

1 Tell me, are there any drafts in existence anywhere, including
2 on the computer, of any statement that he made that later
3 on was altered in some way prior to the signing of it on
4 13 July?---The only draft is, or the only difference that
5 we have recorded is the addresses that we deleted out of
6 the statements.

7 See, what I suggest to you, and I'm not just saying this by way
8 of comment, but can you not see that the vice in that
9 procedure is that until we get the police notes and what
10 we can glean from the police notes, we're finally able to
11 say, for example, that a paragraph was negotiated out
12 apparently after consulting the prosecution. Now, I'm
13 not suggesting there's anything remotely sinister about
14 that, but things that he told you that turned out to be
15 forensically contradicted by other evidence might, it
16 might be said by the person who's a bit suspicious and
17 wants to see justice be done, might be removed from the
18 statement?

19 MR HORGAN: Can I just say something about "negotiated out"? I
20 just query that expression. The circumstances which the
21 witness has given evidence of concern me, so I want to
22 say something about it. Advice was sought as to whether
23 the caution paragraph ought to be in one of those
24 statements. The advice given was that it shouldn't, but
25 it wasn't a question of anything being negotiated out.
26 It was just advice that the police sought about what
27 form, what wording there should be in the statement.

28 HIS HONOUR: Thank you.

29 MR LOVITT: And that's exactly what I meant by negotiated out.
30 I'm not remotely suggesting there's anything wrong with
31 what happened on that occasion, and I made that clear,

1 Why didn't he sign it then and there?---Because he wanted his
2 legal representative to look at it before signing.

3 It really was a negotiated statement wasn't it?---Well - I
4 don't know, I don't know if that's a fair summation, to
5 have a wish that you want your legal rep to see it,
6 before signing it, I don't know that that is fair, maybe
7 it is, I don't know that that necessarily makes it a
8 negotiated statement.

9 He's a man charged with murder, who's admitting to his
10 involvement and he makes a statement to the police, he
11 doesn't sign it but he wants his solicitors to look at it
12 before he will sign it?---Yes.

13 That's a very unusual procedure isn't it, you're not talking
14 about just any old eyewitness who's a bit worried until
15 his lawyer's vetted what he's told the police, you're
16 talking about a man charged with murder, who's admitting
17 to being involved in the murder, but wanting the fine
18 print to be perused and approved by his solicitor?
19 ---I - I think it's a fairly - a very fair thing to do, I
20 would have thought, I mean perhaps I would want to do
21 just that if I was in his position.

22 No, but you see the police normally don't let you, I've never
23 seen - I've only been around the Bar for 35 years and
24 I've never seen it before - with anyone?---I - I
25 certainly think it would be a very fair thing to do and I
26 couldn't see any reason why not to comply with his
27 wishes.

28 Look, if he had have asked for a cream bun you would have given
29 it to him at that stage, wouldn't you?---If I had a cream
30 bun in the room, probably, yes.

31 A good honest answer Mr Bateson. Let's turn to the topic -

1 would have caused Mr Horgan to toss and turn. That's
2 what he was telling you?---Yes.
3 I suppose you passed that on to Mr Horgan, dutifully?---Well,
4 certainly it was passed on to the Office of the Public
5 Prosecutor. I'm not sure whether I spoke to Mr Horgan
6 directly.
7 He wanted an estimate from Horgan, that is what you've written
8 down there?---Well, he focussed on Mr Horgan because Mr
9 Horgan was involved in some court matters, but you
10 know - - -
11 Did he get an estimate from Mr Horgan?---No. Well, certainly
12 not through me. I mean if - if - if there was any
13 communications between the director or the directors
14 office it was done through his lawyer.
15 Through his lawyer?---Through is lawyer.
16 What, his lawyer would from time to time be in contact with Mr
17 Horgan or those instructing Mr Horgan, or perhaps the
18 Director of Public Prosecutions himself?---That's my
19 understanding, yes.
20 That's 26 May, the next date?---The [REDACTED], which is at the
21 PII [REDACTED] Police - sorry, the court.
22 The note I've got for you that day is "Spoke to Mr [REDACTED] in cells
23 with PS." Who is that?---Phil Swindells.
24 Sorry?---Mr Swindells.
25 I beg your pardon. "Still willing to proceed with statements,
26 explained procedures." Now this was the day that he was
27 going to go - this was at PII [REDACTED]?---Yes.
28 Then PII [REDACTED] Court, plea hearing, Mr Horgan prosecuting,
29 something else is crossed out. Pardon my being - why
30 cross out another member of the legal fraternity there?
31 ---Well. Well, I was just not - it's just an issue that

1 I've raised with His Honour.

2 Is it?---Yes.

3 It's a matter of public record, isn't it?---Well, it may well
4 be, but it was - - -

5 The name of the lawyer who appeared for him, Mr McGrath is
6 crossed out, that's basically what I inferred from that.
7 You've got the name of the prosecutor, the name of the
8 judge, but the middle line was blacked out?---Yes.

9 Your Honour, I can't for the life of me see how that could
10 be - - -

11 HIS HONOUR: I take it, Mr Lovitt, I'll have to go back through
12 it, but the evidence for this matter is dealt with in a
13 closed session of course and some matters were, some
14 matters were let back in and others were left out.

15 MR LOVITT: I understand that.

16 HIS HONOUR: That's been left out. To assist you I can't
17 recall the precise reason why that name was left out, but
18 it was - - -

19 MR LOVITT: It's not of great moment.

20 HIS HONOUR: But at this stage certainly Mr Bateson can't
21 answer that question because I've ruled on it in that
22 session. I'm not saying no that on further reflection on
23 his part or Mr Horgan's part or on application on my part
24 that couldn't be changed, but that's the way it stands at
25 the moment.

26 MR LOVITT: Your Honour, I must say it would certainly seem I
27 don't know and I don't care, but it just seemed odd to me
28 that it was crossed out.

29 HIS HONOUR: It may be innocuous.

30 MR LOVITT: Yes. The result was written down 12.30 PII years
31 PII, minimum PII years, re. outstanding PII

1 ---Yes.

2 That would be reasonable?---Yes.

3 Sort of the same thing the next day?---Yes.

4 You are with him at 9.20, for how long?---I believe we left at

5 1530 at that day.

6 No note?---No note but I have since looked at Mr Hatt's notes

7 and I believe that is the case.

8 Then Friday 25th?---At 9.30, 1530 clear. And then again on the

9 29th, 9.30 to 1630 clear. Then 30th of June, 10.30, I

10 believe again to 1530.

11 Yes?---The 9th of July.

12 The 9?---Yes. It is 1055 - - -

13 The notes you've got there, is that at the start of the day,

14 that is the one that I have already referred you to, a

15 portion to reference to the Marshall statement?---Yes.

16 At 11.25: "Mr McGrath entered Government functions.

17 Marshall" and then you had the notes that I have read

18 concerning Marshall. Then there is some deletion?

19 ---M'mm.

20 And then Moran Barbaro's statement and then there is some

21 further deletion?---Yes.

22 I am a little bit hamstrung here, Your Honour, but I would like

23 to ask the witness what it was about that note that has

24 been blacked out that he felt shouldn't be disclosed.

25 HIS HONOUR: I don't think you can. Whilst I can understand

26 your curiosity, curiosity obviously, your frustration,

27 perhaps. Having dealt with in the way that I have, for

28 the reasons that I did indeed gave, I don't believe - - -

29 MR LOVITT: I am not (indistinct) at Your Honour's ruling. I

30 understand that.

31 HIS HONOUR: I appreciate that.

1 MR LOVITT: I understand that, all right?---At 1300 - sorry.
2 You are now writing out the Moran Barbaro statement, rather
3 than just, you know, you see Mr McGrath for six hours. It
4 now has that heading, "Moran Barbaro's statement". Did
5 you have a document with you by that stage?---Yes.
6 When did that come into existence?---Well, if I can take you
7 back to the 22nd and 23rd.
8 Yes?---On the 22nd and the 23rd we did the Marshall statement,
9 effectively, saving it on disc. On the 25th and 29th we
10 did the Jason Moran, finishing it off on the 30th. So
11 that's when those two documents came into being.
12 How do you know you did it on those days, your notes don't
13 reveal that?---I remember. And it does to a certain
14 extent there, Mr Lovitt. On 29 June you will see: "At
15 9.30 at PII with Mr Jason Moran's statement." On the
16 25th - it would start with the 25th: "The 25th of June
17 0930 at PII, re Mr Moran's statement." On the
18 29th: "0930 at PII with Mr Jason Moran's statement."
19 I take it that on 25 June you didn't get all the statement.
20 You had part of it?---Well, 25th of June was - yes,
21 continued into the 29th and finished on the 30th.
22 Yes. So you get a bit on the 25th, more on the 29th and the
23 balance on the 30th?---Correct.
24 Now, next, after 30 June? We got to 9 July?---We've done
25 9 July?
26 Yes?---12 July.
27 What happened then?---On 12 July we went with - just let me
28 look over this page here. Went to the - to the prison.
29 Sorry, I thought it was in the right order, so I was confused?
30 ---OK.
31 12 July, yes?---Yes, we gave him a look at the statements. We

1 then went to PII to print them off and then got him
2 to read them and once again he wanted to talk to his
3 lawyer before he signed them and that's why we came back
4 on the 13th for a videorecorded read back.
5 He wanted to have another chat to his lawyer?---Yes.
6 The statements were in what form? Were they in hard copy or
7 just on a computer, say around 9 or 12 July?---I believe
8 they were in hard copy by that stage.
9 But not signed?---Not signed, no.
10 What happened to the unsigned statements that existed prior to
11 the signing on 13 July?---They were signed.
12 The same documents?---Yes.
13 How do you know?---How do you know or how do I know?
14 All right, how do you know?---Because I have a memory of it.
15 And of course, you know, we've got to accept that what you're
16 saying is true, right?---I hope you do, Mr Lovitt.
17 OK. Now?---Then we go onto the 26th.
18 Just hang on a sec. Yes, if you wouldn't mind?---26 July we
19 attend at 0930 and leave at 1220. On 27 July, I receive
20 a call from Mr McGrath . On 29 July, 0915 to 1035.
21 3 August, 1115 to 1255. 18 August, 1400 to 1500. Sorry.
22 Continue?---26 August, 1135 to 1200. 31 August, I receive a
23 call from Mr McGrath
24 What did he want?---Pardon me?
25 What did he want?---Received call from Mr advise re conditions
26 at PII Inspected by Hatt this morning. There was
27 some talk at that stage that he'd be transferred to the
28 PII Prison which never came about so he was talking
29 about the conditions and being informed about the
30 conditions there.
31 Next?---2 September, I received a call from his girlfriend. He