

DUBLIN CIRCUIT CRIMINAL COURT

Presiding : The Honourable Mr. Justice F. Roe

DIRECTOR OF PUBLIC PROSECUTIONS

v.

RICHARD KEARNEY FLYNN

12th June 1986 (a.m.)

Counsel for the prosecution :	Mr. Groark, B.L.
Counsel for the defence :	Mr. P. McEntee, S.C.
	Mr. J. Connolly, B.L.

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The accused, Richard Kearney Flynn, was arraigned and pleaded not guilty to counts 1 and 2 on the indictment. Mr. Groark, B.L. appeared for the prosecution. Mr. P. McEntee, S.C. and Mr. Connolly, B.L. appeared for the accused.

MICHAEL CAMPBELL, having been sworn, was examined as follows by Mr. Groark

1. D/Garda Campbell, you are a member of the garda síochána attached to the mapping section at Harcourt Street?
- That is correct, my lord.
2. How many years experience do you have with the mapping section?
MR. MCENTEE : I have no issue on this officer's qualifications.
3. I think on 8th July 1985 you went to Clara, Co. Offaly?
- That is correct, my lord.
4. And you have prepared a map which you now hand to the jury?
- That is correct, my lord.
5. In that booklet of maps, D/Garda, if I might refer first of all to an extract from the ordnance survey sheet of Co. Offaly which is the smaller of the three maps before the jury. You indicate the town of Clara on that map and an extract of the survey of the town which indicates Kilcoursey House?
- That is correct, my lord.
6. That is the house in which the Flynn family reside and in which this incident took place?
- That is correct, my lord.
7. That appears to be in the town of Clara or a short distance therefrom?
- A short distance from Clara, yes.
8. And it appears to be on the main Clara to Kilbeggan road?
- That is right, my lord.
9. Can you say what is the distance from Clara to Kilbeggan?
- Approximately three quarters of a mile.
10. You then show on the other two maps the groundfloor plan of Kilcoursey House?
- That is correct, my lord.

11. Would I be correct in suggesting that this house is quite a substantial residence with I think some nine bedrooms?
- That is correct.
12. And a large number of other rooms, isn't that right?
- That is correct, my lord.
13. And the ground floor plan shows the ground floor area of the house?
- Yes, my lord, it shows the layout of the rooms on the ground floor.
14. You show where the phone is?
- That is correct, my lord, in the pantry, and there is a sliding panel adjoining the kitchen there.
15. The entrance as you show is to the north of the map and to go to the stairs one comes in the hall indicated there?
- Yes, my lord. There are two entrances to the house. That is the entrance I came in.
16. The other entrance as you show is between the toilet and pump room on the right?
- That is correct, my lord.
17. When you come through the front door entrance you go through two doors, turn right and up the stairs?
- That is correct, my lord.
18. If we can now go on to the first floor map, that shows the first floor layout?
- That is correct, my lord. I have the rooms numbered 1 - 9.
19. I think you attended at Kilcoursey House in the company of D/Garda Byrne and did you have D/Garda Michael Keating with you also?
- That is correct, my lord.
20. And you carried out in association with them certain examinations of what you found there?
- That is correct, my lord.
21. And you show certain items on that plan which is what you found in some of the rooms in the premises?
- That is correct, my lord.
22. In the first instance when you come up the stairs I think you turn left in order to gain access to room No. 1, you turn left and then you take the first door right?

- That is correct, my lord.
23. And I think that is the only entrance to what is essentially the master bedroom of Kilcoursey House?
- That is correct, my lord.
24. And that as is indicated there contains a bedroom with bed and whatever and then there is an entrance from that to the bathroom?
- That is correct. The bathroom opens from that room.
25. Which is immediately adjoining it and opens off it?
- That is correct.
26. Perhaps you would explain to the jury what each of these marks A, B, C, D and F indicates. Room No. 2, which adjoins the master bedroom was the room in which Father Molloy was wont to stay?
- I understand so, my lord.
27. If we return to room No. 1, what does A indicate?
- A is a location in the bathroom off the main bedroom and it is the location of the sill of the window behind the cold tap of what appeared to be a smudge of blood.
28. Now B and C, would you deal with those?
- B and C were two plastic caps, small plastic caps probably from a cosmetic box which were pointed out by D/Garda Keating.
29. There is a measurement on the map there of 8' 5"?
- That measurement refers to what appeared to be a drag mark of blood on the carpet on the floor of room No. 1 stretching 8' 5" in length to what appeared to be a more congealed piece of blood just below the point C there. That is the darker spot.
30. You indicate also the outline of where the body was found, I think?
- That is correct, my lord. That is the outline of the body as I found it with the head pointing towards the door and a tweed jacket at the foot, the right leg of the body.
31. If we go from there to point F, I think that refers to some what appeared to be blood?
- Well as I came up the stairs I noticed what appeared to be a smudge of blood on the newel post at the top of the stairs on the landing of the first floor.
32. If we go from there into room No. 2 I think you have again

a double bed in that room?

- That is correct, my lord.

33. With lockers to either side of the bed and drawers and wardrobe?

- That is correct, my lord.

34. You indicate there on the locker point D, what does that indicate?

- That is an ashtray. There was a butt of a cigar quenched out on it and a glass of milk with a drink taken from it on the locker.

35. If one goes from bedroom No. 2 there is a toilet shown there across from the entrance to room No. 1. Am I correct in saying in order to go from room No. 2 to there you go out the door of room 2 down the corridor to the door of room No. 1 and turn left to the toilet area?

- That is correct, my lord.

MR. McENTEE : No questions.

ANTHONY BYRNE, having been sworn, was examined as follows by Mr. Groark

36. D/Garda Byrne, you are an official photographer attached to the Photographic Section of the Garda Technical Bureau?
- Yes, my lord.
37. And I think on 8th July 1985 accompanied by the last witness you went to Kilcoursey House in Clara, where you took a number of photographs inside and outside the house?
- Yes, my lord.
38. And you prepared a book of photographs which you took?
- Yes, my lord.
39. There are eleven photographs in the book and you have an index at the back of the book?
- That is correct.
40. And the index at the back sets out in short form what each of the photographs relates to?
- Yes, my lord.
41. Photograph No.1 shows the rear of Kilcoursey House?
- That is correct, my lord.
42. Photograph No. 2 shows the hallway on the ground floor and indicates the stairway leading up to the right to the first floor?
- That is correct, my lord.
43. The third photograph shows the corridor from the stairs from where the stairs come up down to the end of the hallway to where the bathroom is shown?
- That is correct, my lord.
44. Would you describe what photograph No. 4 indicates?
- Photograph 4 is the outer side of the bedroom door.
45. Which bedroom?
- The master bedroom. And the arrows indicate heavy blood spots.
46. JUDGE : Blood spots on the door?
- On the door, my lord.
47. That is the outer door?
- Yes, my lord.
48. Photograph No. 5?
- Photograph No. 5 is the interior side of the same door and the arrows again indicate faint blood spots.
49. Photograph No. 6?

- Photograph No. 6 is the door on the left as you go into the main bedroom.
- 50. Is that the door which leads to the clothes closet?
 - Yes, my lord.
- 51. And the arrows again indicate blood spots on that door?
 - Yes, my lord.
- 52. Photograph No. 7 is a photograph of the entrance to the en suite bathroom?
 - Yes, my lord.
- 53. There is one arrow on that?
 - There are two arrows, one on the jamb of the door and on the towel rail inside the bathroom in the right centre.
- 54. Photograph No. 8 is a close-up of the towel rail and the washhand basin?
 - Yes, my lord.
- 55. There are two arrows again on that photograph?
 - Yes, my lord.
- 56. One on the upright of the towel rail and one on the tap of the washhand basin?
 - Yes, my lord.
- 57. They again indicate blood spots?
 - Yes, my lord.
- 58. What is photograph No. 9?
 - Blood spots on the bedclothes, my lord.
- 59. Was the bed in a made or unmade condition when you saw it?
 - Unmade.
- 60. How would you describe that item of bedclothes which you photographed?
 - A quilt or eiderdown.
- 61. Photograph 10 shows the TV set?
 - Yes, my lord.
- 62. And the arrow again indicates a blood smear which is rather clear to be seen?
 - Yes, my lord.
- 63. What is No. 11?
 - No. 11, my lord, is a bloodstain on the carpet.
- 64. Is that the bloodstain that has been described by D/Garda Campbell as being 8' 5" long?
 - Yes, my lord.
- 65. Leading to where the body was when you entered?
 - Yes, my lord.

MR. McENTEE : No questions, my lord.

DOUGLAS GOODBODY, having been sworn, was examined as follows by Mr. Groark

66. Mr. Goodbody, you are a retired farmer and you live in Clara, isn't that correct?
- That is correct, my lord.
67. I think that you have known the Flynn family for 15 years or thereabouts?
- Thereabouts.
68. And I think you share what is a mutual interest in horses?
- I do.
69. Did you know Father Niall Molloy?
- Very well.
70. How long would you have known him?
- About 15 years also.
71. And I think he also had a keen interest in horses and show jumping?
- Correct.
72. Is it the case that Richard Flynn and his wife, with Father Molloy would have been frequent visitors to your house and you to their house?
- That is correct, my lord.
73. Do you remember 6th July 1985 when Maureen Flynn, the daughter of the accused, got married?
- That is correct.
74. I think you received an invitation but you didn't in fact go to the wedding?
- That is correct. I was not present.
75. I think on the following day as a result of an invitation you went to the Flynn house for a fork lunch?
- Yes.
76. Can you say at what time did you go to the Flynn house?
- Approximately 1 o'clock.
77. How many people were there when you arrived?
- I would have said possibly 20.
78. How long did you remain at the Flynn house?
- Until shortly after 3 o'clock.
79. Was Father Niall Molloy present when you arrived at the house?
- No.
80. Can you say at what time did he arrive?

- I would have thought about 2 o'clock.
- 81. Did you speak to him?
- Yes.
- 82. What type of humour did he appear to be in?
- In good humour.
- 83. Before you left did you invite Mr. and Mrs. Flynn to your house for drinks on that evening?
- I invited them to my house that evening. The primary reason was so that they could give me some details about the wedding which I hadn't been able to attend.
- 84. I think they arrived in your house at about 7.30?
- Yes.
- 85. That would have been Richard Flynn driving his own car and having with him as a passenger Father Molloy and Mr. Flynn's wife?
- That is correct.
- 86. On that occasion what type of humour did Father Molloy appear to be in?
- He was in good humour but obviously suffering from a severe bout of hay fever from which he suffers.
- 87. Is it the case that all three would have had a drink in the house?
- They did.
- 88. Do you recollect what drink Father Molloy had?
- A gin and tonic.
- 89. Mrs. Flynn had a similar drink?
- Correct.
- 90. And Mr. Flynn had a Power's whiskey.
- Correct, my lord.
- 91. Can you recall how many drinks each would have had?
- I think they all had three drinks.
- 92. While they were there you didn't remain inside, you went outside and I think you showed them some horses you had at your place?
- That is correct.
- 93. Is it correct to say that they left your house at about 9 o'clock or thereabouts as you understood it to return to Kilcoursey House?
- Approximately 9.20.
- 94. At that time what type of humour did they appear to be in?
- Very good humour and very friendly.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

95. The position, Mr. Goodbody, is, is it not, that Mr. and Mrs. Flynn were neighbours and friends of yours?
- Correct.
96. And had been for 15 years?
- Yes.
97. Pleasant hardworking people with a very nice family and people that you had no hesitation in having together into your house?
- Absolutely none.
98. And you visited them from time to time?
- Yes.
99. And because of your friendship with the Flynns you came to know Father Molloy who was a friend of the Flynns and again you had a friendship with him because of his interest in horses?
- That is correct.
100. And all of the people with whom we are concerned in this case are highly respectable, reputable, decent people and all friends of yours and friends of each other?
- That is my opinion.
101. And that was the position that obtained on 6th July when you visited at Flynns and the Flynns came back with Father Molloy to your house?
- This was 7th July.
102. I beg your pardon, 7th July. That was the position, everybody was perfectly courteous and friendly and you had no hesitation, indeed you enjoyed having their company and showing them your horses and giving them these three drinks that you gave them?
- That is correct, my lord.
103. And when they left you Father Molloy and Mr. and Mrs. Flynn were clearly on good terms and enjoying one another's company considerably?
- Yes, my lord.

JAMES LOWRY, having been sworn, was examined as follows by Mr. Groark.

104. Mr. Lowry, you are a groomsmen by occupation and in July 1985 you were employed by the Flynn family?
- That is correct, my lord.
105. As your occupation would suggest you are employed to look after the Flynn horses at Kilcoursey House?
- Yes, my lord.
106. Do you remember on 6th July you were invited to attend Maureen Flynn's wedding?
- Yes, my lord.
107. I think on that occasion you met Father Molloy and you had a chat with him and he appeared quite well?
- Yes.
108. He had an interest in the horses?
- At Kilcoursey House.
109. On the following day, Sunday, you got up at your usual time went about your business and you returned to Kilcoursey House about 7 in the evening having been to a match in Tullamore and did you meet Father Molloy at that time?
- Yes, for a brief moment.
110. What type of form did he appear to be in?
- In good form.
111. Who else was in the house at that time??
- Mrs. Flynn was there. I didn't meet anybody else.
112. At 9 o'clock or thereabouts you returned to Kilcoursey House again?
- Yes.
113. Did you meet Mrs. Flynn?
- Yes, I did.
114. I think she was going to get a cup of tea for herself?
- Yes.
115. There was nothing unusual in any way about her?
- No.
116. I think you returned again at about 3 o'clock in the morning, the Monday morning?
- Yes.
117. And in the normal way you went in the front door with your own key?
- Yes.
118. And there was a general state of excitement in the house.

at that time?

- Yes.

119. Who was there?

- Sandra Flynn, Ralph Parkes, David Flynn, Anne Flynn, David's wife. That's all I met for the moment.

120. From what you heard I think you realised that at that time Father Molloy was dead?

- Yes.

121. Did you go to the kitchen and did you meet Father Deignan there?

- Later. About 15 minutes later.

122. That would be about 3.15 or 3.20?

- Yes.

123. And I think you made a cup of tea or a cup of coffee?

- Yes.

124. I think you remained in the kitchen until about 4 o'clock, when you left and went outside?

- That's right.

125. I think at about 6.30 when you returned to the house there was a guard standing in the hall?

- Yes, my lord.

MR. MCENTEE : No questions

MAUREEN PARKES, having been sworn, was examined as follows by Mr. Groark

126. You are Maureen Parkes and you are the daughter of the accused, Richard Kearney Flynn?

- Yes.

127. And on 6th July 1985 you were married to Richard Parkes?

- Ralph Parkes.

128. Sorry, Ralph Parkes, at the church in Clara?

- Yes.

129. And I think there was a large number of people at a reception in your parents house subsequent to that?

- Yes.

130. The following day there was a fork lunch at your parents' house which you attended?

- Yes.

131. About what time did you go there?

- We arrived about 12.30. Between 12 and 12.30.

132. I think there were drinks served first to the guests and then lunch was served at about 3 o'clock?

- That's right.

133. Did you see Father Molloy there when you arrived?

- No. He hadn't arrived when we arrived.

134. Did you see him arriving or do you know what time he did arrive?

- I couldn't say exactly what time he arrived. I know he was there by 2 o'clock.

135. I think the guests remained on, some of them left earlier, some later, but they had nearly all gone at about 5 o'clock?

- That's right.

136. I think then at about 7 o'clock your parents and Father Molloy left as we have heard to visit Mr. Goodbody?

- Yes.

137. You remained on in the house minding the house?

- Yes.

138. Yourself and Anne Flynn?

- My brother's wife.

139. I think at 9.45 your parents and Father Molloy arrived back at Kilcoursey House?

- Yes.

140. What kind of spirits did they appear to be in?

- They seemed in good form. My mum was very anxious that I

go and join my husband so we didn't delay very long.
They seemed in good form, in good spirits.

141. You and Anne then left Kilcoursey and went to White's pub in Clara?

- That is correct.

142. Where your husband and the rest of the family were?

- That is correct, my lord.

143. I think you remained on there until after closing time and you went then to your brother David's house?

- That is correct.

144. At Tubber?

- That is correct.

145. What time do you think you left the pub?

- Em I think it was possibly around midnight.

146. You went then to your brother's house and you arrived there shortly after midnight?

- That's correct. We went directly.

147. I think drinks and sandwiches were served to your guests?

- We had coffee and sandwiches in Tubber, yes.

148. Coffee and sandwiches were served and at a certain time you left to go back to Kilcoursey House?

- That's correct.

149. What time did you leave David's house?

- Left Tubber? About 1, ten past 1.

150. Who was there when you arrived home, who was in the house?

- My father.

151. Did he meet you?

- My father met me, yes. And my mother was in the house.

152. As a result of what he told you you went upstairs?

- I went directly upstairs.

153. What did you see when you went upstairs?

- Em, I found Father Molloy lying on the floor and my mother was also in the room.

154. Where was Father Molloy lying?

- He was lying directly inside the main bedroom door in front of the dressingroom door that you mentioned earlier.

155. There is a map if you might just look at that?

JUDGE : I don't think - the jury can follow it clearly from her description.

156. I think that your mother was also in the room?

- Yes.

157. JUDGE : Your mother was what?

- She was in the room, in her bedroom.
158. What was she doing?
- She was on her knees beside Father Molloy.
159. I think you felt Father Molloy's hand for a pulse but you couldn't get one?
- That is correct.
160. You are a trained nurse, I think?
- That is correct.
161. I think you then looked after your mother as best you could?
- Yes.
162. She was very upset?
- She was.
163. I think at a certain time Dr. O'Sullivan arrived at the house?
- That is correct.
164. What time was that?
- Em accurately I couldn't say. I think it was possibly 2.30. I really can't say.
165. I think he treated your mother and took over the care of Father Molloy?
- That is correct.
166. I think your mother was admitted to the casualty department of Tullamore Hospital that morning?
- That is correct.
167. Did you drive her to the hospital?
- No. Dr. O'Sullivan drove, I was in the back with my mother.
168. When you arrived back I think the guards had arrived at Kilcoursey House?
- That is correct.
169. You arrived back at about 5 in the morning?
- Yes. I stayed some time in the hospital and then came home.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

170. I think the situation is that Father Molloy was a close family friend of all your family, father, mother and the children?
- Absolutely.
171. And a frequent visitor to your house?
- Yes.
172. And he shared an interest with your household in horses?
- That is correct.

173. And I think he had been to your wedding on the Saturday, is that right?
- Yes. He unfortunately couldn't perform the ceremony. He arrived at the wedding as the speeches were going on.
172. He arrived at the festivities and then I think he went back to his parish to say mass on the Sunday morning?
- I do remember him saying goodbye but I can't remember ...
173. Well it was a great day in your life you can't be expected to remember everything. In any event he was there, he took part in the festivities, he went back to his parish to say mass on the Sunday morning and then he came back to this fork lunch?
- For lunch.
174. And then afterwards spent the day with your parents ?
- Yes.
175. And that was all very pleasant and everyone was enjoying the second day of the festivities consequent on your marriage?
- Yes.
176. And that was all very happy and pleasant?
- Wonderful.
177. A wonderful marriage and everyone was delighted with themselves and with you and your new husband?
- Yes.
178. And then you went off with the young people after your parents had come back from their visit to Goodbodys and in due course you came back to find your father in a state of extreme distress?
- That is correct.
179. And clearly distraught, would that be a fair word?
- It would, yes.
180. To describe his condition. You went upstairs then and found your mother trying to resuscitate the late Father Molloy?
- Yes.
181. And you being a nurse tried to help in that process and also tried to help your mother who was in a very distressed condition?
- Yes.
182. And in due course your mother was taken off to hospital

after Dr. O'Sullivan had sedated her?

- That is correct.

183. And you then I think did what you could to render assistance to your father, he was distressed and indeed the entire household who were in an advanced state of distress about this?

- Correct.

184. Appalling occurrence?

- That is correct.

FATHER JIM DUIGNAN, having been sworn, was examined as follows by Mr. Groark

185. Father Duignan, you are the parish priest of Clara, isn't that correct?
- That is correct.
186. And I think you have known the Flynn family for a number of years?
- I have known them since I went to Clara in 1980.
187. I think at 10 o'clock in the morning of 8th July 1985 you received a telephone call from Mr. Richard Flynn?
- That is correct.
188. What did he say to you?
- He invited me to come to his house as quickly as I could and to be prepared to anoint a person.
189. I think you went to the house immediately?
- I did.
190. And you were admitted by Mr. Flynn?
- Yes.
191. What time would that have been?
- I was there within five minutes after I got the call.
192. Now Mr. Flynn showed you to an upstairs room?
- Yes.
193. I think you saw there a man lying on his back on the floor?
- That is correct, yes.
194. Did you know who that man was?
- I wasn't certain at that moment.
195. I think you administered the last rites to him?
- I did.
196. Can you say was he alive or dead at that time?
- I wasn't sure whether he was alive or dead.
197. You administered the last rites and went downstairs and I think you assisted Mr. Flynn in telephoning a doctor?
- That is correct.
198. Who did you try to ring?
- Dr. O'Sullivan.
199. Where does he practice?
- In Kilbeggan.
200. Were you successful?
- We were not successful at that moment and I asked Mr. Flynn if we could try some other numbers of other doctors

and he got me the phone book. I had forgotten to bring my glasses with me and this necessitated me going back to the parochial house to get my glasses.

201. At the time you left the Flynn house to go to get your glasses, who was in the Flynn house?

- The only ones I was aware of were Richard Flynn, Mrs. Flynn and the deceased.

202. How long were you away?

- I would say I was back again - it's only a quarter of a mile from the parochial house to the Flynn household - I would say I was back again within five minutes.

203. On this occasion I think the party had returned from Tubber?

- That is correct.

204. You didn't know where they were?

- No.

205. I think there were a number of people in the house, is that right?

- At that particular time they were actually at the door and I brushed past them in my anxiety to get in contact with a doctor as quickly as possible.

206. What did you then do?

- The phone calls continued and there was no result.

207. The phone calls to who?

- To Dr. O'Sullivan and to a doctor in Clara and in Moate and at that stage Sandra Flynn suggested that it might be possible that Dr. O'Sullivan might be home and I volunteered to go with her in order to see if we could locate Dr. O'Sullivan.

208. Did the two of you go to Dr. O'Sullivan's house?

- That is correct.

209. And you managed to alert Dr. O'Sullivan?

- Yes.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

210. Is the position this, Father Duignan, that you were roused by a telephone call from Richard Flynn, the accused in this case?

- Correct.

211. And he I think was in some distress and asked you to get there as quickly as you could?

- Yes.

212. And to bring the holy oils with you so that you could anoint

a person and you got there as quickly as you could?

- Yes.

213. Mr. Flynn still distressed brought you to the room where the late Father Molloy was?

- Yes.

214. And there partly through your own desire and partly through Mr. Flynn's prompting you tried to get a doctor?

- Correct.

215. And you did everything you could and Mr. Flynn did everything he could to rouse Dr. O'Sullivan and then you rang a series of other doctors?

- Yes.

216. And eventually when you could get nobody Sandra had come back with the young people, you drove off to Dr. Sullivan's and got him back?

- Yes.

217. And the upshot of all this is that Mr. Flynn got you to that house as quickly as ever he could and got a doctor to that house as quickly as ever he could?

- I am very fully satisfied about that.

DANIEL C. O'SULLIVAN, having been sworn, was examined as follows by Mr. Groark

218. You are a medical doctor practising at Kilbeggan?
- That is correct.
219. I think at 2 o'clock in the morning of 8th July 1985 you received visitors Father Duignan, the last witness, and Miss Sandra Flynn?
- Yes, it was before 2. As far as I can remember it was ten to two. They knocked at the door. Unfortunately that particular night I normally bring the phone to my bedroom but I forgot, I left it locked in the surgery and couldn't hear it.
220. As a result of what they told you you went to the Flynn house?
- Yes.
221. What time do you think you arrived there?
- I arrived I should say at 2 o'clock.
222. I think you were shown into the master bedroom by Sandra Flynn?
- That's right.
223. And you saw there and recognized Father Molloy lying on the floor?
- That's right.
224. You had known him previously?
- I had known him previously.
225. You examined him and found that he was dead?
- Yes.
226. You didn't disturb him in any way?
- No. He was covered with a blanket or something when I went in and I didn't realise why he had died until I removed the blanket from his face.
227. I think that you also found Mrs. Flynn in another room?
- She was in the same room. She was being supported by her daughter. She was quite hysterical.
228. I think you treated her and you admitted her to Tullamore Hospital?
- Yes.
229. Did you drive her there yourself?
- I did.
230. Could you say how long prior to your examining Father Molloy had he been dead?
- He was still warm and there was no question of any rigor

mortis having set it so I gather it was a relatively short time. That is all I can say.

231. I think at 7.50 p.m. on 15th July, that's about a week later, at the request of the gardai you took a blood sample from Richard Flynn and from Mrs. Teresa Flynn?

- That's right.

232. And you gave those samples of blood to Detective Sergeant Dunne?

- That's correct.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

233. And I think you got every co-operation from both Mr. and Mrs Flynn in that matter?

- Oh absolutely, absolutely.

KEVIN FORDE, having been sworn, was examined as follows by Mr. Groark

234. Sergeant Forde, you are the sergeant of the guards stationed at Clara?
- That is correct, my lord.
235. At about 3.15 in the morning of 8th July you received a call to go to the Flynn house?
- That is correct.
236. Can you say who called you?
- Rev. Father Duignan. He called to my house.
237. You went to the house?
- That is correct.
238. When you arrived I think did you notify your immediate superior, Inspector Monaghan, of what you understood the position to be?
- I did, that is correct.
239. You arrived at Flynn's house at about half past three that morning?
- That is correct, my lord.
240. I think you were brought to the upstairs bedroom where you saw the body of a man lying face downwards?
- That is correct. Face upwards.
241. I think he was fully dressed and there was a towel covering his face?
- That is correct.
242. Did you know him?
- I didn't know him, my lord, no.
243. I think Dr. O'Sullivan told you that he was Father Niall Molloy from Castlecoote, Co. Roscommon?
- That is correct, my lord.
244. A friend of the Flynn family?
- That is correct.
245. What did you then do?
- I took the towel away from his face, my lord, and I saw that there was blood on the face, the upper lip was burst and there was a cut on the left lower jaw.
246. Did you see blood on the floor of the bedroom?
- There was blood on the floor about 3' long and about 8" wide between the body and the bed. There was also some blood at the head of the body of Father Molloy.
247. The bed was in some disarray?
- It was, yes, my lord.

248. Did you notice anything on the bedclothes?
- I saw what appeared to be bloodstains on the bedclothes, my lord.
249. Did you see other bloodstains in the room?
- I did, on two pictures which were hanging directly above where the body was lying, I saw what appeared to be bloodstains or blood spatters on the pictures.
250. I think after you carried out your very quick examination of the room you then left and spoke to Dr. O'Sullivan?
- That is correct, my lord.
251. And you then as best you could preserved the scene until further assistance came to you?
- That is correct, my lord.
252. Were you then brought in to see Mr. Richard Flynn?
- Yes. His son David brought me into the room and I saw Richard Flynn sitting on a sofa in the room. He was drinking a mug of coffee and he asked me to have one. He appeared to be very relaxed, cool and calm.
253. I think he apologised for bring you out at the hour?
- He did, that is correct, my lord.
254. I think he chatted a little while about the wedding the previous day?
- That is correct.
255. What did he then say to you?
- He said it's a messy old business, indicating the body upstairs. I started to caution him that he wasn't obliged to say anything but he waved his hand and told me that he understood all that.
256. Yes?
- He told me that he felt sorry for his wife, I struck her with my left and I hit him at least twice with my right. That is all there is to it.
257. JUDGE : He said he felt sorry for his wife?
- That is correct.
258. And after that?
- I struck her with my left and I struck him at least twice with my right, that is all there is to it.
259. That is all there is to it, that's what he said to you?
- That's what he said to me.
260. I think David Flynn was present at that time?
- He was, yes.
261. You arranged for the preservation of the scene and I

think Inspector Monaghan arrived at about 4.25?

- That is correct.

262. And you brought him upstairs and showed him the body?

- That is correct.

263. And you then came downstairs and I think you introduced Inspector Monaghan to Mr. Flynn and Mr. Flynn brought you into the sittingroom?

- That is correct, my lord.

264. What happened there or what was said?

- Well on sitting down Mr. Flynn said I am the culprit.

265. I think he again apologised for the trouble he was causing you in taking you out?

- That is correct, my lord.

266. Again did you hear Inspector Monaghan caution him?

- Yes. He cautioned him that he was not obliged to say anything unless he wished to do so but anything he did say would be taken down in writing and may be given in evidence. Mr. Flynn replied that he understood all that, that he had to do it. He went on to relate that Father Molloy ...

267. Did Inspector Monaghan make some observation or question to Mr. Flynn?

- Oh, he did, yes, my lord. He asked Mr. Flynn did he find his wife and Father Molloy in a compromising situation and Mr. Flynn replied no no no, nothing like that.

268. Did he continue?

- He stated that Father Molloy was a friend of the family for about 28 years and he went on to relate that they were himself and his wife were above in their bed at about 12 midnight. Father Molloy was also present and they were having a drink. An argument developed about who would go downstairs to get another drink. When he, Mr. Flynn, refused to go down for the drink, both Father Molloy and his wife physically attacked him. He said he struck his wife once and Father Molloy at least twice.

269. Did he say where he had struck his wife?

- On the face.

270. Did he say what happened to her when he struck her?

- She fell.

271. And he struck Father Molloy twice?

- That is correct.

272. Possibly three times?

- Possibly three times, my lord.

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- That is correct.

272. Possibly three times?

- Possibly three times, my lord.

273. Did he say what he had used to strike Father Molloy?
- His fist, my lord.
274. Did he say what part of Father Molloy he struck?
- His head and face.
275. Did he go on to tell you he threw water on him?
- Yes. Both his wife and Father Molloy were unconscious on the floor and he poured water over both of them to try and revive them. He then contacted Father Duignan and tried to contact Dr. O'Sullivan. When he had done that he came back upstairs and he found that Father Molloy was dead and his wife was in a hysterical state in the room.
276. Inspector Monaghan as he will tell us wrote down what Mr. Flynn was saying as he was saying it?
- He did, that's correct.
277. During the course of the interview did D/Sergeant John Dunne from Tullamore enter the room and sit down?
- That is correct, my lord.
278. When the interview concluded did Inspector Monaghan read over the notes to Mr. Flynn?
- He did, my lord. And Mr. Flynn said that they were correct.
279. Was he invited then to sign the notes?
- He was invited to sign it, which he refused to do but said that he would be making a full statement later that day and he requested a copy of the notes.
280. I think they were provided for him?
- Yes. They were provided to him.
281. Did you sign the interview notes?
- I did.
282. Along with Inspector Monaghan and D/Sergeant Dunne?
- Yes, my lord.
283. I think that interview concluded at about 5 past 5 in the morning and started about a quarter to 5?
- That is correct, my lord.
284. You then set about and organised a member of the gardai to preserve the scene?
- Yes, my lord.
285. During the time you were there there was no unauthorised interference with the scene?
- No, there wasn't, my lord.

MR. MCENTEE : No questions, my lord.

THOMAS MONAGHAN, having been sworn, was examined as follows by Mr. Groark

286. Detective Inspector, you are a member of the guards and I think you are stationed in Tullamore?
- I am stationed in Monahan now, my lord. I was in Tullamore in July last year.
287. I think on the morning of 8th July you received a phone call from the last witness?
- That is correct, my lord. I received a phone call at 3.35 a.m.
288. I think at 4.25 you arrived at the home of Richard Flynn, Kilcoursey House?
- That is correct, my lord.
289. When you arrived there you met the last witness, Sergeant Forde, and Garda Michael Fox and Aidan McHugh?
- That is correct, my lord.
290. You went upstairs with Sergeant Forde and there you saw the body of a dead man lying face upwards?
- That is correct, inside the door of the master bedroom, my lord.
291. How close to the door was it?
- It was quite close to the door. His left shoulder prevented the door from opening fully, my lord. His legs were parallel to the end wall of the room. He was dressed in a blue pullover, grey trousers, shoes, open neck shirt, my lord.
292. His head was covered by a towel?
- That is right, a rusty coloured towel over his face, my lord.
293. You lifted the towel and saw the face of the dead man?
- That is correct, my lord. He had blood on his face and a cut on his upper lip and on the lower point of his jaw on the left-hand side, my lord.
294. You also noticed that there was blood on the floor near the head?
- There was blood on the floor near the head and a large patch of blood similar to a drag mark between the body and the bed in the room, my lord, about five or six feet long and about 7 or 8 inches wide, my lord, on the white carpet.
295. The body was fully dressed?
- Fully dressed, my lord.
296. And there was a tweed jacket on the floor near the feet?
- That is correct, my lord.

297. The deceased was identified to you by Sergeant Forde and having examined the scene and preserving it as best you could you went downstairs where you were introduced to Richard Flynn?
- That is correct. I went downstairs where I met Mr. Richard Flynn, the accused, my lord.
298. Did you know him previously?
- I did not, my lord.
299. How was he dressed?
- He was wearing a dressinggown, pyjamas and bedroom slippers, my lord.
300. Did he apologise for taking you out?
- Yes, my lord, he apologised for the trouble and for taking us out at such a late hour. I introduced myself and I asked to speak with him alone, my lord, and he took me and Sergeant Forde to a sittingroom and on sitting down he said I am the culprit and he apologised again for taking us out of bed. I then cautioned him that he was not obliged to say anything unless he wished to do so and that anything he did say would be taken down in writing and may be given in evidence. He replied I know you have to do that I understand. I then asked the accused what had happened or if he had found his wife and Father Molloy in a compromising position and he replied no no nothing like that. He then went on to tell me that Father Molloy was a close family friend for over 28 years and that at about 12 midnight that night both he and his wife were in bed and that Father Molloy was in the bedroom and they were having a discussion. He told me they had quite an amount of drink taken. He then said that a stupid argument developed over who would go downstairs for more drink and that he got out of bed to go down to get a drink for himself and that at that stage he was physically attacked by his wife and Father Molloy because he indicated that he was not going to get drink for them. He said they both attacked him at the same time and that he struck his wife first on the face with his fist and that she fell to the floor and that he also struck Father Molloy on the face at least twice and probably three times and that he also fell to the floor. He said that both were rendered unconscious and that he tried to revive them by pouring water on their faces. He said his wife came around but

he noticed that Father Molloy was breathing with difficulty and that he knew he had a heart condition. He then ran downstairs and telephoned Father Duignan and tried to contact Dr. O'Sullivan but was unsuccessful. After a short time Father Duignan arrived and he went upstairs with the priest and he found his wife in a hysterical state near Father Molloy.

301. Did you write down what Mr. Flynn was telling you as he was speaking?

- I did, my lord. I had a clipper board with some ruled paper on it, my lord, and I wrote down as he was speaking.

302. I think during the course of that interview Sergeant Dunne from Tullamore arrived and sat down?

- That is correct, my lord. About midway through the interview D/Sergeant Dunne entered the room.

303. After you had written down the account which Mr. Flynn gave you did you read back your notes to Mr. Flynn?

- I did, my lord.

304. What did he say about them?

- He said they are correct, that is a true account, and I invited him to sign them and he said I will not sign anything now but I will make a full statement in the morning. He also requested a photocopy of what I had written and I agreed to provide him with that, my lord.

305. As far as that is concerned on the following day did you receive a further statement direct from Mr. Flynn's solicitor?

- That was on the 15th July.

306. 15th July, a week or so later?

- Yes. Mr. Lysaght, Mr. Flynn's solicitor, called to Tullamore garda station and he handed me a typewritten statement signed by Mr. Flynn and witnessed by Mr. Lysaght indicating that the notes I had taken at the interview on the morning of 8th July were correct and a true account of what had taken place in the bedroom.

307. I think that statement was signed by Mr. Flynn and dated 14th July 1985 and witnessed by Mr. Lysaght. Do you have the original now, the original of your notes and of the statement signed by the accused?

- I have, my lord.

308. The original of both?

- I have, my lord.

309. I think the notes you had taken, I don't know if there is any necessity to read them out to the jury again, are they notes of the evidence you have just given to my lord and the jury?

- That is correct, my lord.

310. I think later on that day at about 12 noon you returned to the Flynn house?

- I did, my lord.

311. And I think you asked to see Mr. Flynn?

- At 12 noon, my lord.

312. On the 8th?

- On the 8th, yes. I met Mrs. Anne Flynn, the accused's daughter-in-law, and I asked to speak with the accused. I was told he was in the rear lawn, my lord, and a short time later his legal adviser, Mr. Lysaght arrived as well.

MR. MCENTEE : There is no relevance to this material.

313. Through his solicitor did you invite Mr. Flynn to make a written statement if he wished to do so?

- I did, my lord.

314. And Mr. Lysaght indicated that Mr. Flynn would not be making a statement?

- That is correct, my lord.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

315. Would not more accurately be making another statement.

- That is correct.

316. You already had a pretty comprehensive statement, I think there are minor variations, they are very minor. I think we had better get this accurately. The original note that you took the relevant bit was "About midnight last night my wife and I went to bed. Father Molloy came into our bedroom and we were all having a drink and a discussion. We all had quite an amount of drink taken. An argument developed between the three of us. It was a stupid argument over who would go downstairs to get another drink. I refused to get them a drink and I said I was going to get one myself and I was out of bed to go down. They both attacked me then, both my wife and Father Molloy physically. My wife got out of bed and Father Molloy who was sitting in the room got up to attack me. They both went for me at the same time and I struck both of

them with my fists. I hit my wife once on the face and she fell down. I hit Father Molloy at least twice and probably three times on the face with my clenched fist. Both my wife and Father Molloy were rendered unconscious. I examined my wife and saw that she was breathing. I also went to Father Molloy and he was breathing with difficulty." He seems to have said but it is not in the note that he knew Father Molloy had a heart condition, is that right?

- Yes. He said I threw water on both their faces and said an act of contrition into Father Molloy's ear.

317. But missing from the note - no, you are quite right it comes in later on ?

- It does.

318. "I examined my wife and saw she was breathing. I also went to Father Molloy and he was breathing with difficulty. I threw water on both their faces and said an act of contrition into Father Molloy's ear. My wife revived but Father Molloy did not. He was having difficulty and I knew he had a heart condition. I ran downstairs to phone the PP and Dr. O'Sullivan." And then he talks about the difficulty of making contact?

- That is correct, my lord.

319. And isn't it correct to say that once you asked him what had happened he gave you a completely frank account, which is the account that you embodied in your statement?

- That is correct.

320. And there was no question of you having to put any pressure on or lean on him or even encourage him to talk?

- None whatever, my lord.

321. He was perfectly frank and he saw you there writing it out and you wrote it down in his presence and while he said he wouldn't sign it because he wanted to talk to his solicitor he did tell you that in due course he would be making a full statement?

- That is correct, my lord.

322. And he asked you for a copy of that and presumably then he brought that to his solicitor and his solicitor accepted that that was a fair and accurate statement that didn't need any enlargement?

- That is correct, my lord.

323. When you in due course saw Mr. Flynn with his solicitor he was saying to you what we talked about on the night of the 7th, morning of the 7th, that is alright, that is a true account of what transpired on the night of this tragedy?
- That is what is contained in Mr. Flynn's subsequent statement handed in by his solicitor.
324. So that you had, almost within hours of this tragedy, you had Mr. Flynn frankly and after caution telling you what happened and you were writing it down and then that being vouched for some days later?
- That is correct, my lord.

WILLIAM JOHN MOLLOY, having been sworn, was examined as follows by Mr. Groark

325. Mr. Molloy, you reside at Castlereagh, Co. Roscommon, and you are a brother of the late Father Niall Molloy, isn't that correct?

- That is correct, your honour.

326. I think that he was 52 years of age at the time he died?

- 52, yes.

327. I think he studied for the priesthood and following ordination he became a chaplain to the army?

- He was with the Irish army in Cyprus for a number of years.

328. When was he ordained as a priest?

MR. MCENTEE : It is hard to see the relevance of this.

- He had been in so many parishes it is hard to

JUDGE : Yes. It doesn't make any difference.

329. I think that he had a life long interest in showjumping, he was a good showjumper himself, I think he was involved in some international teams?

- He was involved in international teams. We all were involved, the whole family.

330. I think on 8th July 1985 after you heard about your brother's death, did you go to Clara garda station and from there to the Flynn residence in Kilcoursey House?

- I went straight to Clara garda station to find out what happened to my brother because there was a knock at my door at about 8.30 and Father Cregan told me that my brother had had an accident. I thought it was merely a kick from a horse.

331. When you got to Kilcoursey House I think Richard Flynn met you and came out to the driveway to meet you?

- That is right. I first reported to Sergeant Fox.

332. What did Richard Flynn say to you?

- Richard Flynn said I'm sorry, I'm so sorry this had to happen. I said what did happen I believe that this has gone on for two days my brother just came up here as a friend and I have come up he is going home to me I have no longer a brother.

333. What did Richard Flynn reply to you when you asked him what had happened?

- Sergeant asked me would I speak to Mr. Flynn inside in

FLYNN (a.m.)

the house, so I said I would and the inspector told me there was a garda sitting in the hallway and he would show me the room where I could talk to Mr. Flynn. Mr. Flynn said again that he was terribly sorry for the whole thing and I said what happened and he said it was a political row, it started with a political row. Now there is one thing there, your honour, that you might say
JUDGE : Mr. Groark

MR. GROARK : Mr. Molloy, answer the questions as I ask the if you would.

- Right.

334. Did you say to him for God's sake what happened, you have been friends for so long?

- For so long.

335. Did he do something then?

- What Mr. Flynn did at that time he was sitting on the couch on the righthand side, I was sitting on the left, and he started scratching his face likewise and I noticed under his finger nails of the right hand that all the blood was congealed and there was a swelling on the back of the right hand and I said is that the hand that killed my brother.

336. I think after this conversation took place Mr. Flynn broke down and was very upset and his daughter came in?

- Mr. Flynn was getting very upset as regards the hand. The next thing his daughter asked him to have some tea or coffee, I said no thanks but father may have some coffee that brought me up and we had to return to Castlereagh Garda Connolly was dead and Father Cregan had to go down and receive the remains.

337. I think you had a cup of tea or coffee and you left to go back home?

- That is so.

WITNESS WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. MCENTEE

338. It is a fact, isn't it, that your late brother was a close family friend of Richard Flynn, Mrs. Flynn and the Flynn family for a very long time indeed?

- That is what Mr. Flynn told me. I never knew Mr. Flynn or the Flynn family in my life.

339. Well were you not aware that there was a friendship between them?

- I was aware there was a friendship but horsey people are horsey people. The Flynn family I have never met.

340. That is not what I'm putting to you. I am putting it to you simply that you knew - I'm quoting from something you told the police?

- Yes.

341. That you were aware of your late brother's friendship with the Flynn family from Clara?

- That would be true.

342. And I'm saying that you knew that that was a deep friendship that had lasted for a very long time?

- A very long time and I could not understand ...

343. What had gone wrong?

- What had gone wrong after 27 years.

344. That is absolutely understandable. And I think when you got to Mr. Flynn's house he came out of the house, he came across the driveway and he said I'm sorry, I'm so sorry over Father Niall?

- That's right.

345. And he asked you into the house for a cup of tea and you and the two curates who had come with you went into the house and had a cup of tea?

- That's right.

346. And after some talk with the guards you went into a private room?

- Yes, we were shown into a private room.

347. And Richard said to you that he had a terrible lot of drink taken, that a political row started and you said for God's sake what happened, you have been friends for so long?

- True.

348. He didn't answer that question but he showed you his hand, he held up his right hand and showed you black marks and discoloration of his fingers under the nails, isn't that right?

- No.

349. That is what apparently you told the guards. He didn't answer me but held up his right hand showing black marks and discoloration of his fingers under the nails?

- No. Mr. Flynn by this time was getting nervous. We were talking about my brother. I said I came up for my brother and he just did that once or twice.

350. He became distressed?

- He became distressed.

351. And I suggest that what you told the guards was he didn't answer when you asked that question and I quote "he did not answer me but held up his right hand showing black marks and discoloration on his fingers under the nails" and he also said "after 20 years of friendship why did it come to this". He broke down, began to cry and become very distressed, at that stage his daughter came in and then the conversation about coffee occurred?

- The coffee arrived and the daughter.

352. You agree that that is what you told the police at the time?

- I agree with that and I signed it in Tullamore.

353. And it was the truth?

- It was the truth.

(Court then adjourned to 2.05 p.m.)

I certify the foregoing to be a true and accurate transcript of the shorthand note taken by me.

B. J.annon

Court Stenographer

RICHARD KEARNEY FLYNN

1st Day (12th June, 1986) p.m.

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MR GROARKE: I intend to call Dr Harbison.

DR JOHN FREDERICK AUSTIN HARBISON (sworn), examined by Mr Groarke:

MR McENTEE: I have no objection to my friend leading this witness through the preliminary material or indeed, for that matter, if Dr Harbison would like to read his report, my lord.
JUDGE: Very good.

1a MR GROARKE: Dr Harbison, you are the State Pathologist, isn't that correct?

- Yes, my lord.

2a For the purpose of the jury, would you say what your qualification are?

- Apart from my basic Medical Degree, I am a Fellow of the Royal College of Pathologists, my membership being by examination; I am a Fellow of the Faculty of Pathologists of the Royal College of Physicians of Ireland, and I hold the Diploma in Medical Jurisprudence in Pathology of the London Society of Apothecaries; I have been State Pathologist for eleven and a half years and a Pathologist for twenty five years; I am lecturer in Medical Jurisprudence at Trinity College, Dublin.

3a I think at twenty past eight in the morning of 8th July, 1985, as a result of a report - a report you received at twenty past eight that morning - you went to Clara Garda station and from there to Kilcoursey House?

- Correct, my lord.

4a On arriving there you met Sergeant Kevin Forde who gave you a briefing as to the circumstances in which you were there?

- Yes, my lord.

5a I think that, having done that, Sergeant Forde led you to an upstairs bedroom?

- Yes, my lord.

6a Where just inside the door you saw the body of a man lying on his back with his face covered with a towel?

- Yes, my lord.

7a I think that you directed certain photographs to be taken by Detective Garda Byrne?

- Yes, my lord.

8a And you directed Detective Garda Keating to remove the towel from the face of the deceased person?

- Yes, my lord.

9a What did you then do?

- I had further discussions with members of the Gardai and also with Dr Smith, the forensic scientist. The body was identified to me then at 1.47 p.m., as it lay, by Canon Patrick Murray of Athlone, in the presence of Sergeant Forde, as that of Fr Niall Murray, a Curate, of Fuerty, Co. Roscommon. I then went ahead with a description of the room as I saw it. This body lay just inside the door of what appeared to be the master bedroom of the house and off this bedroom was a large bathroom. The head of the body lay approximately three feet from the saddle of the bedroom door, that is the door between the...I am just recalling from my memory now, whether that is the door with the landing or the door with the bathroom.

10a It would be the bathroom door, Dr Harbison?

- It would be the bathroom door, yes, my lord, the door between the bathroom and bedroom. The trunk of the body was at an angle of about forty five degrees to the partition wall between the bedroom and the bathroom. The left leg lay roughly parallel with that wall and the right leg out from it at an angle of thirty degrees to the left leg. The body was clothed in a blue round-necked long-sleeved pullover, a long-sleeved collar attached blue shirt, a pair of dark grey worsted trousers, shoes and socks. There was a brown herring-bone tweed sports jacket on the floor near the feet of the body. The right arm lay at about thirty degrees out from the body and was fully extended or stretched. The left arm was bent at the elbow so that the forearm was parallel to the body and the left hand within an inch of the skirting board - that again is of the wall between the bedroom and the bathroom.

On preliminary inspection of the body, there was white froth coming from the mouth and I could see an injury to the left side of the upper lip. I noted a further injury over the angle of the lower jaw on the left side. At 1.56 p.m. I measured the air temperature and found it as 21.3 degrees Celsius. Three minutes later I noted that rigor mortis was firmly established in all four limbs. Rigor mortis is a condition of rigidity of the muscles, my lord, which sets in a few hours after death and remains for a day or two. It was present in all four limbs and in the neck and in the lower jaw. I then considered the bedroom which is a large one. It had a double bed - there was some disorder but not marked - a large wardrobe, a dressing table, a rocking chair, two bedside chests of drawers, a television set and a record player. As I have mentioned, the room was not in any very great state of disorder except for an area in which male and female garments were scattered around the bed and adjacent floor and on some chairs. There was blood staining of the thick carpet on the floor over a distance of eight to nine feet, extending from a point six feet from the foot of the double bed - that would be six feet away from the foot of the bed towards the door onto the landing - and then it extended towards the body to a point two feet from the right arm of that body. Nearest the body the staining was dark and appeared to have been due to direct bleeding onto the surface, that is onto the carpet, but the remainder was fainter and suggested a wiping action or smearing action along the carpet. At 2.17 p.m. I took the temperature in the rectum of the body and I noted it to be 31.5 degrees Celsius. The normal rectal temperature of a living person, my lord, who does not have a fever is 37 degrees. So, that is 6½ degrees below the normal body temperature, in degrees Celsius. Then I assisted Detective Garda Keating to wrap up the body when I had taken the temperature and he sealed it with adhesive tape, and the

body was then removed by ambulance. I left the scene at half past two and went to the hospital at Tullamore. I then went to the mortuary of the hospital at 4 p.m. and Inspector Monaghan came and gave me further information concerning the background to the case. I also briefly met Dr O'Sullivan who was the family doctor to the household and who informed me that he had occasionally attended on Fr Molloy, or Fr Molloy attended on him. Between the time I lost sight of the body at the scene and I saw it again at the hospital it had been in the custody of Garda Fox who handed it over to me. So, I began my examination proper at ten to five that afternoon. Present at it were Detective Garda Keating, the ballistics or scene of crime officer, Detective Garda Declan Buckley and Detective Garda Cloonan, both fingerprint experts, Detective Garda Byrne, who was taking the photographs, and Garda Fox, whom I think was stationed at Clara. I began by opening the plastic sheeting which had been wrapped around the body at the scene and was able to expose parts of the body, enabling me to take trace evidence in the form of scrapings of the finger nails, cut and plucked samples of hair from the head, which I gave to Detective Garda Keating.

11a You removed certain clothing from the body which you gave to different members of the Gardai - nothing turns on that, Dr Harbison. I think that there was also some money in the trousers pocket of the deceased and some car keys?

- Yes, my lord.

12a We are not concerned with them. Did you note the external appearances of the body?

- Yes, my lord. It was that of a late middle aged male of fairly lean build, five feet and eleven and a half inches in height, with receding grey hair, and then I noted a number of injuries on the body. Dealing first with the head.

There was a group of lacerations - these would be cuts of blunt origin rather than with a sharp knife, I will continue to call them lacerations - on the left side of the mouth. First of all, a three-quarter inch laceration on the outer surface of the left side of the upper lip near the midline; then a three-eighths of an inch or smaller laceration near the left angle of the mouth - it was also on the upper lip, and a tiny one-sixteenth of an inch long transverse split of the lower lip close to the left angle of the mouth. That completes the lip injuries. I noted bruises on the nose, two vertical ones three-quarters of an inch long on its left side and a bruise three-quarters by one-quarter of an inch on the right side, that right sided bruise with a graze or abrasion at its upper end. I noted some bruising which had a spotty appearance over the right cheek bone, measuring one inch by half an inch. I noted a superficial graze or abrasion, one-sixteenth of an inch across, on the outer surface of the right ear, on the rim of the flap or pinna, which was accompanied by bruising beneath the upper end of that ear flap over an area of one inch by half an inch. I then noted, but I had already seen this injury at the scene, a laceration or blunt origin cut three-quarters of an inch long over the shaft of the lower jaw on the left side, two inches in front of the angle of that jaw. And last of the injuries on the head, a group of two grazes, one an eighth and one a sixteenth of an inch across, on the tip of the chin, just to the left of the midline. Turning to the only injury on the upper limbs, some fading bruising on the left forearm, three inches above the bony bit on the little finger side of the wrist, known as the styloid process. This placed it at roughly left mid-forearm. On the lower limbs or legs, I noted bruises with fading edges on both knees and on the middle of the left shin, the largest of these an inch and a quarter across. I noticed an abrasion or graze an eighth

of an inch across, with a little flap of skin on its inner edge on the left side, an inch and a half below the private parts. I noticed an abrasion or graze a sixteenth of an inch across on the inner surface of the lower leg on the right side, one inch above and behind the boney prominence of the right ankle or malleolus. I noted a number of other external features. There were a few tiny haemorrhages beneath the inner surface of the right lower eyelid. I call these petechiae haemorrhages and they are a type seen in asphyxial deaths, deaths where people have a struggle to breathe at the end. I noted that he had his natural teeth and that they were intact. I could not detect any fracture of the bones of the face, though the nasal cartilage - that's the bit of the nose about half way down that one can wobble from side to side - was slightly more mobile than normal. There was an old operation scar on the upper abdomen. The private parts and the back passage or anus were all normal. I noted some boney deformity of the pelvis on the right side, in the pubic area. The post mortem staining, which is due to the stoppage of the circulation after death, was the normal purple colour and was distributed, as expected, over the back, that is beneath the body as it lay on its back. By the time the body had been taken to the hospital I was able to break down the rigor mortis or muscle stiffening which I had found firmly set in at the scene. That completed my external assessment of the body, my lord. If counsel is agreeable, I will proceed then to my internal examination. Taking first the head. There was bleeding into the right temporalis muscle. This is the muscle that one can feel on the side of the head when one clenches ones teeth and it would be above and slightly behind the right ear, under the skin, and there was bleeding in that muscle. I also noted some areas of bleeding in the membrane covering the skull, at the back of the head, and also in what I describe as the left parieto-occipital area - that is high on the left side of the head towards the back. That bleeding was an inch across.

The skull was intact. The membrane directly beneath the skull - the dura - was also intact. But when I removed the dura I noted a thin area of haemorrhage, which I would call subdural, being under the dura, which was of clotted blood, but obviously fresh clotted blood, over the left side of the brain, on the side and towards the back. It was up to one eighth of an inch thick and I did not see any membrane on it. Membranes over such clots indicate that they are perhaps a week or more old, my lord. There was no such membrane. I also found this bleeding between the brain and its covering membrane, the dura, on its under surface in the areas I describe as the right and left middle cranial fossae - that would be in the under surface of the brain directly in from the ears would be the simplest way to describe its position - and in the posterior cranial fossa - that's low down - in the back of the cranial cavity. I noted slight flattening of the convolutions of the surface of the main parts of the brain on both sides, that's of the cerebral hemispheres, indicating some slight swelling of that brain. There was thickening of the inner membrane over the brain, over the upper parts of the hemispheres. This was not relevant to injury, my lord; it was a long standing finding. I could see no bruising of the brain surface. I did note on the under surface of the brain, on the left side, grooving of a structure called the uncus and that grooving indicates that there was swelling of the brain on that side. I then placed the brain for stiffening up and examination later, in a preservative fluid. I then turned to dissecting the remainder of the head and neck, and found bleeding in the tissues under the skin and in the muscle over the length of the shaft of the lower jaw on the left - that is beneath the laceration I had described in that area, my lord - also over the right angle of the lower jaw and over the outer margin of the right eye socket. I also noticed bleeding in the neck in the tissues above and beneath a salivary gland which is below the left side of the lower jaw,

the sub-mandibular gland, and over the left side of the larynx or voice box in the neck. This dissection confirmed that there were no fractures of the bones of the face. I did see a denture, a partial one, on the lower jaw in this dissection. It was intact and in its normal position, and the neck structures generally were intact. When I opened the airway, the trachea and the larynx, I found they contained white froth. The thyroid gland in the neck was normal. I then turned to my examination of the chest. The rib-cage was intact. The left lower margin of the rib-cage was turned out, an old deformity, not in any way due to recent injury but perhaps old injury. The cavities in each side of the chest, or pleural cavities, were intact and healthy. Continuing my dissection of the airways downwards, I noted that the wind-pipe and its branches contained much watery froth but no foreign material - that is he didn't appear to have inhaled any foreign object or food vomited or anything like that - nor did I get any smell from the lungs to suggest that they had been subject to digestion by fluid from his stomach, nor did I see any inflammation of the lining of the airways which would further exclude the effect of stomach juices. However, the striking feature was that both lungs were grossly oedematous, that means they were very waterlogged. By this I mean, my lord, fluid which has derived from the circulation - I don't mean that water entered the airway. I use it as a simple term, the technical term being described as oedema. The right lung weighed 950 grams and the left 1000. This would be three times the normal weight of the lung and would indicate that there would be very little space left for air absorption through those lungs. Dissecting the lungs showed no disease in them nor any evidence of any emboli, that is clots that had found their way into them. The pericardium or sack around the heart was healthy. Externally the heart was normal in

size and it showed two small white patches of fibrous tissue on its front surface. The heart weight 400 grams, which I would put at the upper limit of normal for a man of almost six feet in height. The left ventricle which is the main pumping chamber showed slight hypertrophy or thickening of its wall, being between one and a half and two centimetres thick, the normal being said to be 1.3. I cut through the heart muscle and found an area which appeared to be scar tissue in the heart muscle, in that portion dividing the two muscular chambers, the ventricles, near its apex - that's out near the front tip of the heart - though this area of scar tissue was no more than one centimetre or a third of an inch across. I took a sample of it for microscopic examination. Otherwise, the heart muscle appeared healthy. The coronary arteries did show traces of atheroma - that is the normal degenerative disease which people in our society suffer from - but they were open and would have allowed blood to circulate. The left anterior descending coronary artery, the one in front, divided into two small vessels which contained atheroma but they were at least 50% open for circulation, and I took a sample of these. The heart valves appeared normal. The aorta or principal artery coming from the heart did show some atheroma or degenerative disease of its lining in the abdominal part where it had undergone hardening. The oesophagus or gullet was normal. I have already mentioned the pericardium was healthy. I come then to the abdomen or tummy. Its cavity, the peritoneal cavity, showed adhesions in the region of the stomach. This would have been due to an operation on the stomach in the past, as indicated by the scar outside. The stomach contained not much more than 50ml. of brown mucoid material - that would be only about two fluid ounces. There was some inflammation of the lining of the stomach at the fundus or upper end.

The duodenum below it was normal. The remainder of the intestines showed some slight dilatation or distension due to gas and emitted a slightly unpleasant smell which suggested early decomposition. The liver was slightly paler than normal, possibly due to fat in it. The gall bladder contained a large quantity of gravel - that is tiny gall stones. The spleen, pancreas and adrenal glands were normal. There was bleeding into the hilum - that is the stalk - of the left kidney but the structure was not damaged. The kidney itself was intact. Both kidneys were slightly congested but otherwise normal and the bladder was mildly distended with urine. I took samples of urine and blood samples, one of the blood samples into a plain glass container and the other into a plastic container with a preservative called flouride. And, so, I completed my examination of the body at ten o'clock that evening, the 8th July, my lord.

13a On the 30th July then did you carry out an examination of the brain?

- Yes, my lord, by which time the brain had had a chance to be hardened, and I examined it with and in the presence of Dr Farrell of the Richmond who is a Neuropathologist. It weighed 1500 grams. On the outside the findings were as I noted originally but also I noted that the uncus, that structure which I described as being grooved on the left, that the right one was also grooved and that also there were areas of haemorrhage beneath the inner membrane covering the brain, so called sub-arachnoid haemorrhage, along the top of the brain in such an isolated distribution that I concluded they were due to injury rather than spontaneous. On slicing through the brain I noted that the cavities within the brain, known as the ventricles, were flattened and also a passageway between two of them called the aqueduct, indicating swelling of that brain, but I did not notice anywhere in the brain localized

bruising or contusion. So much for the brain examination. I then examined portions of the brain and the heart and other organs, my lord, under the microscope and there were some changes indicative of lack of oxygen in portions of the brain and also changes indicating fluid accumulation or cerebral oedema in that brain. I examined the area of apparent scar tissue in the heart under the microscope and confirmed it but could not find any evidence of recent muscle tissue death, that is of a recent infarct or heart attack. I did note in one area that there were some abnormally large branching muscle fibres. I neglected to note that I also examined the narrowest of the coronary arteries and confirmed the absence of any thrombosis in them, in that it was still open. I confirmed the pallor of the liver as being due to the presence of a small amount of fat and I noticed that there was some congestion of the blood vessels in the liver. The pancreas had undergone post mortem degeneration, a common finding. In the lungs I noted great congestion of the blood vessels, I noted protein in the air passages which confirmed this oedema or waterlogging of the lung and I noticed a haemorrhage into an air cavity at one point. Examination of the kidney showed no evidence of blood pressure. This was important, my lord, from the point of view of there being the possibility of a slight enlargement...there was slight thickening of one of the heart chambers. I quote an analysis - this may be given by another witness, my lord - I don't know if it is relevant for me...

14a You may give that analysis - this is an analysis of the blood and urine samples which you took in the post mortem?
- Yes, my lord. I received a report from the Forensic Science Laboratory of analysis...

MR McENTEE: I am perfectly happy that this witness should give this evidence, my lord.

JUDGE: Yes, very good.

WITNESS: ...and the blood alcohol was found to be 134.7 milligrams in 100 millilitres of blood and the urinary alcohol level was 196.6 milligrams in 100 millilitres of urine, and I expressed the opinion on these, my lord, that this would come within ordinary social drinking. I would not consider this a drunken blood level. For the benefit of the jury, the current limit permitted to a driver is 100. The deceased's was 134, above the driving limit but not very much above it. That concluded my examination, my lord, and my report next deals with my conclusions on that examination. Father Niall Molloy, in my opinion, died of acute brain swelling or the effects of acute brain swelling and acute sub-dural haemorrhage, both resulting from multiple injuries to his head and neck, principally to his face. The distribution of those injuries is consistent with the deceased being the recipient of five, six or more blows, such as by a fist, but the violence was insufficient to fracture any of his facial bones. Other pathological findings consisted of pulmonary oedema, these very moist lungs, with haemorrhage or bleeding into them, and a slightly enlarged heart. This oedema of the lungs, in my opinion, is most likely to have been associated with the head injury, a phenomenon which pathologists refer to as cerebral lung, which would have given rise to the froth seen exuding from the dead man's mouth and indeed in his wind-pipe. Inhalation of vomit and acute heart failure would be alternative explanations for this waterlogging of the lung, my lord. In my opinion, the evidence of these as the cause is certainly far less than the brain injury. I don't exclude certainly the heart condition as a possible contributory factor to that lung waterlogging. I would exclude inhalation of vomit - there was no evidence of it, my lord - as a cause of that. I mention this enlargement not so much of the heart as a whole but of one chamber. The whole heart was within normal limits of weight. I couldn't explain this thickening

of one chamber on the grounds of blood pressure. When there is reasonably long standing blood pressure it produces changes in the blood vessels in the kidney microscopically which I could not find. Likewise, the degree of coronary artery disease in this man was not very great; I have seen considerably worse in people who have died of other causes. But I did find microscopically, in one area only admittedly, an abnormal pattern of heart muscle and this points to the possibility of the deceased having an abnormality of his heart muscle as a cause of the slight thickening of that heart chamber, the left ventricle. Despite the finding of these, my lord, nevertheless, my opinion is that the head injuries are still the primary cause of death and the dominant cause of the waterlogging of the lungs. I would also mention that there was no evidence of any vomiting at the scene or on the deceased's clothing to suggest that he could have inhaled vomit. Coming to other injuries...

15a Before you leave that, Dr Harbison, did you also consider in relation particularly to injury number 5, number 5 being a laceration over the ramus or shaft of the lower jaw on the left side, two inches anterior to the angle of that jaw, a further possible cause?

- Yes, my lord, I was asked by the authorities to consider this, could it have been caused by fist alone or could it have been caused by some other agency, and certainly as a laceration it is not common for a fist to split a jaw open as much as that in the general rough and tumble of the cases that I see where there have been fisticuffs, though it would be possible with a particularly heavy blow. So that other possible causes would be that something much harder than a fist struck the jaw or, conversely, the jaw struck something fixed and hard, the simplest explanation of the latter being a fall against anything from the side of a table, a bed post, a heating radiator or something of that sort. One could not

exclude the possibility of a kick causing it once the individual's head was near the floor. It is more the typical sort of injury that one would associate with either a kick or striking something hard than with just a simple blow of the fist.

16a You were about to say that you examined the body for evidence of any other injury?

- Yes, I was interested in any evidence of a struggle, my lord, and I did not find typical defensive injuries; these would be the sort of injuries that the dead man might have sustained in warding off blows. I did mention one forearm bruise but as it had a fading appearance it suggested to me that this was not associated with any struggle in the immediate hour or two before the man's death and was possibly a day or two earlier or earlier still. Likewise, I did not see any injuries on the deceased's fists to suggest offensive injuries sustained while giving punches. Those were my only observations on remaining injuries on the body. There were some on the leg in common places of injury like the skin and the knee that I did not attach any great weight to.

17a I think you concluded from your examination that death had occurred late on the night of the 7th July or the very early hours of the 8th July, 1985?

- Yes, my lord, more likely in the early hours, since the body was only 6½ degrees below normal temperature in the house, though it was very warm at the time. It was over 20 degrees Celsius - that would be in the sixties or seventies Fahrenheit.

18a And I think you end your report by saying the cause of death was acute brain swelling and acute sub-dural haemorrhage and, secondly, head injuries?

- I consider these the underlying cause of death, yes, my lord.

Cross-examined by Mr McEntee:

- 19a Dr Harbison, the conclusion you reached, as I understand it, is that Father Molloy died as a result of probably blows which could have been as few as five in number?
- Yes, my lord.
- 20a And of those at least one - the one on the left jaw - that could have been caused when falling if he fell heavily against an object on his way down?
- Against a hard object, yes, my lord.
- 21a And similarly, whilst it is not necessary for your conclusion, it is possible that more than one injury was caused by hitting something on the way down? It would be hit less hard or less directly than the one on the jaw but could be explained in that way?
- I think if there are multiple injuries in the course of a fall, my lord, one must postulate, if not a staircase, some step by step fall. That would be a little more difficult to presuppose in the room in which I saw the body, with its soft carpet.
- 22a Well, take for instance, you have got the ventilators and you have got the bed and you have got, say, from a radiator to a chair to the ground?
- It is possible, my lord.
- 23a So that there is nothing in the evidence that precludes the possibility of our ending up with as few as two or three blows struck by Father Molloy's assailant and then further injury when he is on his way to the ground?
- I think I estimated around the five, my lord. So, it postulates three on the way down and two from the assailant, or three from the assailant and two on the way down.
- 24a That is open?
- Yes.

- 25a So, we can have as few as two or three blows which is what my client says happened - that is consistent with your findings?
- Certainly the three, my lord; two a little less likely.
- 26a Well, three is quite all right - Mr Flynn says two or three. That is consistent?
- Very good, my lord, yes.
- 27a I know that you favour the view that Father Molloy died as a result of head injury?
- Yes, my lord.
- 28a But I have to suggest to you, whilst I know you don't favour it, that you cannot dispose of the possibility that death was caused by acute heart failure not necessarily related to trauma?
- I could certainly say that a cardiac condition could have contributed to his death, my lord. I can't ignore the brain injuries.
- 29a I know you can't ignore the brain injury and I am not saying that there were not blows delivered to Father Molloy, but take the position where for some reason he lost his temper, he got very angry and became aggressive - he had a diseased heart, isn't that right, not grossly diseased but diseased?
- Right, my lord.
- 30a I have to suggest to you that there is a possibility that you cannot positively dispose of, that the death may have been consequent on acute heart failure that happened at the time of or immediately before but not consequent on the blows he got?
- At the time of...not immediately before...?
- 31a Well, immediately before, consequent on his rage or his anger and the efforts he made, because my instructions are, and the evidence is, that Father Molloy appears for some reason, or for no reason perhaps, to have attacked my client. I am suggesting that rage or anger and the exertion consequent upon it in attacking my client may have brought on acute heart failure, having regard to the morbid condition of Father Molloy's heart, as a possibility, no more?
- Yes, my lord, I would accede to that possibility.

Re-examined by Mr Groarke:

32a When you say a possibility, Dr Harbison, you said in answer to my friend initially that you cannot ignore the brain damage that you found?

- True, my lord.

33a Is it still your view that the cause of death in this instance was primarily the result of head injuries sustained by the deceased?

- Yes, my lord.

34a In your examination of the room, Dr Harbison, did you find any object, in so far as you can recall, which was likely to... first of all, I think there is no evidence to suggest that there was a radiator in that particular room but there is evidence of a radiator in the bathroom?

MR McENTEE: This is cross-examining his own witness, my lord, and he is cross-examining in the most doubtful way.

35a MR GROARKE: Dr Harbison, in your examination of the room did you see anything which was likely to cause the injury which you described to the jaw?

- Recalling the location of the blood smear on the floor pointing towards the bed, the bed post would be near enough for a fall against it to have occurred with the cut head then landing on the carpet, and the man was nearly six feet tall. It is stretching it a bit because I seem to recall saying that that smear began six feet from the bed - a point approximately six feet from the foot of the double bed. So, in the position of the furniture at that time, that was the most likely. It is quite a while ago. If there was a picture of the room that I could refresh my memory on in an album.

MR McENTEE: The map is probably the most useful, my lord, might I suggest.

36a JUDGE: Perhaps Dr Harbison could look at the photographs. Have you got photograph 11, Dr?

- Yes, my lord, that is after the body had been removed, and one can see the concentration of blood on the carpet. One can see the smear of blood extending towards the bottom left hand corner of the photograph and the photographer who took that picture would have been standing with the foot of the double bed close to his left hand. It doesn't actually show...one can see there are two chairs for instance but they are some distance from the bed in photograph 11.

JUDGE: Do you think the map may help, gentlemen?

MR MCENTEE: I thought it was a little more useful for this purpose, my lord.

JUDGE: Have you finished, Mr Groarke?

MR GROARKE: Yes, my lord.

JUDGE: Well, you can examine Dr Harbison on the map if you wish.

MR MCENTEE: I am obliged to your lordship.

Re-cross-examined by Mr McEntee:

37a Do you see the map of the room, Dr Harbison?

- Yes, I see it now, my lord.

38a And the blood-stain that you talked about is there. Depending on where Father Molloy fell, possible candidates, I would suggest, are the bed pillar and the bed post because we know that there is, do we know, that there is a pillar on the bed?

- I seem to recall that, yes, my lord; a spike sticking up.

39a Can we posit that you can hit your head off the spike that sticks up, then subsequently on the bed frame and then on the floor, that the table with the television on it is a candidate, that the corner of the wardrobe is a candidate, the door of the wardrobe, and even, I suppose, if the row happened deeper into the room, possibly even the rocking chair? Any door furniture, like those knobs we see on the photographs, they are all possible candidates, aren't they?

- Yes, my lord. I would say probably the small television table would have the sharpest edge.

- 40a It is certainly in the area of the struggle?
- But one still has to postulate two impacts.
- 41a The bed then is probably the better candidate, isn't it, with its great spiked knobs on it?
- Yes, my lord.
-

DETECTIVE SERGEANT THOMAS DUNNE (sworn), examined by Mr Groarke:

- 42a Detective Sergeant Dunne, you are a member of the Investigation Section of Garda Headquarters?
- That is correct, my lord.
- 43a At 7.50 p.m. approximately on 15th July I think you saw Richard Flynn and, subsequent to that, Richard Flynn's wife, Teresa Flynn?
- That is correct, my lord.
- 44a I think you met them at the surgery of Dr O'Sullivan who gave evidence here already today?
- That is correct, my lord.
- 45a And I think that you requested from both the accused, Richard Flynn, and from his wife a sample of blood which was taken by Dr O'Sullivan and given by Dr O'Sullivan to you?
- That is correct, my lord.
- 46a And I think they both cooperated with you?
- They did, my lord.
- 47a And I think that the samples of blood were given by you, in the sealed containers in which you received them, to Detective Garda Michael Keating?
- That is correct, my lord.

MR MCENTEE: No questions, my lord.

DETECTIVE GARDA MICHAEL KEATING (sworn), examined by Mr Groarke:

48a Detective Garda Keating, you are attached to the Ballistics Section of the Garda Technical Bureau?

- That is correct, my lord.

49a And your duties include the technical examination of scenes of crime?

- Yes, my lord.

50a On Monday, 8th July, 1985, you went to Kilcoursey House accompanied by the photographer, the mapper, and I think certain other members, including Dr Maureen Smith of the Forensic Science Laboratory?

- Yes, my lord.

51a You went upstairs I think, or you were shown upstairs, and into this bedroom where you saw the body of a man lying on his back inside the door?

- That is correct, my lord, yes.

52a I think that the body lay fully clothed on its back with the left leg lying, as you say, roughly parallel to the dividing wall, as we have heard?

- Yes, my lord.

53a Did you see something on the carpet?

- Yes, my lord; I noted a number of items which were close to the body. There was a piece of cotton wool, a sock, a tissue, and the top and bottom of a clear plastic box, the top of it being marked "Cotton." I would imagine it came from a cosmetic affair.

54a Nothing turns on it in any event?

- Nothing, my lord, no.

55a Did you see a mark on the carpet?

- Yes, my lord. I saw a drag mark in what appeared to be blood from approximately six feet from the end of the bed towards where the body lay.

56a I think both ends of the mark were more heavily stained than the remainder?

- That is correct, my lord, yes.

57a I think that you picked up certain items which would be taken by you in the normal way from the investigation of crime but we are not concerned with those, Garda Keating. Did you on the 9th July, 1985, return to Kilcoursey House with other of the Gardai?

- I did, my lord, yes.

58a Apart from the drag mark on the carpet in the upstairs bedroom, did you see other marks?

- Yes, my lord. I continued my examination of the room on the 9th July and I saw, apart from the drag mark on the carpet, there were what appeared to be blood splatters and smears present on the following areas: on the edge and outside surface of the bedroom door - the blood on the edge of the door was smeared rather than splattered; the outside surface of the door and architrave leading to the closet, and the blood on the architrave was smeared; the wall and picture frame to the right hand side of the door to the closet; the left hand architrave which is fitted to the bedroom side of the door leading to the bathroom - this blood was smeared; on the radiator, wash hand basin and window ledge of the adjoining bathroom - the blood on the window ledge of the radiator was smeared. There was blood on a magazine lying on the bed, on the top cover and duvet of the bed, on the bottom of the bed board, on the television screen beside the bed and on a magazine on the top of the television.

59a I think that each of these places to which you refer are detailed on the map and indeed in some of the photographs that have been handed into Court?

- Yes, my lord, they are.

60a I think photographs 4, 5 and to the end of that book detail the blood marks or show photographs of the blood marks which you have described?

- Yes, my lord.

61a I think Dr Maureen Smith who was with you, took swabs from those locations and she can tell us what she found in relation to those?

- Yes, my lord.

62a I think that you also took swabs from some of these areas?

- Yes, my lord. Any of the items which were mobile and which could be packed, I dealt with them by packing them and labelling them.

63a And in particular I think you took the clothing which was there and on which there appeared to be blood?

- That is correct, my lord, yes.

64a And any other item which appeared to you to be in any way the subject of a blood mark?

- Yes, my lord.

65a I think that you were not able to take any swabs from the blood smears or from the splatters of blood present under the door knob fixed to the closet door?

- I wasn't able?

66a Were you able to take them? Sorry, forgive me. You didn't deal with that, I think, isn't that right?

- That is correct, my lord, yes.

67a Whatever samples you did take of clothing or whatever you handed over to Dr Smith, isn't that right?

- Yes, my lord, that is correct.

Cross-examined by Mr McEntee:

68a . . . Amongst the places that you found blood-staining was on the bottom bed board?

- That is correct, my lord.

69a That is a board attached to the frame of the bed, is that right?

- Yes, my lord.

70a Correct me if I am wrong about this, but I think this is a rather large bed with four posts that came up and ended in some sort of ornamental device, is that right?

- Yes, my lord. The bed board was actually made of timber with two protrusions at both sides of the bed.

- 71a Two at the top and two at the bottom?
- Correct, my lord, yes.
- 72a And they ended in some sort of a knob that isn't quite round but an elongated knob, is that right?
- If I remember properly, my lord, there were a number of different levels to the knob but they were square.
- 73a They were square knobs?
- Yes, my lord, if I remember rightly.
- 74a And they were sort of at the end of these posts that come up?
- Yes, my lord.
- 75a And then there was a bed board as well connecting them, is that right?
- That is correct, my lord.
- 76a A mahogany board connecting those?
- Yes, my lord.
- 77a So that one...I am not asking you whether it happened but it would be possible in falling to hit yourself off this square knob and then off the bed board where you found the blood?
A person could fall in that way?
- It is possible, my lord, yes.
-

DR MAUREEN SMYTH (sworn), examined by Mr Groarke:

78a Dr Smyth, you are a Forensic Scientist at the Forensic Science Laboratory of the Department of Justice?

- That is correct, my lord.

79a What are your qualifications?

- I hold an Hons. Bachelor of Science and a Doctorate from the National University of Ireland.

MR MCENTEE: I have no objection to my friend leading this witness to whatever exhibits he in fact believes he needs, my lord.

JUDGE: Very good.

80a MR GROARKE: I think you yourself attended, as we have heard, on the 8th July, 1985, at Kilcoursey House and you took certain samples which you considered of importance to your investigation and subsequently you were in receipt of a large number of exhibits and samples from other members of the Gardai?

- Yes, my lord.

81a I think in particular you were in receipt of three samples of blood being in the first instance that of the accused, Richard Flynn, secondly, that of Mrs Flynn, and thirdly, that of the deceased, Father Molloy?

- Yes, my lord.

82a In addition you received clothing which, it was suggested, had been worn by these three persons on the night of the 7th and the early morning of the 8th July?

- Yes, my lord.

83a And I think that you carried out examinations, in the first instance, to blood type the blood groups of these three samples and subsequently carried out an examination on these clothes to determine whose blood, if any, was on the clothing?

- Yes, my lord.

84a Without going into any great detail so far as the groups were concerned, I think you did find that the blood groups of the three individuals were different and were identifiably so?

- That is correct, my lord.

85a Did you then set about examining the clothes in the first instance of Richard Flynn - I think that he on the occasion was wearing pyjamas, isn't that right?

- Yes, my lord.

86a And what did you find?

- A number of blood stains on the pyjama top were consistent with the blood of Niall Molloy, and I fully grouped the stain on the front and found that it indeed did match the blood of Niall Molloy, my lord. A blood stain on the left back matched the blood of Therese Flynn, containing groups which are present in approximately one person in every thousand. I grouped two stains on the pyjama bottom and both of these matched Richard Flynn's own blood.

87a I think you also carried out then an examination of the orange blanket and the night clothes of Therese Flynn?

- Yes, my lord.

88a And what did you find on those?

- I grouped a number of clothes on the night-dress and dressing-gown and in this case the blood was consistent with that of Niall Molloy. The small blood stain on the orange blanket was consistent with Mrs Flynn's blood.

89a And the clothes of Niall Molloy?

- I grouped a number of blood stains on the sweater and trousers which were consistent with his own blood. A small stain over the pocket on the right back of the trousers was consistent with the blood of Richard Flynn.

90a In relation to the blood that was found in the room, I think that you were not able to determine the groups of those stains which were found on the doors and walls, isn't that right?

- That is correct, my lord.

91a But you were able to group the blood stains on the orange towel and the bedspread, the duvet cover and blouses from the end of the bed and the magazine from the television set and the carpet?

- Yes, my lord.

92a And who did that blood belong to?
- With the exception of one stain on the duvet, all the blood stains were consistent with the blood of Niall Molloy. One stain on the duvet cover was consistent with the blood of Richard Flynn.

93a There ^{was} a small blood-stained area on the yellow towel from the bathroom. I think you are satisfied that this was not from Niall Molloy but could have come from either Richard or Therese Flynn?

- Yes, my lord.

94a And I think that you have those items of clothing here if necessary to be produced?

- I returned them to the Gardai, my lord.

Cross-examined by Mr McEntee:

95a Dr Smyth, what you found is consistent with a situation in which Father Molloy bled - we know that to be so?

- Yes, my lord.

96a Mr Flynn appears to have lost some blood as well because you found some blood from him?

- That is correct, my lord.

97a Mrs Flynn didn't apparently lose any blood that you located, is that right?

- No, my lord. There was a blood stain on the left back of the pyjamas of Richard Flynn and also on the orange blanket.

98a Mrs Flynn lost some blood and that is consistent with what we know too because she was struck - we know that. And Mrs Flynn told us that she went to the assistance - she didn't tell us but we know from evidence that she was with Father Molloy trying to resuscitate him when her daughter came in, so that explains that blood on her clothing, and apparently Mr Flynn in turn tried to give assistance to both his wife and to Father Molloy. So, that's all of a piece with what you found, isn't that right?

- Yes, my lord. I found an exchange of blood types on the different articles of clothing.

99a But consistent with the assistance that we know that Mrs Flynn rendered to Father Molloy and that my client rendered to Father Molloy and to his wife at some stage?

- Yes, my lord.

MR MCENTEE: Nothing mysterious about that.

MR GROARKE: My lord, I would tender the remainder of the witnesses in the book of evidence to my friend, Mr McEntee, but I understand that he will not require them. That being the case, my lord, that is the prosecution evidence.

MR MCENTEE: I have an application to make to your lordship which would be best made in the absence of the jury.

JUDGE: Very good. Ladies and gentlemen, a matter has to be discussed in your absence. Would you retire to the jury room for a few minutes, please.

JURY ABSENT:

MR McENTEE: May it please your lordship. I would apply to your lordship at this juncture for a direction on both counts in the indictment. As your lordship knows, the first count charges Mr Flynn that on the date in question he unlawfully killed Father Molloy - that is to say that is a manslaughter count - and the second count is assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the State Act 1861. In relation to the first count, my lord, that is the count of manslaughter, your lordship has the evidence of Dr Harbison that whilst he believes that the death of Father Molloy was caused by blows, he accepts that he cannot dispose of the possibility that Father Molloy died from acute heart failure before he was ever struck any blows. He doesn't favour that explanation, my lord, but he says that it is an interpretation that is open on the evidence that he examined. Now, my lord, the onus is on the Prosecution to satisfy the jury beyond all reasonable doubt in relation to the manslaughter count that the death of Father Molloy results from the alleged assault by Mr Flynn and not from any other cause, and if it is reasonably possible, even reasonably possible, my lord, that there is another explanation for that death then, in my respectful submission, the prosecution in relation to that matter fails, and fails on the basis of the evidence of the only person who has given evidence and who is in a position to interpret the actual cause of death, my lord. I accept, my lord, that Dr Harbison favours another explanation; he favours an explanation that the death is consequent on the head injuries. But that is not the point, my lord. I accept that he does favour another explanation. But what he says, and says, my lord, without reservation, is that whilst he does favour that, he cannot dispose of the possibility that death was due, having regard to the condition of the late Father Molloy's heart, my lord, and it was diseased, he cannot dispose of the possibility that he, having become angry and exerted himself as a result of that anger and the

statement of Mr Flynn establishes those facts, my lord, that his death or that the physiological process that ended in his death resulted from the heart condition and the excitement and acute heart failure rather than from the blows, my lord. He also says, my lord, that even if that - and he does say that - but he says that as well as that he has less reservations about agreeing that the heart condition is likely or liable to have accelerated the death, my lord, and he doesn't say what the comparative contributing percentages or which is likely to have contributed more, my lord. And in my respectful submission, even if your lordship didn't take the view, and I submit that your lordship should take the view, that the possibility of acute heart failure antedating and unrelated to the blows inflicted by my client as a possibility for the cause of death, if your lordship or the jury are left in the position where the heart condition of Father Molloy is a contributing factor and you don't know or the jury doesn't know because the evidence hasn't stated the extent to which that is a contributing factor, it may very well be on the evidence that it is the major contribution and that the subsequent blows are a minor contribution and that the actual causation is primarily resulting from a heart condition rather than the blows. So, there are two ways of looking at the evidence of Dr Harbison, both of which, in my respectful submission, dispose of the prosecution case in seeking to establish beyond reasonable doubt the necessary causal connection between the injuries and the death. Quite apart from that consideration, based, my lord, on a strict and in my respectful submission proper consideration of the evidence of Dr Harbison, your lordship then has to consider, in my respectful submission, the state of the evidence overall, and in my submission the position in respect to the evidence now is that your lordship has evidence derived from the only two people present at the

assault apart from the deceased, if there was an assault in the criminal sense, the incident, are Mr Flynn and Mrs Flynn. Mrs Flynn is not a witness and cannot be a witness for the prosecution, my lord. So, the only evidence of what happened on that occasion is derived exclusively from my client through the interview he had with the two police officers that your lordship has heard from and the document that has gone in as a result of that, my lord. And there is no evidence, as there cannot be evidence, to contradict that. Mr Flynn's evidence, my lord, is, derived from that statement, that he was present in his bedroom; he was in his pyjamas and dressing-gown, we believe, although the evidence is not all that clear about it but it seems to be the case; he and his wife had retired for the night; they were having a sociable drink with their friend who came into the room for the purpose of having a drink; they were having a discussion about something, it doesn't matter very much what, and at some stage, perhaps consequent on fatigue, perhaps consequent on fatigue and drink, a foolish dispute arose as to who would go downstairs for the drink. Mr Flynn has told the jury and told the Court through his statement that he refused to get a drink for the others but said he would get a drink for himself and for some reason that appears to have triggered a violent reaction in the other two people. Mr Flynn says that when he refused to get a drink for anyone but himself they became indignant and, he says, attacked him. And he says that when those two people attacked him he did what he was entitled to do, he defended himself. And he defended himself, my lord - he struck his wife and he struck two or three blows to Father Molloy. Father Molloy, my lord, was, as we know, a large man and he fell. Again, Dr Harbison agrees that there may have been as few as two or three blows and it is at least possible Father Molloy struck himself on the way down and there is

one of the injuries, that's the injury to the left jaw, that Dr Harbison thinks is consistent with his having struck something on the way down rather than having had a blow that caused that injury with a fist. He posited a number of possibilities of how this injury could have been come by, but, as always, my lord, the jury would have to be told by your lordship that they must give the interpretation that is most favourable to the accused, and the most favourable interpretation, my lord, is that that injury to the left jaw bone was caused by striking something. Certainly, it would be quite wrong for the jury to speculate that it was caused by a kick. And if there is an interpretation reasonably open, and Dr Harbison says it is reasonably open, that this and perhaps another one or two of the injuries could have been caused by striking something on the way down, then you have a situation, in my respectful submission, my lord, where Mr Flynn, believing himself to be under attack from two people who had become quite irrational for no apparent reason and become very angry with him in circumstances which must have been distressing and frightening to him, struck out, using a minimum number of blows, my lord, but blows which unfortunately had the consequences that they had. In my respectful submission, my lord, the evidence of Mr Flynn is evidence that he did what he did in self defence. He believed he was under attack; he reacted to that attack. And there is no evidence, my lord, at all, because we are dependent entirely on the evidence of Mr Flynn, that the situation was other than he says it was, one in which he was attacked; he reacted to that attack in a way that he considered appropriate, and again, my lord, I stress the fact that Father Molloy is a big man, much bigger than my client, my lord. He is a man presumably, apart from his heart condition, in reasonably good physical condition. He is, my lord, a man who, we know, led an outdoor life and was interested in horses and was a horse man at all

relevant periods, my lord. And my client, in my respectful submission - there is no evidence to say and there cannot be evidence to say that the situation is other than Mr Flynn says it is, that is one in which he, believing himself to be under attack from two people, one of whom was this big and reasonably athletic man, took steps to defend himself, my lord. The question, my lord, of self defence has been dealt with reasonably recently in our Supreme Court in the case of *The People (The Attorney General) v. Dwyer*. It is reported at 1972 Irish Reports at page 416 and there are two passages from it, neither of them very lengthy, my lord, which I think will be of assistance to your lordship in deciding the matters that I am putting before your lordship. The first passage is part of the judgment of Mr Justice Walsh, my lord, in the Supreme Court at page 420. He says: "A homicide is not unlawful if it is committed in the execution or advancement of justice, or in reasonable self-defence of person or property, or in order to prevent the commission of an atrocious crime, or by misadventure. In the case of such self-defence, the homicide is justifiable and is therefore not unlawful. In such a case, where the evidence in the trial discloses a possible defence of self-defence, the onus remains throughout upon the prosecution to establish that the accused is guilty of the offence charged (and he refers to the decision of the Supreme Court in *The People (Attorney General) v. Quinn*). If the prosecution has not satisfied the jury beyond reasonable doubt that the accused had not believed on reasonable grounds that his life was in danger and that the force used by him was reasonably necessary for his protection, the accused must be acquitted of any charge of unlawful homicide. To put it another way, but without suggesting that there is any reduction in the burden of proof on the prosecution, the homicide is not unlawful if the accused believed on reasonable grounds that his life was in danger and that the force used by him was reasonably necessary for his protection.

In such a case he is entitled to a complete acquittal. At one time it was thought that the person attacked was required to retreat so far as he could before resorting to force; this point is considered in R. v. McInnes where Lord Justice Edmund Davies, delivering the judgment of the Criminal Division of the English Court of Appeal, said at page 1607 of the report that this was too inflexible 'and might, in certain circumstances, be regarded as significantly misleading.' He preferred the view expressed by the High Court of Australia in R. v. Howe that a failure to retreat is only an element in the considerations on which the reasonableness of an accused's conduct is to be judged, and he quoted with approval the statement of the position put in Smith and Hogan's Criminal Law (2nd ed. at p. 231) that it was 'simply a factor to be taken into account in deciding whether it was necessary to use force, and whether the force used was reasonable.'" In my respectful submission, my lord, the heart of that passage from Mr Justice Walsh's judgment is a passage where he says that if the prosecution has not satisfied the jury beyond reasonable doubt that the accused had not believed on reasonable grounds that his life was in danger and that the force used by him was reasonable for his protection, the accused must be acquitted of any charge of unlawful homicide. Here, my lord, there is no evidence whatever and there cannot be evidence because the only person present there who knows the nature of the attack that was made on him is Mr Flynn. Mr Flynn did what he did, my lord, and there is not, and the State, in my respectful submission, could never satisfy the jury beyond reasonable doubt that he did not believe on reasonable grounds that he was threatened and that the force he used was not reasonably necessary for his protection. There is a later passage, my lord, again in the judgment of Mr Justice Walsh where he says: "Our statutory provision

makes it clear that the intention is personal and that it is not to be measured solely by objective standards. In my opinion, therefore, when the evidence in a case discloses a question of self-defence and where it is sought by the prosecution to show that the accused used excessive force, that is to say more than would be regarded as objectively reasonable, the prosecution must establish that the accused knew that he was using more force than was reasonably necessary. Therefore, it follows that if the accused honestly believed that the force he did use was necessary, then he is not guilty of murder. The onus, of course, is upon the prosecution to prove beyond reasonable doubt that he knew that the force was excessive or that he did not believe that it was necessary. If the prosecution does not do so, it has failed to establish the necessary malice. If, however, at the same time it does establish that the force used was more than was reasonably necessary it has established that the killing was unlawful as being without justification and not having been by misadventure. In those circumstances the accused in such a case would be guilty of manslaughter. For these reasons I am of the opinion that the question raised in the Attorney General's certificate should be answered in the affirmative." That is to say that the onus never shifts and that it is for the prosecution at all times to prove that the accused used unreasonable force and knew it was unreasonable at the time he used it. So, in respect of the manslaughter charge, in my respectful submission then, my lord, there are at least four grounds for nonsuiting the prosecution at this stage. First of all, there is the possibility left open by Dr Harbison that the death results from acute heart failure, not necessarily related to what Mr Flynn did but related more to the state of anger to which Father Molloy got himself and having due regard to what we know about his diseased heart.

There is the second possibility that even if it doesn't go as far as that, my lord, that the heart condition was a major contributing factor to the death, so major, my lord, that the jury would have to say that it was the true cause since there is no evidence of the extent to which the heart condition is the 'causa causans' as opposed to the blows, and then the considerations raised in the judgment of Mr Justice Walsh in Dwyer's case. As well as that, the fourth matter, my lord, is, your lordship would be entitled, in my respectful submission, to hold that this was a case of what Mr Justice Walsh en passant in Dwyer refers to as misadventure, my lord, a situation in which there was no intention ever to do any damage to Father Molloy but what happened happened not because the human will or the human capacity for intending anything was at play but because people were very tired, slightly drunk and something totally irrational arose ex improviso and nobody intended the consequences that ensued, my lord. So, on those four grounds I respectfully submit there is no case to go to the jury on the manslaughter charge, my lord. Similarly, my lord, in relation to the assault occasioning actual bodily harm, your lordship would be entitled to take the view here that the assault, on the evidence, if assault there were, resulted from a belief by Mr Kearney that he was being assaulted and had to take steps to defend himself. The same considerations arise as are adumbrated in the Dwyer case, my lord, and again the situation is that the State cannot ever in this case bring the evidence to the point of being able to disprove that Mr Flynn believed...they can never prove that it was unreasonable for him to have done what he did in the circumstances that then obtained. In my respectful submission, exactly the same considerations arise in respect of the assault occasioning actual bodily harm, the second count in the indictment, as do to the first count in so far as my submission based on the Supreme Court judgment in Dwyer's case is concerned, my lord.

I can't put the matter further than that but, in my respectful submission, these are weighty considerations and, in my respectful submission, I have the support of the Supreme Court, my lord, in the Dwyer case for my submission in relation to both counts.

JUDGE: What does the Dwyer case say about misadventure, Mr McEntee?

MR McENTEE: It doesn't say more than that misadventure is a defence, my lord, a complete defence to homicide. It is said almost en passant by Mr Justice Walsh at the very beginning of the judgment, my lord. The second paragraph on page 420, my lord: "A homicide is not unlawful if it is committed in the execution or advancement of justice or in reasonable self-defence of person or property or in order to prevent the commission of an atrocious crime or by misadventure."

JUDGE: He doesn't say anything further?

MR McENTEE: He doesn't develop it, my lord, because he goes on to develop what they were concerned with, which is the question of self-defence. But in my respectful submission, my lord, misadventure recognized as recently as 1972 by the Supreme Court as being a defence, my lord, is a situation that arises where somebody is injured, meets their death or is injured, not because anyone wished it to be so or not because anyone intended that their activities should have that result but out of a sheer accident which arose without anyone desiring it or wishing that it should come about, my lord, and in my respectful submission this is a case in which there are large indications. Here we have a situation, my lord, in which Mr Flynn and Father Molloy were close friends, close family friends, had been apparently for twenty seven/twenty eight years. Father Molloy was in the house as the guest of Mr Flynn and his family. He had been there the day before to the wedding,

he had been back this day to the post nuptial luncheon in the afternoon, he had gone with them to visit the Goodbodys. Mr Goodbody told your lordship that they left the best of friends, my lord, and warmly disposed towards each other. Then as the evening goes on this aberration occurs, absolute aberration, my lord, in which for some reason Mrs Flynn and Father Molloy got annoyed with my client, reacted as they did and triggered off his response, my lord, which certainly was not his intention, and if ever there was a case, my lord, where all the surrounding circumstances indicate absence of intent and misadventure, my lord, this is it. This, my lord, in my respectful submission, is as near to an accident, to a pure accident, a pure unintended occurrence as one could find and again, my lord, if proof of that is needed further, my lord, you have only to look at the reaction of Mr Flynn after the incident. He is immediately, my lord, without any regard to the consequences to him, he is first of all trying to revive the unfortunate Father Molloy, my lord, then ringing the doctor, ringing the priest, getting his daughter to go for the doctor, eventually bringing the Guards along to his house and telling them precisely what occurred, my lord. If ever there was a case redolent of total absence of intention to do any harm to anyone, it is, in my respectful submission, this one, my lord. This is a most sad, sad occurrence, my lord, but, in my respectful submission an occurrence which is not criminal in any meaningful sense of that word.

JUDGE: Mr Groarke?

MR GROARKE: If your lordship pleases. If I might first of all deal with my friend's submission in relation to the concept of misadventure. My lord, misadventure implies precisely what it says and that is an accident, an entire accident, my lord, in which no positive act containing any remote degree of malice could in any way be involved. Misadventure, my lord, arises in the main in instances, for instance, my lord, where a person discharged a shotgun which he had absolutely no reason to believe was in any way loaded and killed somebody; that would be misadventure. Or in the instance where a surgeon gives somebody some type of treatment genuinely and innocently believing that it is the appropriate and proper thing to do but a death results; that too, my lord, is an instance of misadventure. It requires that no positive act which could be interpreted as containing a degree of malice is absent. Now, with respect to my friend, my lord, that does not arise in this case in so far as if there is nothing else, my lord, at least there is evidence on which a jury can decide on the facts before this Court, my lord, that there was an assault. That being the case, my lord, the plea of misadventure is not open to my friend. If I might deal with the other points, my lord, backwards as I have taken the misadventure point first, and that was the issue of self-defence. My lord, with the greatest of respect to my friend again, my lord, I say that there is sufficient evidence adduced by the prosecution in this case, my lord, upon which the jury can decide whether or not the accused, Richard Flynn, acted in self-defence in the first instance, my lord, had genuine reason for believing - and he must, my lord - that the threat which was put to him was such as required the action that he did, and thirdly, my lord, that the force used by him was reasonable force in all those circumstances. And here, my lord, again I could read the extract from Mr Justice Walsh's decision in *The People (Attorney General) v. Dwyer*:

"If, however, (this is the prosecution) at the same time does establish that the force used was more than was reasonably necessary it has established that the killing was unlawful as being without justification and not having been by misadventure. In those circumstances the accused in such a case would be guilty of manslaughter."

I say, my lord, here that it is a matter for the jury to infer from all the facts and circumstances to which I will come in a moment as to whether or not the accused had reasonable grounds for believing that the threat with which he was faced required the use of force which he did apply. The facts, my lord, of this case in relation to that are these. In the first instance, my lord, this was not a stranger meeting a stranger. This accused man was in his own house with his friend for any number of years and his wife in the room as he sees it being set upon as a result, as he describes, of no consequence. Now, with the greatest of respect, my lord, to Mr McEntee and to his point, it seems, my lord, that the degree of force which might be required in those circumstances to meet any type of an onslaught in those circumstances, my lord, is not the degree of force which was used here by the accused and that, without any question but that it is a jury point which they must decide, that the degree of force used was not reasonable in the circumstances in so far as that the interpretation of the threat which was posed as seen subjectively by Mr Flynn in those circumstances did not require that that degree of force, which is described and which I will describe shortly, my lord, was required. It is not the instance, my lord, of Mr Flynn being set upon by a stranger and taking fright and doing something of this nature, my lord, which he might greatly regret. It is not quite as simple as that, my lord. This is an instance where, as we know, he knows the parties that are involved, and I say,

my lord, that having heard the evidence given by Dr Harbison relative to the degree of injuries first of all that were sustained by the deceased, and they were multiple injuries and some of them very severe injuries, in the first instance, my lord. In the second instance, my lord, these were injuries which were caused not by the use of an implement but by a fist. Now, with the greatest of respect again, my lord, I would submit that the nature and the degree of injuries which would be caused by a fist such as would result in sub-dural haemorrhage and brain damage which would result in death, my lord, requires a vast degree of force. That fact taken in association with the fact that after his examination Dr Harbison could find no evidence to suggest that the deceased had got an offensive or a defensive mark upon his body. That, my lord, with respect, shifts the onus from the prosecution or, at least, I shouldn't put it like that, my lord, that the onus which is upon the prosecution is complied with and it is a matter for the jury then to infer from the facts of the case as to whether or not they consider that the accused man acted in reasonable self-defence using reasonable force for that purpose. The next point raised by my friend, my lord, if I might go to the first point and that is the possibility of heart failure prior to any assault upon him. I must confess I am somewhat confused as to what Mr McEntee means. If he suggests that there was a possibility of heart failure prior to any assault upon the deceased by the accused, then he must suggest that, notwithstanding the condition of the deceased subject to this heart failure, the assaults, of which there were a number, were subsequently carried out. I do not have to go as far as my friend suggests in saying that I must exclude, as it were, heart failure as a cause. The evidence in this case, my lord, was, and Dr Harbison was quite specific in relation to it, that yes, there was a possibility that heart failure may have contributed

in some way to the death. However, he stuck to his guns, my lord, that he was satisfied it was his opinion that the cause of death was the head injuries and the sub-dural haemorrhage which the deceased suffered from. Now, if it was the case, my lord, that the deceased did suffer the head injuries, if I might so describe them, as described by Mr Harbison and he subsequently got a heart attack, that doesn't excuse the accused, my lord. That is not sufficient; that does not shift the onus from the prosecution, my lord, with respect to my friend. The evidence is and Dr Harbison was specific on any number of occasions, my lord, that he could not ignore, as he said himself, the brain damage as being the main cause of the deceased's death. In those circumstances, my lord, I say that there is sufficient evidence to go before the jury, my lord, and I say, my lord, leaving aside entirely the question of the heart condition or whatever - Mr McEntee in that regard said that the jury would have to be definite in relation to the cause of death in that regard. My lord, it is a matter for the jury, having heard the evidence of Dr Harbison, to decide whether or not they accept the evidence of Dr Harbison and to infer from the facts as I say I have proved, my lord, what the actual cause of death was. If they are not satisfied, and they can be told if they are not satisfied that the cause of death in this instance was not the brain injuries or the result of the assault, then that they must give the benefit to the accused certainly, my lord, but they will be told that, my lord, but it is a matter for the jury again. In so far, my lord, finally, if I might read an extract in so far as the issue of self-defence is concerned, an extract of the decision of Mr Justice Walsh in the case of The People (Attorney General) v. Michael Quinn, in which he deals, my lord, with what the situation is as regards

self-defence. He says, my lord, that when the evidence in a case, whether it be the evidence offered by the prosecution or the defence, discloses a possible defence of self-defence the onus remains throughout upon the prosecution to establish that the accused is guilty of the offence charged, and that is the case. The onus is never upon the accused to raise a doubt in the minds of the jury. In such cases the burden rests on the prosecution to negative the possible defence of self-defence which has arisen and if having considered the whole of the evidence the jury is either convinced of the innocence of the prisoner or left in doubt whether or not he was acting in necessary self defence they must acquit. He goes on to say that before the possible defence can be left to the jury as an issue there must be some evidence from which the jury would be entitled to find that issue in favour of the appellant. If the evidence for the prosecution does not disclose this possible defence, then the necessary evidence would fall to be given by the defence. In such a case, however, where it falls to the defence to give the necessary evidence, it must be made clear to the jury that there is a distinction, fine though it may appear, between adducing the evidence and the burden of proof and there is no onus whatsoever upon the accused to establish any degree of doubt in their minds. What I say in relation to that, my lord, is, that your lordship in addressing the jury will undoubtedly say to the jury that the onus rests upon the prosecution and, unless they are satisfied that the onus has been discharged, then the benefit of such doubts, or the benefit of that doubt, must certainly be given to the accused, my lord. But I say that in so far as the matter stands, the inference of facts to be drawn by the jury from the evidence, my lord, is conclusive, with respect, that the onus has been carried by the prosecution in this regard.

I have no hesitation in granting the direction sought by Mr McEntee on the manslaughter charge. I am satisfied that on Dr Harbison's evidence it would not be open to the jury to convict of manslaughter. With regard to the second charge I would like to hear Mr Groarke further. Mr Groarke, it appears to me at the moment that the evidence clearly establishes the reasonable possibility of self defence being necessary. Now, if the jury were satisfied that the defendant struck five blows to Father Molloy, then I have no doubt the evidence would require the matter to be left to the jury because there would be evidence for them to hold that even if the defendant was acting in self defence that more force was used than was necessary. But Dr Harbison has agreed that it is possible that only two or three blows from an assailant were struck and that the five - making up the five - the two or three more could have been caused through falling and hitting something. In these circumstances, is there sufficient evidence to leave the case to the jury, having regard to the fact that self-defence is certainly open. What evidence will the jury have if there is a reasonable possibility that the defendant only struck two or three blows and that some of the injuries, we don't know which, were caused by the deceased falling and striking his head on something?

MR GROARKE: Well, my lord, if it is the case that the jury can be satisfied that three blows were struck by Mr Flynn and caused some of the injuries described by Dr Harbison, and Dr Harbison in his evidence indicates that only one of the injuries which he has described in his list of I think ten injuries, that only one of those injuries could have been sustained, that is injury number 5 in his list, by the deceased falling against a blunt object or whatever. Then it is a matter for the jury to decide whether or not the remainder of the injuries which were sustained by the deceased

were justifiable or did they constitute an assault in the circumstances as being unnecessary force or an unnecessary wading-off of whatever blows may or may not have been struck by the deceased on the accused. It is a matter for the jury, my lord, with respect. They are not being asked to speculate as to what the injuries were which might or might not have been inflicted accidentally, shall we say, my lord, because it is indicated by Dr Harbison that there is only one which might be.

JUDGE: Which one is that?

MR GROARKE: Number 5 in his list, my lord, which was the laceration three-quarters of an inch long over the ramus or shaft of the lower jaw on the left side, two inches anterior to the angle of that jaw. I understood the evidence of Dr Harbison to be, my lord, that it was only in relation to that particular injury upon the deceased that he would have a doubt, as it were, my lord, as to how that injury might have been inflicted. He said in relation to that, my lord, that the injury might have resulted from, I think he said, a striking with a blunt instrument, a kick or a fall against a fixed blunt instrument. That was my understanding, my lord, of the evidence of Dr Harbison.

JUDGE: That may have been his direct evidence but I think that in cross-examination, and even in re-examination by you, he may have gone further. What do you say, Mr McEntee?

MR McENTEE: I say, my lord, with regard to injury number 5, Dr Harbison says that that, in his view, was definitely not caused by a fist blow, and then we must construe that as having been caused in a fall. But he also agreed with me, my lord, that if the fall was a fall in which the deceased hit things more than once, and this is the reason he was dealing with the possibility of the television and the television table and the ground or the bed with its knobs, its back and the ground, he said that whilst he was sure that one of them wasn't a fist that he could not say that others were not also not caused by a fist. So that, in the end of the day,

he was willing to agree with me that there was a possibility that there were possibly two fist blows and three injuries on the way down or, more likely, three fist blows and two non-fist blows as he hit things coming down, my lord, and Mr Groarke is not right in saying that he said that there was only one injury that was consistent with a blow whilst falling. He said that there was one injury that was inconsistent with a fist blow and that any number of the injuries could have been caused on the way down provided that he hit objects on the way down, more than one object, and he did allow that there were a number of possibilities of that happening, my lord. So, the situation in the end of the day is as your lordship says, that the evidence permits of the possibility of there being no more than two or three blows, which is what my client says.

JUDGE: I am of opinion that Mr McEntee is right. I must give a direction on the second count as well.

MR McENTEE: May it please your lordship.

JUDGE: I think I should say that, since the case aroused so much publicity and so much unpleasant speculation, that there is not the slightest evidence whatever of any impropriety on the part of Father Molloy and Mrs Flynn, none whatever. That has been completely excluded.

MR McENTEE: May it please your lordship.

JURY PRESENT:

JUDGE (to jury): Ladies and gentlemen, the case has come to an end in your absence. Mr McEntee applied for a direction on both counts and, having heard him and Mr Groarke, I was of opinion that Mr McEntee's application was well founded and, accordingly, I am directing you to bring in a verdict of not guilty on both counts. I should explain to you why I have arrived at that decision. In a criminal case like this the State must prove beyond reasonable doubt that an accused person is guilty on every count that they prefer against him. That means in this case the State must prove that Mr Flynn was guilty of manslaughter on the first count, guilty of assault occasioning actual bodily harm on the second count. They must prove that beyond all reasonable doubt. The law puts no onus on Mr Flynn to prove that he is innocent. In this very sad case - and that's what it is from start to finish, a row between people who were close friends for thirty years - in this case there is no evidence as to what happened except the statement made by Mr Flynn, and on his own statement it would not be proper to convict him on either count. The only other evidence on which the State could rely as being useful to their case is the evidence of Dr Harbison, but Dr Harbison agreed that there was a possibility that Father Molloy died from a heart attack, and once that possibility is there the law does not allow you to speculate and to say that he died as a result of head injuries caused by an assault. On the second count Dr Harbison's evidence makes it impossible for you properly to convict or for me to leave the case to you because he agrees that only two blows, perhaps three, may have been struck, that other injuries were caused when Father Molloy fell. If that is the case, the case assumes a very different aspect than what it had when it was opened. The possibility of self-defence is undoubtedly brought into the picture by the evidence and if only two or three blows were struck it would be impossible to say that more

force was used than was necessary. So, for these reasons, ladies and gentlemen, I have had no hesitation in the end in acceding to Mr McEntee's application and directing you to return a verdict of not guilty. I think, since it is such an exceptional case, that I would be justified in offering my sympathy to all concerned in what was a great tragedy, particularly Father Molloy's family who have suffered the sad loneliness caused by his death and, of course, have also had to suffer from unpleasant talk because the incident happened in Mr and Mrs Flynn's bedroom. It is perfectly clear from all the evidence that the friendship between Father Molloy and Mrs Flynn was a perfectly proper one, so proper that he was in Mr and Mrs Flynn's bedroom. They were great friends for nearly thirty years and there is not an iota of evidence that there was anything improper in their relationship. In fairness to Father Molloy's family, his close relatives, I think I should state that. Neither is there anything which suggests that Father Molloy was guilty of any improper conduct. Mr Flynn's defence raises the possibility that a blow was struck but the best of friends fall out at times. These were very close friends. They all had probably a little more drink than they would normally take because of Mr Flynn's daughter's wedding. One word borrowed another. This is not the first time that friends have struck each other blows, but in this case all parties were very unlucky in that the blows led to death. I have not the slightest doubt that Mr Flynn had not the remotest intention of killing Father Molloy or of causing him any harm whatever and, as far as Mr Flynn is concerned, he must have suffered appalling mental agony since this unfortunate matter; it will live with him for the rest of his life. For these reasons I think, whilst it is a little bit unusual, it is not improper for me to express sympathy with all parties over this dreadful matter. Nobody intended anything wrong to happen, any injury to be caused.

So, thank you very much, ladies and gentlemen. I will ask Mr Foreman to sign his name.

(The Issue Paper was then signed).

Anne Kinella

Official Stenographer.