



Tithe an Oireachtais

**An Comhchoiste um Dhlí agus Ceart, Comhionannas,
Cosaint & Cearta na mBan**

**An Tuarascáil Deiridh
ar Thuarascáil an Coimisiúin Fiosrúcháin Neamhspléach faoi
Dhúnmharú Seamus Ludlow**

Márta 2006

Houses of the Oireachtas

**Joint Committee on
Justice, Equality, Defence & Women's Rights**

Final Report
on the

**Report of the Independent Commission of Inquiry
into the
Murder of Seamus Ludlow**

March 2006

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Chairman's Preface

At the outset, the Sub-Committee wishes to commence this Report by expressing again its deepest sympathy with the relatives of Mr Seamus Ludlow who was brutally murdered on 2 May, 1976. The Sub-Committee was particularly touched by the intense trauma and feelings of abandonment experienced by the relatives. In particular, credit is due to the Ludlow-Sharkey family for their continued search for justice over 30 years.

We have heard submissions made by relatives of Mr Ludlow, serving and former members of the Gardai, office holders, officials and interest groups. We would like to thank all those persons who appeared before the Sub-Committee, who gave of their time so generously. We hope that the process of holding these hearings as part of the consideration of the Report by the Independent Commission of Inquiry goes some way towards assisting the relatives in dealing with their ongoing grief and suffering.

The Sub-Committee believes it is important that the Oireachtas can and does inquire into matters of great public concern. I am grateful to other members of the Sub-Committee for their hard work and commitment to the public interest in carrying out this process.

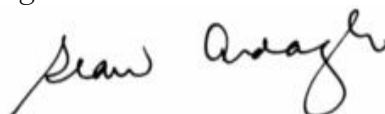
The Committee is indebted to Hugh Mohan S.C. and Paul Anthony McDermott B.L. for their pro-active role in advising and assisting the Committee. Credit is also due to Ray Treacy and the staff of the Committee who have spent long hours on the organisation and secretarial backup to whom we are very grateful.

The Joint Committee on Justice, Equality, Defence and Women's Rights hereby adopts as a report of the Joint Committee, the Report of the Sub-Committee on the Barron Report in accordance with the resolutions of Dáil Éireann and of Seanad Éireann dated 3rd November 2005.

In adopting the report of the Sub-Committee, the Joint Committee wishes to emphasise that all views expressed by the Sub-Committee in the report and all conclusions drawn and recommendations made therein are those of the Joint Committee.

We commend this report to the Houses of the Oireachtas.

Signed

A handwritten signature in black ink, appearing to read 'Seán Ardagh', written in a cursive style.

Mr. Seán Ardagh T.D., Chairman of the Joint Committee on Justice, Equality, Defence and Women's Rights, 29th March 2006.

Sub-Committee on the Barron Report on the Murder of Seamus Ludlow

Deputies



Sean Ardagh
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Joe Costello
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Finian McGrath
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Senator



Jim Walsh
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Chapter 1

Introduction & Victims' Voices

- 1) By motions of referral by Dáil Éireann and Seanad Éireann dated 3 November, 2005, both Houses of the Oireachtas requested the Joint Committee on Justice, Equality, Defence and Women's Rights or a Sub-Committee thereof to consider, including in public session, the Report of the Independent Commission of Inquiry on the murder of Seamus Ludlow and the observations made thereon by former Commissioner Wren and Mr. Justice Barron. This is the third set of hearings on Inquiries made by Mr. Justice Barron.
- 2) The Sub-Committee on the Barron Report was asked to consider the report in public session in order that the Joint Committee could report back to Dáil Éireann and Seanad Éireann by 31 March 2006 for the purposes of making such recommendations as the Committee considers appropriate and any changes to legislative provisions and the legislative and other changes, if any, required in regard to the notification to the next of kin of inquests in regard to murders or deaths in suspicious circumstances. This report has been issued accordingly.

Victims' Voices

- 3) The examination of the Report of the Independent Commission (hereinafter referred to as the Barron Report) commenced with oral submissions from the Ludlow-Sharkey family. The Sub-Committee wished to hear from the family members at the outset of its hearings in order to place them at the centre of its work. It also considered that hearing from these relatives would focus attention on the grief and distress which they still endure.
- 4) Seamus Ludlow was a 47 year old, unmarried forestry worker from Thistle Cross, Dundalk, County Louth. He was killed in the early hours of the morning on 2 May 1976. He was shot a number of times. To date, no-one has been charged with his death. In respect of the cause of the murder the Barron Report concluded that:

“As to the cause of the murder: it would seem to have been a random, sectarian killing of a blameless catholic civilian by loyalist extremists. There is absolutely no evidence to suggest Seamus Ludlow was known to his attackers, or that he had any republican connections or sympathies which might have led to his being targeted by loyalist subversives.”

- 5) Seamus Ludlow was a quiet unassuming man whose life revolved around family and home. He occasionally visited pubs in Dundalk and he was known for his charitable work. There was nothing whatsoever to connect him with any subversive organisation and members of his family recalled that he was firmly opposed to the IRA and similar groups.
- 6) Everyone who described Seamus did so in warm terms. His sister Ms. Nan Sharkey stated:

“Seamus lived with me, or I lived with him. He was a very good fellow. He was a very good living chap. He never got into any trouble and he was good to his parents. Anywhere he went, he would tell me who got a lift from or who he got home with. He never gave any trouble to anyone...He was very kind to my children. He was a good living man too so there is no one to say anything about him.”

Ms. Briega Doyle, a niece of Seamus, who was 16 years old at the time of his death, movingly described her affection for her uncle:

“We loved him. I loved all my uncles but because we were reared with him he was like another father to us. Although there were ten of us he never scolded us. He was a lovely person. I was only 16 and could not understand who would shoot my uncle.”

- 7) In its written submission to the Sub-Committee, British Irish Rights Watch, made the important observation that:

“No-one in authority has ever given the family of Seamus Ludlow the credit that they are due for having themselves pursued the failure of the police investigation. Had they not done so, there would have been no Barron Report and no hearings by the Sub-Committee.”

The Sub-Committee hopes that the following remarks will go some way towards remedying this omission. The fact that we are writing about what happened to Seamus in this report is due to the exhaustive efforts made by his family to ensure that his case has not simply been forgotten. After listening to their submissions, it is clear to the Sub-Committee that the family are still deeply affected by the desperate shock and trauma of the brutal death of Seamus and the continuing pain caused by the subsequent failure on the part of the authorities to bring his killers to justice. The Sub-Committee recognises and wishes to put it formally on record that the Ludlow-Sharkey family have remained steadfast and courageous in their pursuit of justice for Seamus over the past 30 years.

- 8) Mr. Kevin Ludlow, a brother of Seamus, told the Sub-Committee of his upset at the way in which the Gardaí handled the investigation into Seamus’s death:

“We lost a brother and it is a shame to think of how the Gardai treated the family. We were treated very badly for 20 years, until we started this process ten years ago. We got nothing but lies from the Gardai, who blamed the IRA or members of the family for what happened. How they carried on was absolutely wrong. When I saw the body in the ditch and identified it, I just could not believe it. To think that our brother was murdered and we were told lies day after day. Every time we talked to the Gardai we got lies, lies, lies.”

Kevin described how he had identified the body of Seamus at the scene where he was found.

- 9) Ms. Nan Sharkey, a sister of Seamus, explained how the family could not bring themselves to tell their mother what had happened to Seamus:

“We had to tell her he was in a car accident. We could not tell her the way he was shot. She died not knowing. She never knew about it. You could not tell her; she was confined to bed. She was heartbroken.”

- 10) Ms. Eileen Fox, a sister of Seamus Ludlow, was critical of the way in which the Gardaí handled the investigation and the suggestion by them that he had been killed by the IRA:

“We were subjected to an awful lot of harassment from Gardaí who were in and out every day. For weeks they were with me in the house every day. They were saying it was the IRA and this and that.”

- 11) Mr. Michael Donegan, a nephew of Seamus, explained that his father, Kevin Donegan (who had been in the Irish Defence Forces for 14 years and who was of the view that if he heard it from the Gardai it must be true), had believed the suggestion by the Gardaí that the killing of his brother was arranged by the IRA and carried out by members of the Ludlow-Sharkey family because Seamus was an IRA informer. He described the tension this gave rise to among the family members:

“There is no question about it; the killing traumatised the family, turned us upside down. To a large extent it put our lives on hold for the next 30 years, which is why we are here today...He met these gardai over a number of months and they just kept putting it home to him: the IRA, the IRA, the IRA. He went to his grave with that belief: that it was the IRA, because of what they told him. There is no question that it caused a lot of conflict in my house. I am not going to try and avoid it now.”

- 12) Mr. Brendan Ludlow, a nephew of Seamus, described how his parents had put two Gardaí up in their house between 1972 and 1976. He also pointed out that he had been a member of the Defence Forces operating on the border where his uncle was killed from 1977-1999. He explained:

“This is how we treated the State. The State has treated us as described from 1976 to date; we have had nothing else but the same treatment from the Garda Síochána”.

When Deputy Power asked him if he felt that the Garda investigation at the time had been carried out properly he said that in his opinion it had not been and added:

“I think they did not want to know about the Ludlow family. The statement was made that it was political and that he was shot by his own”.

- 13) Seamus’s niece, Ms. Briega Doyle, described her affection for her uncle and how he was like a father to her. She described how she was the fourth oldest in the family and was 16 at the time of the murder. She stated that:

“I am Mrs Sharkey's daughter, I was reared in the same house as Seamus. I was only 16 when he was murdered. When you are 16, it was an awful thing for your uncle to die and it was worse that he was shot. I remember the special branch questioned me in a car on my own. I was taken into a car outside auntie Eileen's house and I was asked who did I think killed my uncle. I was only 16, I had not a clue. I did not know anything about the troubles in the North. He was a quiet man. I was reared with him - so was Jimmy - and he would not harm a hair on your head. It is sad to see a young man die like that. He did not deserve what he got.”

- 14) Mr. Jimmy Sharkey, a nephew of Seamus, told the Sub-Committee:

“In general, the Garda Síochána's behaviour towards us over 30 years has been nothing short of terrible. It has been a terrible experience for us all and even harder for Kevin Ludlow, Eileen Fox and Nan Sharkey. It is also hard for the rest of us at times. I was not surprised that the Gardai did that or that the State acted as it did. They have done so in similar cases, including the Monaghan and Dublin cases and, as we will see, that of Dundalk. They simply did not care. The only way that one will ever get answers is through an independent inquiry - it must be an inquiry.”

Deputy Hoctor asked Mr Sharkey about the mysterious fact that an anniversary mass is celebrated every year for Seamus in Staffordshire in England and he indicated that the family have no idea who requests this mass.

- 15) The Sub-Committee heard during its hearings from the Secretary General of the Department of Justice, Equality and Law Reform and noted that he stated that assistance might be provided to the family by the Criminal Injuries Tribunal and the Remembrance Commission.

- 16) The Sub-Committee wishes to thank the family for the contribution that they made and to record the fact that they provided full and open co-operation with our work.

BIOGRAPHICAL DETAILS OF THE LUDLOW- SHARKEY FAMILY

- 17) The details of the family members are:

Mr. Kevin Ludlow, brother of Seamus Ludlow.

Ms. Nan Sharkey is a sister of Seamus Ludlow who lived with him at the time of his death.

Ms. Eileen Fox, a sister of Seamus Ludlow.

Mr. Michael Donegan, a nephew of Seamus Ludlow.

Ms. Briege Doyle, a niece of Seamus Ludlow, who was 16 years old at the time of his death.

Mr. Brendan Ludlow, nephew of Seamus Ludlow.

Mr. Jimmy Sharkey, a nephew of Seamus Ludlow.

Chapter 2

APOLOGIES AND ACCEPTANCE OF FAILINGS BY THE STATE

- 18) During the course of the hearings certain apologies and acceptances of failings were made to the Ludlow-Sharkey family on behalf of the State. It seems appropriate to the Sub-Committee to record them all together in a single place in this report.
- 19) The current Garda Commissioner, Noel Conroy noted the failure to follow up the information provided by the RUC in 1979 and stated that *“Thereafter the trail went dead. Unfortunately we are in a situation today where we have not resolved that crime. From a Gardai point of view, I regret this very much in so far as I can see it, it was a failure on the part of the Garda Síochána not to have had the crime thoroughly investigated and brought to a satisfactory conclusion.”*
- 20) In answer to a question from Deputy Hoctor as to whether he was willing to apologise on behalf of the Garda Síochána for its failure to act as expected, Commissioner Conroy stated:
- “I have no difficulty apologising to the family on two fronts: regarding the overall investigation, in so far as we did not bring it to a successful conclusion; and in respect of our handling of the inquest. I apologise to the family in that regard. As I said earlier, I regret the Garda Síochána did not bring this investigation to a satisfactory conclusion. I have no doubt that management within the organisation feels the same.”*
- 21) In response to a question from Deputy Costello, Commissioner Conroy expressed regret to the family for the way the inquest into Seamus Ludlow’s death was handled in 1976:
- “I am very disappointed at the way in which that episode transpired. It is very regrettable. The family of the late Seamus Ludlow was informed on the morning of the inquest. To make matters worse – from what I have read in the documents – the Gardai did not seek the consent of the coroner to have the inquest adjourned. That is the least I would have expected to be done in order that the family would be able to attend and hear the evidence.”*
- 22) Former Commissioner Byrne stated that *“I am a great believer that we should say we are wrong if I believe that is the case, rather than waiting for others to say it. Without pointing the finger at anybody, we, as an organisation, failed in terms of following through the next step in this investigation. There is no issue of conspiracy. It was a human failure that there was no follow up.”* He agreed with Deputy Ardagh that it was an overall management failure.

- 23) In his presentation to the Sub-Committee, the Minister for Justice, Equality & Law Reform, Mr Micheal McDowell, T.D., stated that:

“On this occasion I express deep regret to the family and next of kin of Mr Seamus Ludlow, on what by any standards was a deeply unsatisfactory and inexcusable experience in the holding of the first coroner’s inquest.”

In respect of the Gardai investigation, the Minister added:

“The Garda investigation into the murder of Seamus Ludlow, undoubtedly, had good and, unfortunately, very bad points. The 1976 investigation, as Judge Barron said, was a professional one but what happened in 1979 cannot be stood over. I do not think any member of the Garda Siochana has since attempted to do so. I cannot do a better job of highlighting these issues than was done by the inquiry. On the basis of the findings of the Barron Report, the Ludlow family undoubtedly, has a sound basis for feeling very aggrieved at a number of events surrounding the murder, including those relating to the interview of suspects and the original coroner’s inquest.”

- 24) Former Detective Sergeant Corrigan expressed how devastated he was when the investigation was not pursued in 1976. Former Detective Inspector Courtney expressed the disappointment he felt when he was told by C3 that the investigation would not proceed and said *“It never left my mind, even though at the time I was investigating several murders up and down the country.”*
- 25) The Sub-Committee welcomes all of the above comments.

Chapter 3

THE PATH TO BARRON

- 26) Towards the end of 1995, members of the Ludlow-Sharkey family received information from a journalist to the effect that a group of loyalist extremists from mid-Ulster was responsible for Seamus's murder. Over a series of meetings, the journalist named specific persons whom he believed should have been suspects for the murder. He suggested that the family hold a press conference and also contact the Garda Commissioner with this information.
- 27) On 2 May 1996, the 20th anniversary of Seamus's death, a press conference was held by the family in Dublin. A letter was also sent to the then Garda Commissioner. The letter expressed concern at the failure to effect a prosecution in the case and at *"the general conduct of the investigation by the Gardaí at the time"*. In particular, it was said that in the period following the murder, the family had been led to believe, by individual gardaí, that republican paramilitaries were responsible. The letter concluded:

"We would greatly appreciate, therefore, if you as Garda Commissioner, could see your way to order a new investigation into the murder with a view to bringing to justice those responsible for this terrible crime. The Ludlow-Sharkey family pledge its total and full co-operation in any such new investigation and undertake to provide the Gardaí with the name of the person believed to be the killer. We should point out however that we understand the gardaí already possess this information."

- 28) A new investigation was ordered by the then Commissioner and was conducted by Detective Superintendent Ted Murphy of the Special Investigation Unit, Crime Branch. This reactivation of the case brought to light information received from the RUC in 1979 concerning four loyalist suspects for the killing. When this was brought to the attention of the Commissioner in 1997, contact was made with the RUC and the four men were arrested by RUC officers in February 1998. The four, whose names were not among those given to the Ludlow-Sharkey family by the journalist in 1995-96, were interviewed and then released. During the course of questioning two of the four men admitted being present when Seamus Ludlow was murdered but denied being involved. A file was then sent to the Director of Public Prosecutions in Northern Ireland for a decision on whether charges should be brought against these men. No prosecution was brought on the basis of insufficient evidence.
- 29) A Victims' Commission was established in the aftermath of the Good Friday Agreement and arising from its recommendations the Barron Inquiry commenced an examination into all aspects of the killing of Seamus Ludlow.

The Barron Report

- 30) In his report Mr. Justice Barron concludes that Seamus Ludlow was murdered by loyalist extremists, seemingly at random:

“The facts and circumstances as they appear to the Inquiry have been set out in this report. They indicate that Seamus Ludlow was picked up by a car near the bridge on the Dundalk to Newry road; that this car was driven by James Fitzsimmons and contained three other passengers – Richard Long, Samuel Carroll and Paul Hosking. Information obtained by the RUC from Hosking suggested it was Carroll who shot Seamus Ludlow. The inquiry has not been in a position to test the veracity of this allegation.”

It is not the function of the Sub-Committee to apportion guilt or innocence to any named individual and thus we express no view on this conclusion.

- 31) Mr. Justice Barron also states that the original investigation of 1976 was conducted competently and diligently by Gardaí and that they are in no way to blame for the failure to identify the killers.
- 32) The key question for the Barron Inquiry was why the information supplied by the RUC in 1979 was not pursued. The Inquiry believed that the only credible explanation for this is that a direction was given to the investigating officer at the time to abandon plans to have the suspects interviewed outside of the jurisdiction. As to why this might have been the case, the Inquiry stated that such a policy may have led to demands for reciprocal arrangements by the RUC. The Inquiry states:

“Such a policy could have arisen out of a combination of one or more of the following factors:

- (a) A risk that republican subversives would target RUC officers coming to this jurisdiction;*
- (b) A risk that republican subversives would view such co-operation with the RUC as a justification for attacking members of An Garda Síochána; and*
- (c) A fear of the political consequences arising from the fact that a certain sector of the population would perceive any co-operation with the RUC in this State as a ceding of sovereignty to the British Government.”*

The Inquiry concluded that:

“The Inquiry believes it most probable that the decision was made by Deputy Commissioner Laurence Wren (C3). Before doing so, it is likely that he would have discussed the matter with other senior Gardai and possibly senior officials from the Department of Justice. However the absence of files means that this cannot be confirmed.”

- 33) In respect of the inquest, Mr. Justice Barron concluded that there appears to have been no justification for the failure to notify Kevin Ludlow of the date of the inquest into his brother's death. Given the nature and circumstances of the death, other family members should also have been notified. The fact that the inquest proceeded reflects a belief that because the cause of death was undisputed, the inquest procedure was a formality. While this was technically true, the decision to proceed in the absence of family members caused them unnecessary hurt and annoyance at a time of extraordinary sadness and difficulty in their lives.
- 34) Mr Justice Barron attended before the Sub-Committee and explained that he dealt with this Inquiry and prepared his Report in the same way as he dealt with the other matters on which he reported. Essentially, the information came from the Gardaí and he had to analyse that and see where that would bring him. He spoke to the family on a number of occasions and he sought information from the then RUC but, apart from some very limited information it supplied regarding the 1977 to 1979 period, that was as much as he got. He was satisfied that he had received full co-operation from the Gardaí and from the Department of Justice, Equality and Law Reform. He felt that people had been willing to tell him what they knew but importantly he stated that it was obvious that he was not given the full picture by one or more people. In response to a question from Senator Walsh as to whether the absence of powers of compellability and the giving of sworn evidence represented a serious shortcoming in his Inquiry, Mr. Justice Barron responded by saying:

“I do not think so. The people we spoke to seemed willing to tell us what they knew. It is obvious we were not given the full picture by one or more people but, generally speaking, we were given the full picture.”

The Sub-Committee is of the view that this comment must be viewed in light of the fact that Mr Justice Barron had no powers either to compel persons to attend or to compel documents to be produced. This absence of powers is of obvious significance in the light of Mr Justice Barron's view that he was not given *“the full picture by one or more people”*.

- 35) The Sub-Committee wishes to express its gratitude to Mr. Justice Barron for the work he and his staff have done in producing the report and for the assistance they gave us in the course of our hearings.

The Powers of the Sub-Committee

- 36) At the outset it should be noted that the Sub-Committee is bound by very precise terms of reference beyond which it cannot stray. In particular, the Sub-Committee is not conducting an investigation of its own into the events that happened during the period concerned, nor is it seeking to apportion guilt or innocence to any individual person or body. It has neither the jurisdiction nor the legal authority to perform any such function. In *Maguire v Ardagh* [2002], the Supreme Court granted a declaration that:

“... the conducting by the Joint Oireachtas Sub-Committee of an inquiry into the fatal shooting at Abbeylara on the 20th April 2000, capable of leading to adverse findings of fact and conclusions (including a finding of unlawful killing) as to the personal culpability of an individual not a member of the Oireachtas, so as to impugn his or her good name is ultra vires in that the holding of such an inquiry is not within the inherent powers of the Houses of the Oireachtas.”

Everybody who appeared before us was asked to respect the fact that we cannot stray beyond our terms of reference or our legal powers. The Sub-Committee is grateful to everyone for their co-operation in this regard.

- 37) It should also be noted that the Sub-Committee has no powers of compellability and thus everyone who came before it did so voluntarily and we thank them all most sincerely for their attendance on that basis.
- 38) A couple of crucial witnesses refused to attend. The Sub-Committee expresses its regret that these persons felt unable to assist it with its inquiry.
- 39) Former Detective Sergeant Daniel Boyle wrote to the Sub-Committee and stated that:

“In confirmation of my telephone conversation to you, also on this date, I wish to say that I will not be attending the hearings on 14th February 2006.”

Subsequent attempts to ask former Detective Sergeant Daniel Boyle to attend were unsuccessful. As will be seen below, former Detective Sergeant Daniel Boyle is a crucial link in the central conflict of fact that emerged in both the Barron Report and the testimony before the Sub-Committee. It is therefore a matter of particular regret to the Sub-Committee that he felt unable to attend.

- 40) Mr Jim Kirby, former Assistant Principal in the Department of Justice, wrote to the Sub-Committee and stated:

“As I explained to you then and as I have already told Judge Barron that I have no recollection of the murder of Mr Ludlow or of any subsequent developments in relation to that murder.

I am satisfied that I have no information available to me that would be of assistance to the Sub-Committee in fulfilling its remit.”

We regret he could not attend, as given the frequency of contact between the Department of Justice and the Gardaí, his assistance would have been helpful to us in understanding the events that occurred.

- 41) Through the good offices of the PSNI the Sub-Committee forwarded correspondence to the four persons named by the RUC as the suspects for the murder but no response was received from them. In respect of one of the suspects, the PSNI were unable to forward the correspondence due to security concerns.

The Context of Events under Investigation

- 42) In considering the matters which are the subject of this report, it is clearly important that they should be viewed in the context of the times. The period 1976-1980 was clearly very difficult and fraught with tension. The British Government were pressing for greater co-operation on three security-related matters: “hot pursuit” across the border, permission for RUC officers to question suspects in the State, and overflights by British military aircraft. These three issues evoked strong reactions amongst ordinary people in the State, and such popular opposition was inevitably reflected in the policies and attitudes of the Gardaí and successive governments.
- 43) A number of persons who appeared before the Sub-Committee referred to the nature of the times when the events under consideration arose. Minister McDowell stated that:

“We are examining the events of 30 years ago through the prism of all that has occurred since, including North-South co-operation and political progress. Given that a high level of co-operation between the Garda and the Police Service of Northern Ireland is now the norm, as evidenced by their co-operation in the investigations into the Northern Bank raid and other organised crime, it is hard to appreciate how different things were - regrettably - in the 1970s. It may be trite to say they were different times, but that is the reality. Our attitudes to Northern Ireland and what constituted appropriate contact between the respective forces of law and order in the two jurisdictions were informed by different considerations of history. I cannot put it more forcefully than this. The Sub-Committee should bear in mind that the issue of extradition, for example, was considered extensively in 1973-74 under the Sunningdale Agreement. A

bilateral commission was established when no agreement was reached in this fundamental area of law enforcement. The Criminal Law (Jurisdiction) Act 1976 which was passed as a result of the commission's activities did not provide for extradition but for mutual jurisdiction on either side of the Border for serious offences, including murder. When one considers the current circumstances, it is clear that relations between the two sovereign states on this island were very different in the 1970s."

44) In his written submission to the Sub-Committee, Commissioner Conroy stated that *"The period 1976 to 1980 was one of huge turmoil. Deep divisions of distrust existed, not only between the nationalist and unionist communities in Northern Ireland, but also between Governments of the United Kingdom and this State."*

45) Former Chief Superintendent Cotterell stated that:

"The 1970s was a deadly time on the Border. It was terribly busy because all sorts of things were happening. There were many incursions, particularly air incursions. All these events had to be investigated and a file sent to headquarters for the Department of Foreign Affairs, which then made the appropriate protests."

46) It is difficult for us to appreciate this kind of turbulence at this remove of time. The Sub-Committee recognises that the turbulence of the times may go some way to explaining what occurred. However it does not believe that this turbulence excuses the fact that an investigation into the murder of one of the State's citizens stopped despite the fact that four suspects had been identified. **No matter how turbulent the times, the investigation into the murder of a citizen of the State should not be sacrificed for any reason.**

Chapter 4

CO-OPERATION

- 47) In previous reports the Sub-Committee has expressed its concern about the lack of co-operation provided by the United Kingdom authorities. Regrettably, it received no co-operation in respect of these hearings either. By letter dated 16 January 2006, the Secretary of State for Northern Ireland, the Rt Hon Peter Hain MP, stated that the British Government had provided Mr Justice Barron with information that he requested on a number of issues relevant to his report and added:

“All relevant information held by the British Government has therefore already been passed to Justice Barron and incorporated into his report.

While I support the important work being done by Justice Barron’s Independent Commission of Inquiry and by the Sub-Committee, I do not believe that there is anything that I could usefully contribute to that work at the public hearing.”

In fact when one turns to the Barron Report one discovers that an absolute bare minimum of information was received from the authorities in Northern Ireland.

- 48) In the course of the hearings, Deputy Ardagh summarised the views of the Sub-Committee in respect of this problem, particularly in the context of the kidnapping of Mr Donegan by the British Army:

“I am very disappointed that we have still not been able to receive from the Northern Ireland authorities any information of any description regarding Mr Donegan’s interviewing, particularly considering that helicopter travel was involved. One would assume that there would be information regarding trips for helicopters. Even that information has been withheld and has not been forthcoming. I state our utter disappointment with the authorities in Northern Ireland for their non-cooperation with us.”

- 49) A slightly more helpful response was received from Sir Hugh Orde, the Chief Constable of Northern Ireland. He stated that because the role of the RUC in the case had been well documented and as he had no personal knowledge of the case, he did not consider he would be able to add anything of value by attending the Sub-Committee’s hearings in person. However he drew the Sub-Committee’s attention to the work of the Historical Enquiries Team (the HET) which has a remit to review and re-investigate where possible all deaths in Northern Ireland attributable to “The Troubles”. He informed us that:

“Whilst the unit will not examine deaths or incidents in the Republic, there is no doubt that many of the organisations and individuals were involved in criminal acts on both sides of the border and will be of interest to both jurisdictions. The HET have had an initial meeting with An Garda Síochána to discuss liaison.

The whole process will be underpinned by a developing Analytical database, which will contain all the details relevant to each case and which can be used to identify both links between cases (intelligence or forensic/ballistic), gaps in intelligence or trends/evidential possibilities.

There is potential for a liaison facility between the HET and An Garda Síochána to monitor progress in the continuing review process, utilizing the Analytical database, to highlight any relevant links to the Ludlow case or further evidence uncovered and to conduct any further joint enquiries that may be appropriate.”

- 50) **The Sub-Committee wishes to once again record its disappointment at the lack of co-operation from the British authorities.**

Chapter 5

THE GARDA INVESTIGATION

Introduction

- 51) One of the issues that has arisen on foot of the Barron Inquiry is whether there was a policy that dictated that Gardaí would not interview suspects North of the border during the time in question. As with the Barron Inquiry, the Sub-Committee heard sharply conflicting submissions in respect of this issue. It is surprising that what would appear on its face to be a straightforward question of fact has produced such a dichotomy of evidence. Whilst the Sub-Committee does not have the power to adjudicate on which view is correct, it can and must identify precisely how the conflict of evidence arises.

The initial inquiry in 1976

- 52) It will be recalled that Mr. Justice Barron concluded that the original investigation of 1976 was conducted competently and diligently by Gardaí and that they are in no way to blame for the failure to identify the killers.
- 53) When questioned by Deputy Hctor, former Detective Sergeant Corrigan said that the investigation did not close down after 21 days but that the emphasis on it might have closed in terms of the heavy concentration of personnel on it. He said that in murder investigations a period of a month or two for the initial investigation is quite commonplace because personnel from headquarters and investigators are taken away to deal with other crimes.
- 54) It became evident to the Sub-Committee that the family do not agree with this. Deputy Costello asked Mr Jimmy Sharkey if he agreed with that analysis and he replied in the following terms:

“No. The failings lie in 1976. If the committee members look three years further on to 1979, then they are missing the whole thing. They are not seeing the wood for the trees. In 1976, the Gardai probably did not know who killed Seamus Ludlow as they did not have enough concrete information, suspects and so on, but they knew the IRA did not do it. There were only two groups carrying out killings at that time - apart from the SAS, which came on the scene around that time - and they were the republicans and the loyalists. The Gardai would have known that the loyalists were involved in the bombings in the town in December 1975, six

months before Mr. Ludlow was killed. They had to be channelling their intelligence elsewhere, but they kept a spin on the incident the whole time that it was the IRA, for the reasons that I outlined earlier.”

- 55) In contrast, in his written submission to the Sub-Committee, Commissioner Conroy stated that:

“From an examination of the papers into the original Garda investigation in 1976 I am satisfied that a thorough investigation took place at that time and that all of the usual practices employed by An Garda Síochána were put in place during this inquiry. The conclusions of Mr Justice Barron endorse this view at page 83 of his Report, where he states ‘the evidence shows that it was carried out competently and diligently by the Garda Officers concerned. The failure to identify the killers at that time was due entirely to a lack of reliable intelligence information – for which Gardai were in no way to blame’.”

- 56) The Sub-Committee cannot adjudicate on this issue. However, a number of serious questions did arise.

- (a) Why was the Gardai investigation in 1976 stopped after such a short period of time?
- (b) Is it possible that the Gardaí had a disposition towards believing that the attack was conducted by the IRA and did not sufficiently investigate other possibilities?
- (c) Why was there no attempt or real attempt to seek co-operation from the authorities in Northern Ireland?
- (d) The failure to seek co-operation from Northern Ireland is even more surprising given the fact that by letter dated 27 April 1976, the RUC had identified seven suspects worthy of note, including a person, who was one of the four persons ultimately named as a suspect in the killing of Seamus Ludlow (see para 132-135).

The 1953 Directive

- 57) Before moving on to consider the 1979 Inquiry, the text of a directive from the Assistant Commissioner “C” Branch dated 13 November 1953, needs to be set out as it plays an important role in the conflict of testimony that will emerge. The Directive stated:

“In accordance with established practice, reciprocal arrangements exist whereby members of other police forces may visit the area of the Republic to pursue enquiries into ordinary crimes committed in their area, interview suspects witnesses etc...”

In all such cases, the members of the other police force should be accompanied by a member of the gardai of the same rank as visiting officers, who should remain present as far as possible at all interviews with members of the public.

In the case of crimes or offences or enquiries of a political nature arrangements should not be made whereby members of other police forces can interview persons in this country or accompany members of An Garda Síochána making such inquiries. In these cases, any enquiries which are considered necessary to be made should be made by Gardai themselves. The result of any such enquiries made by gardai should not be communicated direct locally to the police forces concerned, but forwarded to the Commissioner (3C section).”

It will be seen from the plain words of the Directive that it deals exclusively with members of other police forces who wish to visit the Republic. On its face it does not say anything about the circumstances in which members of the Gardai could travel North.

The 1979 Inquiry

58) In respect of the 1979 investigation, the Barron Report concluded:

“In the final analysis it seems that the reason for the failure to pursue the questioning of the suspects lies in the perception that it was contrary to Government policy to do so. If that was the correct view, then it would have been known to Deputy Commissioner Wren. While it may or may not have been discussed with officials in the Department of Justice, it would have been something of which they were all aware. This would explain why the garda Commissioner Patrick McLoughlin was not told, something which a later Commissioner, Patrick Byrne, accepted in his letter of 10 January 2003.” (page 81)

59) Mr. Justice Barron appeared before the Sub-Committee and reiterated the finding in his report that the 1979 inquiry had come to a halt because of policy reasons:

“The report has drawn the conclusion that if there was not a policy, it was certainly a perception of the Garda that there was such a policy”.

- 60) He was also asked by Senator Walsh if he thought that one of the reasons for Gardaí not going up North to interview suspects was due to personal safety concerns and responded:

“I mentioned this as a possibility and I was told it was not correct. I cannot put it any firmer than that. At this remove, it would be unlikely for anybody to admit that was a cause. From what I saw of individual gardaí, I do not believe it would have been a cause.”

- 61) It emerged during Mr. Justice Barron’s submissions to the Sub-Committee and questions put to him in respect of the evidence of former Detective Inspector Courtney, former Assistant Commissioner Ainsworth and former Commissioner Wren that there is significant conflict between the findings made in the report and the submissions of former Commissioner Wren.

The conflicting submissions in respect of the stopping of the Garda investigation

- 62) In his report, Judge Barron noted that former Detective Inspector Courtney said that he discussed the case with former Detective Sergeant Daniel Boyle who he says told him former Commissioner Wren had said that, if the four suspects were to be extradited to the Republic, a similar number of IRA extraditions would be sought by the RUC and he did not want this to happen.
- 63) Former Detective Inspector Courtney was the border Superintendent at the relevant time and stated that in his view what Mr Justice Barron said in his report was accurate. In respect of 1976 he stated:

“We had an open mind on the investigation. We investigated it from all angles, keeping in mind that it could have been an ordinary domestic murder, a Provisional IRA or UDA murder. We had no definite suspects or line of inquiry.”

- 64) Former Detective Inspector Courtney described how he had been surprised and delighted when the RUC had given him the names of the four suspects. He said that the purpose of his visit North on that occasion was in relation to the Dundalk bombing. The RUC had told him that they had received the information they were giving him approximately 18 months previously. Because of the detail he was given, he was satisfied that the information was reliable. He was of the view that the four named suspects should be interviewed and investigated. In respect of the information, he stated that *“I sent it on to C3 whose duty it was to make arrangements to have the people interviewed. My function was just to report the matter, to pass on the information.”* He said that he would have had no authority to go North to interview suspects and that it was the duty of C3 to make such

arrangements. He said his link persons in C3 were late Chief Superintendent Michael Fitzgerald and, in his absence, former Detective Sergeant Daniel Boyle. He was clear that one could not go outside of the State in respect of the interviewing of suspects without permission from C3.

- 65) Former Detective Inspector Courtney made it clear that the RUC had been very selective in their co-operation with the Gardaí. As we know, they only passed on the information in respect of the four named suspects 18 months after they had received it themselves. In addition, they did not provide any assistance in respect of the car used in the Dundalk bombing. This shows that at that time the RUC appeared to be drip feeding information to the Gardaí and the question arises as to whether they were only passing on information to serve their own ends.
- 66) Former Detective Inspector Courtney said that he had been surprised when he had spoken to former Detective Sergeant Daniel Boyle and had been told that nothing would be done about the investigation and he described how then the investigation “just fizzled out”. He said that “*The reason given was that if the four suspects were extradited, the RUC would be looking for four IRA suspects to be extradited to Belfast.*” He was 100 per cent certain that that was what former Detective Sergeant Daniel Boyle had said to him. Former Detective Inspector Courtney went on to say that all he himself could do was to report the facts and take directions. As former Detective Sergeant Daniel Boyle was his link in C3 he would not have been in a position to question his authority. He said that he was satisfied that he had responded to all correspondence from C3 and that the fact that certain letters might not have been located at this stage did not mean that he had not answered the correspondence. The correspondence with C3 would go through Chief Superintendent Dan Murphy. He said that he believed at the time that he could have secured a conviction “*One must strike when the iron is hot. We should have interviewed them at the time, not years afterwards, since the trail grows cold as the years pass by.*” Deputy Power asked him if he contended that it was former Commissioner Wren who made the decision not to question the suspects and he stated that “*I do not know what the position was in this regard. He was probably told to do it. I reported to him and gave him the names of the suspects.*” He then said that he assumed it came down from former Commissioner Wren but very fairly added that he could not be certain of this as all he knew was what former Detective Sergeant Daniel Boyle had told him in March or April 1979. Deputy Ardagh asked him if his colleagues had expressed dissatisfaction that the four suspects were not interviewed because of the actions of people at a higher level and he stated that that was the case and that they felt that at least the four suspects should be interviewed. Deputy Ardagh asked him if he could have done anything on foot of his dissatisfaction and he explained that: “*At the lower level, you can discuss it all right. I was satisfied with what former Detective Sergeant Daniel Boyle said, which I will always remember because I was so disappointed with the news. It never left my mind, even though at the time I was investigating several murders up and down the country.*”

- 67) Former Detective Inspector Courtney also identified an additional concern that the Barron Report gave rise to in his mind:

“Following the receipt of information from the RUC regarding the names of the suspects, I submitted my report through the channels of communication to the Commissioner of C3. I was surprised when I got this book after Christmas to discover that this information had already been received by the Commissioner of C3. That was the first I knew about it. I am disappointed that the Commissioner of C3 had not told me this, given that I had been very much in touch with him at the time, as many subversive murders and other crimes were being committed and there was a great deal of interaction between him and me. I felt I should have been told C3 had that information but I was never told. C3 was responsible for the investigation and making arrangements to have the suspects interviewed and possibly extradited at a later stage. I had nothing to do with this. My position was to report the facts as I got them from the RUC, the names of the suspects, which I did.”

- 68) Former Commissioner Wren was the Deputy Commissioner of C3 in the period January to April 1979. He told the Sub-Committee that he had no recollection of having been approached by former Detective Inspector Courtney for permission to interview the four suspects. He said that any such decision would not have been made by C3 without reference to a higher authority. He complained that:

“Despite the foregoing, which clearly shows that there was not one word to indicate that I was approached about the matter in any way, the Inquiry has come to the conclusion that it believes it more probable that the decision was made by former Commissioner Wren. In light of the foregoing and when former Detective Inspector Courtney's direct superiors do not appear to have any knowledge of his efforts in this regard, how this conclusion could be reached beggars comprehension. I sent a memo to this effect at the time, to which there was a very brief reply stating that the relationship between the gardaí and the Department of Justice and the general policy in such matters is fully set out in pages 66 to 81 of the report and that the conclusion reached was based upon the information contained in these pages. I could not see it in those pages.”

It should be noted that when he appeared before the Sub-Committee, Mr Justice Barron defended his finding by stating that *“The Report was given to C3. It is doubtful such a highly unusual piece of information would not have been given to the head of that division, who was former Commissioner Wren.”*

- 69) Former Commissioner Wren said that he wanted to confirm to the Sub-Committee that the issue of allowing former Detective Inspector Courtney to travel to Northern Ireland to interview suspects had not been discussed with him by anybody. He explained that Northern Ireland *“... is outside the jurisdiction of An Garda Síochána and that our members have no legal right to operate there.*

Indeed, any such practice was specifically ruled out in a crime branch Directive issued to the force as far back as 1953. That is the procedure that has been followed since and was brought to the notice of the Inquiry, since it is referred to in the report at the bottom of page 79.” The status and meaning of this Directive was to become an issue giving rise to further conflict in submissions to the Sub-Committee.

- 70) Former Commissioner Wren was emphatic in his recollection that the question of him giving authorisation to go North, simply did not arise:

“There was no way in which I could have authorised former Detective Inspector Courtney or any other member of the force to go to the North because we had no jurisdiction or authority, irrespective of whether we had been invited. An invitation from a police officer in Northern Ireland confers no authority or legitimate status on a member of the Garda Síochána questioning suspects in that jurisdiction. A member in this position would have been on his own if anything had gone wrong as there was no law to cover that eventuality.”

- 71) Former Commissioner Wren went as far as to suggest that there was in fact no reason for the Garda investigation to have ceased:

“The investigation did not have to cease because the Garda Síochána could not travel to the North. The normal procedure would have been for the Garda Síochána to request assistance from those who had information in the North and to have the suspects interviewed and dealt with in that jurisdiction, without extradition. The Offences against the Person Act 1861 covered the granting of legitimacy to an investigation in the North into a murder that had taken place in the South. I will not refer in great detail to the legislation but the investigation could have been handled in this fashion. The question of my refusing to allow any member of the force to travel to Northern Ireland does not arise”.

- 72) Former Commissioner Wren also agreed that the 1953 Directive was adopted as policy and would have been known to have been such. When Deputy Ardagh asked him about the status of the Directive he stated that *“one could assume that because it was the policy for the whole force. It merely clarified the legal position in case anyone thought they had authority to go North. It merely reminded them that it was not done.”*

- 73) In response to questions from Senator Walsh, former Commissioner Wren stated that C3 would not have been the appropriate body from which to seek permission to go across the border to interview suspects. He was clear that C3 had no involvement with Gardaí wishing to travel North and thus it would have been wrong for former Detective Inspector Courtney to have made the request from C3. When questioned by Senator Walsh about who would give permission he stated that *“Nobody would give permission to go to the North to question*

suspects. I am not aware of any occasion on which that happened.” He added that “C3 was not an investigating unit; we were just a conduit for passing on to the Department whatever intelligence or information had been received about one thing or another.” He said that he could not offer the Sub-Committee any reason why the investigation was not pursued. The Sub-Committee in seeking information on this issue has received correspondence from the Garda Commissioner’s Office which does detail occasions on which Gardai did interview suspects in Northern Ireland, both accompanied and unaccompanied (see para 92). In response to a further question by Senator Walsh, former Commissioner Wren said that he was not aware of any RUC officers coming South, at least not officially.

- 74) **Thus there is a clear conflict between the position of then Detective Inspector Courtney and that of former Commissioner Wren.** Unfortunately, former Detective Sergeant Daniel Boyle declined an invitation to appear before the Sub-Committee. His position has to be gleaned from three lines in the Barron Report:

“D/Sgt Daniel Boyle (now retired) was also questioned by C/Supt Murphy. He said he had ‘a vague recollection’ of the Ludlow case, but had no recollection of any conversations with former Detective Inspector Courtney on the subject.”

Thus, the one person who might be in a position to resolve the conflict with some degree of certainty does not appear to be in a position to do so. The Sub-Committee regrets that it did not have an opportunity to hear for itself from former Detective Sergeant Daniel Boyle as his submissions might have assisted in identifying the nature and parameters of the conflict more clearly. The Sub-Committee also remains unclear about precisely what happened to the proposed trip to Glasgow by Chief Superintendent Murphy to interview one of the suspects.

- 75) Former Detective Sergeant Corrigan accompanied former Detective Inspector Courtney to RUC Headquarters in Belfast in 1979. He indicated that he agreed entirely with the contents of the Barron Report. He said that they had travelled to Belfast in connection with the car used in the bombings in Dundalk. He had regarded the information that the RUC had given them about the four suspects for the murder of Seamus Ludlow as credible. He said that he was grateful to get the information and did not question the delay on the part of the RUC in providing it. In response to a question from Senator Walsh, his recollection was that the RUC had not indicated that any of the four persons they had named were members of the security forces in the North. He pointed out that the RUC provided no information in respect of the car used in the Dundalk bombing. He stated that:

“I was devastated when the case was not pursued. I returned from Dundalk very excited about developments in terms of the identification of what I considered to be good suspects for the crime. To be honest, I was elated and could not wait to have them interviewed.”

When asked by Senator Walsh what should have been the next step to have been taken he responded:

“I believed we should have sought permission to go to Northern Ireland to put to the RUC, in synopsis form, the sequence of events, those we believed were involved, the terrain and so on in order to allow them to conduct the relevant interviews.”

He added that he had hoped the interviews would be carried out by the RUC and said *“I was looking forward to that happening and was hoping to visit Northern Ireland within a week.”* The Sub-Committee is of the view that this is important as it illustrates the suddenness with which the Garda investigation ceased at that time. In response to a question from Deputy Costello, former Detective Sergeant Corrigan stated that he had been *“dumbfounded”* when the former Detective Inspector Courtney had informed him that he had been on to C3 and that the matter (i.e. the interviewing of the suspects) was not being pursued. He said that he spoke to former Detective Inspector Courtney every second or third day and asked why no authorisation to travel North was forthcoming:

“When I pressed him to phone C3 again, first of all he said it was not being proceeded with and when I asked why he said former Commissioner Wren who was then in charge of C3, had said that it was not going ahead because if the four suspects were interviewed the RUC, as it was then known, would be looking for reciprocal arrangements with four IRA persons to be extradited North and that it was not going ahead for that reason.”

He stated that:

“I was so frustrated and annoyed that I did not want to discuss it with anyone. I felt very let down after having put in so much effort. We could not pursue the case and I was not aware that anyone else had information in that regard.”

He told the Sub-Committee that he would not have envisaged that he would go across the border to directly interview the suspects himself. He told the Sub-Committee that he had assumed that he and former Detective Inspector Courtney would travel North to provide information to the RUC to assist them in carrying out the actual interrogation. He told the Sub-Committee that such permission was not forthcoming. He was clear that C3 was the only part of An Garda Síochána that could issue an instruction to travel to Northern Ireland.

Submissions from other persons

- 76) The testimony given by other persons who appeared before the Sub-Committee make the divergence in the above submissions even more stark.
- 77) The Divisional Officer in Drogheda at that time, former Chief Superintendent Cotterell, was clear that the Gardaí could not leave their own jurisdiction without the permission of C3. He said he would not have been in a position to question the policies of C3. In response to a question from Deputy Murphy, former Chief Superintendent Cotterell stated that:

“The policy of not allowing gardaí to go to the North was not haphazard - that is definite”.

Former Chief Superintendent Cotterell explained to the Sub-Committee that:

“We would have to issue a written report and then receive permission to go there”.

- 78) Former Chief Superintendent Cotterell told the Sub-Committee that he agreed that there was a difficulty with conducting interviews North of the border. His submission suggests that reciprocity was the difficulty:

“If we went to interview them up there they would be looking for all sorts of privileges down here. They were privileges they could not allow because they would not be accepted coming down.”

- 79) In response to questions posed by Deputy Power in respect of the need to get C3 permission, former Chief Superintendent Cotterell stated that:

“I do not think you would need the permission for gardaí to go up to have a chat with RUC officers but interviewing suspects would be a horse of a different colour.”

- 80) Former Detective Garda Hynes, who was involved in the investigation at the time, stated that he had been involved in a number of external investigations where the Gardaí interviewed in the North, suspects and witnesses in respect of events that had taken place in the South. He stated that *“As far as I am aware, the normal procedure was that when such journeys were made, permission had to be received from crime and security branch, or C3 as it was then known.”* In respect of the 1953 directive he stated that he had never heard of it and that he had never heard it being discussed when arrangements were being made to travel abroad.
- 81) Mr. Gerry Collins, Minister for Justice 1977 to 1981, in his submission to the Sub-Committee took the view that the RUC should have brought in these men, questioned them and if necessary, used the provisions of the Criminal Law

(Jurisdiction) Act 1976 to try them in Northern Ireland. In response to questions from Senator Walsh in respect of the policy of not allowing interviews by Gardai north of the border, Mr. Collins told the Sub-Committee:

“That was the policy of the day. My view was that it was the proper policy and it was one I supported totally and fully and if I was still there I would support it”.

He explained the background to the policy as follows:

“They wanted many things and they are matters of public knowledge, which are mentioned on page 84 of the Report. It is a question of the hot pursuit of suspects across the Border, which in my mind and the minds of the professionals within the Garda, would have been the height of folly in practice. Who would protect those who were pursuing the suspects from ambush? If they flew in spotter aeroplanes 800 feet or 1,000 feet across the Border, who would protect the small aeroplanes from being shot down? If they came and questioned suspects in Garda stations, who would protect them as they travelled in and out? There was no way the Government could have a situation where any of its agencies was involved in handing over persons who were suspects only and who were needed for questioning by the authorities in Northern Ireland. That was the policy of the day.”

He stated that he could not resolve any difference in the account of former Detective Inspector Courtney and former Commissioner Wren but added:

“I totally support everything former Commissioner Wren said. He is one of the finest, most honourable, principled people I have met in the police force. He is a man of the utmost probity and integrity who gave 44 very valuable years in the service of the State.”

- 82) Former Assistant Commissioner Ainsworth was Deputy Commissioner in C3 from December 1979 to February 1983. He told the Sub-Committee that C3 had never been examined by management consultants at the time. He said that no correspondence in respect of the Ludlow murder had ever been brought to his notice. He was not aware of the 1953 directive at the time. He pointed out that nobody has authority to guillotine a murder investigation for non-statutory reasons and said that if he had been aware that this had occurred he would have raised the matter with the Commissioner. He added:

“Extradition is not a matter for the Garda Síochána, but the Government and the courts. The Garda investigates an accused person and places the papers before the proper legal authority for decision. What happens after that is determined by other forces, not by the Garda. The Garda examines and presents the case which thereafter develops. The Garda cannot take into consideration extraneous matters such as overflight incursions or

extraterritorial inquiries because all these matters are purely political. A murder inquiry continues, even when nothing can be added to finalise the case. That has always been my approach to murder inquiries. The prime function of the Garda is the protection of life and property and a murder is a major Garda concern following the loss of life. The Garda is obliged to pursue a murder inquiry without interference. If a murder case becomes cold for any or numerous reasons, it should be independently reviewed by an independent investigator. That is how I see the development of a crime investigation. Dogmatic or persuasive directives stopping or curtailing an inquiry are valueless.”

- 83) In response to questions from Deputy Costello, former Assistant Commissioner Ainsworth agreed that co-operation existed between the RUC and Gardaí but that it did not extend to being present while an interview was taking place in an RUC station. He said that the Ludlow file had never been given to him when he was in C3 and that this baffled him. He said he did not know anything about former Detective Inspector Courtney being stopped from continuing his investigation.
- 84) John Fleming was Commissioner of C1 from 1977 to 1979. In a written submission to the Sub-Committee he stated that he never received any information in relation to the Ludlow murder. He said that between 1977 and 1979 *“I had no knowledge of any member of the Garda travelling to Northern Ireland to investigate crime during that time”*.
- 85) In respect of the 1953 Directive, Garda Commissioner Conroy told the Sub-Committee that any such document would have been incorporated into the Garda Code in 1965. In response to a question from Senator Walsh, he informed the Sub-Committee that the 1965 Code did not contain anything specific to prohibit Gardaí from travelling outside the jurisdiction to interview suspects or assist another police force to do so. He drew a distinction between the Gardaí going North to request the RUC to investigate suspects and the Gardaí seeking to interview persons in the North themselves:

“There would have been no difficulties in requesting permission to go outside the State to assist another police service such as the RUC at the time in conducting investigations on behalf of the Garda Síochána. There is no way that our authorities, either then or now, would give permission to a member of the Garda Síochána to go to another jurisdiction and ask the police service to interview individuals suspected of having committed a crime. That would never happen. If Garda Headquarters was taken apart, I doubt if a document would ever be found which would state this”.

He said that C3 would have been a conduit in ensuring that everything was prepared and that officers were ready to travel.

- 86) In respect of reciprocity, Commissioner Conroy stated:

“I could foresee a situation where, for reasons of which I am not aware, C3 may have refused permission to travel to Northern Ireland to conduct an investigation, namely, because reciprocal arrangements would have had to be put in place in the South. That is as far as I can go on that matter. I have not read anything in the documentation which suggests that was the case. I cannot, unfortunately, enlighten the Sub-Committee any further.”

- 87) Minister McDowell offered the Sub-Committee his interpretation of the issues in the following terms:

“The Barron inquiry believes the only credible explanation for the non-pursuit of the suspects is that a direction was given that led the investigating officer to abandon plans to have the suspects interviewed outside the jurisdiction. I am afraid I am not in a position to adjudicate between the competing claims made by former members of the Garda Síochána on who did or did not give such a direction. I simply do not know how the decision not to interview the suspects was reached or what precisely formed the Garda's thinking in this case. There is nothing in the files of the Department that relates to the identification of the four suspects in 1979.

I note that the Barron Report posits that the decision not to pursue the information offered by the RUC was made by the then Garda Commissioner, Mr. Laurence Wren. The Report goes on to speculate that before making the decision, it is likely that Mr. Wren would have discussed the matter with other senior gardaí and, possibly, senior officials from the then Department of Justice. The members of the Sub-Committee are aware from the report that the only surviving member of the Department's security division which would have dealt with such matters at the time has no recollection of the case. As I said, there are no records in the Department from 1979 which deal with this topic. I will return to this aspect of the matter.

At this remove, there is no way that the Department or I can definitively state whether the Department was consulted by Mr. Wren or any other garda on the issue of the questioning of the suspects. I am sure Mr. Wren will want me to note that he strongly denies the findings of the report in this regard as they relate to him in their entirety. Having said that, I speculate that no such communication took place. My belief which can only be an educated surmise is based on two main reasons. First, there is no reason to believe the Department was notified in 1979 that four suspects had been identified by the RUC. There is certainly no documentary evidence that this was the case. Second, it is my understanding of the general relationship between the Department and the Garda that the investigation of criminal offences was a matter for the force within the legal and operational frameworks of the day. Although

the Minister and the Department would have been briefed in general terms on the progress of major Garda investigations, they would have had no role in directing individual investigations.”

- 88) Deputy Costello asked the Minister how the contradictory reports in respect of the policy could be reconciled. Minister McDowell emphasised again the assistance his Department was willing to provide and suggested the following:

“To return to what Deputy Peter Power said, if former Detective Garda Hynes identifies a particular case and date, it would be interesting to see whether there is a relevant paper trail in the Department throwing up material of the kind we now say does not exist. On the other hand, if it is established beyond any doubt that there was interviewing of witnesses north of the Border at the time in question, the matter of whether the Department was consulted is an issue from which the sub-committee might draw inferences in respect of other cases. I am speculating now and I am not really in a position to help very much. However, if a particular file or instance is identified, the Department will help by carrying out a search with a view to identifying whether there is a paper trail of consultation and whether there was departmental or ministerial involvement in other cases in similar circumstances”.

- 89) Mr Sean Aylward, Secretary General of the Department of Justice, Equality and Law Reform also assured the Sub-Committee that assistance on this matter would be forthcoming:

“Senior members of the Garda are checking out this to see what they can find. We will check it out also, but it is extremely recent evidence. One person has suggested that in some crime investigations there was direct interviewing of suspects and identified two or three cases where it was done directly. This runs counter to the evidence of very senior and respected individuals who have given evidence. There is a divergence on the specific point of directly interviewing suspects held in custody in Northern Ireland. We do not have information that sustains that assertion but it would be worth checking out. It is important to record the divergence which is considerable.”

- 90) Former Commissioner Pat Byrne assisted the Sub-Committee by offering his views:

“The key question, in my view, that was asked of me by Mr. Justice Barron was framed in his letter to me which refers to steps taken as a consequence of intelligence received. In the letter he states that there was nothing on file to suggest that any such steps were taken. He asks whether this suggests no such steps were taken and, if so, where would the default lie. My synopsis would be that we had the information and he was asking

what we did with it. Part of my reply as contained in the interim report reflects my view.

The over-arching issue in relation to this, as is contained in my report, is the awareness of people of that information which was first received by the Garda Síochána on 30 January 1979. Obviously those who were not aware of it cannot be faulted. In my report I refer to people in public life both in this State and in Northern Ireland who were aware of the information. I hasten to add, however, that irrespective of who knew what, the primary responsibility rested with the investigative authority at the time this crime was committed in this State, and that was the Garda Síochána.

In essence, in terms of what did or did not happen, the responsibility lay with the Garda Síochána, although it gives me no satisfaction to say that. To suggest otherwise would be ludicrous. At the end of the day, there was a systems failure for various reasons. As I stated in my report, having examined all paperwork and documentary evidence on this matter, I could not identify why what one would have expected to happen did not happen.”

He said that it was a human failure and that he had not been able to identify the individual persons responsible for the system failure which had occurred. It was one which he could not foresee happening again. He was of the view that a situation where four murder suspects were named but no steps were taken simply would not occur again.

- 91) Former Commissioner Byrne said that he could not imagine a situation whereby members of the Garda Síochána would interview suspects who did not wish to be interviewed outside the State. The responsibilities and powers of the Garda Síochána only apply within the State. However he pointed out that there are a number of ways people can be interviewed, including having a suspect interviewed by another on one's behalf. The key issue was therefore whether any further steps were taken, such as having the suspects interviewed by a different agency such as the Scottish police or RUC or, not interviewing them at all. Also, were there further meetings regarding intelligence, were discussions held with the DPP and was background information sought directly or indirectly in terms of establishing where the suspects were at a particular time? He said that C3 was the channel that one would use. He said he found it odd that the 1953 Directive, with which he had never been familiar, would be used to justify events which occurred over 20 years after it was written.
- 92) The Sub-Committee has now however received information from Chief Superintendent Corcoran who is the Personal Assistant to the Garda Commissioner. The Garda Commissioner promised to assist the Sub-Committee by giving the Sub-Committee information and details on issues that might arise. In this regard, former Detective Garda Terry Hynes told the Sub-Committee of 3

separate incidents where he was aware that Gardai has travelled to Northern Ireland in connection with incidents that had taken place in this jurisdiction and on which occasions he believed interviews with suspects had taken place. Chief Superintendent Corcoran was able to confirm the following:

- in respect of a robbery at Dundalk Railway Station in 1973, 2 Detective Gardai interviewed suspects in an RUC station, and on one occasion, in a hospital in Belfast
- in respect of the murder of Mr Monroe Nish in 1972, Detective Gardai travelled to Guernsey to interview a suspect and that permission was sought to travel to Northern Ireland to interview witnesses, and
- in respect of the Boyce and Porter murder case in Donegal in 1973, Detective Gardai interviewed suspects in Northern Ireland with the permission of the RUC and unaccompanied by the RUC.

This entire letter is included at Appendix A.

Other Precedents and The Livingstone Incident

- 93) The written submission of Justice for the Forgotten drew attention to the fact that there were precedents in both jurisdictions for cross-border interviews by both the Gardai and the RUC. They gave the example of the murder of Oliver Boyce and Brid Porter in County Donegal and noted that on 14 March 1973 a team of Garda Officers interviewed three suspects in Belfast and on the following day interviewed a fourth suspect in Derry. They pointed out that blood samples were taken from the three suspects interviewed in Belfast.
- 94) In addition, Justice for the Forgotten drew attention to the fact that a Patrick Anthony Livingstone had been interviewed by RUC officers whilst in Dundalk.
- 95) This alleged incident was obviously relevant to the question of what mechanisms were in place to interview persons on the other side of the border. When Commissioner Conroy attended before the Sub-Committee he was asked if he could enquire into this matter.
- 96) By letter dated 10 February 2006 Commissioner Conroy responded and the Sub-Committee is very grateful to him for his prompt and efficient response in this regard. He informed us that Patrick Anthony Livingstone was a native of Belfast with an accommodation address in Dundalk. Following an assault on an off-duty Garda he was arrested on 5 December 1975 and was subsequently charged with assault occasioning actual bodily harm. At the time the Gardai were aware that he was wanted for questioning in connection with the murder of Samuel Llewellyn on 15 August 1975. He was remanded in custody to Dundalk District Court on 10 December 1975. On that date his case was not reached before lunch and he was

brought back to Dundalk Garda Station where a written record indicates that he was interviewed by RUC officers. The interview took place between 1.40 pm and 2.10 pm. No member of An Garda Síochána was present during the interview. Mr Livingstone was returned to Dundalk District Court where he was successful in obtaining bail. No mention of the interview with the RUC officers was made to the court. Subsequently a warrant was received from the RUC for execution within this State alleging that Mr Livingstone was responsible for the murder of Samuel Llewellyn in Belfast on 15 August 1975. On 23 June 1976 Dundalk District Court ordered the extradition of Mr Livingstone to Northern Ireland. This order was appealed but before the appeal was heard Mr Livingstone was arrested in Northern Ireland. The Gardai understand that Mr Livingstone pleaded not guilty to the murder charge in Belfast in 1975. Commissioner Conroy said that he was inquiring with the PSNI in respect of what facts were proffered by the prosecution in the case. Commissioner Conroy informed the Sub-Committee that *“The interviewing of Mr Livingstone at Dundalk Garda Station on the 10 December 1975 by members of the RUC, unaccompanied by members of An Garda Síochána, runs contrary to the regulations in place at that time.”*

- 97) The Livingstone incident is an extraordinary one and was not something of which Mr Justice Barron was aware. Its significance has come to light during the course of the hearings of the Sub-Committee. It raises the question – if RUC officers could interview a suspect in Dundalk why could not the Gardai interview the four suspects (either themselves or, more properly, through the RUC) in the Ludlow Inquiry. The Livingstone incident (whilst raising serious questions in its own right – which questions are outside the remit of this particular inquiry) makes the failure to follow up the four suspects all the more inexplicable. It also appears to conflict with some of the submissions made to the Sub-Committee in respect of the extent to which the two police forces could and did conduct investigations across the border.

Submissions from representatives on the conflict of evidence

- 98) The Sub-Committee also heard a number of submissions from legal representatives which addressed the conflict of testimony that exists. These submissions were particularly helpful since they set the conflict of evidence that has arisen in its proper context.
- 99) On behalf of Justice for the Forgotten, Mr. Cormac O’Dúlacháin referred to research carried out by Ms. Margaret Urwin which indicated that interviews had taken place in the North on a number of occasions. In respect of the suggestion that there was some sort of policy that the Gardai did not travel to the North his submission to the Sub-Committee was that:

“If there was a general Garda policy, it appears to have been subject to exceptions in certain cases.”

Mr O'Dúlacháin pointed out that:

“Nothing has emerged from documents in the Department of Justice, Equality and Law Reform or any Department indicating such a policy existed”.

Ms. Margaret Urwin described to the Sub-Committee two cases of Gardaí going to the North to interview suspects for crimes carried out in the Republic and of RUC officers travelling south to interview a suspect with regard to a crime committed in Northern Ireland.

- 100) Deputy Murphy asked whether it might have been the case that police forces on both sides of the Border may have drawn distinctions between different types of crimes and that the policy or directive was in force for any matter associated with subversive situations but did not apply to ordinary circumstances. Mr. Ó'Dúlacháin pointed out that it was not clear that the 1953 Directive remained in force by 1976 and that co-operation appeared to have been formalised at that point:

“By the end of 1974 formal procedures had been agreed on the exchange of intelligence and Garda-RUC co-operation, and these had arisen as a result of what were referred to as the Baldonnell panels. By the end of 1974 new procedures governed mutual co-operation on security and investigations and distinguished between co-operation at a Border level between local divisions on each side of the Border and the responsibilities of the various command structures whether C3 or elsewhere.”

He proceeded to inform the Sub-Committee that:

“The Barron Report does not refer to that formalisation of the manner of communications and it does not seem that Mr. Justice Barron has seen the fruits of whatever formal agreement was put in place at the end of 1974. Knowing that there were formal structures for regular review of security matters between the Garda and the RUC we are not aware whether at any of those meetings that may have taken place from 1975 to 1977, the murder of Seamus Ludlow or any other atrocity were raised. While we know there was a structure for communication between the Garda and the RUC and for regular reviews and discussions on security matters, it is not referred to or exhibited in the Barron Report.”

- 101) Ms. Urwin reiterated that formal structures for co-operation had been put in place prior to the killing of Seamus Ludlow:

“...co-operation existed not just between the Garda and the RUC but also between the Irish and British Governments, and the British Government pushed hard for the Irish Army to co-operate directly with the British

army in 1974. The Irish Government, the Defence Forces and the Garda resisted this. There was a close and ongoing co-operation and we have seen the papers for this year and last year in the National Archives in London so we are aware that formal structures had been put in place before Seamus Ludlow was murdered.”

- 102) It appears that matter is still unresolved. Mr. O’Dúlacháin told the Sub-Committee:

“we do not know what political direction was given following the events of 1974 or whether it was the subject of any changes. In 1979 the then Minister for Justice, Mr. Collins, expressed the view that disclosures made early in that year may also have been politically motivated in the sense of being part of a bargaining game for security initiatives. We have seen neither the Irish diplomatic or intergovernmental papers nor the UK papers for 1978”.

- 103) Deputy Power asked Mr. Ó’Dúlacháin about the policy considerations he appeared to have unearthed in his trawl through the English 1974-75 files and the possibility of a joint or agreed policy on mutual co-operation. Mr. O’Dúlacháin responded by revealing that:

“There were two meetings in Baldonnell, one early in 1974 and another in September 1974. What are referred to as the Baldonnell panels were established. Effectively they were expert groups trying to put in place procedures and protocols for mutual co-operation. They seem to have become operative some time in or about October 1974. There were meetings between the Garda Commissioner and the RUC Chief Constable which were police force only meetings at which the lines of communication between the two forces were clarified, in particular the lines at local divisional level and the lines at what might be regarded as a technical level in terms of direct communication between the ballistics and forensic departments North and South. In one respect that is obvious in the Ludlow report where there is communication from the data reference centre in Belfast straight back to the ballistics office in C4.

What we are not clear about is the exact detail of the protocols that were agreed. We are aware that they existed at different levels, that they related to matters such as communications, that for the purposes of ensuring secret communications the British Government supplied the Garda with the necessary equipment, and that it was willing to supply equipment to the Irish Army as well in terms of secure radio links and such matters. Quite an amount of detail was gone into. How that was put into practice from early 1975 onwards we do not know”.

- 104) Deputy Power then asked, if there was such a protocol or mutual co-operation policy in place at that stage, how it could be reconciled with its non-implementation in the Ludlow case. Mr. Ó'Dúalacháin answered that:

"We cannot reconcile it. That is the issue that arises out of the report. There is no reconciling it. If a decision or minute had been recorded, it would lead one to why a decision was or was not taken. That is the issue that requires consideration".

The Sub-Committee is not in a position to resolve this issue.

- 105) Mr. Ó'Dúalacháin concluded:

"What emerges from the discussions at what I call the civil servants' meeting in early September 1974 is that they were looking at the practicalities of all aspects from crime detection through to prosecution. The purpose of the entire exercise was to bring about prosecutions as if the Border were no obstacle. The whole objective of the agreement between the Irish and British side was that one would not end up with circumstances as arose in January-February 1979 where witnesses were not interviewed and a prosecution was not proceeded with".

- 106) Senator Walsh noted that Ms. Winter, British Irish Rights Watch had been dismissive of the reason given by Mr. Justice Barron for the non-pursuit of the investigation and that she found the reciprocity argument un-compelling. He asked whether any such policy would be written down. Ms. Winter responded by saying:

"If policies had been developed at governmental level, they would have been written down because they emerge eventually on the public record in one shape or form. I am not sure if there was an informal understanding between the RUC and the Garda. I would have expected, in the context of intelligence matters and high level officers, there would have been an agreed protocol but that does not appear to have emerged in Mr. Justice Barron's research".

- 107) Mr. Greg O'Neill made the helpful insight that:

"A great deal of policy and practice relates to the alleged legal constraints, which were in fact phantom. If the political will to take action existed, it would have been possible to do so because the supposed constraints were largely non-existent".

Resolving the conflict

- 108) As stated before, the Sub-Committee is not in a position to resolve the conflict that all of these submissions highlight. On behalf of the family Ms. Deirdre Murphy, S.C., submitted to the Sub-Committee that a public inquiry was the appropriate mechanism to resolve the issue:

“A public inquiry would test each of those issues and decide whether former Commissioner Wren was correct in stating that no decision was taken. His view is that no decision was taken because it could not have been made due to the fact that there was nothing to decide upon on foot of the law being clear. Everybody disagrees with him because nobody else knew evidence about the 1953 directive would appear. That matter is up in the air.

If, for the sake of argument, a tribunal of inquiry came to a conclusion that a decision was taken by former Commissioner Wren, questions would arise as to why he has to date denied that such a decision was made and with regard to who else was party to the decision. There are many possibilities that have not been explored or nailed down, notwithstanding two Garda inquiries.

This report will return to the question of what type of inquiry might assist in the resolution of the conflict of testimony in due course.

Chapter 6

MISSING DOCUMENTS AND MISSING EVIDENCE

- 109) In previous reports this Joint Committee has addressed the issue of missing documents and missing evidence. Indeed this has become a strong theme of all events investigated. The murder of Seamus Ludlow is no different.

The Exhibits

- 110) At page 8 of the Barron Report, it is stated that some exhibits are missing, including two of the bullets found at the murder scene and photographic records of certain fingerprints taken at the scene. At page 24, the Report says that the Barron Inquiry wrote to the Gardai asking if there were any exhibits still extant from which DNA samples might be obtained. The Gardai replied that there were not.
- 111) Former Assistant Commissioner Ainsworth stated that “*Exhibits in a murder inquiry must always be preserved indefinitely.*” The Sub-Committee endorses this view. It is extraordinary that in the context of the murder of a citizen, real evidence was not preserved. Commissioner Conroy stated that “*I would go so far as to say very limited forensic evidence that could be developed, other than the bullets, was found at the scene of the crime.*” He clarified that it did not appear that a chip bag with fingerprints on it had ever been found at the scene (which was something that had been suggested in some of the other submissions to the Sub-Committee).
- 112) The failure to retain the exhibits in the case is of particular concern for the following reason - when the four suspects were interviewed by the RUC in 1998, two of them made admissions. The DPP for Northern Ireland has since made a decision that there is not sufficient evidence to mount a prosecution. If there had been some exhibits preserved, and even if one of those could have been linked to the four suspects, then it may have been the case that a different decision could have been reached.
- 113) The Sub-Committee notes that the Supreme Court has made it clear in recent years that there is a duty on the Gardai to preserve evidence. In the case of *Braddish –v- The DPP* [2001] 3 IR 127, Mr Justice Hardiman, giving the judgment in the Supreme Court stated:

“It is well established that evidence relevant to guilt or innocence must, so far as necessary and practicable, be kept until the conclusion of the trial. This principle also applies to the preservation of articles which may give rise to the reasonable possibility of securing relevant evidence”.

Garda files

- 114) At page 7 of the Barron Report it is stated that some Garda files were either missing or were never brought into existence. There are no Security and Intelligence (C3) files on three of the suspects about whom information was received from the RUC in 1979. There was a file on the fourth suspect that had been opened in 1976 as a result of unrelated information received from the RUC, but unfortunately it is missing. No files were found from the Murder Investigation Unit or the Fingerprint section. Apparently, incomplete files were found in the Ballistics section.
- 115) Given the fact that C3 received a letter from the RUC naming the four suspects for the murder, it is a matter of particular surprise to the Sub-Committee that there appear to be no C3 files on three of those suspects. It remains utterly unclear why this would be the case.
- 116) The searches for documentation carried out by Chief Superintendent Murphy are set out at pages 49-50 of the Barron Report. It transpired that the correspondence registers and occurrence books for Drogheda and Dundalk Garda stations had been destroyed.
- 117) Former Chief Superintendent Cotterell stated:

“I noticed when reading the report that there was correspondence missing. I could well imagine this happening because the station in Drogheda at the time was a very old dilapidated building, which has been replaced by a nice new one. Given that files were transferred from there to Dundalk, and after a number of years transferred back to Drogheda again, I can well imagine many of them being lost.”

- 118) Former Detective Sergeant Kavanagh aided Chief Superintendent Murphy in the 1998-99 investigation in carrying out archive searches of documentation relating to the case. He confirmed that he had been unable to locate the Ludlow file in the archives located under the Garda Technical Bureau. He said he did not foresee a change in that position and did not believe that anyone was holding back a file.

Department of Justice Files

- 119) At page 8 of the Barron Report, Mr. Justice Barron reported that he had been informed by the Department of Justice, Equality and Law Reform that no contemporaneous file on the murder of Seamus Ludlow had been found. The only files that the Department did locate were as follows:

- (a) File S39/98 – it begins with cuttings of newspaper articles from the Sunday Tribune dated 8 and 15 March 1998 in which the existence of the four suspects was revealed for the first time to the general public.
- (b) File S57/99 – it begins in November 1999 with a request from the Ludlow-Sharkey family for an inquiry into the murder.
- (c) File in the 72/ series (which deals with autopsies and crime statistics) – contains a request for an autopsy on the victim and a copy of the Garda file on the case.

Mr Justice Barron concluded that:

“It is clear from the above that there was a Departmental file opened on the death of Seamus Ludlow, which contained a copy of the Garda investigation file. But no additions were made to it when Gardai received information from the RUC regarding suspects in 1979: nor was a new file opened on the matter. Given that the publication of similar information in the Sunday Tribune articles of March 1998 led to the opening of a new file, it is hard to understand why the same was not done in 1979 – assuming that this information was passed to the Department.” (page 9 of his report)

- 120) In his submission to the Sub-Committee, Minister McDowell stated that:

“The only thing I can say for certain is that there is no file, no documentary evidence and no folklore memory which suggests the matter was considered by the Department. That does not suggest conclusively that a verbal communication did not take place.”

Deputy Power pointed out that if the usual procedure was for such applications to be entirely oral, no inference can be drawn from the fact that there is nothing now in the Department's records.

- 121) Minister McDowell reiterated the assistance his Department had given and was willing to give in respect of the issue:

“The co-operation of the Department was complete and wholehearted. There was discussion in the Department when Mr. Justice Barron was appointed. It was not a matter of my giving an instruction; there was a unanimous agreement that he was to be enthusiastically co-operated with and that every file was to be turned inside out to search for any information he might want. He received extensive briefings, which his report reflects. At this stage, the same applies with regard to this Sub-Committee. If there is material of any kind in the possession of the Department, even on a collateral issue such as that to which the Deputy referred, namely, credibility, we would be happy to provide it.”

The Department keeps files of this kind at three locations. It has a security file repository in the departmental headquarters, keeps other files at Santry and gave many files to the National Archives. The Department's archive at Santry contains less interesting material while most of the material that went to the National Archives has not yet been examined. However, all three sources of material are available and we will provide it and assist anybody to search for material that would be of use to the Sub-Committee."

- 122) Mr Gerry Collins stated in respect of contacts between the Gardaí and the Department of Justice:

"I have no doubt but that extensive records would have been kept. They should have been kept and I am certain they were kept at that time because any document I ever got from a junior, say from Mr. Kirby or his assistant - a document related to security - would have been brought in by the person by hand and I would have seen what was in it. I would discuss it with him, note it, sign it and date it. I wanted to mention that. If Mr. Kirby had no knowledge of this business, as the Report says, I can understand that. I just wanted to say that. He is the only person to whom the committee could have spoken about this."

It appears there was a lot of communication between the Department and the Gardaí and yet no files appear to have been kept. The reason for this remains a mystery.

RUC/PSNI files

- 123) The Barron Report records that the PSNI submitted a report on 9 June 2003 which contained no new information concerning the suspects and which stated that no records had been found concerning the questioning of Kevin Donegan. On 30 September 2004 the Barron Inquiry obtained a copy of the RUC investigation file and stated *"The file contained a substantial amount of material relating to the interviewing of suspects in 1998; but no documentation from 1977, when information on the suspects was first received from RUC Special Branch"* (page 10). The legal team to the Sub-Committee has looked at the investigation file which was supplied by the RUC. It shows that the RUC conducted a full and complete investigation of the matter and conducted a large number of interviews with the four suspects. In the file, the RUC note that the Gardaí do not appear to have followed up the information given to them about the four suspects in 1979.
- 124) The requests for documentation by Chief Superintendent Murphy are set out at page 50 of the Barron Report. Details of any RUC correspondence was either not available or not forthcoming and Chief Superintendent Murphy *"was not*

surprised that documents were not made available, as it would have been contrary to RUC Special Branch practice to release documentation”.

- 125) The Sub-Committee deeply regrets the lack of co-operation in this regard.

Northern Ireland Office Files

- 126) The Barron Report records that all that the Inquiry received from the Northern Ireland Office were three references to the murder in intelligence summaries. The Barron Inquiry had no success in follow up queries and in particular seeking information about the questioning of Kevin Donegan. It concluded:

“The inquiry queried this apparent lack of documentation in a further letter dated 28 November 2003, but received the same response in reply. A final attempt to elicit information under this heading was made on 14 July, but had not been replied to at the date of completion of this report.”

- 127) Once more, the Sub-Committee deeply regrets the lack of co-operation in this regard.

General observations

- 128) On behalf of Justice for the Forgotten, Mr. Cormac O Dúlacháin made the following general observations in respect of the availability of files, the non-accounting for files, missing files, missing exhibits and material no longer recoverable:

“That is a common trend emerging in relation to all the atrocities during the 1970s that Mr. Justice Barron has been asked to investigate. It begs a question that has not been addressed or answered in the latest Barron Report, that whether what is missing is the result of general maladministration over the years or is particular to these atrocities. From the Barron Report, we are not able to assess whether the documents, exhibits and files that are missing are part of a larger number of exhibits or investigation files that are in turn missing or someone has selectively gone through the archives and moved material particular to these inquiries.

It appears that this is not a question that Mr. Justice Barron can ask because from the Report it appears that in so far as a search for documents has been conducted, the actual physical and manual search has been entrusted to the authorities who have those documents. In other words, as far as we know, no member of the Barron team has physically entered the Department of Justice, Equality and Law Reform or the

headquarters of the Garda Síochána or the technical bureau to try to establish exactly in what context these exhibits and files are missing.”

- 129) In terms of further investigations he offered the following views:

“It should be possible to trace minutes of a meeting between Irish and British civil servants in early September 1974, either in the files of the Office of the Attorney General here or in associated Government Departments, to investigate whether a briefing paper or note was prepared or to examine a minute of the meeting. It certainly appears that, outside of the Garda Síochána, at a formal policy level, decisions were made on whether, and to what extent, interviews should be allowed to be conducted in this State by the RUC.”

- 130) The Minister for Justice, Mr Micheal McDowell, T.D., noted that the Barron inquiry had been happy that the Department had co-operated fully and went on to tell the Sub-Committee that:

“The Department has no file or papers dating from 1979, or the intervening years, corresponding to the time when the RUC forwarded information about the four named suspects to the Garda. On this matter the Barron report states it is hard to understand why a file was not opened in 1979, assuming that “this information was indeed passed to the Department”. That comment goes to the nub of the matter. If papers had been forwarded, I can only surmise a new file would have been opened or, more likely, that the papers would have been placed in the existing Department file, opened in 1976, containing the original Garda report. Since neither of these actions took place, it seems the most reasonable conclusion in the circumstances is precisely that the information the Garda obtained from the RUC was not forwarded to the Department”.

- 131) **The Sub-Committee is deeply concerned that missing documents and evidence feature so strongly in this report, just as they have done in our previous reports.**

The Letter dated 27th April 1976

- 132) During the hearings it emerged that a letter was communicated to the Gardaí, naming one of the four suspects as a person in whom the police should take an interest. The letter pre-dated the murder of Seamus Ludlow. On behalf of the family, Mr McGuill said that they had not adverted to the existence of this document since it was only obliquely referred to elsewhere. He pointed out that it was not addressed in Mr Justice Barron’s Report.
- 133) At the request of the Sub-Committee, Assistant Commissioner Martin Callanan made available for inspection to the Sub-Committee’s legal advisers, a document

dated 27 April 1976. This document was a two page letter from the RUC Headquarters on Knock Road, Belfast. The document was marked "Secret". It was a letter to John Paul McMahon, Chief Superintendent, based at Phoenix Park. It is difficult to make out the signature on the document. The document provides a pen picture of seven individuals who are related to the UDF, the Red Hand Commandos and the UDA. The letter seems to be a response to a request from Chief Superintendent McMahon to the RUC for information on members of the UDF, the Red Hand Commandos and the UDA. One of the individuals who later became a suspect in the Seamus Ludlow murder inquiry is described in significant detail in this document. His age and date of birth are given. The document also gives details of his previous convictions.

- 134) There is nothing expressly in this document to suggest that this individual or any of the other persons named in it was engaged in cross-border activity or posed any threat to persons in the Republic. However, the fact that Gardaí received the letter in response to a query they had raised suggests these were persons in which they were specifically interested.
- 135) Assistant Commissioner Callanan indicated that this document had been shown to Mr Justice Barron.
- 136) The Sub-Committee is of the view that this document raises questions about the adequacy of the 1976 investigation. In particular, the fact that this individual was named in this document raises the question as to why intensive cross-border inquiries were not conducted in 1976 in order to ascertain whether Seamus Ludlow could have been murdered by one or more of the persons identified in the document that had been supplied by the RUC a few short months previously. The Sub-Committee wishes to record its thanks to Assistant Commissioner Callanan for addressing its query in respect of this matter in such a timely and efficient manner.

Chapter 7

GARDA INTERACTION WITH THE FAMILY

- 137) One concern expressed by the family was why the suggestion had gone around at the time of the murder that Seamus might have been connected to the IRA. Mr Kevin Ludlow complained that the Gardaí had done nothing to correct this false impression. He stated:

“They said he was an IRA informant and that is why the IRA killed him, which was wrong. These were the lies they were giving out about the man. Seamus worked for another party at elections in Ravensdale and he definitely had nothing to do with the IRA. The IRA had no call to kill him anyway – definitely not. This is the way it was doing these things, just to blacken the family.”

- 138) Ms Nan Sharkey stated that *“We all had to listen to the rumours. What else could we have done? A lot was said that was not correct.”* Mrs Eileen Fox stated that *“... I thought it was just intimidation by the Garda. Even the day after they were still at the same story.”*

- 139) Deputy McGrath asked Mrs Fox if the Gardaí had ever mentioned the scenario of loyalist paramilitaries or members of the UDA being involved in the murder and she said *“never”*. Michael Donegan stated that:

“We have lived continually in the south Armagh area for all those years. I do not think there is anyone in the area who really believes that uncle Seamus was an informer, even though these rumours were out there. The rumours never went away. It would be wrong to assume that the rumours just came from the gardaí - they did not. I have with me copies of two books - two scurrilous publications - written about the SAS, both of which state as a fact that uncle Seamus was an informer who was murdered by the IRA. I presume that the source of that information is the British Army. Clearly, the rumour mill was North and South.”

- 140) Mr. Brendan Ludlow stated that *“Basically speaking, the Garda told my father nothing. They treated my aunts and uncles with the utmost disrespect.”* Ms Briege Doyle described being interviewed by Special Branch officers in the back of a car and stated:

“I was afraid. I was in the back of the car and they were in the front. They asked me repeatedly who did I think killed my uncle. I said I did not know. They repeated the question and said the IRA shot him. I did not know what the IRA was. I knew nothing.”

141) Mr Jimmy Sharkey explained to the Sub-Committee that:

“I, too, was twice questioned in the back of a car by Special Branch officers. On the first occasion, they took a softly softly approach, as they tried to get to know what I knew and things like that. The second time, they took a more hardline approach when they asked me who I thought killed Seamus. They kept saying that it was the IRA, but I said I did not think it was the IRA. When I mentioned to them that I thought the SAS or a loyalist group killed him, one particular garda got very agitated about that. He kept pointing and gesturing to me in the back seat saying things like, “You know f-ing well who killed Seamus Ludlow. You tell us it was the IRA.””

He added:

“I did not get agitated about that because I knew what these guys were up to. Their whole persona and body language told me a different story. I was probably more streetwise than Brieghe Doyle, so I knew about being taken into a car with strange people. I knew what was happening in the north of Ireland at that time, with loyalist groups, the IRA and the SAS operating along the Border. However, that was the line of questioning from the gardaí. They did not want to hear anything about loyalist groups or the SAS; all they wanted to hear about was the IRA.”

He also described further meetings with a member of the Gardaí in 1978, who when he asked him who had killed Seamus, simply abused him.

142) Mr. Ed Moloney, a journalist who published articles on the death of Seamus Ludlow, was of the view that the Seamus Ludlow affair was a “scandal” and stated:

“The Garda would have known almost immediately that all the customary hallmarks surrounding the shooting of an informer by the IRA were missing in Seamus Ludlow's case. Normally, informers would be taken away for lengthy interrogation to extract a confession, often over days, and then shot, whereas the Garda knew Seamus Ludlow had been alive and drinking in a bar the night before. The IRA has rules and regulations governing the treatment and proceedings against suspected informers and however one regards the IRA, they themselves take these matters very seriously.”

143) Former Detective Inspector Courtney stated that in respect of 1976:

“We had an open mind on the investigation. We investigated it from all angles, keeping in mind that it could have been an ordinary domestic murder, a Provisional IRA or UDA murder. We had no definite suspects or line of inquiry”.

He added:

“I visited the family at least twice in the course of the investigation and at the early stages. I spoke to them and told them that we were doing our best. I got on well with them and they did not make any complaints to me at any stage when I was at the house. I said we were doing our best to try to find the persons involved.”

- 144) Deputy Costello asked former Detective Sergeant Corrigan if he had ever been aware that the Gardaí were suggesting that the IRA had been involved in the murder and he responded that there was gossip in all investigations and that he had not heard any rumours. When asked by Deputy Murphy whether it was reasonable that the most active terrorist organisation in the area at the time would have been suspected in any murder he stated that they would be in the category of suspects and that in a murder investigation one must keep an open mind until persons or organisations are eliminated. He agreed that it was logical for the Gardaí to think that IRA members were suspects since Seamus Ludlow might have accidentally stumbled across some sensitive IRA information.
- 145) Mr Brendan McGahon, a former Fine Gael TD for Louth, expressed his desire that the people who took Seamus’s life would be extradited and made to pay the penalty for taking his life. He stated that:

“When Seamus was killed and his body was found lying on the roadside a couple of hundred yards from his home, it was reasonable to assume that the IRA had done it because the IRA was the only firm operating in the business of slaughter or murder in the Border area at that time. The UVF and the other loyalist terror groups did not come across the Border, with the possible exception of the bombing in Dundalk which took the lives of two Dundalk people. It was a normal assumption to make, both on my part and, indeed, on the part of the Garda which, I understand, believed it was the IRA. In my opinion, there was no other rational view that could have contrasted with that belief.

I understand that in the interview with Mr. Pat Kenny I said I was told by a member of the Garda. I obviously was but for the life of me, I cannot remember. I did not make a conscious note at that time that 25 years later I would be asked to relay what occurred. I just do not know who told me but, as a Deputy in a grief-stricken and violent area of the country, I was concerned about the deprivation that the IRA was causing to my county, and my town in particular, and I would have consulted the Garda on many issues relating to the scourge of the IRA in the Border area.

I was wrong in blaming that organisation in this case but as to who told me, I honestly do not know. If it was to save my own life, I could not name a person. It is not that I do not want to help the committee. I never sat on fences in my life and I am not doing so now. The only reason is that I cannot remember who told me.”

The Sub-Committee also noted that the Garda Síochána Act 2005 establishes an inspectorate which will monitor the operation and administration of the force and report to the Minister for Justice, Equality and Law Reform with advice on best practice. The Commissioner is now statutorily obliged, if there is a problem or something untoward, through the Secretary General of the Department, to inform the Minister.

- 146) The Sub-Committee notes the strong feelings that the family have in respect of the manner in which they were treated by the Gardaí and, in particular, in respect of the unfounded suggestions of an IRA involvement. **The family appear to have been treated in an appalling manner. The Sub-Committee notes and welcomes the apologies proffered by the Gardaí and the Minister for Justice, Equality and Law Reform. The Gardaí do not seem to have made any inquiries in Northern Ireland in 1976 or seriously considered the possibility of collusion. The Sub-Committee wishes to emphasise the fundamental importance of treating the families of the victims of violent crime with the utmost sensitivity.**

Chapter 8 COLLUSION

- 147) In previous reports, the Joint Committee indicated the grave concerns it had about the role played by collusion in the events it is examining. Once again it has emerged as a strong theme in the current inquiry. In its written submission to the Sub-Committee British-Irish Rights Watch stated that it “... *has always been puzzled as to why the Irish authorities seem so untroubled by the fact that the murder of Seamus Ludlow involved a serious cross-border incursion by two serving members of the British army.*”
- 148) Mr Michael Donegan repeated the utterly extraordinary story of how his father, Kevin Donegan (now deceased), was kidnapped by the British Army a day after the funeral of Seamus. His account is worth recounting in full:

“... the day after Uncle Seamus was buried, a party of British soldiers came to our house. We live in a place called Drumintee, just a few miles across the Border close to Forkhill Barracks. My father opened the door to them and they told him they were sent by the RUC to ask some questions of my mother, who was the sister of Seamus Ludlow. It was very strange, when I think about it, that they knew my mother was Seamus Ludlow's sister. Some of our neighbours did not know that; the British Army did. My father told them it had nothing to do with them, they were not police, this was not their jurisdiction and that they should go away. They insisted they were going to get the answers they were looking for. When eventually my mother came out to see what was going on, they started putting questions to her, such as why the IRA would do that to her brother as surely to God it would not do that for nothing. They suggested he must have been involved in something, must have been a bad man and deserved it. This went on for some time.

When they departed, my father got on a bicycle, cycled the two miles to Forkhill to take it up with the RUC, to make a complaint. When he got there, apparently there were no RUC officers available or if they were there they were not interested in him. He was then abducted, put aboard a British military helicopter and flown to Bessbrook where he was interrogated for over an hour by a military intelligence officer. He did not speak about it much, but he always said the one thing they wanted to know was what the Garda knew and was thinking, and what was its line of inquiry.

He was away from home for more than an hour. My mother became rather concerned because Forkhill is only a short distance away - about ten minutes on a bicycle, there and back - and he had not returned. She

telephoned the barracks and was told they had never heard of him. She became very concerned and telephoned the local councillor. Like the good man that he was, he jumped in his car and drove straight to Forkhill. He was satisfied that my father was not there. At first, they would not tell him where my father was. Eventually, he got it out of them that my father was in Bessbrook. He then drove to Bessbrook to bring my father home.”

The Sub-Committee is of the view that this event, taking place as it did the day after the funeral of Seamus Ludlow, gives rise to the most serious of concerns about the precise knowledge of the British Army at the time of the murder of Seamus Ludlow and its aftermath.

- 149) The Barron Report stated that the Inquiry had not received any information from the Northern Ireland authorities in respect of this matter and had simply been told that there was no material found on file to indicate that the Army questioned Mr Donegan. The inquiry had written to the authorities in Northern Ireland expressing surprise at the absence of any army records, given that such records appeared to be kept meticulously in both jurisdictions. At the time of the completion of the report no reply had been received by Mr Justice Barron to this letter.

- 150) Once again, the Sub-Committee is disappointed that the non-cooperation of the British authorities in this regard means that it is not possible to explore the significance of this incident any further. Mr Michael Donegan was of the view that concerns that the British authorities might not co-operate was no reason not to have a public inquiry:

“If it means the British do not co-operate, so be it. That does not mean that an inquiry cannot go ahead. The British can be shamed for their non-appearance.”

- 151) Mr Jimmy Sharkey also touched on collusion in his submission to the Sub-Committee:

“The people involved would not have taken the chance of driving into a hotbed such as Dundalk town or even into County Louth. It would be like us going to the Shankill Road to kill someone. One has to know where one is going. These guys, two members of the British security forces, were in the town that night, in the car, heavily armed. Their target did not appear, so they picked up Seamus. It could have been anyone, but they killed him.”

- 152) Deputy McGrath asked Ms Jane Winter of British-Irish Rights Watch about collusion and she stated:

“... there seems to have been a toleration of members of the regular army also being members of paramilitary groups. They obviously had access to

weaponry, know-how and explosives. Many were part-time soldiers and were obviously spending part of their time in the army and part in paramilitary groups. However, there seems to have been very little true concern about this or attempt to eradicate it. Attitudes today are perhaps very different but at the time there seems to have been a great deal of tolerance for that sort of thing.

I believe there was also a degree of direction going on. I certainly think, in the case of the Dublin and Monaghan bombings, that the bombs in Dublin were very sophisticated for their day and that outside help must have been given to the people who planted those bombs in their manufacture.”

- 153) She also points out that the Barron Report did not explain what happened in the period between when the RUC apparently knew the name of the perpetrators and when they passed that information on to the Gardai in 1979. She concluded;

“Over the 15 years I have been researching human rights violations, particularly in Northern Ireland but also in the Republic, it has become increasingly apparent that in Northern Ireland, in particular, there was very deep infiltration of paramilitary groups of all factions and that the intelligence services, whether army intelligence, special branch for the police or MI5, had a pretty clear idea of who was doing what to whom and who was responsible because they were collecting intelligence of a very high order and they were not using it for the legitimate purposes of prevention or detection of crime. It seemed almost to be an end in itself to understand what was happening, to know what was going on and, to some extent, to control it. A lot of individuals, as we have seen in Seamus Ludlow's case, were riding two horses both in the army and in loyalist paramilitary groups. However, it was not just individuals who were involved, like rotten apples in the barrel.”

- 154) For his part Mr Ed Moloney, journalist, speculated:

“There is an elephant in the room and everyone is pretending it is not there. It is time to talk about that elephant, not least to ask whether it is real or merely an illusion. For this or any other investigation to probe the killing of Seamus Ludlow without examining this issue, to leave the question unasked or unanswered, would render the investigation incomplete and deny the Ludlow family justice. No matter how awkward, embarrassing, inconvenient or even irrelevant in some eyes, the question must be asked and answered because, if we are honest, we all know it has lurked, sometimes unspoken, sometimes not, in the minds of every person who has had anything to do with the attempt to establish the truth behind the events of 2 May 1976. The elephant is the possibility that Seamus Ludlow was killed by a loyalist paramilitant who was working as an agent for British intelligence and whose role was covered up by them, with the

assistance of elements in the Garda Síochána. It derives both from the realities and history of the dirty little intelligence war that was fought in the North and from many of the circumstances of the Ludlow killing and especially its aftermath.”

155) When asked by Deputy McGrath whether British Intelligence had penetrated C3 former Commissioner Wren referred to the Crinnion case when a conviction was obtained.

156) When asked about collusion by Deputy Ardagh, former Detective Sergeant Corrigan stated that:

“I was afraid that the fact that members from Dundalk station were going to the North of Ireland would filter out to loyalist organisations because the general cry from the RUC at that stage was that we were not doing enough.”

In response to a question from Senator Walsh, he responded:

“In my experience the RUC would not have been as forthcoming in supplying information on matters relating to the loyalist side as they would have been in relation to those on the nationalist side. That was my overall assessment of the situation.”

157) **The Sub-Committee cannot resolve this issue. It can only say that it has the gravest of concerns about the role collusion played in the murder of Seamus Ludlow. It is undisputed that two of the suspects identified by the RUC were serving members of the UDR at the time of the murder. The suspicion of collusion arises so strongly because of the following three facts:**

- (1) Two of the suspects were serving members of the UDR.**
- (2) The fact that the brother-in-law of Seamus Ludlow, Mr Kevin Donegan, was kidnapped the day after the funeral by the British Army, who wanted to know what the Gardai knew about the case.**
- (3) No notes of the interrogation of Mr Kevin Donegan by the British Army have ever been made available by the British authorities.**

There are disturbing parallels between the role collusion played in the murder of Seamus Ludlow and the role collusion played in the Dublin and Monaghan bombings, as discussed in the previous two reports of this Joint Committee.

Chapter 9 THE INQUEST

- 158) One of the issues which arose in the Barron Report was the non-attendance of family members at the inquest due to lack of notification by the Gardaí. Mr. Justice Barron found that there appears to have been no justification for the failure to notify Mr. Kevin Ludlow of the date of the inquest into his brother's death. Given the nature and circumstances of the death, other family members should also have been notified. The fact that the inquest proceeded reflects a belief that because the cause of death was undisputed, the inquest procedure was a formality. While this was technically true, the decision to proceed in the absence of family members caused them unnecessary hurt and annoyance at a time of extraordinary sadness and difficulty in their lives.
- 159) In his submission to the Sub-Committee, Mr. Justice Barron agreed that the family should have been notified in a professional and impartial way, stating that: *“It is only reasonable that as many members as possible of the family of somebody who is murdered in such circumstances are told about it.”*
- 160) A new inquest was held into the death of Seamus Ludlow in 2005 and the coroner returned a verdict of unlawful killing. The next of kin were represented at this second inquest and the Department of Justice, Equality and Law Reform provided an *ex gratia* payment to meet the costs of the legal representatives who had acted for them at that inquest.
- 161) The Sub-Committee heard submissions from the family members about the original inquest. Mr. Kevin Ludlow stated that the Gardaí: *“...waited until the last minute before coming to my house - I was away working in Newry - to tell us that the inquest was being held.”* He explained that: *“They say there was a mix up but how could there be a mix up with such an important inquest? There could not be a mix up. That just shows how they were covering up everything all the time.”*
- 162) Mr. Jimmy Sharkey also took the view that there was a deliberate policy to keep the family away from the inquests and this was part of a *“cover up”*.
- 163) Mr. Kevin Ludlow described how he had been on holidays in Cavan in the last week of July and the first week of August 1976. On his return, a neighbour had told him that the Gardaí were looking for him and that he thought it was in relation to the inquest. He went up to the barracks *“....but there was no word of the inquest.”* He described how he was to go back to work in Newry on the Tuesday. That morning, at 10:15 a.m. a Garda called to his house and said that the inquest was to be held at 11 a.m. He asked if it could be put back as he was working in Newry but the Gardaí told him that it had to be heard first as it was first in the list.

- 164) No family members were contacted about the inquest and Mr. Ludlow agreed that the family were unhappy with the way it was dealt with and would welcome an apology from the Gardai.
- 165) Mr. Michael Donegan pointed out that first time the family heard of the inquest was in the following weeks in the *Dundalk Democrat*. He highlighted the hurt that this had caused the family and he pointed out that *“It was embarrassing to find we did not know what had gone on at the inquest into how our loved one had been murdered in such foul circumstances.”*
- 166) Commissioner Conroy apologised to the family for the way the inquest was handled. He noted that the Gardai did not request that the coroner adjourn the inquest and he stated that *“That is the least I would have expected to be done in order that the family would be able to attend and hear the evidence.”* In a follow up letter to the Sub-Committee Commissioner Conroy stated that:
- (a) He was in broad agreement with the list of recommendations outlined in the report of the working group reviewing the coroner service. In particular he fully supported the recommendations dealing with notice of inquests.
 - (b) He was of the view that it would be more appropriate for the Coroner’s Office to have the necessary administrative capability to service the assembly of a jury for a Coroner’s inquest.
 - (c) He agreed that a Coroner should release documents to interested parties except in certain circumstances which would have to be defined.
 - (d) He agreed that witnesses should be granted anonymity in certain circumstances.
 - (e) He was of the view that the taking of evidence from witnesses outside the jurisdiction should be considered by means of video-link and the conditions defined in statutory terms for the taking of such evidence.
- 167) Minister McDowell also made submissions on this issue to the Sub-Committee. He pointed out that *“current best practice on the part of coroners is to afford the next of kin every opportunity to attend inquests.”* He said that this practice developed in response to a ruling of the High Court which found that failure to give the next of kin an opportunity to be heard at an inquest constituted a breach of the rules of natural and constitutional justice. He also stated that coroners are now advised that if they are not satisfied that the spouse or next of kin have been properly notified they should be prepared to adjourn an inquest.

- 168) Minister McDowell also told the Sub-Committee that responsibility for holding the inquest in a proper and fair manner is entirely the coroner's and is not a matter for the Garda Síochána.
- 169) He made reference to the *Report of the Coroners' Review Group* which recommended a comprehensive overhaul of the coroner service with regard to, firstly, the legislation governing the work of coroners, secondly, support services available to them and thirdly, the structural organisation of the coroner service and pointed out that this reform effort was further enhanced by the *Report of the Coroners' Rules Committee* in October 2003.
- 170) These Reports formed the background to the Government's approval for the early drafting of a Bill to comprehensively reform the legislation relating to coroners.
- 171) Mr. McDowell described the proposed new Bill which, he stated, incorporates many of the recommendations made by the Coroners Review Group as well as having regard to developments since in jurisprudence and ongoing reform of coroner services in other common law jurisdictions.
- 172) He told the Sub-Committee that the Coroners Bill would radically reform the coroner service and that it would provide for a modernisation of the death investigation, post-mortem and inquest procedures so as to ensure a better service to society in general and the relatives of the deceased in particular, than is currently possible under the Coroners Act 1962. He expressed deep regret to the family and next of kin of Mr. Seamus Ludlow, "*on what, by any standards, was a deeply unsatisfactory and inexcusable experience in the holding of the first coroner's inquest.*"
- 173) He identified two critical elements in the reform of the coroner service: the development of optimum structures and administration for a modern coroner service; and the widening of the scope of the inquest. He pointed out that the Bill provides for the establishment of a coroner service. Once that service is established, full responsibility for coroners, including financial responsibility, will rest with the Minister for Justice, Equality and Law Reform and the involvement of local authorities which provide the coroner service and the accommodation for it will cease.
- 174) The Bill proposes to widen the scope of the inquest from investigating the proximate medical cause of death, to which it is confined at present, to establishing in what circumstances the deceased met his or her death. Current law in the Act of 1962 and as interpreted by the courts, provides for a restrictive approach as to the examination at inquest of "how" the person died. The examination is limited to the proximate medical cause of death. The Coroners Review Group recommended the extension of the remit of the coroner to the investigation of the wider circumstances surrounding a death and that it be expressed in positive terms in any new legislation.

- 175) Minister McDowell also highlighted the necessity for the new coroner legislation to meet the requirements of the European Convention on Human Rights. He told the Sub-Committee that judgments from the European Court of Human Rights in Strasbourg and decisions about its application in the United Kingdom, in particular a decision of the House of Lords in Britain which interpreted Article 2 of the Convention as providing for a more extensive investigation of the circumstances of death, seemed to indicate that an extension of the scope of an inquest is not simply a policy choice but is effectively required to meet the obligations of the Convention. The effect of some judgements of the European Court of Human Rights is that there must be provision for legal aid in cases where there is involvement of the State in the circumstances of the death. The Bill provides that the Minister for Justice, Equality and Law Reform may, with the consent of the Minister for Finance, arrange for the granting of legal aid in proceedings before a coroner where a person has died in, or resulting from being in, State custody or in certain institutional care situations.
- 176) The Dublin City Coroner, Dr Brian Farrell outlined the role of the coroner to the Sub-Committee and explained that the courts have held that the inquest is confined to ascertaining the proximate cause of death. He was clear that the family and next of kin must be notified about the hearing. He referred the Sub-Committee to the Victims' Charter published by the Department of Justice, Equality and Law Reform which provides that "*The family will be informed (most commonly through the Gardaí at present) of the date, time and place of the inquest as soon as possible.*" He outlined his own practice to the Sub-Committee in the following terms:

"If the family have not been in touch with my office we find that asking the Garda to act on our behalf is a fail-safe approach. It is fail-safe because if the family are not present at the inquest I would ask the garda involved to explain why. I would adjourn the inquest unless we have a satisfactory explanation as to why the family did not wish to attend or the family have been in touch with the coroner's office before the hearing. In some cases the garda would say the deceased was an elderly person whose only relative was in a nursing home and unable to attend. If I was satisfied with that information, I would proceed. Those are the only circumstances in which I would do so. A garda might say that, having made inquiries, no family member could be contacted. However, there might be a witness at the inquest who knew a family member or distant relative. In that case I would adjourn and ask the garda concerned to look again. Families invariably attend. It is always a surprise to us if they are not present and we would not proceed without a satisfactory explanation for their absence.

We welcome the minimum period of two weeks but would try to improve on it if we could. If the family does not appear, the inquest ought to be adjourned but this has not been suggested in the deliberations of the

coroners' rules committee. However, we think it would be appropriate for the Oireachtas to consider this issue when debating the new Bill."

In response to a question from Deputy Costello, Dr Farrell said that the manner in which the Ludlow-Sharkey family were treated in respect of the inquest would not pass muster under current practice. When Deputy Ardagh asked him if he would welcome a statutory provision of notification he indicated that he would. He said that a statutory provision would help coroners in respect of general guidance purposes and in particular in respect of their interaction with the Gardai.

- 177) Dr Farrell was of the view that there must be power of compellability to secure a material witness who had evidence pertaining to a death. Dr Farrell expressed his gratitude for the assistance that coroners get from the Garda Síochána but said that he was of the view that it would be better if they had their own coroner's officers. He was further of the view that it would be better if the coroner rather than the Gardai empanelled a jury. He agreed with Deputy Murphy that there was a need for more provisions for coroners and their staff and pointed out that he was the only coroner in Ireland to have staff.
- 178) **The Sub-Committee urges the early enactment of the new Bill to ensure that no other family has the experience of the Ludlow-Sharkey family ever again. In particular we recommend that there be a statutory provision dealing expressly with the duty to notify the family and the next of kin.**

Chapter 10 THE TYPES OF INQUIRY AVAILABLE

179) The purpose of this section of the report is to consider what might happen next.

A criminal prosecution

180) In 1999 the DPP for Northern Ireland decided not to prosecute the four suspects named in 1979, on the basis that there was insufficient evidence against them. In their written submission the family stated that they had come to accept that a criminal prosecution in the case would be virtually impossible for the following reasons:

- (a) delay;
- (b) non-compellability of the two main witnesses;
- (c) the credibility of the two main witnesses in that one has no recollection of the other even being present at the scene of the murder;
- (d) the absence of forensic evidence;
- (e) the adverse and prejudicial pre-trial publicity resulting from the Barron Report.

181) The Sub-Committee recognizes this reality but notes that there is no statute of limitations in criminal law and that it is always possible that fresh evidence will emerge that will enable a successful prosecution to be brought even at this very late stage. In response to a query from Deputy Hctor as to whether it is considered by the Gardai that the case of the murder of Seamus Ludlow is closed, Commissioner Conroy stated that that was not the case and added:

“I would go as far as to say that if the individuals concerned turned up in this jurisdiction tomorrow morning, we would take action. I am not sure whether that would result in people being brought to justice but let me be quite clear that if we had information tomorrow that some of them were in our jurisdiction, we would take action.”

The Sub-Committee welcomes these comments.

182) By letter dated 15 February 2006 Commissioner Conroy informed the Sub-Committee that he had corresponded with the Chief Constable of the PSNI regarding the feasibility of further action against the suspects at this stage. He enclosed a response from Sir Hugh Orde dated 14 February 2006 which stated that:

“Having consulted with the Assistant Chief Constable, Crime Operations department, I can advise you that there is no new information or intelligence in addition to the RUC Investigation file that would justify any further investigation. However, the work of the Historical Enquiries Team may uncover new information in this matter as they reinvestigate crimes committed during the “Troubles” in this jurisdiction. I will keep you informed of any developments.”

- 183) One other issue arises in respect of the prospects of a prosecution. Senator Walsh asked Minister McDowell if the four named suspects were brought to trial, would they, even at this stage, be able to claim privilege under the Good Friday Agreement. Minister McDowell stated that:

“ That is a matter on which I would not like to hazard a guess. It is possible they could do so. It is equally possible they might not. It would depend on the nature of the venture and the picture painted by the evidence. If it was a gratuitous act of motiveless murder, then an issue arises in terms of whether the person accused and convicted would be a qualifying prisoner under the legislation.”

The Sub-Committee recognises that it would be inappropriate to speculate as to the applicability of the Good Friday Agreement in advance of any prosecution being mounted. It appears that the Good Friday Agreement would be no impediment to convicting the four suspects.

- 184) The Sub-Committee notes that developments in statutory mutual assistance have occurred with significant legislative changes since the Criminal Justice Act 1994 leading to the Criminal Justice (Mutual Assistance) Bill 2005. When it is passed and implemented, it will give effect to three mutual assistance instruments, the first of which is the Convention on Mutual Assistance in Criminal Matters of the Member States of the European Union, signed in 2000. The second is the protocol to that convention, dated 2001, while the third is the second additional protocol to the Convention, also dated 2001. Therefore, there is now provision under law for the establishment of joint investigation teams. It is also noted that there are now formal structures in place to ensure the speedy and secure communication of sensitive intelligence and that there are dedicated liaison officers between An Garda Síochána and the PSNI.
- 185) The Secretary General of the Department of Justice, Equality and Law Reform, Mr Sean Aylward, pointed out that the Criminal Injuries Tribunal and the Remembrance Commission might be able to provide the family with some assistance.
- 186) **The Sub-Committee is strongly of the view that the Garda Commissioner should proactively appoint a dedicated team of Gardaí to look at the investigation again, to see if there is any possibility of bringing any or all of the four suspects to justice.**

Submissions in respect of the form of Inquiry

187) In their written submission the family's lawyers sought a full public inquiry, and indicated that there are four questions which a public inquiry would have to address:

- (a) Was the murder of Seamus Ludlow properly investigated in 1976?
- (b) Why were credible leads given to the Gardai by the Northern Ireland Police Force at the latest in January 1979 and not followed up?
- (c) Why was the real evidence gathered at the scene not preserved?
- (d) Was a decision taken not to pursue the investigation of the murder of Seamus Ludlow and, if so, who took that decision?

188) In its written submission to the Sub-Committee, British-Irish Rights Watch drew attention to jurisprudence from the European Court of Human Rights in which the Court set out a comprehensive set of general principles as to how governments and their agents should approach the investigation of cases which involve killings by the army or the police and/or allegations of collusion, in order to comply with their obligations under Article 2 of the Convention which protects the right to life. As two of the four suspects identified by the RUC were serving members of the UDR, the Sub-Committee recognises that the murder of Seamus Ludlow raises a potential breach of Article 2.

189) In respect of any inquiry, one potential obstacle is that the events in question are now almost three decades old. This can lead to difficulties with persons' recollections. For example, former Chief Superintendent Cotterell cautioned that:

"Before I begin, I would caution members that I am now well into my 85th year, therefore, my memory is not good. I find it difficult to recall something that happened yesterday, never mind something that happened 30 years ago. Members must bear with me if I am not able to recall matters, which I am sure will be the case."

However this is not an insurmountable hurdle. Ed Moloney, journalist, stated that if it was the case that there was not much point in investigating matters of 20 or 30 years ago, then why had the Bloody Sunday Inquiry sat in Derry for the past three years.

190) Mr. Ó'Dúlacháin pointed out that the experience of Justice for the Forgotten was that more information emerges the more formal an inquiry becomes:

"A formal inquiry, where people must swear on oath and where there are powers to trawl through departmental files and subject the findings to

public scrutiny, is the only mechanism whereby we can at least guarantee to victims that all that could have been done was done. It is a public issue and concerns the public exercise of power. It is not related solely to the Garda, but to both how the Garda performs its functions and whether political decisions were made and whether they were justifiable.”

- 191) He also referred to the experience of Justice for the Forgotten before the European Court of Human Rights¹:

“I wish to make one final point. Issues arose at previous hearings in regard to whether cases could be brought to the European Court of Human Rights. Justice for the Forgotten was involved in two such recent cases arising in regard to 1974, and 1972 and 1973. As part of those complaints we raised issues relating to the non-co-operation with Mr. Justice Barron, the Oireachtas committee and inquests. Both cases did not proceed as the European Court held they were inadmissible. One aspect in particular it highlighted, and relied upon in structuring its judgment, was the fact that neither the Barron inquiry nor the Oireachtas committee hearings were effectively statutory inquiries. They were not inquiries being carried out in pursuit of a statutory function.”

- 192) Ms Jane Winter stated: *“In our view it is certainly a breach of Article 2 in that, to this day, there has not been an effective investigation which has produced prosecutions and the whole truth about what happened.”* She added:

“ I agree with Cormac Ó Dúlacháin that the more formal an investigation, the more information that comes to light. It was interesting when Judge Cory was investigating the murder of Mr. Patrick Finucane that he found papers the Stevens III team had never seen, even though they had spent many years examining the same issues. If there is ever a public inquiry into Patrick Finucane's case, I would not be surprised if more documents

¹A direct action before the European Court of Human Rights might run into difficulties at this stage. In *Cummins and others v The United Kingdom* (13 December 2005) the applicants were relatives of three persons killed in the Dublin bombings. They claimed that the UK had failed to co-operate with recent inquiries into the killing and that this amounted to a breach of Article 2. The European Court of Human Rights held that the proceedings were manifestly ill-founded. However it did state that:

“The United Kingdom authorities had already been requested to assist in providing information concerning the Dublin-Monaghan bombings and had provided some information and copies of documents after trawling through hundreds of thousands of files. The Court finds that the United Kingdom Government response to a subsequent extension of the inquiry and a new series of requests concerning earlier incidents was unsurprisingly not enthusiastic. It sees no reason to doubt that responding to such requests would have been time consuming in the extreme and is unpersuaded by assumptions that the work had already been done for the Dublin-Monaghan bombings or that the task would be one of relative simplicity for British staff well-practised in document retrieval due to experience of their own inquiries.

come to light. I am not convinced that Judge Cory saw everything. The higher the level of formality, the more personally responsible witnesses feel for the evidence they give. They feel they must personally account for their actions because they may be at risk of being prosecuted for perjury if they do not tell the truth. In my experience, one can get further that way than with informal inquiries. Informal inquiries are often blocked by the disappearance of crucial documents. Many papers came to light in the Bloody Sunday inquiry, which had not seen the light of day for many years.”

Ms Winter also said that public servants are more diligent in respect of public inquiries as they know they will be held to account.

- 193) Ms Winter stated her belief that if the Republic of Ireland set up a public inquiry, with all the powers that go with it, and made formal inquiries of the British Government rather than the informal inquiries Mr. Justice Barron was forced to make, the matter would become a government to government issue as to whether proper disclosure would be given to the public inquiry. A formal inquiry puts matters at a different level and makes it harder for people to refuse. She observed that in the case of Seamus Ludlow, there is probably far less at stake politically than in the case of the Dublin-Monaghan bombings and therefore there is more chance that a formal inquiry for co-operation from one state to the other would succeed. She pointed out that Britain might find itself criticized in the UN, Europe and perhaps the US if it did not comply with a very formal request for co-operation. Senator Walsh asked her if she found the police more forthcoming than, for instance, the Northern Ireland Office. She replied that this was only since Sir Hume Orde took over and the Patten recommendations have begun to be implemented. There is a new mindset among the police, particularly among the younger people joining the police service. Ms Winter noted that there are now quite a number of police officers from outside Northern Ireland in senior posts within the police service and they have a very different attitude to that of their RUC predecessors. She told the Sub-Committee that she now got more co-operation from the PSNI than from the Northern Ireland Office but that that certainly would not have been her experience in the past.
- 194) A forceful submission was made on behalf of the family in support of the establishment of a public judicial tribunal of inquiry under the Tribunals of Inquiry Act 1921. The basis for this was the submission that the failure to interview the four primary suspects was a failure in the State's obligation to carry out an effective investigation into the murder of Seamus Ludlow. It was necessary to dispel public concern that there is a reason to believe that a wilful decision was made by members of the Gardai and/or the Department of Justice to avoid interviewing the four suspects. The family's written submission went as far as to say that *“it is a matter of extreme public urgency and importance to dispel all or any basis for such a belief otherwise members of the Ludlow family and the wider public are left with grounds of believing that this State was an accessory after the fact in the murder of Seamus Ludlow and thereby complicit in his murder”*. They

pointed out that at the second inquest relating to Seamus Ludlow they had been prevented from asking questions in respect of the conduct and course of the Gardai investigation.

- 195) In their legal submissions, the family pointed out that a tribunal of inquiry would allow them to publicly ask questions. The family respectfully pointed out the limitations that the Sub-Committee was under in what it could investigate. They suggested that government departments only take a trawl for documents seriously when compelled to do so. Thus they want a public inquiry which could compel the production of documents. In addition they pointed out the stark conflict between the witnesses in respect of the protocol for the Gardai travelling across the border. The family pointed out that one of the limitations of the Barron Report was that persons had not been interrogated. They pointed out that in respect of an inquiry into why the gardai investigation stopped most of the witnesses and documents were present within the jurisdiction. They pointed out that a tribunal of inquiry would permit cross-examination.
- 196) During the final session of the public hearings of the Sub-Committee, a debate occurred as to the respective merits of a tribunal of inquiry as compared to a commission of investigation under the Commissions of Investigations Act 2004. The family pointed out that a commission of investigation would have the following limitations:
- (a) it would merely be a replication of the work done by Mr Justice Barron with a few additional statutory powers;
 - (b) it would conduct its work in private so the manner in which it reached its conclusions would not be transparent;
 - (c) the family would be excluded from the process other than making submissions the weight attached to which can never be ascertained;
 - (d) where there is a conflict, the commission will not be in a position to make findings of fact as to what occurred, but will only be able to give its opinion as to its view of what occurred;
 - (e) the subject of any inquiry will be the State itself and thus it is inappropriate that the Government should have control, in whatever guise, of the inquiry.

The Sub-Committee's recommendation in respect of the form of inquiry.

- 197) The Sub-Committee is of the view that a further inquiry is essential in order to ensure justice is both done and seen to be done. It is also necessary to address the

potential damage to the rule of law that would occur if the investigation into the murder of any citizen of the State is not treated in a thorough and professional manner as is the right of every citizen. The Sub-Committee has carefully listened to the arguments for and against different forms of inquiry, including written submissions.

The Sub-Committee acknowledges the concerns raised and appreciates the arguments in favour of why a public inquiry under the Tribunals of Inquiry Act 1921 has been sought. However, the Sub-Committee takes cognisance of the fact that the Oireachtas has recently passed the Commissions of Investigation Act 2004. A commission of investigation under this legislation has the following characteristics:

- a) it can compel the attendance of witnesses;
- b) it has powers of entry;
- c) it has powers to order the discovery and/or inspection of documents;
- d) it can conduct its investigation in public where it considers it proper and appropriate so to do;
- e) section 9 of the 2004 Act specifically provides that a commission is to be independent in the performance of its functions and duties;
- f) section 10 of the 2004 Act gives a degree of flexibility in that it states that a commission, while subject to the Act, is also subject to its own rules and procedures in order to allow it to conduct its investigation in a manner considered appropriate in the circumstances of the case and also to conduct its inquiry as expeditiously as possible;
- g) it has the power to recommend a tribunal of inquiry under the Tribunals of Inquiry Act 1921.

The issue of what form of inquiry should be established as in the past, caused quite a degree of deliberation for the Sub-Committee and it has been an issue which has caused concern. **However, the Sub-Committee has come to the conclusion that the most appropriate form of inquiry is a commission of investigation pursuant to the Commissions of Investigations Act 2004.** We are not satisfied that a commission of investigation would be any less likely to ascertain the truth than a tribunal of inquiry. Indeed the whole purpose of the Act of 2004 was to create a more streamlined and efficient type of investigative process. The Oireachtas having promulgated such a mechanism, it would be inappropriate for this Sub-Committee to operate on the basis that it will not be an effective method of inquiring into the conflicts of fact which have emerged both in the Barron Report and before this Sub-Committee. It is very important to

ensure that any inquiry at this stage is conducted with all due expedition and in that regard this mechanism clearly provides the best route.

Chapter 11

EXECUTIVE SUMMARY AND RECOMMENDATIONS

A - THE TREATMENT OF THE FAMILY BY THE STATE

- 198) The family of the late Seamus Ludlow appear to have been treated in a very unsatisfactory manner by the Gardai in the aftermath of the murder. The Sub-Committee notes and welcomes the apologies proffered by the Gardai and the Minister for Justice, Equality and Law Reform. The Sub-Committee wishes to emphasise the fundamental importance of treating the families of the victims of violent crime with the utmost sensitivity.
- 199) The Gardai do not seem to have made any inquiries in Northern Ireland in 1976 or seriously considered the possibility of collusion.

The Sub-Committee recommends:

- I) **That it should be the express policy of the State that, no matter how turbulent the times, the investigation into the murder of a citizen of the State should never be sacrificed for any reason.**
- II) **That all murder investigations should be conducted with the utmost vigour and that every avenue of investigation is pursued.**

B - THE CONDUCT OF THE INVESTIGATION BY THE GARDAI

- 200) In respect of the 1976 investigation, the Sub-Committee notes that forensic material or evidence collected at the scene seems not to have been retained. If any or all of this material was preserved, it could have greatly assisted in bringing a prosecution for the murder of Seamus Ludlow.

The Sub-Committee recommends:

That the Gardaí put in place specific measures, in line with the Criminal Justice Bill 2004, to ensure that relevant material collected at crime scenes is preserved and documented and that there is an appropriate auditing and oversight mechanism.

- 201) The Gardai received a two-page document from RUC Headquarters in April 1976. This document contained information on known loyalist sympathisers and in particular, information on one individual who was to later become a suspect in the Seamus Ludlow murder. In respect of the 1979 investigation, there is a clear conflict between the position of former Detective Inspector Courtney (the officer in charge of the investigation) and that of former Commissioner Wren (the officer in charge of C3) as to why the information received from the RUC in 1979, naming four suspects for the murder, was not pursued.
- 202) The Sub-Committee received submissions stating that suspects would not be interviewed by members of an Garda Siochana in Northern Ireland, and reference was made to that position being Garda policy. The Sub-Committee was told of 3 instances where this was said to have happened, and on seeking further clarification the Office of the Garda Commissioner confirmed that in each of these cases interviews were conducted by members of an Garda Siochana outside the jurisdiction. In two of these cases interviews were conducted by members of an Garda Siochana in Northern Ireland unaccompanied by members of the RUC.

The Sub-Committee recommends that a commission of investigation be established to investigate the following:

- i) Whether the evidence collected at the scene of the murder of Seamus Ludlow in 1976 was available in 1979 and if not, why not?**
- ii) Why were credible leads given to the Gardaí by the Northern Ireland police force not followed up?**
- iii) Why were the four named suspects not interviewed?**
- iv) Was there a policy in existence not to interview suspects in Northern Ireland for crimes committed in this jurisdiction?**
- v) Was a decision taken not to actively pursue the investigation of the murder of Seamus Ludlow and if so, who took that decision and why?**

C - REOPENING THE INVESTIGATION

- 203) The Sub-Committee notes that there is no statute of limitations in criminal law for the crime of murder and strongly recommends that the Garda Commissioner should appoint a dedicated team of Gardai to re-examine the case in a proactive manner to see if there is any possibility of bringing any or all of the four suspects to justice. The Sub-Committee notes that developments in statutory mutual

assistance have occurred with significant legislative changes. It is also noted that there are now formal structures in place to ensure the speedy and secure communication of sensitive intelligence and that dedicated liaison officers have been appointed between An Garda Síochána and the PSNI. It should be possible for the Gardai to receive assistance from the PSNI. It will be important for the Gardai to liaise with the family of the late Seamus Ludlow and to keep them informed of any developments.

- 204) The Sub-Committee noted from the submission of Sir Hugh Orde, the Chief Constable of the PSNI, that the Historical Enquiries Team has been established in Northern Ireland. Its purpose is to reinvestigate crimes committed during the Troubles in Northern Ireland. This is a very welcome development and a similar body should be established in this jurisdiction which would liaise and co-operate with its counterpart in Northern Ireland. The Sub-Committee believes that a framework should be agreed whereby both bodies can co-operate on a cross-jurisdictional basis in respect of these matters.

The Sub-Committee recommends:

- a) **That all mechanisms be fully utilised by the Gardai to liaise with the PSNI in respect of the investigation into the murder of Seamus Ludlow.**
- b) **That the Garda Commissioner appoint a dedicated team of Gardai to re-examine the case in a proactive manner, to see if there is any possibility of bringing any or all of the four suspects to justice.**
- c) **That the authorities make full use of all statutory mutual assistance mechanisms and protocols available so that what occurred in the Seamus Ludlow investigation will never happen again.**
- d) **That a Historical Enquiries Team be established in this jurisdiction to investigate unresolved crimes connected with the Troubles and that it have a particular remit to liaise with its counterpart in Northern Ireland.**

D - MISSING DOCUMENTS

- 205) The Sub-Committee is deeply concerned that, yet again, important and relevant documents and files are missing. As noted in the Barron Report, some Gardai files are either missing or were never brought into existence. The relevant security intelligence files are also either missing or non-existent. Files in the Murder Investigation Unit were also found to be incomplete and there appeared to be no contemporaneous file on the murder of Seamus Ludlow in the Department of Justice.

The Sub-Committee recommends that a commission of investigation be established to investigate the following:

- a) **What documents were created or maintained by An Garda Siochana including security intelligence C3 Section in relation to the murder of Seamus Ludlow?**
- b) **Where are those documents?**
- c) **If those documents are not available for inspection what is the reason for this?**
- d) **What documents were created or maintained by the Department of Justice (and Departments of An Taoiseach, Foreign Affairs and Defence, in respect of the Cabinet Sub-Committee on Security), in relation to the murder of Seamus Ludlow?**
- e) **Where are those documents?**
- f) **If those documents are not available for inspection what is the reason for this?**

E - LACK OF CO-OPERATION FROM THE BRITISH AUTHORITIES

- 206) The Sub-Committee wishes to once again record its disappointment at the lack of co-operation from the British authorities. The Sub-Committee is very concerned and is at a loss to understand why it took the RUC eighteen months to forward information it had gathered on the murder of Seamus Ludlow to the Gardaí. No explanation for this time lapse has been forthcoming and this issue alone raises enormous concerns. The Sub-Committee is also very concerned at the lack of co-operation with this Sub-Committee and with the Barron Inquiry, particularly the failure to provide information and documentation.

F - COLLUSION

- 207) The Sub-Committee has the gravest concerns about the role collusion played in the murder of Seamus Ludlow. It is undisputed that two of the suspects identified by the RUC were serving members of the UDR at the time of the murder. There is a strong suspicion of collusion because of the following facts:

- (1) Two of the suspects were serving members of the UDR.
- (2) The brother-in-law of Seamus Ludlow, Mr Kevin Donegan, was detained the day after the funeral by the British Army. The British Army wanted to know what the Gardaí knew about the case.
- (3) Notes of the interrogation of Mr Kevin Donegan by the British Army have not been made available by the British authorities.

- (4) There was a delay of eighteen months before relevant information was passed on by the RUC to the Gardai.

There are disturbing parallels between the suspicion of collusion in the murder of Seamus Ludlow and concern over collusion in the Dublin and Monaghan bombings, as discussed in the previous two reports of the Joint Committee.

The Sub-Committee believes that it is essential that these concerns and fears are addressed by the Northern Ireland authorities. The very basis of the Belfast Agreement in Easter 1998 was that there would be a new beginning and co-operation between the inhabitants of this island. The failure to co-operate has compounded the anguish suffered by the family of the late Seamus Ludlow and has not assisted in increasing confidence and co-operation between the two parts of this island.

The Sub-Committee feels the following issues are important

- i) How and in what circumstances did the Northern Ireland Authorities receive early information on the suspects in the Ludlow murder?**
- ii) Why the RUC did not expeditiously pass on relevant information regarding suspects in relation to the murder of Seamus Ludlow?**
- iii) Why and in what circumstances was Kevin Donegan (brother-in-law of Seamus Ludlow) interviewed by the British Army on the day following the funeral?**

The Sub-Committee recommends the following:

That the Gardai seek clarification and information from the Northern Ireland authorities through the Historical Enquiries Team or through the mechanisms set out in para 184, including answers to the above 3 questions.

G – CORONER’S INQUESTS

- 208) The Sub-Committee noted that the recent report of the Coroner’s Review Group recommended a comprehensive review of the coroners’ service and in particular the need for new legislation, support services and the necessity for a structured organization. The Sub-Committee was informed that a new Coroners Bill is being prepared.

The Sub-Committee recommends:

- a) That priority should be given to the enactment of the new Coroners Bill to ensure that no other family has the experience of the family of the late Seamus Ludlow.
- b) In particular it recommends that there be a statutory provision dealing expressly with the duty to notify the family and the next of kin on a timely basis of the holding of an inquest.

oOo

Appendix A
Letter from An Garda Síochána
An Garda Síochána

Oifig Chúntóir Pearsanta
an Choimisinéara,
An Garda Síochána,
Páirc an Fhionnuisce,
Baile Átha Cliath 8.



Office of the Commissioner's
Personal Assistant
Garda Headquarters,
Phoenix Park,
Dublin 8

Tel/Teileafón: 66 62015 / 16 / 18

Fax/Facs: 66 62013

Please quote the following ref. number
P.A. 2.4.1.

Web site: www.garda.ie

E-mail: comstaff@iol.ie

Date:

Mr Derek Walker
Senior Clerk
Houses of the Oireachtas
Joint Committee on Justice,
Equality, Defence and Women's Rights
Leinster House
Dublin 2

Dear Mr Walker,

I am directed by the Commissioner to refer to your correspondence dated the 6th February 2006, seeking files, notes or statements taken by Gardai from witnesses or suspects outside the jurisdiction, as referred to by former Detective Garda Terry Hynes during the hearings of the Sub-Committee on 31 January 2006 in respect of:-

- a) A train robbery in Dundalk
- b) The murder of Mr. Monroe Nish near Castlebellingham, and
- c) The Boyce and Porter murder case in Donegal in 1972.

and to advise as follows:

(a) This matter refers to an armed robbery at Dundalk Railway Station on the 20th February 1973.

Three persons were convicted of Robbery with aggravation contrary to Section 23(1)(a) of the Larceny Act 1916 and Possession of Firearms in relation to this robbery and sentenced to five years imprisonment on each charge to run concurrently.

The Garda Statements available reflect the fact that three Garda members, Detective Sergeant Myles Hawkshaw, Detective Garda Sean Gethins, and Detective Garda Terry Hynes, all based at Dundalk Garda Station, travelled to Belfast on the 27th/28th February 1973 where RUC officers introduced them to a number of suspects detained at RUC Stations in Belfast. A further suspect was interviewed in a Hospital ward.

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

Interviews of the suspects were conducted as follows;

- (a) Detective Sergeant Hawkshaw and Detective Garda Hynes interviewed [REDACTED] at Springfield Road, RUC Station. Following a brief introduction to the prisoner, the RUC officer left the members unaccompanied to continue the interview.
- (b) On 28 February 1973 Detective Sergeant Hawkshaw and Detective Garda Hynes interviewed [REDACTED] at Springfield Road, RUC Station. The Gardaí were introduced to the prisoner by an RUC officer. The file does not reflect whether or not this RUC officer remained in the room for the entire interview period.
- (c) On the 14 March 1976 Detective Garda Hynes and Detective Garda Gethins went to Musgrave Park Hospital Belfast accompanied by an RUC officer who introduced them to [REDACTED] who was detained there. The RUC officer then left the ward.

(b) The Murder of Mr. Monroe Nish

On the 10th May 1972 Detective Superintendent Dan Murphy and Detective Sergeant Myles Hawkshaw travelled to Guernsey. There they attended at Police HQ where they were introduced to the suspect in connection with the death of Robert Munro Nish, whose body was found outside Castlebellinam, Co Louth on 2 May 1972.

During their meeting with the suspect in Guernsey they interviewed him unaccompanied for a period. The suspect was extradited to Ireland with his consent and he was subsequently convicted of the manslaughter of Robert Munro Nish and sentenced to four years imprisonment.

In the course of enquiries into the death there is on file an application from the Superintendent Drogheda Garda Station to Commissioner C1, dated 18 September 1972, seeking permission to interview witnesses in London, Channel Islands and Northern Ireland.

Attached are copies of three statements from witnesses in Northern Ireland;

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]

There is no documentary evidence on file to indicate number (1) was ever interviewed by the Gardaí. In relation to number (2), he was interviewed by the Gardaí but the statement does not reflect the location where it was taken and in respect of number (3), the statement was taken at Dundalk Garda Station.

There is no other documentary evidence to indicate Gardaí travelled outside the State to interview any other witnesses in this case.

(c) The Boyce and Porter Murder case in Donegal

On the 14 March 1973 a team of Detectives from Dublin and Dundalk were in Belfast with the RUC to assist in interviewing suspects in connection with the Boyce and Porter murder in Donegal in 1972.

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

The following members were in attendance there;

- (1) Detective Superintendent Dan Murphy (deceased)
- (2) Detective Inspector John Courtney
- (3) Detective Inspector Hubert Reynolds
- (4) Detective Sergeant Colm Browne (deceased)
- (5) Detective Sergeant Myles Hawkshaw
- (6) Detective Garda Terry Hynes Dundalk Garda Station

Detective Superintendent Dan Murphy was accompanied by an RUC officer during the course of interviewing a suspect, as was Detective Inspector John Courtney.

Detective Inspector Hubert Reynolds and Detective Garda Hynes were accompanied by an RUC officer to an interview room to interview a prisoner and following a brief introduction to the prisoner the RUC officer left and returned at a later stage.

Detective Sergeant Colm Browne and Detective Sergeant Myles Hawkshaw were unaccompanied by RUC officers when interviewing a suspect.

The relevant statements in respect of each case, which were provided pursuant to a criminal investigation, are enclosed and should be treated with confidentiality.

Yours sincerely,



B CORCORAN
CHIEF SUPERINTENDENT
PERSONAL ASSISTANT
TO COMMISSIONER

13 March 2006

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

Appendix B: Oral Submissions Received

Tuesday 24 January 2006

Family members

Mr. Kevin Ludlow	brother of Seamus Ludlow
Mrs. Nan Sharkey	sister of Seamus Ludlow
Mrs. Eileen Fox	sister of Seamus Ludlow
Mr. Michael Donegan	nephew of Seamus Ludlow
Mr. Brendan Ludlow	nephew of Seamus Ludlow
Ms. Briege Doyle	niece of Seamus Ludlow
Mr. Jimmy Sharkey	nephew of Seamus Ludlow

Justice for the Forgotten

Ms. Margaret Urwin, Secretary for Justice for the Forgotten
Mr. Greg O'Neill, Solicitor
Mr. Cormac Ó Dúlacháin S.C.

British Irish Rights Watch

Ms. Jane Winter, Director of British Irish Rights Watch

Tuesday 31 January 2006

Former Gardai

Mr. John Courtney, Former Detective Inspector
Mr. Richard Cotterell, Former Chief Superintendent
Mr. Lawrence Wren, Former Commissioner
Mr. Thomas Ainsworth, Former Assistant Commissioner
Mr. Gary Kavanagh, Former Detective Sergeant
Mr. Terry Hynes, Former Detective

Mr. Gerry Collins, Former Minister for Justice

Mr. Brendan McGahon, Former T.D.

Wednesday 1 February 2006

Mr. Pat Byrne, Former Garda Commissioner

Mr. Noel Conroy, Garda Commissioner
Mr. Martin Callinan, Assistant Garda Commissioner

Wednesday 8 February 2006

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

Mr. Seán Aylward, Secretary General, Department of Justice, Equality and Law Reform.

Mr. Ed Moloney, Journalist

Tuesday 14 February 2006

Dr. Brian Farrell, Dublin City Coroner

Mr. Owen Corrigan, Former Detective Sergeant

Thursday 16 February 2006

Mr. Justice Henry Barron

Tuesday 21 February 2006

Mr. James MacGuill, Solicitor

Ms. Deirdre Murphy, S.C.

Mr. Eamonn Coffey, B.L.

Appendix C: Written Submissions to the Sub-Committee

- Commissioner of An Garda Síochána, Mr. Noel Conroy
- Former Commissioner of An Garda Síochána, Mr. Lawrence Wren
- Justice for the Forgotten
- British Irish Rights Watch
- Mr. James MacGuill on behalf of the Ludlow-Sharkey Family

Appendix D: Correspondence Received by the Sub-Committee

- Commissioner of An Garda Síochána, Mr. Noel Conroy
- Mr Brendan Corcoran, Chief Superintendent, Personal Assistant to the Commissioner,
- Mr Martin Callinan, Assistant Commissioner, An Garda Síochána
- Mr. Peter Ryan, Assistant Secretary, Department of the Taoiseach

- Rt Hon Peter Hain, Secretary of State for Northern Ireland
- Mr Gary Clarke, Staff Officer to Chief Constable
- Mr. Hugh Orde, Chief Constable, Police Service of Northern Ireland

- James McGill & Co, Solicitors to the Ludlow-Sharkey family
- Mr. Seán Aylward, Secretary General, Department of Justice, Equality and Law Reform
- Mr. Michael McDowell T.D., Minister for Justice, Equality and Law Reform
- Mr. Barry Donoghue, Deputy Director of Public Prosecutions
- Mr. James Hamilton, Director of Public Prosecutions
- Mr. David Walker, Department of Justice, Equality and Law Reform

- Mr. Ed Moloney, Journalist
- Mr. Patrick Livingstone
- Ms. Jane Winter, British Irish Rights Watch

- Mr Thomas Ainsworth, former Assistant Commissioner
- Mr. Daniel Boyle, Former Garda Detective Sergeant
- Mr. Patrick Cooney, Former Minister for Justice
- Mr. Patrick Jordan, Former Garda Detective Inspector
- Mr. John P. McMahon, Former Assistant Commissioner C3
- Mr. James Kirby, former Assistant Principal in the Department of Justice
- Mr. John P. Fleming, Former Commissioner C1
- Mr John P.McMahon, former Assistant Commissioner in Crime Branch, An Garda Síochána

Appendix E: Joint Committee Advertisement for submissions



Joint Committee on Justice, Equality, Defence and Women's Rights.

SUB-COMMITTEE ON THE BARRON REPORT ON THE MURDER OF SEAMUS LUDLOW.

REQUEST FOR SUBMISSIONS

By Resolutions of Dáil Éireann and Seanad Éireann on 3rd November 2005, the Report of the Independent Commission of Inquiry into the Murder of Seamus Ludlow, which had been presented to the Government by Mr. Justice Henry Barron, was referred to the Joint Committee on Justice, Equality, Defence and Women's Rights, chaired by Seán Ardagh T.D. On 3rd November 2005, the Joint Committee published the Report as part of its 'Interim Report on the Report of the Independent Commission of Inquiry into the Murder of Seamus Ludlow.' The Joint Committee has decided to establish a Sub-Committee, to be called the Sub-Committee on the Barron Report on the Murder of Seamus Ludlow, to consider, including in public session, the Report of the Independent Commission of Inquiry into the Murder of Seamus Ludlow, and to report back to the Joint Committee concerning any further necessary action.

The Joint Committee has also decided:

- that submissions relevant to its Orders of Reference, both written and oral, will be sought from interested persons and bodies;
- that a series of hearings will be held, in public session, to commence in January 2006;
- that the Sub-Committee will in due course, submit a report to the Joint Committee which will, in accordance with the terms of the Motions of Referral, report back to the Houses by 31st March, 2006.

The Members of the Sub-Committee are Deputies Seán Ardagh (*Chairperson*), Joe Costello, Máire Hochtóir, Finian McGrath, Gerard Murphy, Peter Power and Senator Jim Walsh.

The Interim Report is available for viewing on the Oireachtas website (www.oireachtas.ie) and hard copies are also available from the Committee Secretariat at the address indicated below.

As part of its consideration of the Report, the Sub-Committee intends to hold a series of hearings, starting in January 2006, which various interested parties and bodies and some of those persons referred to in the report will be invited to attend. In order to assist the Sub-Committee in the hearings process, submissions relevant to its Orders of Reference are invited from interested parties and bodies and from members of the general public.

Submissions should be made in writing only to:

**Clerk to the Sub-Committee on the Barron Report on the Murder of Seamus Ludlow,
Kildare House,
Kildare Street,
Dublin 2.**

Or by e-mail at: barronreportludlow@oireachtas.ie If possible, submissions should be sent electronically.

The closing date for receipt of submissions is 5.30 p.m. Friday 6th January, 2006.

Appendix F: Motions of the Dáil and Seanad

Tá Dáil Éireann tar éis an tOrdú seo a leanas a dhéanamh:

“Go n-iarrann Dáil Éireann ar an gComhchoiste um Dhlí agus Ceart, Comhionannas, Cosaint agus Cearta na mBan, nó ar Fhochoiste den Chomhchoiste sin, breithniú a dhéanamh, lena n-áirítear breithniú i seisiún poiblí, ar an Tuarascáil ón gCoimisiún Fiosrúcháin Neamhspleách faoi dhúnmharú Shéamuis Ludlow, agus ar na tuairimí arna dtabhairt ag an gCoimisinéir Wren agus ag an mBreitheamh Barron ar an gcéanna, agus tuairisc a thabhairt do Dháil Éireann roimh an 31 Márta, 2006:–

- maidir le Tuarascáil an Choimisiúin Fiosrúcháin Neamhspleách faoi dhúnmharú Shéamuis Ludlow agus leis na tuairimí arna dtabhairt ag an gCoimisinéir Wren agus ag an mBreitheamh Barron ar an gcéanna d’fhonn cibé moltaí a dhéanamh is cuí leis an gCoiste agus d’fhonn aon athruithe is gá a dhéanamh ar fhorálacha reachtacha; agus
- maidir leis na hathruithe reachtacha agus eile, más ann, a bhfuil gá leo i ndáil le fógra a thabhairt do na neasgholta i dtaobh ionchoisní maidir le dúnmharuithe nó básanna in imthosca amhrasacha.

Dáil Éireann has made the following order:

That Dáil Éireann requests the Joint Committee on Justice, Equality, Defence and Women's Rights, or a sub-Committee thereof, to consider, including in public session, the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow, and the observations made thereon by former Commissioner Wren and Mr. Justice Barron, and to report back to Dáil Éireann by 31st March, 2006 concerning:–

- the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow and the observations made thereon by former Commissioner Wren and Mr. Justice Barron for the purposes of making such recommendations as the Committee considers appropriate and any changes to legislative provisions; and
- the legislative and other changes, if any, required in relation to the notification to the next of kin of inquests in relation to murders or deaths in suspicious circumstances.”

Tá Seanad Éireann tar éis an tOrdú seo a leanas a dhéanamh:

“Go n-iarrann Seanad Éireann ar an gComhchoiste um Dhlí agus Ceart, Comhionannas, Cosaint agus Cearta na mBan, nó ar Fhochoiste den Chomhchoiste sin, breithniú a dhéanamh, lena n-áirítear breithniú i seisiún poiblí, ar an Tuarascáil ón gCoimisiún Fiosrúcháin Neamhspleách faoi dhúnmharú Shéamuis Ludlow, agus ar na tuairimí arna dtabhairt ag an gCoimisinéir Wren agus ag an mBreitheamh Barron ar an gcéanna, agus tuairisc a thabhairt do Seanad Éireann roimh an 31 Márta, 2006:—

- maidir le Tuarascáil an Choimisiúin Fiosrúcháin Neamhspleách faoi dhúnmharú Shéamuis Ludlow agus leis na tuairimí arna dtabhairt ag an gCoimisinéir Wren agus ag an mBreitheamh Barron ar an gcéanna d’fhonn cibé moltaí a dhéanamh is cuí leis an gCoiste agus d’fhonn aon athruithe is gá a dhéanamh ar fhorálacha reachtacha; agus
- maidir leis na hathruithe reachtacha agus eile, más ann, a bhfuil gá leo i ndáil le fógra a thabhairt do na neasgholta i dtaobh ionchoisní maidir le dúnmharuithe nó básanna in imthosca amhrasacha.

Seanad Éireann has made the following order:

That Seanad Éireann requests the Joint Committee on Justice, Equality, Defence and Women's Rights, or a sub-Committee thereof, to consider, including in public session, the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow, and the observations made thereon by former Commissioner Wren and Mr. Justice Barron, and to report back to Seanad Éireann by 31st March, 2006 concerning:—

- the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow and the observations made thereon by former Commissioner Wren and Mr. Justice Barron for the purposes of making such recommendations as the Committee considers appropriate and any changes to legislative provisions; and
- the legislative and other changes, if any, required in relation to the notification to the next of kin of inquests in relation to murders or deaths in suspicious circumstances.”

Appendix G: Orders of Reference and Powers of Joint Committee

JOINT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS.

Dáil Éireann on 16 October 2002 ordered:

- “(1) (a) That a Select Committee, which shall be called the Select Committee on Justice, Equality, Defence and Women’s Rights, consisting of 11 Members of Dáil Éireann (of whom 4 shall constitute a quorum), be appointed to consider -
- (i) such Bills the statute law in respect of which is dealt with by the Department of Justice, Equality and Law Reform and the Department of Defence;
 - (ii) such Estimates for Public Services within the aegis of the Department of Justice, Equality and Law Reform and the Department of Defence; and
 - (iii) such proposals contained in any motion, including any motion within the meaning of Standing Order 157 concerning the approval by the Dáil of international agreements involving a charge on public funds,
- as shall be referred to it by Dáil Éireann from time to time.
- (b) For the purpose of its consideration of Bills and proposals under paragraphs (1)(a)(i) and (iii), the Select Committee shall have the powers defined in Standing Order 81(1), (2) and (3).
 - (c) For the avoidance of doubt, by virtue of his or her *ex officio* membership of the Select Committee in accordance with Standing Order 90(1), the Minister for Justice, Equality and Law Reform and the Minister for Defence (or a Minister or Minister of State nominated in his or her stead) shall be entitled to vote.
- (2) (a) The Select Committee shall be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on Justice, Equality, Defence and Women’s Rights to consider-
- (i) such public affairs administered by the Department of Justice, Equality and Law Reform and the Department of Defence as it may select, including, in respect of Government policy, bodies under the aegis of those Departments;

- (ii) such matters of policy for which the Minister for Justice, Equality and Law Reform and the Minister for Defence are officially responsible as it may select;
- (iii) such related policy issues as it may select concerning bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas;
- (iv) such Statutory Instruments made by the Minister for Justice, Equality and Law Reform and the Minister for Defence and laid before both Houses of the Oireachtas as it may select;
- (v) such proposals for EU legislation and related policy issues as may be referred to it from time to time, in accordance with Standing Order 81(4);
- (vi) the strategy statement laid before each House of the Oireachtas by the Minister for Justice, Equality and Law Reform and the Minister for Defence pursuant to section 5(2) of the Public Service Management Act, 1997, and the Joint Committee shall be authorised for the purposes of section 10 of that Act;
- (vii) such annual reports or annual reports and accounts, required by law and laid before both Houses of the Oireachtas, of bodies specified in paragraphs 2(a)(i) and (iii), and the overall operational results, statements of strategy and corporate plans of these bodies, as it may select;

Provided that the Joint Committee shall not, at any time, consider any matter relating to such a body which is, which has been, or which is, at that time, proposed to be considered by the Committee of Public Accounts pursuant to the Orders of Reference of that Committee and/or the Comptroller and Auditor General (Amendment) Act, 1993;

Provided further that the Joint Committee shall refrain from inquiring into in public session, or publishing confidential information regarding, any such matter if so requested either by the body concerned or by the Minister for Justice, Equality and Law Reform or the Minister for Defence;

- (viii) such matters relating to women's rights generally, as it may select, and in this regard the Joint Committee shall be free to consider areas relating to any Government Department; and
- (ix) such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas,

and shall report thereon to both Houses of the Oireachtas.

- (b) The quorum of the Joint Committee shall be five, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.
 - (c) The Joint Committee shall have the powers defined in Standing Order 81(1) to (9) inclusive.
- (3) The Chairman of the Joint Committee, who shall be a Member of Dáil Éireann, shall also be Chairman of the Select Committee.”.

Seanad Éireann on 17 October 2002 ordered:

- “(1) (a) That a Select Committee consisting of 4 members of Seanad Éireann shall be appointed to be joined with a Select Committee of Dáil Éireann to form the Joint Committee on Justice, Equality, Defence and Women’s Rights to consider –
- (i) such public affairs administered by the Department of Justice, Equality and Law Reform and the Department of Defence as it may select, including, in respect of Government policy, bodies under the aegis of those Departments;
 - (ii) such matters of policy for which the Minister for Justice, Equality and Law Reform and the Minister for Defence are officially responsible as it may select;
 - (iii) such related policy issues as it may select concerning bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas;
 - (iv) such Statutory Instruments made by the Minister for Justice, Equality and Law Reform and the Minister for Defence and laid before both Houses of the Oireachtas as it may select;
 - (v) such proposals for EU legislation and related policy issues as may be referred to it from time to time, in accordance with Standing Order 65(4);
 - (vi) the strategy statement laid before each House of the Oireachtas by the Minister for Justice, Equality and Law Reform and the Minister for Defence pursuant to section 5(2) of the Public Service

Management Act, 1997, and the Joint Committee shall be so authorised for the purposes of section 10 of that Act;

- (vii) such annual reports or annual reports and accounts, required by law and laid before both Houses of the Oireachtas, of bodies specified in paragraphs 1(a)(i) and (iii), and the overall operational results, statements of strategy and corporate plans of these bodies, as it may select;

Provided that the Joint Committee shall not, at any time, consider any matter relating to such a body which is, which has been, or which is, at that time, proposed to be considered by the Committee of Public Accounts pursuant to the Orders of Reference of that Committee and/or the Comptroller and Auditor General (Amendment) Act, 1993;

Provided further that the Joint Committee shall refrain from inquiring into in public session, or publishing confidential information regarding, any such matter if so requested either by the body concerned or by the Minister for Justice, Equality and Law Reform or the Minister for Defence;

- (viii) such matters relating to women's rights generally, as it may select, and in this regard the Joint Committee shall be free to consider areas relating to any Government Department;

and

- (ix) such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas.

and shall report thereon to both Houses of the Oireachtas.

- (b) The quorum of the Joint Committee shall be five, of whom at least one shall be a member of Dáil Éireann and one a member of Seanad Éireann,
- (c) The Joint Committee shall have the powers defined in Standing Order 65(1) to (9) inclusive,

JOINT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS.

Powers of the Joint Committee

The powers of the Joint Committee are set out in Standing Order 81(Dáil) and Standing Order 65 (Seanad). The text of the Dáil Standing Order is set out below. The Seanad S.O. is similar.

"81. Without prejudice to the generality of Standing Order 80, the Dáil may confer any or all of the following powers on a Select Committee:

- (1) power to take oral and written evidence and to print and publish from time to time minutes of such evidence taken in public before the Select Committee together with such related documents as the Select Committee thinks fit;
- (2) power to invite and accept written submissions from interested persons or bodies;
- (3) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;
- (4) power to draft recommendations for legislative change and for new legislation and to consider and report to the Dáil on such proposals for EU legislation as may be referred to it from time to time by any Committee established by the Dáil(whether acting jointly with the Seanad or otherwise) to consider such proposals and upon which has been conferred the power to refer such proposals to another Select Committee;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss policy for which he or she is officially responsible: provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy;
- (6) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss proposed primary or secondary legislation (prior to such legislation being published) for which he or she is officially

responsible: provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such proposed legislation;

- (7) subject to any constraints otherwise prescribed by law, power to require that principal office holders in bodies in the State which are partly or wholly funded by the State or which are established or appointed by members of the Government or by the Oireachtas shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: provided that such an office holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;
- (8) power to engage, subject to the consent of the Minister for Finance, the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and
- (9) power to undertake travel, subject to—
 - (a) such rules as may be determined by the sub-Committee on Dáil Reform from time to time under Standing Order 97(3)(b);
 - (b) such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 98(2)(a); and
 - (c) the consent of the Minister for Finance, and normal accounting procedures."

SCOPE AND CONTEXT OF COMMITTEE ACTIVITIES.

The scope and context of activities of Committees are set down in S.O. 80(2) [Dáil] and S.O.64(2) [Seanad]. The text of the Dáil Standing Order is reproduced below. The Seanad S.O. is similar.

“(2) It shall be an instruction to each Select Committee that-

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

and

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil.”

Appendix H

Joint Committee on Justice, Equality, Defence and Women's Rights.

Order establishing Sub-Committee on the Barron Report on the Murder of Seamus Ludlow

That

- a) a Sub-Committee (to be called the Sub-Committee on the Barron Report on the Murder of Seamus Ludlow) be established to consider, including in public session, the Report of the Independent Commission of Inquiry into the Murder of Seamus Ludlow, and the observations made thereon by former Commissioner Wren and Mr Justice Barron, and to report back to the Joint Committee concerning the following matters:

— the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow and the observations made thereon by former Commissioner Wren and Mr. Justice Barron for the purposes of making such recommendations as the Committee considers appropriate and any changes to legislative provisions; and

— the legislative and other changes, if any, required in relation to the notification to the next of kin of inquests in relation to murders or deaths in suspicious circumstances.

Provided that-

- the Sub-Committee and the Joint Committee, may accept, including in public session, submissions on the Report from interested persons and bodies;
 - a series of hearings will be held in public session, to commence in January 2006; and
 - the Sub-Committee will in due course, submit a report to the Joint Committee which will, in accordance with the terms of the Motion of Referral of Dáil Éireann and Seanad Éireann dated 3rd November, 2005, report back to the Houses by 31st March, 2006.
- b) The Sub-Committee shall consist of 7 members of whom six shall be Members of Dáil Éireann and one shall be a Member of Seanad Éireann;
- c) The quorum of the Sub-Committee shall be three;

and

- d) The Sub-Committee shall have all of the powers of the Joint Committee, including those referred to in Standing Order 81(1), (2) and (4) to (9) (Dáil) and in Standing Order 65(1), (2) and (4) to (9) (Seanad) and the power referred to in Standing Order 91(2) Dáil and 81(2) Seanad; provided that the exercise of the powers to publish and print evidence and to travel and to engage consultants shall in each case be subject to the approval of the Joint Committee’.

Appendix I

JOINT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS

List of Members

- Deputies Seán Ardagh (FF) (Chairman)
 Joe Costello (LAB)
 Máire Hctor (FF) (Government Convenor)
 Finian McGrath (Independent/ Technical Group)
 Gerard Murphy (FG) (Vice-Chairman)
 Breeda Moynihan-Cronin (LAB) (Opposition Convenor)
 Seán O Feargháil (FF)
 Jim O’Keeffe (FG)
 Charlie O’Connor (FF)
 Denis O’Donovan (FF)
 Peter Power (FF)
- Senators Maurice Cummins (FG)
 Tony Kett (FF)
 Joanna Tuffy (LAB)
 Jim Walsh (FF)