in a significant number of suspected suicides by cop, victims exhibit either low levels of suicidal intent, which

may be as a result of illness or other motivating factors, or that the subjects are ambivalent or indifferent to the outcome of their contact with the police.

Mental illness and suicidal intent

As already noted, suicidal intent is a necessary ingredient in cases of suicide by cop. Dr. Turkington confirmed that people with mental illness have the capacity to form a suicidal intent. The difficulty arises in interpreting the nature of the intent in the context of the particular form of mental illness. Dr. Turkington gave as an example a person with a persecutory delusion involving the police who is involved in an apparent suicide by cop incident and suggested that it may be *''difficult to know whether they are actually trying to get themselves killed or trying to fight back against the people who they believe are persecuting them''.*

6. Indifference

In suspected cases of suicide by cop one must also consider whether the actions of the victim are motivated by a desire to bring about his or her own death or simply the result of indifference to the outcome of the event. For example in four out of the five unsuccessful suspected suicide by cop cases encountered by Dr. Turkington the victim was indifferent. In his words it was ''*Russian Roulette, if they were shot, so be it.*''

7. Categories of suicide by cop

Evidence to the Tribunal indicates that the circumstances surrounding most cases of suspected suicide by cop differ greatly. There is, as yet, no standard or uniform categorisation of suicide by cop. Dr. Turkington and Professor Tom Fahy, categorised such incidents as follows:

Dr. Turkington

Dr. Turkington stated that suicide by cop is categorised, according to the level of suicidal intent present, into three sub-groups:

i. Suicide by cop with direct confrontation (the highest level of suicidal intent).

   In this sub-group, as the label implies, the victim orchestrates a situation to bring himself or herself into direct confrontation with the police. Prior warning has usually been given to others.

ii. Suicide by cop with disturbed confrontation (a medium level of suicidal intent).

   This accounts for up to 50% of cases and comprises situations where persons behave in an irrational and emotionally disturbed manner. They unintentionally attract the attention of the police, and a stand-off ensues. Dr. Turkington indicated that there are present within the sub-group three further sub-types:

(a) Suicide intervention
This relates to a bona fide suicide attempt, which has been hesitant or ambivalent. An example given is where an individual is unsure whether or not they want to end their life. The individual may have a weapon in the house. They take an overdose and the police attend at the scene. The individual reacts to the rescue by training a weapon on the police who are attempting to assist. This is a suicide bid, which has failed and ends up as a potential suicide by cop.

(b) Disturbed domestic
In this sub-type the police are called out in response to a domestic disturbance and the aggressor turns on the police when they arrive.

(c) Disturbed person type
Dr. Turkington told the Tribunal that the ''*disturbed person type accounts for 20.3% of all cases and in such a situation there is a high irrational and desperate quality to the behaviour of the armed individual*.''

iii. Suicide by cop with criminal intervention (the lowest level of suicidal intent).
This sub-group typically arises following a failed crime. The victim is surrounded by the police and knows that he has no realistic chance of escape but is not willing to face the prospect of a long prison sentence and makes an escape attempt, knowing that it will probably result in his death.

Professor Fahy

Professor Fahy in his evidence referred to a paper by Mohandie and Meloy which was published in the Journal of Forensic Science in 2000 in which two categories of suicide by cop are classified:

i. The victim has an instrumental goal, in that he or she attempts to escape or avoid the consequences of criminal or shameful actions or solve another type of problem (e.g. avoiding exclusion clause of suicide in a life assurance policy, rationalising that it might be morally wrong to commit suicide, but maybe more acceptable to be killed; or use a confrontation with the police in an effort to reconcile a failed relationship). In other cases the individual may seek what they believe to be a highly effective means of accomplishing death.

ii. The victim has an expressive goal, and may be communicating hopelessness, depression and despair; a statement about his or her ultimate identification as ''victim''; his or her need to save face by dying or being forcibly overwhelmed rather than surrendering; their intense power needs; rage and revenge; or their need to draw attention to an important personal issue.

8. The identification of a suicide by cop incident

The intending suicide by cop victim, in addition to having the necessary suicidal intent, must in the view of the various witnesses also be in possession of a ''weapon'' in order to achieve the goal of being shot by the police.

Criteria

In cases where suicide by cop is suspected, its identification can only be confirmed where there has been a prior communication of the suicidal intent, such as a suicide note. In other cases the best that can be achieved is a probable diagnosis from an examination of the circumstantial facts surrounding the case. Dr. Turkington spoke of conducting a ''psychological autopsy''. Dr. McKenzie spoke of examining a ''chain of behaviour'' and other experts referred to carrying out an ''equivocal death analysis''. Broadly speaking such an autopsy or analysis involves examining a suicide victim's behaviour prior to his or her death. In 1993 an American psychologist, Clint Van Zandt, proposed a list of behavioural indicators to assist in the identification of suicide by cop cases and against which experts carry out an initial examination of the available evidence. This list describes types of behaviour which have the potential to lead to a police involved victim provoked shooting:

- The individual is a subject of a self-initiated hostage or barricade situation and refuses to negotiate with the authorities.
- The subject has just killed a significant other person in his/her life (particularly important if the victim was a child or the subject's mother).
- The subject demands that the police kill her/him.
- The subject sets a deadline for the authorities to kill him/her.
- The subject has recently learned that he/she is suffering from a life-threatening illness or disease.
- The subject indicates an elaborate plan for his/her own death; one that has taken both prior thought and preparation.
- The subject indicates that he/she will only ''surrender'' (in person) to the officer in charge.
- The subject indicates that he/she intends to ''go out in a big way''.
- The subject makes no demands that include those allowing his/her escape or subsequent freedom.
- The subject comes from a low socio-economic background.
- The subject provides the authorities with a verbal ''last will and testament''.
- The subject uses language which tends to indicate that he/she may be looking for a manly or macho way to die.
- The subject has recently given away money or personal possessions.
- The subject has a criminal record, which includes evidence of assaults upon other people.

- The subject has recently experienced one or more traumatic events that affected him/her, or subject's family or career.
- The subject expresses feelings of hopelessness and helplessness.

Cautious approach to application of criteria

Mr. Lanceley and Professor Fahy, in their respective reports, provided lists of behaviour indicators which are variations of the Van Zandt list. The experts at the Tribunal agree that the presence or absence of behavioural indicators may assist in the formation of a judgement as to the victim's motivation in a police shooting. However, they are of the view that their use should be treated with caution. According to Dr. McKenzie, their use is based on subjective qualitative analysis of cases rather than quantitative scientific analysis. Dr. Turkington expressed a warning as follows:

> *''every suicide is absolutely unique in relation to a person's own biological vulnerability, their life events, their relationships, they are all completely different. So you find these small statistical weighting factors, it doesn't help you very much with the suicide that you were trying to understand.''*

Professor Fahy also cautioned that none of the Van Zandt features are diagnostic of suicide by cop and that that diagnosis would be a matter of opinion or consensus.

SECTION B: — Experts' Opinions

1. Dr. Sheehan

The Tribunal posed the following written question to Dr. Sheehan:

> *''Having regard to all the facts relating to John Carthy and his irrational behaviour on the 19th and 20th April, 2000, is there anything that might establish or suggest that his motivation for leaving home with his gun and heading towards Abbeylara was to have himself shot and killed by the police, a phenomenon which has occurred in the United Stated of America, where it is known as 'suicide by cop'?''*

John Carthy's mental state

Dr. Sheehan believed that it was unlikely that the subject was suicidal at the time of the siege because, in his opinion, it appeared that he was elated during this period. He noted that in past psychiatric history the only documented incidence of suicidal ideation was associated with a depressive episode.

Suicidal ideation or intent, Dr. Sheehan said, is closely associated with depression and is rare in the context of mania/hypomania. In concluding that the subject lacked suicidal intent over the course of 19th/20th April, 2000 he referred to the conversation between Kevin Ireland and John Carthy. In response to a request from Mr. Ireland that he should not do anything foolish, he (John Carthy) replied, ''*I haven't a notion*''.

Dr. Sheehan made the point that these were not words expressed by a person wishing to kill himself.

Dr. Sheehan stated that John Carthy's behaviour during the siege was more consistent with mania. The taunting behaviour by the subject was consistent with mania and was an example of bravado rather than an expression of suicidal ideation.

He was, he stated, elated and paranoid at the time of the siege:

> *''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.''*

Dr. Sheehan placed significance on the fact that although John Carthy possessed many of the risk factors for suicide, i.e., gender, age group, loss of a job, relationship problems and history of alcohol abuse, he had never attempted to kill or harm himself. In other words there was an absence of a history of attempted suicide. He also pointed out that John Carthy was in possession of a shotgun for many years, and thus had a means of killing himself. Most attempts at suicide, he said, were planned events, accompanied by what he termed ''*final acts*'' e.g., the preparation of a will in advance of the suicide attempt and also the writing of suicide notes. Frequently, the person takes measures to ensure that they will not be discovered or interrupted during the act. Dr. Sheehan felt that there was an absence of planning in the events of 19th/20th April, 2000 and that John Carthy's behaviour was erratic and irrational.

The exit from the house

In considering the subject's exit from the house and his subsequent actions, Dr. Sheehan returned to the issue of John Carthy's mental state. In his view his behaviour was consistent with his elated and paranoid state. John Carthy had displayed unpredictability, impulsiveness and invincibility after he left the house.

In walking out past the armed gardaí the subject was again acting in a manner consistent with his elated mental state. Dr. Sheehan felt that he would have been aware of the presence of the members of the ERU and that it was significant that he walked past them. The opening of the gun and the removal of the cartridge was a clear signal that he (John Carthy) was armed and able to protect himself; to defend himself.

Dr. Sheehan stated that it was his belief that the subject was delivering a loud and clear message when he opened the gun and removed one cartridge, the message being ''*I am armed, I am dangerous*''. He did not see John Carthy as having reduced his firepower but rather demonstrating to those observing, that the gun was loaded, closed and could be used. Had John Carthy wished to be killed he would have precipitated a confrontation with the first ERU officer he encountered, but that what

he was doing was protecting an area around him. In those circumstances remaining armed and potentially dangerous was consistent with paranoid ideas.

Lack of suicidal intent and/or indifference

Dr. Sheehan disagreed with the opinion of Dr. McKenzie that John Carthy's actions in walking past the armed members of the ERU were as a result of his failure to perceive them; and his view of the fact that he didn't fire on those members was something of a ''*red herring*''. On the contrary, Dr. Sheehan placed considerable weight on the fact that he had walked past the armed officers. He was also asked to comment on Dr. McKenzie's view that the subject's behaviour had to be viewed as a chain of significant behaviours over the proceeding 22 hours. While not disagreeing, he emphasised that the subject's behaviour had to be viewed in the context of his mental state; that he was manic and grandiose, and oblivious to danger. Dr. Sheehan reiterated that, in general, suicide is a planned event, which relates to severe depression and that there is a prior communication of suicidal intent. These factors were absent in John Carthy's case, he stated. What he observed was in a sense disorganised and chaotic behaviour associated with a very disturbed agitated mental state and not a planned, organised goal directed scenario which would provoke a situation whereby he would be shot.

Suicide note

Dr. McKenzie expressed the view that only about 30% of people who kill themselves leave a suicide note and that generally speaking the figures range from somewhere in the range of 15% to 35%. Dr. Sheehan said that he believed that between 10% and 45% of suicide victims left suicide notes.

In his evidence to the Tribunal, Mr. Lanceley agreed with Dr. Sheehan that suicide was generally a premeditated event. He said that people who commit suicide generally have a plan and usually that plan is a very fixed plan. However, he went on to say that if the plan was interrupted that they would want to improvise. Mr. Lanceley was of the view that John Carthy had a plan, and that that plan was to be shot by the Garda in his ancestral home. However, he believed that over the course of the incident Detective Sergeant Jackson disrupted this plan and John Carthy therefore had to improvise, leading him to exit the house. Dr. Sheehan, invited to comment on this evidence, stated that, in his view, Mr. Lanceley had not considered John Carthy's mental state and in particular the fact that he was paranoid at the time of the incident. Dr. Sheehan stressed that without considering the subject's mental state you could not make sense of his behaviour.

Dr. Sheehan's conclusion

In summary, Dr. Sheehan concluded:

> *''I do not think that Mr. Carthy's behaviour on leaving the house is consistent with a suicide attempt. It appears that he walked past three or more armed ERU men. Had he wanted to commit suicide, it is likely that he could have precipitated a confrontation immediately on leaving the house. Rather, he behaved in a reckless fashion, exiting the house unexpectedly and clearly*

underestimating the perilous situation he was in. His behaviour is consistent with an elated mood, demonstrating impaired judgement and false self-confidence.''

2. Dr. Turkington

Medical history

Dr. Turkington examined evidence of the subject's medical history. He noted that his manic depression was initially predominately depressive, with 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). He also opined that, in addition to the likelihood that John Carthy suffered from psychosis during his illness, he had a paranoid trait to his personality, which led him to have paranoid ideas and ideas of reference as part of his personality. Dr. Turkington's elaboration on this is contained in section I of Chapter 4.

John Carthy's mental state

According to Dr. Turkington, the subject was suffering at the time of the siege from a mixture of hypomania, irritability, intermingled lowering of mood, and anger with some suicidal ideation. He was further disinhibited, overactive and with pressure of speech. He also appears to have intermingled paranoid ideas concerning the gardaí. Further he believed that the subject's suicidal intent was evidenced by his request to the gardai to ''*shoot me, shoot me.*''

Dr. Turkington stated that John Carthy's suicidal intent was personality driven and did not arise solely from his depression. He was of the opinion that had it arisen solely out of his depression he would, more than likely, have just shot himself as soon as he possibly could. He 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 that were accumulating at that point in time.''*

The subject, he said, was exhibiting signs of suicide by cop of a disturbed type and that his request to the gardaí to shoot him was a typical development of this type. 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.

Suicidal intent

Dr. Turkington believes that John Carthy did have a plan at the back of his mind that his life would be ended in the siege. His view is that his suicidal intent increased

throughout the incident and changed from moderate suicide intent to high suicidal intent with direct confrontation.

Dr. Turkington believes that the death of John Carthy is an example of suicide by cop predominantly by direct confrontation of a manipulated type, i.e., he orchestrated the situation which resulted in the attendance of the police. He believed that the subject's interaction with the gardaí over the course of the siege failed to escalate the situation. John Carthy's request to be shot and his watch looking were statements indicating that his suicidal intent was increasing. Dr. Turkington interpreted the looking at the watch as being a clear communication that *''something is about to happen''*.

The exit from the house

Dr. Turkington's view is that by the time John Carthy exited the house, his level of suicidal intent had risen; he knew that in coming out of the house he was creating a dangerous situation. He was asked if the actions of the subject on leaving the house were those of a rational person doing what an experienced gunman would do, or those of somebody trying to get himself killed:

> *''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 expressed the opinion that the removal of the cartridge by John Carthy was a communication to police marksmen that he was going to fire one deadly shot. It was a very meaningful and clear thing to do which was highly compatible with the escalation observed in suicide by cop situations. John Carthy walked past the ERU men because his desire was not to shoot the police but to be shot by them.

Dr. Turkington was asked to comment on Professor Malone's view, that in circumstances where there had been no clinical cases of suicide by cop to date in Ireland, in the absence of a precedent, it reduced the likelihood that John Carthy thought the police would actually fatally shoot him. Dr. Turkington responded that because something had not happened before, it did not follow that it will not now happen.

Dr. Turkington was also asked to comment on the view expressed in other evidence to the Tribunal that in cases of suicide, one is dealing with something that is planned, and premeditated, something that usually relates to severe depression, and further that a person would have communicated what they were going to do in advance. He responded as follows:

''well, this, I think, is an older idea, that most suicides are planned and their current assessment is severe depression. In actual fact most of the suicides we see don't have severe depression, people can commit suicide when they are very angry; they can commit suicide when they are psychotic. They can commit suicide in all manner of mental states. So I would take issue with this fact that people are usually severely depressed and they would normally have told somebody about it and planned it. The epidemiology in suicide just doesn't support that.''

Conclusion

Dr. Turkington concluded by stating that when John Carthy left the house, he was in a disinhibited, angry and moderately depressed state, and that he was intent on completing suicide through the mechanism of police shooting.

This conclusion was based on the balance of probabilities but he accepted that the mental state as described could also lead to other possible conclusions in relation to the siege. Thus although Dr. Turkington was of the opinion that John Carthy's actions were motivated by a desire to have himself shot at the hands of the police, he conceded the possibility, that, those actions were a product of his mental state which rendered him indifferent to the outcome.

3. Dr. McKenzie

Dr. McKenzie observed that while it was not possible for him to carry out a ''psychological autopsy'', or ''equivalent death analysis'', the statements and testimony of the parties involved in the life and death of John Carthy provided an evidential basis for the making of an assessment in relation to suicide by cop. He analysed what he described as the ''*chain of behaviour*'' which could be used to indicate intention on the part of the subject.

John Carthy's mental state

Dr. McKenzie noted that the subject's life circumstances were:

''in some disarray in the period immediately before the incident leading to his death . . . He was concerned, possibly distressed, about the slagging he had been receiving about the goat incident and its reporting in a Sunday newspaper. He was concerned about the impending move to new property and had some financial difficulties following the loss of a job, was concerned about providing financial support to his mother, to furnish the new house, and had experienced some difficulty in personal relationships''.

Dr. McKenzie considered that John Carthy was likely to have been experiencing extreme subjective stress (from his life circumstances) and a contemporaneous failure of his medication to deal with the resulting anxiety and/or a shift in the presentation of his illness to rapid cycling or mixed bipolar disorder. Dr. McKenzie was of the view that this combination might explain why John Carthy was ''*on a high*'' in April, 2000.

Suicidal intent or indifference?

Dr. McKenzie expressed the opinion that the subject had the intention, from the outset, to bring about a situation that would result in his own death. However he was of the view that the specific plan was only formulated during the course of the afternoon of 20th April. John Carthy, he stated, had made a number of attempts to provoke the police into shooting him, such as, standing at the window and calling on the police to ''*shoot me, shoot me*''. These attempts proved unsuccessful and there was, he believed, a need for him to do ''*something else*''. This resulted in his decision to exit the building. When he did so it was with a view to bringing about his own demise, Dr. McKenzie believed.

By 5:30 p.m. on 20th April, the subject was deeply disturbed and probably heavily confused. This state of affairs might, Dr. McKenzie observed, give rise to questions whether he was so emotionally aroused as to be in a state of indifference to his fate when he exited the house. However, he believed that his behaviour in opening the gun and throwing aside one of the cartridges, was highly significant. This action, coupled with the switching off of the safety catch on the shotgun, represented what Dr. McKenzie described as ''*linked behaviours*''. These linked behaviours indicated that John Carthy intended to open fire upon the command post, or possibly on the garda members close by. Dr. McKenzie thought that this behaviour deliberately demonstrated to the gardaí that the shotgun was loaded and it moved his behaviour:

> *''well beyond the phase of indifference and firmly into the area of intentionality. This can, in my view, only mean that it was John Carthy's goal to behave in such a way that he would be shot*''.

Dr. McKenzie was asked for his opinion on the subject's failure to confront the members of the ERU on his exit from the house. He believed that his senses and perceptions were impaired and his concentration was focused on the grouping of police at the command post, and that although he may have seen the members of the ERU, he was not aware of them:

> *''bearing in mind . . . the highly anxietous state which John Carthy found himself in at that moment. I think even if he turned his head, there is no guarantee that he saw at all the men who were in the road because his concentration was elsewhere.''*

Dr. McKenzie was asked to comment on Dr. Sheehan's view, that John Carthy's behaviour in leaving the house was inconsistent with a suicide attempt, in particular in the way he ignored the ERU men. Dr. McKenzie stated that he did not believe that it was John Carthy's intention to kill, maybe even not to hurt anybody, but what he wished to demonstrate to the gardai was that he had a clear intention of shooting at somebody. Dr. McKenzie's conclusions that Mr. Carthy intended to demonstrate to the gardaí an apparent intention to open fire on the command post or on police who were in the vicinity of that vehicle is difficult to accept. It ignores a reasonable conclusion to be drawn from the evidence that he did not threaten or shoot at the armed ERU men who were close to him as he walked towards his gateway, and others who were nearby on the road. More importantly, it ignores what he said to

his friend, Kevin Ireland, a few hours earlier, namely, that he had no intention of shooting anyone. It is also credible that a reasonable conclusion to be drawn from the discarding of one cartridge was that the subject was retaining only the minimum fire power to keep the police at bay as he walked towards his destination. If he had discarded both, he would have been immediately overpowered as in all probability he would have appreciated. Dr. McKenzie has not addressed that alternative explanation.

The psychologist has postulated that there is ''*no guarantee*'' that Mr. Carthy ''*saw at all*'' the ERU men who were on the road near the gateway ''*because his concentration was elsewhere.*'' That conclusion ignores vital supporting evidence, i.e., that six or seven ERU officers who were close to him on his route to the road and while discarding a cartridge having got there, were all shouting at him to drop his gun (i.e., to surrender). Would it not be unreal to conclude that the loud shouting probably did not direct his mind towards the ERU men. He looked at them but ignored them. If he had been intent on ''suicide by cop'' he could have achieved that instantly by turning his gun towards anyone of them — but he did not do so.

The identification of suicide by cop

Dr. McKenzie identified eight of the 16 Van Zandt criteria as being present in the subject's situation. These criteria related to matters which took place at the scene and also matters arising in John Carthy's life prior to the siege**.** While an equivocal death analysis could not be conducted (as this required the investigating psychologist to interview all of the key figures involved in order to come to a conclusion), he was satisfied that the evidence presented to the Tribunal, and from other sources, enabled him to put together a picture which could be examined against the Van Zandt criteria. He further believed that there existed a chain of significant behaviour which told *''something about John Carthy's state of mind*''. Dr McKenzie said:

> ''*Although the Van Zandt criteria are useful, they are I think only indicators. They are what are sometimes referred to in the research domain as necessary, but not sufficient conditions. In other words, there has to be something to be added to it, that is my view. For that reason, I have chosen to create this chain of intent which . . . goes beyond the events which are the core of this incident, in fact, includes aspects of John Carthy's life which are outside the period of time that the Tribunal is specifically considering.*''

The eight Van Zandt criteria present, according to Dr. McKenzie, were as follows:

i. *''The individual is a subject of a self-initiated hostage or barricade situation and refuses to negotiate with the authorities.*

ii. *The subject demands that the police kill her or him.*

iii. *The subject indicates that he or she intends to '*go out in a big way'.

iv. *The subject makes no demands that include those allowing his or her escape or subsequent freedom.*

v. *The subject comes from a low socio-economic background.''* [Which I assume includes education.]

vi. ''*The subject uses language which tends to indicate that he or she may be looking for a manly or macho way to die.*

vii. *The subject has recently experienced one or more traumatic events that affect him or her, or subject's family or career.*

viii. *The subject expresses feelings of hopelessness and helplessness.''*

There is no evidence to support the criteria at 3 and 5. Regarding the latter point: Mr. Carthy's correspondence with Ms X makes clear that he had an exceptional capacity to express his thoughts clearly in articulate, fluent language. He had the benefit of a full course in secondary education. His socio-economic background was not ''low''.

Dr. McKenzie told the Tribunal that:

> ''*While the match of 8/15 (>50%) of the circumstances of the Abbeylara case with the Van Zandt criteria might be seen as conclusive, it is my view that, as is the case in some criminal prosecutions, a chain of behaviour, not limited to the event itself may be identified, thus demonstrating a degree of* mens rea *beyond that of most reports of similar events* [i.e. suicide by cop incidents].''

This led Dr. McKenzie to look at a ''chain of intent'', which involved looking at statements made by John Carthy and exchanges between him and others (including Detective Sergeant Jackson) commencing at approximately 8:30 p.m. on 18th April when he commented to Ms Farrell, ''*the party's over; no more laughing. The Guards won't be here any more''* ending with his exit on to the roadway. Dr. McKenzie categorised these under four headings, date/time, the stimulus, the response and the source.

Conclusion

Dr. McKenzie concluded that John Carthy placed himself deliberately in the line of fire of armed members of the Garda Síochána, with the intent that in so doing he would bring about his own death. Having failed to entice the police to shoot him inside the house, he chose this deliberate and conscious act, to advance upon police positions with the loaded and operational shotgun. He observed, ''*In my opinion there is ample evidence that John Carthy was the provocateur in a victim provoked, police involved death.''*

4. Professor Fahy

John Carthy's mental state

Professor Fahy thought that at the time of the incident John Carthy was in a predominantly hypomanic state with some depressive themes interwoven, consistent with a mixed affective disorder, exhibiting a mixture of elation, anger, irritability with