COMMISSION TO INQUIRE INTO CHILD ABUSE
PUBLIC HEARING

HELD AT HERBERT PARK HOTEL
BALLSBRI DGE, DUBLIN 4

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CHAIRPERSON OF THE INVESTIGATION COMMITTEE***

ON MONDAY, 19TH JUNE 2006 - DAY 227A

EVIDENCE OF MR. JAMES MARTIN

BEFORE:

MR. JUSTICE SEÁN RYAN
CHAIRPERSON OF THE INQUIRY

and

MS. MARIAN SHANLEY
MR. FRED LOVE

227A

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the evidence in the above-named action.

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MEMBERS OF THE COMMISSION PRESENT:

REGISTRAR TO INVESTIGATION COMMITTEE: MR. B. REEDY

COUNSEL FOR THE COMMISSION: MS. FERGUS SC
MR. P. WARD BL

Instructed by: MS. E. McHUGH

MR. P. GAGEBY SC

Instructed by:

MR. D. McGRATH SC
MR. M. DOWLING BL

Instructed by:

FOR THE DEPT. OF JUSTICE, EQUALITY AND LAW REFORM: MR. FERRITER SC

Instructed by: CSSO

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THE HEARING COMMENCED AS FOLLOWS ON MONDAY, 19TH JUNE 2006:

THE CHAIRPERSON: Good morning.

MS. FERGUS: Good morning, Chairman.

This morning we will hearing evidence from Mr. James Martin, Assistant Secretary to the Department of Justice, Equality and Law Reform. I think after the witness has been sworn in he would like to make an introductory statement, if that's all right, after he has been sworn in.

THE CHAIRPERSON: Yes.

MR. JAMES MARTIN, HAVING BEEN SWORN, WAS EXAMINED, AS FOLLOWS, BY MR. GAGEBY:

THE CHAIRPERSON: Please sit down, Mr. Martin. Thank you very much. Now, Ms. Fergus. Mr. Martin, you want to make an introductory statement.

A. If I may. Thank you, Chairman. I would just like to make a few brief introductory remarks before I respond to any questions.

The Department of Justice, Equality and Law Reform is most anxious to assist the Commission in any way it can and I will endeavour to answer all the questions raised with me in an open and forthright manner, having familiarised myself with the material on the files held...
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within the Department. I wish to begin by referring back to the Taoiseach's statement of 11th May 1999 and to publically state that the Department fully endorses this apology on behalf of the State and its citizens to those abused in residential institutions.

I will, if I may, state briefly what responsibilities the Department of Justice had regarding detention of children. We had full responsibility for the detention of offenders 16 and over and we had responsibility for certifying and maintaining a register of places of detention for children under 16 for purposes of remand or sentence to such a place of detention for a period not exceeding one month.

While the Children Act 108 in Section 108 appears to entrust full responsibility to the Department of Justice as the police authority to provide such places of detention, it has always been accepted that this task in practice fell to the Department of Education who were designated under Section 109(3) of the act of 1908 as responsible for the inspection and making of rules for these places of detention.

It would appear from Department of Justice files that wherever possible reformatory and industrial schools already approved, funded and subject to inspection by the Department of Education were registered under Section 108 of the 1908 Act as places of detention.
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They remain so certified unless they indicated that they were no longer willing to serve as a place of detention. Similarly, when Marlborough House was established as a place of detention in 1944 it was certified as a place of detention under the 1908 Act by the Department of Justice.

Up to very recent times the Department of Justice has consistently held the view that responsibility for the detention of offenders under 16 was not appropriate to it. The reasons for this were that children should not be treated in the same manner as adult criminals, that if the task fell to the Department the perception would be that we were running prisons for children, that the Department had no particular expertise in dealing with children and that there was no overall benefit in efficiency to the State in transferring the function from the Department of Education to the Department of Justice.

There was a very significant change in the Department's thinking in this matter following a review of the area initiated by the Secretary General in 2004, with the support of the Minister and the Minister of State. Following this, in December 2005 the Government endorsed the creation of a youth justice service in the Department of Justice, Equality and Law Reform to deliver a joined-up approach across Government bodies in the area of youth justice, operating under the aegis
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of the office of the Minister for Children. The net
effect of this important Government decision is that
the responsibility for detention of all young offenders
under the age 18 will pass from both the Department of
Education and Science and the Irish prison service to
one service, the new agency.

In preparing this statement the Department reviewed all
files which came within the terms of discovery orders
made to us. We have sought to give a fair and
objective overview of the relevant material on the
Department's files. It has proved difficult and in
many cases impossible for me or staff in the Department
to attempt to look behind the material in the files or
to try and put context or attach a particular relevance
to written comment where we are not privy to what
discussions may have taken place which may have
influenced decisions.

The Department wishes to assist the Commission in its
important work. In the evidence I will give to the
Commission I will make every effort to deal with the
questions raised by all of the parties represented
before the Commission today and will be pleased to
provide written clarification on any point of detail
where the information is not immediately available.

THE CHAIRPERSON: Thank you very much.
MS. FERGUS: I think Mr. Gageby now is
going to...
MR. GAGEBY: Yes, Mr. Chairman. Good morning, Mr. Martin.

Patrick Gageby is my name and I'm appearing today with Ms. Ni Raifeartaigh as amicus curiae to the Commission.

You have obviously studied the extant files with a degree of care, because I see from your statement of some 50 or so pages that you have looked at the historical matters really from about the 1940's onwards in some detail?

A. Yes.

Q. Now, this is obviously to look back at very different times in Ireland in terms of the relationship between the Government and religious who ran education, industrial schools, reformatories, etc.?

A. Yes.

Q. Could I come to one issue which obviously figures very largely in your papers, because it is the consideration of Marlborough House?

A. Yes.

Q. Now, as the Commission and members of the public are aware, Marlborough House was effectively a short term remand institution for boys and it had originally, I think, in historical terms been situated, I think, in the city and was then moved out to an old house in Glasnevin?

A. Yes, it moved from Summerhill out to Glasnevin.

Q. And it was run and staffed and paid for by the Department of Education. Boys who had got into trouble
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could be remanded by a judge of the district court there for, I think, a maximum of approximately one month. Was it also the theory that in a period of one month there would be some, let's say, examination of the boys?

A. Just to clarify that, they could be remanded by the courts, that remand I don't think was limited to one month because they could be on conviction, sentenced to one month, a maximum of one month's imprisonment so as to be there, so I don't think the remand necessarily refers to one month, they could be remanded for whatever period the court thought necessarily. I presume it would normally be shorter than that.

Q. Okay. Is it possible to discern whether that institution was there with a view to assisting the Court later on in deciding what should be done, in other words, did it perform any assessment functions at all?

A. I'm not aware of it. As I said, it was run by the Department of Education, my understanding is that its primary function was as a place of detention rather than a place of assessment. It is clear from the file that in a later period, in the 1940's and 1950's, that the courts could have access to probation officers or medical assessments of that, but that didn't relate specifically to the Marlborough House or the remand.

Q. That's in fact something I just wanted to come on to because this is looking at the area from reformatories as opposed to industrial schools. But when a judge was
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coming to decide on what should be done with a child who had apparently offended, so therefore leaving aside children who are destitute or found wanting. What sort of materials could the State in one form or another provide to a judge in that circumstance? Was there a core of psychologist and people like that to assess children?

A. Well it obviously depended on the period that you are talking about.

Q. Let's say take the 1940's and 1950's?

A. There was no specific arrangement in Marlborough House for any kind of assessment, that I am aware of. As I said, I think it was purely a place of detention. From looking at our files, the question of assessment did come up on the question of medical assessment and psychiatric assessment and it wasn't directly related to Marlborough House as such, but there was provision for doctors, there was a panel of doctors that the courts could refer to and there was some material -- whether those doctors should have psychiatric qualifications, there seemed to be a period where there were no doctors with psychiatric qualifications in the late 1940's and certainly prior -- just looking at the files, it looked like prior to that the head of Grangegorman was one of the doctors so they would have had -- prior to 1944, they would have had access to him or her and certainly by the 1950's there was at least one doctor with psychiatric qualifications. There could have been a period there in the middle when there was

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none. There was no professional probation officers in
the sense of professionally qualified probation
officers until the 1960's.

9 Q  Prior to that, how many probation officers were there
in the country?
A. There was six. Since the foundation of the State there
was six full time paid probation officers.

10 Q  They were all in Dublin, I think?
A. They were all based in Dublin. A lot of use was made
at the time for probation purposes of voluntary
societies like Vincent de Paul or the Legion of Mary.
The probation service as a professional service wasn't
really established until the 1960's as a result of an
interdepartmental committee chaired by...(INTERJ ECTION)

11 Q  What type of qualifications would a probation officer
in Dublin, one of the six, have had in the 1940's and
1950's?
A. There was no set qualification. I think I read
somewhere that they expected them to have experience or
interest in social work. But there wasn't a
requirement to have a degree in sociology or social
studies.

12 Q  In fact, they were all men as well; weren't they?
A. I don't know that for certain, but I presume they were,
I didn't see any evidence that they were woman.

13 Q  Just to expand on that, probation officers, in theory,
if the system was functioning, could firstly make some
class of a report to a judge on a juvenile offender
prior to sentence, that's No. 1; isn't that right?
A. The practice now is one of the main functions of the probation officer is to do an assessment prior to sentencing for judges.

14 Q. I think we are all reasonably au fait with what's happening now. I am just trying to look at the type of information that was available to judges in the 1940's and 1950's in relation to juveniles. Is there any indication as to what class of information a probation officer could bring other than a bit of family background?

A. No. I have seen no evidence in any of the files that they came up with a kind of a structured assessment of children or what should be done with them.

15 Q. Do I also understand it that children who weren't going to be sent to an institution could be put on probation which would suggest some class of supervision by the probation officer?

A. They would be put on probation. It didn't necessarily mean supervision by a probation officer, it could be supervision by any individual, it could be by Vincent de Paul, by the legion of Mary, there was a kind of informal arrangement. But it could be a probation officer, but it wasn't necessarily a probation officer.

16 Q. Am I right in saying that outside of Dublin there was, I think, calls in, particularly from Limerick, for assistance with provision of probation officers; is that right?

A. I'm not aware of that, but I have no reason to dispute that.
Q. Can I just note one thing, am I right and I may be wrong, in thinking that there would be an ambivalence perhaps in having people from either the Vincent de Paul or the Legion of Mary functioning professionally at that level? For instance, people might consider there was some slur on the family or that there was some moral judgment being made on them?

A. Possibly. The only thing I would say is that the 1908 Probation Act it refers to the duty of a probation officer to befriend the offender. So it wasn't the legislation for probation didn't envisage them as necessarily professional people, it was more a kind of guardian or a role model.

Q. So, I mean, certainly in 1950's there seems to have been no disquiet at the idea that either that the Legion of Mary or the Vincent de Paul, both of a reasonably strong religious impulse, were going to be involved in, I am going to say, non-residential minding of people who have gotten into trouble?

A. Well, I don't know enough to answer that question. Certainly the feedback I get from probation officers, that prior to the establishment of a probation service, it was people involved in voluntary work and obviously some of the more significant bodies would have been of a religious nature.

Q. That, of course then also has its mirror in the sense that, I think, all of the main institutions, barring Marlborough House, were themselves run by religious orders?
Mr. James Martin

A. Certainly dealing with children, yes.

Q. Marlborough House, I think as was apparent, was an institution which had many faults and I think it is quite apparent in the papers and I think even the Department of Education has admitted that it wasn't, I think the phrase was, a model of its kind. Do you derive any information from the fact that it seems to have been a relatively small institution with what we would say would be a relatively good staff ratio and still had difficulties in maintaining, let's say, a reasonable regime?

A. Sorry, I am not sure I understand the question.

THE CHAIRPERSON: What's the point, Mr. Gageby, because we couldn't get it right in Marlborough House with a reasonable ratio, why on earth are you complaining when we didn't get it right with the worse ratio, that's really what your asking?

MR. GAGEBY: No, it isn't.

THE CHAIRPERSON: Well, it is really close.

MR. GAGEBY: One of the things that comes through...(INTERJECTION).

THE CHAIRPERSON: What are you asking, Mr. Gageby, if that is not it?

MR. GAGEBY: Well, does anybody learn from the fact that a small institution will require, and a large institution will
Mr. James Martin

1 require, larger amounts of staff. That's not a wee
2 question, that's a learning process, Mr. Chairman.
3 THE CHAIRPERSON: Say the question again,
4 Mr. Gageby.
5 MR. GAGEBY: Perhaps if I put
6 it...(INTERJECTION).
7 THE CHAIRPERSON: Put it because I'm not sure
8 I'm getting it.
9 21 Q MR. GAGEBY: It is quite clear the
10 Department of Justice is
11 critical of the Department of Education's running of
12 Marlborough House?
13 A The Department of Justice looked at the question of the
14 running of Marlborough House in the interdepartmental
15 committee in the 1960's and when it was coming towards
16 the end of its term the 1970's the Department was
17 very critical of it. The criticism in the Barry
18 Committee (sic) in the 1960's was the way the staff
19 were recruited, they were recruited from the labour
20 exchange.
21 22 Q And they were undesirables?
22 A Well they weren't regarded as suitably qualified
23 certainly for -- yes.
24 23 Q Well the correspondence is there, and it is -- I am not
25 trying to -- do you understand?
26 A Yes.
27 24 Q I am trying to elicit what does one learn from
28 something like Marlborough House? Let me put it out
29 what seems certainly from the correspondence to be so.
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1 It was a relatively small institution catering for an average of boys and it might have been 10 or 15 or sometimes more, there was a reasonable amount of staff for that amount. It was subject to the Department of Education and a large amount of the boys would regularly reappear in court. So, to that extent it was slightly different from other institutions because those who were remanded were appearing before courts?

9 A. Yes.

10 25 Q We also know, because even before the Kennedy Committee asked for complaints, boys had made complaints about ill-treatment?

A. Yes.

11 26 Q And some of these had been made to district justice, District Justice McCarthy and I think others afterwards, and there had been a history of complaints the truth or otherwise of which just for the moment isn't here. All right. That was against the backdrop in which this was being actually run by the Department of Education and the persons who were actually employed in it and to run it had no actual experience in childcare, barring, I believe, the matron, who I think had a nursing qualification. Am I right?

24 A. I'm not familiar with the full detail of running because it is run by the Department of Education. Certainly I would say the Department of Justice didn't think -- compared to the institution being run by the Department of Justice, they didn't think it was very professionally run, that's clear in their assessment of
27 Q Yes. There seems to have been a pattern of complaints good, bad or indifferent for a minimum of 20 years before Marlborough House is closed in about 1972?

28 A Our knowledge of the complaints, the first knowledge came up in 1951 when the Department of Education suggested an interdepartmental conference on the future of Marlborough House and we sought the views of a district justice whether he would participate. He said that he had heard complaints about it, he had complaints himself. That's the first time the Department of Justice ever heard complaints. They weren't pursued because they came up in the context of different things.

29 Q I'm not trying to pursue a blame game of who and when. I am trying to simply establish that it would seem there had been a pattern of some people involved being unhappy with this institution and it took quite a while to close it?

29 A Yes. Certainly by the time of the interdepartmental committee in the 1960's it was quite clear that everybody concerned felt it should be closed and it took a long time to close but there was an expectation it would be replaced by Finglas as early as 1963, I think.
Mr. James Martin

A. Yes. I think the interdepartmental committee suggested retired guards, retired prison officers and retired army people.

Q. Army NCOs, okay. That's with a view to dealing with what was probably seen as rather troublesome young boys in this institution?

A. Well I think it was that they were not happy with the quality of the staff and they felt that the type of personnel we just mentioned would be more professional and were used to dealing with these kind of circumstances.

Q. These kind of circumstances would be the control and discipline of other people?

A. Yes.

Q. I'm not trying to fix you with that, I'm just trying to explore the idea because it didn't -- I mean, obviously a prison officer who might have worked in, let's say, St. Patrick's institution or if there is any other institution might have experience with younger children but it doesn't strike me that the army would and while obviously the guards would have in their normal duties?

A. No, it is quite clear, if I take your inference you are quite clear that they were suggesting that they would get a better quality of staff for the running of the institution but they certainly didn't seem to be recommending that they would be particularly qualified in dealing with children or in childcare.

Q. Yes. This seems to be against a background of what
appears to be a rather poor quality, old building. Yet one of the interesting things that has shown up is that it appears to have been very little provision for the boys to do anything in the institution?

A. Well that's correct.

Q. To occupy themselves?

A. Yes, that's correct. Because it was intended as a remand home, a remand centre, so the expectation was that boys would only be there for a very short period of time, the maximum period they could be for a place of detention was one month, so it wasn't a long term institution it was more a holding centre while they were processed by courts and the expectation they then would be referred to industrial schools or reformatory schools.

Q. Subsequently there was a minor disturbance in the early 1970's before its closure and some guards had to be called in. One of the interesting things reading the reports of that is that it indicates that the only amusement afforded to the boys there was the ability to watch the television in the evenings and there was poor exercise facilities?

A. Yes, it is quite clear that there wasn't a range of facilities for young boys there.

Q. It would seem that that effectively had endured from the time it was opened in the 1940's until the time it closed in the 1970s?

A. Yes, I presume so.

Q. Now just moving on a little bit, one of the functions
which then fell to be decided by the Department in the early 1970's was how an assessment centre would be set up by which children who were coming into contact with the law would actually be assessed in a way that hadn't happened before; isn't that right?

A. Yes.

38 Q. I am talking about the establishment of the Finglas centre?

A. Yes, that was addressed, it came up in the context of the interdepartmental committee in the 1960's that there was an expectation that Finglas would have a specialised assessment centre and that it would be child orientated, so to speak, yes.

39 Q. So in the early 1960's there was certainly some thinking that prior to children being sentenced, in whatever shape or form there ought, in fact, to be some professional assessment of them and seeing what problems they might have had and that sort of stuff?

A. Yes. I am not sure exactly what happened there but it looks from reading the files on the interdepartmental committee it was the Department of Education was coming with this approach, the Department of Justice was happy with that approach, the Department of Justice didn't really have any expertise in child psychology so they weren't really in a position for things. They were happy that there would be a professional assessment but I am not sure did they push it or, I think, it was the idea of the Department of Education.

40 Q. In fact, that was a centre that was going to be built
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in Finglas west, I think is the description?

A. Yes.

Q. And that was ultimately built in Finglas; wasn't it?

A. It was, yes.

Q. And it came to be known as St. Lawrence's; is it?

A. According to the files, yes.

Q. It would seem that when St. Lawrence's was built and established in, I think, 1973, but I am quite capable of being wrong by a year or two, it was, in fact, given to the Franciscans, was it, to be run?

A. I understood it was Del La Salle.

Q. Yes, Del La Salle.

A. The Department of Education were involved. The Department of Justice was, so to speak, interested but not directly involved.

Q. I am just interested in one aspect, is that obviously expertise in the Del La Salle order had to provide this service, I am just interested in the thing because so much of what we have been looking at is from the 19th Century and well into the 20th Century when the religious orders run most of these?

A. Unfortunately I'm not able to answer that question because it was an Education project as the Department of Justice was looking on but we didn't have any direct interaction with the Del La Salle order, it was all the Department of Education.

Q. I am just simply noting that it is quite late, if you want to look at it as a history of moving from the religious to the religious not being involved in these
Mr. James Martin

Can I ask you, do you sense -- as a general aspect, do you sense that there was a great feeling from the 1950's onwards that the system of juvenile justice, be it for offenders or otherwise, was something that really ought to be reformed? Do you get that feeling from the Department, in records?

A. It was quite clear in the late 1950's the question of juvenile delinquency was an issue that was coming up in various foray. And the Minister for Justice at the time, Mr. Haughey, established this interdepartmental committee on the prevention of crime and treatment of offenders. One of the issues that it was to look at specifically was juvenile delinquency. So within the Department that was, so to speak, the engine that was picked to drive forward developments in that area so.

Q. So, to what extent does the Department of Justice in the 1940's and 1950's really know much about what's happening to children who have been committed either to industrial schools because of family difficulties or children who have been sent to reformatories by reason of a brush with the law? To what extent does the Department know much about the children?

A. Very little. From a departmental point of view we took no interest in children unless they were breaking the law, that's where they come into our ambit as the Department. The view, obviously the Department was responsible for the running of the Gardaí and the court system so it was aware of obviously crimes being committed by young people and the interaction with
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guards. The line they would draw it was our job to deal with the probation service, the court service and the guards. When it came to the disposal of young offenders under the age of 16 that was the specialty of the Department of Education. But the interdepartmental committee in 1960's it recommended the establishment of the probation service and the professional service and it established the juvenile liaison officers scheme in the Garda Síochána to deal with juvenile to try and divert them away from the court system before they got to the stage that they were going to be convicted.

Q. Can I ask you, the correspondence which we have seen in the files certainly seems to indicate a belief in the Department of Justice that the Department of Education was a bit inert on reforming the system. Am I right in putting it that bluntly?

A. Well I wouldn't like to put it so bluntly, but there is obviously criticisms of the Department of the way the Department of Education is responding to its ideas. The interdepartmental committee made certain recommendations about industrial schools and reformatory schools and it was quite clear from the files that they felt that the response from the Department of Education wasn't as proactive as they would like.

Q. Why do you think that was, Mr. Martin, let's open it out? Why do you think the Department of Education seemed to have to be prodded by Justice who didn't really seem to know, in a sense, an enormous amount
Mr. James Martin

1. about the children themselves?
2. A. I don't know, is the answer. All I can say is that in one sense it is easy for the Department of Justice to criticise another Department but they drew a very clear line that they had views that the Department of Education should be more active but they were not going to take over that role themselves.
3. 50 Q. Would it be fair to say that there is a couple of themes which are obvious, obviously the costings of reform is something that everybody keeps in mind; is that right?
4. A. Yes, well, obviously for any proposal the cost involved.
5. 51 Q. For instance, the grant for industrial schools doubled, I think, in 1969, which was I think the most -- the largest increase that had ever happened; isn't that correct?
6. A. Well it was a matter for Education, I don't know, but I presume that's correct.
7. 52 Q. Okay. So I mean obviously this is a system in which there is a large amount of legal bodies concerned. The Department of Justice, as you say, is by and large only concerned with children if they appear to infringe the law and have been prosecuted?
8. A. (WITNESS NODS).
9. 53 Q. And have some responsibility for probation officers?
10. A. Yes.
11. 54 Q. Although, it is historically not actually clear what the exact service they provided was. Do we know are
there any actual records of documents the probation
officers brought into being in the 1940's, 1950's and
eyear 1960's? This isn't a complaint about discovery,
I am just simply exploring.
A. I am not sure about the situation for -- I got the
impression that the -- prior to the establishment of
the professional service it would be left very much to
the individuals, there might be some records but I am
just not in a position to answer that in any detail.
Q. Okay. Could I go back to the interdepartmental
committee concerned with the question of aftercare.
Aftercare is something that spans both the industrial
schools and reformatories and what we are talking about
here is the probation level of some service to
children, young people who have been discharged from
either industrial schools or reformatories or something
like that. That's something that, I think, the Cussen
Committee had been thinking about as well in the
1930's. When does it seem that the interdepartmental
committee began to look at this, is this the early
1960's?
A. The interdepartmental committee was established in 1962
and it did mention aftercare as one of the issues.
Q. That was obviously partially in the context of juvenile
delinquency, which children are likely to get into?
A. Yes.
Q. The theory there, I am sure the good practice was, that
with some support, presumably from the probation
officers or the social workers or something like that
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children who had been in trouble could be steered a bit away from that, maybe help with jobs, accommodation or something like that?

A. I think the idea was that children who came out of the industrial schools or reformatory schools that rather than just being put out on the street that there should be a support structure there. I don't think -- like, the probation officers are limited to people who were on probation, they couldn't deal with somebody whose finished, so to speak, their term in an industrial school, they wouldn't have any power to get involved there. I think the Department was trying to encourage Education and the institutions that that would make arrangements for when their charges were finished in their term that there was some mechanism to get them into jobs and into a settled structured lifestyle.

Q. Yes, because one of the complaints, for instance, in relation to some of the larger main institutions that an enormous amount of the boys on leaving either emigrated or those who stayed perhaps joined the army, now that may not be a complaint, but there really didn't seem to be any aftercare for quite a number of children. In a sense, what was actually done about that, I know there is talk about it in the early 1960's, but what was actually done?

A. All I can say is that the Department of Justice made that recommendation on to Education and then they said it was a matter for Education to pursue it.

Q. Yes. In a sense in that's Justice looking at

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Education, certainly ideas there could be a structure there, isn't that right, probation officer, social workers, whatever form that the State could actually provide some class of a service?

A. At the time. Obviously one of the options, instead of pursuing that they could have tried to establish some kind of a structure to deal with that.

Q. That's because there wasn't a structure?

A. Well, I am not very familiar with that.

THE CHAIRPERSON: Was it not in the rules that the industrial school was required to follow up, was that not in a rules?

MR. GAGEBY: I'm talking about a structure.

THE CHAIRPERSON: But is that not in the rules?

MR. GAGEBY: Yes, but I am talking about on actual structure, people and persons and...

A. I think there was some reference, for example... (INTERJECTION)

THE CHAIRPERSON: So it was the job of the industrial school, it had a statutory obligation and a contractual obligation to follow up.

MR. GAGEBY: Yes, but I am actually talking about the actual... (INTERJECTION)?

THE CHAIRPERSON: ... whether the
Mr. James Martin

1 But the interdepartmental committee
2 said it would do so, they had it.
3
4 Q. MR. GAGEBY: And what about
5 reformatories?
6 A. That was also fall under -- I presume because
7 reformatories are education, I think they were covered
8 by the same rules, I am not sure not sure now, it is a
9 matter for Education.
10
11 Q. And St. Patrick's Institution?
12 A. St. Patrick's Institution is different, yes, that's run
13 on a different principle. And there was always.
14
15 Q. MR. GAGEBY: Can I just come back to a
16 couple of other things.
17
18 You are aware of an interesting document because it was
19 pulled from your files of a series of lectures by
20 Mr. O'Connor?
21 A. Yes.
22
23 Q. Now that is essentially on juvenile delinquency?
Mr. James Martin

Q. So it didn't touch very much on the issue of industrial schools. One of the things that Mr. O'Connor -- and I think this is about 1957/58; am I right?

A. I think the papers said it was read through Turim in 1959, so it could have been that.

Q. And he had cold figures from the previous two years or so in Ireland; isn't that correct? One of the things that he was interested in was that where children were committed to industrial schools he believed for until they were 16 and he was critical of that, critical of that system isn't that right?

A. I think he was critical generally of the system in existence, yes.

Q. Mr. Chairman, I have here, which I was going to put on the monitor, now it is not really for this witness to answer but it is just as a question of information.

THE CHAIRPERSON: Yes, sure.

MR. GAGEBY: This is an abstract of -- I have about 300 committals to St. Vincent's Industrial School, Goldenbridge and I am going to put up the first three pages just of what I have and the rest of it is going to be submitted to you in any event.

THE CHAIRPERSON: This is statistical material, is it?

MR. GAGEBY: It is, yes. What it is going to show is that from 1954 there was a pattern of short term committals and I
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think when we put our materials to you, Mr. Chairman, it would seem that between 1955 and 1965 350 girls admitted by court order and 220 were for less than the expiry of their 16th, so I am going say 220 for the less than the maximum as it were. Just by way of reference, I am going put it up on the monitor, if I may.

THE CHAIRPERSON: Yes. Maybe Mr. Ward can help you fit it in. I can see the right-hand side no problem Mr. Gageby, but I can't see the left-hand side. Slide it over, keep going that way and we will...

MR. GAGEBY: Mr. Chairman, what I am going to point out is that they are all from St. Vincent's, the admission records and I have the names for ...(INTERJECTION)

THE CHAIRPERSON: Surely we shouldn't be using the names,

Mr. Gageby.

MR. GAGEBY: Very good. I will put the names out so.

MS. FERGUS: No, the names of the pupils.

MR. GAGEBY: I am just going to indicate, Mr. Chairman, I am just asking you to look at a couple of things here.

THE CHAIRPERSON: Let's take it down from the screen, first of all,

Mr. Gageby, because I can understand -- now, tell us
what you are telling us, Mr. Gageby. You are saying
that one of the complaints was that children were
ordered to be detained, not just in Goldenbridge but in
many other industrial schools until they were 16.

MR. GAGEBY: Yes.

THE CHAIRPERSON: No matter what reason there
was for -- I know this
doesn't directly concern you, Mr. Martin, but it is an
Inquiry so let's not worry about that. No matter what
the original reason was, let's just use a neutral term
for bringing the child before the court, a boy or a
girl, he or she went off to an industrial school until
16, that's a big complaint made.

MR. GAGEBY: Absolutely, yes,
Mr. Chairman, yes.

THE CHAIRPERSON: You are acknowledging that.
You are acknowledging that.
But you are saying there is nonetheless a significant
number of admissions which are for a lesser period,
which are short term. Is that what you are saying?

MR. GAGEBY: Yes, and perhaps this isn't
the place to be doing that,
but it seems to come up in Mr. O'Connor's report. Thee
reason I said this and I am sorry to cut across
Mr. Martin and argue... (INTERJECTION).

THE CHAIRPERSON: That's all right.

MR. GAGEBY: But this is an appropriate
time. Mr. O'Connor was of
the view that committals had to be until the age of 16,
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now he may be right -- and because this material came in very late I just can't help the Commission at the moment. He may be right in terms of offending and it may have been a different legal practice in relation to children who came in as being found destitute, and I use that for all the reasons advanced. But one of the things that came up is that my solicitor, Mr. McDonald, had a memory of being told that the Resident Manager in Goldenbridge in 1954 had approached District Justice McCarthy and asked if they couldn't in be shorter committals. That therefore is how on very late on Friday night I got this abstract which covers 1955 to 1965 and which shows short term committals, because the interesting thing is not the question that people were committed until their 16th birthday, of which many obviously were, but possibly released on application of parents or guardians before that. But there seems to be quite a number of committals beginning, in fact, in 1954 -- sorry, I think there might be one in 1954 but mainly 1955, of approximately a year.

Now, that doesn't actually trench with what Mr. Martin is saying and Mr. O'Connor may still be right, but I just thought that...(INTERJECTION).

THE CHAIRPERSON: But you mention it at this point because you say it is something that came up --

MR. GAGEBY: I don't know about other institutions.
THE CHAIRPERSON: -- to your information and it is relevant because Mr. O'Connor in his Turim paper is making the assumption that everybody went until they were 16. He actually may have believed that they had to be sent until 16.

MR. GAGEBY: He may only have been speaking ...(INTERJECTION).

THE CHAIRPERSON: Don't worry, Ms. Buckley, I am on to this. We are all understanding exactly what the issue here is, don't have fear that you need to intervene, you don't need to intervene.

MS. BUCKLEY: Great, because I don't agree with Mr. Gageby.

THE CHAIRPERSON: All I am telling you is don't worry, we know exact think point. Ms. Shanley, Mr. Lowe and myself, without having to debate, know exactly what the point is. But nonetheless we are interested in the point that Mr. Gageby is making to us and if he has information in writing we will be happy look at that, that's as far as it goes.

MR. GAGEBY: I will put it in statistically. I just thought it was convenient, while the material was there, to do it.

THE CHAIRPERSON: I understand.

MR. GAGEBY: Could I come back then --
Mr. James Martin

1 sorry, I have ignored you,
2 Mr. Martin, for a while. Could I just come back to one
3 thing which is a matter really of general application,
4 childcare at the moment is a million miles from what it
5 was 40 or 30 or 50 years ago and there is a large
6 amount of people now employed in minding the small
7 amount of children who are in institutions of one form
8 or another, whatever they are called, I think that's a
9 given; isn't it?
10 A. (WITNESS NODS).
11 70 Q Also the situation is that the care of children is more
12 centralised in terms of what agency deals with them am
13 I right in that?
14 A. I can't really speak for areas outside the Justice
15 area, but it certainly only very recently that the
16 policy decision has been decided to centralise the care
17 of people who are coming into -- young offenders coming
18 into criminal but while we are in the process of doing
19 it it hadn't actually been effective yet. So it is
20 only now, only in the 21st Century, that the care of
21 young people who are coming into criminal is being
22 centralised.
23 71 Q I think one of the things that anybody might take is
24 that nobody would actually have built a system for
25 detaining young people in the way that it actually
26 evolved, in a sense that you wouldn't sit down and say
27 this is the way to do it. For a start, the Department
28 of Justice didn't -- you weren't responsible for
29 children who were committed either because of parental
difficulties or, in fact, they offended; is that right?
A. Yes.

Q. The Department of Justice had some licensing
capabilities and of course ran the prisons; isn't
that right?
A. Yes.

Q. That would include the follow up from the Borstal,
St. Patrick's?
A. Yes.

Q. The Department of Education only ran one institution,
which was Marlborough House?
A. Directly, yes.

Q. Of course you are right. One residential institution.
Local authorities had some instructions in relation to
industrial schools; isn't that right. Or am I asking
the wrong person?
A. You are asking the wrong person. But I know the
way...(INTERJECTION)

Q. Yes. What we have seen is from the 1940's, 1950's and
1960's that, certainly from your departmental view
point the papers that are coming up in the discovery
are really about juvenile delinquency; isn't that
right?
A. Yes.

Q. But of course the vast majority of the children in the
care system weren't delinquent in the slightest sense,
they were just simply unfortunate?
A. Certainly in the early days there was very few actual
people who had actually come through the criminal side.
In a sense, one gets the feeling that some portions of the State were really cruising, there really wasn't a great impetus for change by the State through the 1940's and 1950's?

A. I am not sure I can answer the question.

I know you are not personally responsible for it, I am just asking you what you think?

Certainly our records don't show any -- the first consideration of juvenile delinquency in a considered way that we see on the files is 1962 when the interdepartmental committee set up. Up to then we don't see any -- much thought given to the issue.

One of the things that strikes me is that on the discovery there there is a letter from the Minister, Mr. Haughey, to a local residents group, who had some worries about the building, I think in the early 1960's of what was going to be, at the end of the day, St. Lawrence's; is that right?

That's correct, yes.

It would seem there is about nine years between the apprehension of the local people and the actual building of the local place; is that right?

There was quite a long period. Now I can just say from our own experience of building prisons it is quite a long period because there is normally lots of resistance from local people to even the suggestion that you might purchase land in their area for these kinds of institutions.

Do you think therefore that the changes which have come...
about, I mean the Childcare Act is 1991, that's the first effective alteration of the legislation since 1941 and then 1908?

A. Certainly from looking at things it was the Kennedy Committee that really instigated the change.

Q. Well they certainly made the recommendations?

A. Yes. There was work, I know, the Department of Health originally ran with the ball so to speak, reviewing the whole area of childcare, including the juvenile justice area, but I think their first efforts weren't successful. So it was the 1991 Act was the childcare side and the Department of Justice -- it was only at that stage that the Department of Justice started looking at the juvenile justice side of things.

Q. Was the issue of law reform and the alteration of Statutes was that any part of the brief for the Department of Justice?

A. Yes, in a broader sense, but specific areas. My recollection is that the Kennedy Report specifically suggested that the administration of childcare generally, including the administration of detention centres for young people, should be centralised and it should be centralised in the Department of Health. And the Department of Health took that issue up and I believe they produced draft legislation in 1985.

Q. Which would be about 15 years after the Kennedy Report?

A. Yes. But it was, I believe, unsuccessful, it didn't meet with general claim for the voluntary or professional sectors dealing with childcare and our
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Department had difficulties with what they were proposing on the juvenile side.

Q. In retrospect, and there is nothing obviously personal about it, do you believe that there would have been speedier change if your Departments had been involved, because one certainly senses that there is an element, I don't say quite a turf war, but it does appear there is sensibilities between the Department of Education and the Department of Justice which have to be respected?

A. There was, I think, certainly from my experience in the Department, there has always be this unhappy allocation of responsibility between the Department of Justice, the Department of Education and the Department of Health as to who was responsible for what area and it has only been finally resolved hopefully forever at this late stage.

Q. If I could just come to some particulars. A couple of things that came to the Department's attention were reasonably specific to places, there is Marlborough House, there is Daingean, which is mentioned in pejorative terms and also Artane; isn't that right?

A. (WITNESS NODS).

Q. In a sense if the Department was hearing about, I am going say, pejorative or criticisms about a particular institution, if it was hearing them what was it hearing with a view to doing? For instance, Fr. Harry Moore had a lot of complaints which exercise the Department in the early 1960's, so what did the
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1 Department, in your view, actually see its view was to
deal -- I mean, why was it listening to those and what
was it going to do if it thought they were right; if
you understand me?

A. I presume, and this is just a presumption, it is clear
that when they established the interdepartmental
committee some publicity was given to it because there
is talk about interviewing people before they make
submissions to the committee. I presume it was in that
context Fr. Moore approached. And they were looking at
the question of the juvenile delinquency generally. It
is not quite clear why they strayed into the area of
Artane, because that particular school didn't deal with
juvenile delinquent at all, it was the non-criminal
side. The Department obviously would be very conscious
that people who aren't going turn out to be structured
members of a structured society they tend to end up in
jail. So it has always been the view of the Department
of Justice if you are going try and stop people turning
into criminals you want to get them at the youngest
possible age, so we would always have a general
interest in what's happening there.

But I think it is quite clear, even though the
Department took quite an active role in dealing with
education on the question of Artane, there was a line
they drew in the end of the day they made
recommendations, it is a matter for Education to follow
it up, it is not our job. I think that's quite clear
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1 from the files, that even though the Department
2 expressed a view to Education about how things might be
3 improved they drew a line and said this is as far as we
4 go, it is over to you then to decide what you do with
5 those recommendations.
6
7 Q I just want to tease out one thing. There is three
8 institutions in the papers are ones about which
9 complaints are made and -- in fairness, battles about
10 that. Do you think the complaints -- leaving
11 Marlborough House, do you think complaints about
12 Daingean and Artane caused anything to happen?
13 A. Well, if we are talking about Daingean in particular,
14 the involvement of Mr. Crowe, I think, did result in a
15 change in the regime of corporal punishment in that
16 institution.
17
18 Q Yes. Because one of the interesting things is that one
19 of the things that is in your discovery is a series of
20 four articles from the Irish Times in 1950 which seems
21 to be quite a moderate and reasoned and modern view of
22 how a juvenile justice system ought to be. One of the
23 things that is noted there it appeared that the author
24 was of the belief that corporal punishment had been
25 abolished a number of years before in Daingean, which
26 may or may not have been right. Is there any
27 indication of -- I mean, looking at those series of
28 articles, other than being clipped out, how they moved
29 things on?
30 A. No. All I can say is that they were clipped out and
31 put on the files so someone read them, but whether it
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may or may not have influenced their attitudes subsequently.

MR. GAGEBY: Mr. Chairman, if there is anything else that I can be of assistance on. I mean, I don't feel any obligation to be partial to my...

THE CHAIRPERSON: No, thank you very much.

MR. GAGEBY: I think that's all.

END OF EXAMINATION OF MR. MARTIN BY MR. GAGEBY

THE CHAIRPERSON: Now, Mr. O'Hoисín, you represent the Oblate fathers or specifically for Daingean. Mr. O'Hoисín, will you be some time, it is simply a practical thing, if you are going to be some time, we will make arrangements so that you are more comfortably located. If you have only a brief few questions then it is probably not worth doing so.

MR. O'HOISIN: I am happy enough with where I am. I think I will be -- provided that you are, Chairman, I think I will probably be about 15 or 20 minutes.

THE CHAIRPERSON: But if you are comfortable there, Mr. O'Hoисín, in normal circumstances with that I would have said we will rise and we will give you a few minutes or whatever.

MR. O'HOISIN: I am happy enough to stay.

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THE CHAIRPERSON: Very good. Let's get on with it. Thank you very much, Mr. Ó hOísin, if you change your mind tell us.

MR. JAMES MARTIN WAS THEN EXAMINED, AS FOLLOWED, BY
MR. Ó hOÍ SIN:

Q. Mr. Ó hOísin: Mr. Martin, my name is Colm Ó hOísin and I am appearing on behalf of the Oblate Order, who operated the reformatory in Daingean and I have just a few questions to ask you about that.

Daingean, as you know, operated from 1940 through to its closure in 1973 as a reformatory and it was the only reformatory in the State for boys. You are aware of all of that?

A. Yes.

Q. Insofar as the Department of Justice is concerned I appreciate from your statement that it is accepted by you that the Department of Justice had responsibility in relation to Criminal Justice Act system during all of this period?

A. We had overall responsibility for the criminal justice system but not every aspect of it.

Q. Yes. And the juvenile justice system was obviously part of that criminal justice system isn't that correct?
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A. Yes, we had responsibility for aspects of the juvenile justice system as well.

94 Q You obviously had responsibility in relation to -- some responsibility in relation to the courts or administrative matters in relation to the courts?

A. Yes.

95 Q Responsibilities in relation to An Garda Síochána and responsibilities in relation to probation service?

A. The probation service, yes.

96 Q I think you said also that you had an interest in -- or the way you put it is that:

"The Department did not take interest in children unless they were breaking the law".

But we can take from that that you were interested in children that were breaking the law, you were interested in a system of dealing with juvenile delinquency?

A. We were interested obviously -- in fact, one of the functions of the Department of Justice is to maintain law and order in all aspects.

97 Q Yes. Now, you also appreciate and I think you indicated in your evidence to Mr. Gageby that the Department of Justice appreciated that it was important to try and get people when they were young, that if people were offending when they were young that they were likely to turn out to do the same when they reached adulthood?

A. There was always that danger obviously, yes.

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98 Q. And that was another reason for the Department... (INTERJECTION)?

A. It would be a reason why the Department would stray outside its strict brief that general social conditions can influence the crime rate and things like that. So the Department does occasionally stray outside what we would regard as strict remit to address issues that may lead to an increase of crime, or things like that.

99 Q. When you say a strict brief, the position was that insofar as the running of Daingean was concerned that was the responsibility of the Department of Education?

A. Yes.

100 Q. But other than that fact it was the Department of Justice's responsibility to run the juvenile justice system?

A. The responsibility of the Department of Justice didn't extend to the detention of people under 16, that we were responsible -- we had overall responsibility for providing Gardaí, providing for the courts, providing the criminal law generally, but as for the disposal by the courts for people under 16 that was, in the eyes of the Department of Justice, a matter for the Department of Education.

101 Q. Just one small point in that, you did have a statutory responsibility in relation to the detention of people under 16 on remand but as a matter of practice it was shifted over to the Department of Education?

A. We had a responsibility to certify, there was a bit of confusion, up to 1944 the Department of Justice wasn't
sure that it had that responsibility. Prior to that it was regarded that the Gardaí had a responsibility to locate places for remand. But in 1944 the advice of the Attorney General was no, that that was appropriate for the Department of Justice. So from 1944 on it had the role of certifying places for remand and places of detention that a court could sentence a juvenile for no more than one month.

Q. When you say that you had full responsibility for the detention of offenders of 16 and over, obviously a lot of the pupils in Daingean were over 16?

A. Well, yes. When I say over 16 that's not 100% correct. The attitude of the Department was when somebody came before the courts and they were going to be sentenced for a crime that and they were 16 and over that we would accept full responsibility. There was obviously people in the reformatory and the schools who could have been sentenced before they were 16 and there was a period where, between 1941 to date, where the courts had the option of sending a 16 year old either to a reformatory school or into St. Patrick's institution, Borstal.

Q. It is a fact that the two years was a very typical period of detention in a reformatory. So there were quite a lot of offenders there who were 17 and 18?

A. I don't have any facts on that but I have no reason to disagree with you.

Q. If it is of some assistance to you, Chairman, and to the Commission, if you look at Fr. Hughes's statement
at paragraph 8.6 he refers to a sample year in the 1960's showing the age spread for Daingean. I think that's taken from the Kennedy Report as well, it is page 103, I think of the Kennedy Report so he's just got an extract of it there.

From that, going through the age spread I will just give...(INTERJECTION)

Q. THE CHAIRPERSON: Can I just clarify one thing, MR. O'HÖSIN.

Mr. Martin, you are saying when it comes to the division of the responsibility, if I understand correctly, when somebody, a boy or a girl, came before the courts, say a boy came before the courts and he was 16 or upwards and it was on a criminal charge, he was fully the responsibility of the Department of Justice?

A. Yes. The Children Act of 1908 had the line at 16.

Q. THE CHAIRPERSON: Yes.

A. So I think the thinking back in 1908 was you weren't a chide, when you reached 16 you were effectively an adult. So the Department of Justice always accepted responsibility for people 16 and over. And there was the Borstal system until the 1960's with St. Patrick's institute. And then St. Patrick's institution would take people from 16 to 21. In very exceptional cases, if there was a particularly -- if a child was certified as unruly, even though they were under 16 they could be sent to prison and then they would come into our care.
THE CHAIRPERSON: Thank you. Sorry, Mr. O'Hoisin.

MR. O'HISIN: Just for completeness sake, in that extract the age spread indicates that 6% in a sample year in the 1960's, of the pupils in Daingean were 13; 11% were 14; 31% were 15; 35% were 16; 15% were 17; and 2% were 18.

THE CHAIRPERSON: Thank you.

Q. MR. O'HISIN: That was 52% of the pupils in that particular year would have been 16 or over.

As you said, it is not possible to -- I think it is fair from what you have said to draw the conclusion it is not possible to make a very definite break between the Department of Justice's responsibility in relation to these matters and the Department of Education insofar as if somebody was certified as unruly, even though they were under 16 they could be sent to St. Patrick's institution, which was under the Department of Justice?

A. They could actually be sent to a full adult prison, yes.

Q. MR. O'HISIN: Or to St. Patrick's?

A. I am not sure, technically thinking I think they were actually sent to prison and then they were transferred to St. Patrick's.

Q. MR. O'HISIN: And there were situations where persons who were in Daingean occasionally, in some of the notes it
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indicates, that it is very much a last resort, were sent back essentially and were sent to St. Patrick's from Daingean?

A. Well, I am not sure if that would happen without a court order.

Q. Well I think it would have involved a court order?

A. Yes.

Q. The position in relation to the Department of Justice then would have been that you had responsibility for a juvenile offender all the way up to the time when they were actually committed to an institution, to Daingean?

A. Not necessarily, in a broader sense, yes. But like, for example, in Dublin they probably would have been sent on remand to Marlborough House, which was run by the Department of Education so we wouldn't have direct responsibility but they were in our system but they wouldn't necessary be in our care. So I think most people before they went to Daingean, if they were in Dublin, probably would have been remanded to Marlborough House.

Q. There is a distinction between a responsibility for the juvenile justice system and the particular institutions into which these juveniles were placed?

A. Yes.

Q. But the Department of Justice, you would accept, had a responsibility in the system as to what was to happen to these juvenile offenders?

A. You had a responsibility for the criminal justice system and had a responsibility to get them to court.
Now the view in the Department would be that Education -- if they were under 16, it was really a matter for Education to deal with how they were disposed of. If they were 16 and over it was a matter for Justice to look after them.

Q. Education's responsibility was really running the institution, I am only concerned with Daingean here, not Marlborough House, was running Daingean but it had no responsibility in relation to the courts and to what happened to these juvenile offenders in the court; is that correct?

A. That's correct.

Q. So that somebody else must have had responsibility and it was the Department of Justice, is that correct, for what was happening to the juvenile offenders in court?

A. I am not sure there is a simple answer to that question. The courts -- we would be responsible for legislation to some degree, so we would be responsible for legislation of what happened to 16 year olds. The Department of Education is responsible for the education of what happened to under 16 year olds. The courts would then have a range of options open to them depending on the legislation.

THE CHAIRPERSON: MR. O'HOSIN, LET'S ASSUME the answer is question for the moment, let's assume that and we will see where it is going and then we will see whether Mr. Martin needs to be -- at least, I think I am understanding the distinctions because strictly speaking you could say
look, we are responsible for paying the district justice. Are we responsible for him, I'm not sure. We are responsible for the guards but operation. So he could be -- let's assume the answer is yes, the Department is responsible, see where it takes us and then maybe make some qualifications.

Q. MR. O'HOLSI: Yes. I want to suggest to you that the Department of Justice really had a responsibility in relation to the fact that there wasn't a proper system of assessment of juveniles when they were convicted of offences and before they were committed. So there was no assessment being done to say this juvenile has been convicted of this variety of offences, what's the appropriate place to which they should be sent. I want to suggest to you that this was a Department of Justice responsibility and something which they fell down...(INTERJECTION)

Q. THE CHAIRPERSON: Just stop there for a second. What do you say to that, Mr. Martin?

A. Well the answer is question yes and no. The Department obviously was responsible for supporting the courts so the support provided to the courts so far as the assessment of any individual, including a juvenile, was after 1960 with the probation report, an assessment submitted by a probation officer, and the court had the facility to refer them to a medical doctor and at most stages those medical doctors could include somebody with psychiatric ability. Now the question of
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assessment of a more kind of child orientated
easessment did come up in -- two areas it came up in
the context of the interdepartmental committee where
the Department of Education emphasised that the new
centre in Finglas that was going to replace Marlborough
would be a purpose built assessment centre with
facilities provided there to the Department of
Education. I believe the Kennedy Report in its report
also dealt with the question of assessment and it
recommended that the Health Boards would have child
assessment centres that could support the courts.

Q. THE CHAIRPERSON: Mr. Martin, if I am
understanding and maybe
just a slightly different point, if I am understanding
Mr. O'hOisín's line of questioning, it is something
like this: Children found themselves appearing in
court, some of them were there because they were
accused of crimes, some of them weren't. Some were
under 16, some were older 16. Let's forget the over
16s and take the under 16s, the vast majority of them
were there not because they committed -- but that's not
important, some were there are for crime and some
weren't. He's saying "right, there was no system of
assessing children as to their suitability for where
they might be sent", whatever the reason for that?
A. Yes.

Q. THE CHAIRPERSON: If one were to point the
finger which Government
Department is responsible for that situation?

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A. Well I think it would be both the Department of Education and the Department of Justice. We both had a role.

THE CHAIRPERSON: If I'm understanding what you are saying, what you have said earlier, that may be part of the problem that we are assessing?

A. Yes.

THE CHAIRPERSON: Does that get to something that you are asking?

MR. O'HOSIN: I think there is a sense to some degree that this is falling between two stools.

THE CHAIRPERSON: Or three.

MR. O'HOSIN: Well if Health is brought in as well, but I think that's more laterally.

THE CHAIRPERSON: Yes.

121 Q. MR. O'HOSIN: Mr. Martin, the need for and the desirability for having assessment before somebody was committed to a particular institution is something that was not new in the Kennedy Report, it is something that's mentioned as far back as the Cussen Report in 1936, did you know that?

A. Well, the Department of Justice didn't have much dealings with the Cussen Report, that was an educational report and Education pursued that. I think, we couldn't find any material on our files about
the Cussen Report, that doesn't mean it didn't exist because some of the very old files were missing but from all out of our investigation of the Cussen Report it was reporting to Education and its recommendations were implemented by Education in the 1941 Children Act.

122 Q I just find it a bit hard to understand why the Department of Justice wouldn't have some interest in it, insofar as it was a commission of inquiry into the reformatory and industrial schools?

A. Yes, but it was always accepted the Department of Education was responsible for reformatory schools and industrial schools, the Department of Justice had no responsibility for reformatory schools or industrial schools.

123 Q I just want to quote to you a section from the Cussen Report, which at paragraph 53 had stated:

"At present no medical report is required before a child is sent to an industrial school or a reformatory. We are of the opinion that each child should, prior to any order being made by a justice, be examined by a doctor duly appointed for that purpose, a doctor's report which should be in the form of a special certificate on the line of a life insurance certificate on the child's physical and mental condition should be in the hands of the justice before he considers ordering the detention of the child.

If it is found in the report of the examining doctor the child is physically or mentally abnormal or if the doctor is unable to form a definite opinion the justice should, if the case is one calling for detention in the school or that the child be sent to an institution, specially certified for such cases, which we recommend in our report."

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So there was a very clear statement in that report about the high desirability of this type of assessment for before a committal took place; isn't that right?

A. Yes.

Q. And again it is something that's referred to in the interim period between that and the Kennedy Report, which is nearly more than 30 years later. We have some articles that we included in a book of documents, I think by Professor Fahey in Trinity College in 1940's where he talks about the juvenile system and this is part of what's there, I think you are familiar with those?

A. Yes, I have seen them since Friday.

Q. The difficulty, I have to say, is that -- would you accept that in retrospect, looking back on it now, that the Department of Justice should have taken a more proactive role in ensuring that the juvenile justice system was operated in such a way that juvenile offenders were sent to institutions which were suitable to them having regard to their medical and mental abilities or capacities?

A. Well, that's a difficult question, in the sense that the Department of -- like I said, the view taken by the Department of Justice if they were dealing with juveniles under 16 it was a matter for Education. All aspects, what kind of centre would be deemed there and how they would be dealt with. It is ironic that in
some cases that perhaps if the Department of Justice had taken a more active role and actually ran some of the institutions that there might have been less danger of abuse, but certainly there would be less danger that they would be properly educated because the Department of Justice didn't have any skills to deal with children. It had skills to protect people's right and keep them in safe and secure custody, but as an institute it didn't have any particular expertise to deal with children.

Q. I am not sure that I am getting the point across to you. There seems to be a cut-off point at the time that the committal takes place, when the juvenile goes into the custody of the Department of Education through the institution that is they were ultimately responsible for, that's one side of the line. But on the other side of the line, up until that particular point the Department of Justice doesn't appear to have any responsibility and it appears to be the Department of Justice that has the responsibility?

A. Yes, it is a kind of a difficult issue, because obviously if you are going to assess people you have to assess them in relation to where they are going to be sent, what the institutions are there. So there wouldn't be much point in the Department of Justice having an assessment team and having no involvement with the centres because obviously you have to recommend what centres are appropriate. So if you going to deal with children the assessment would have
to be by a child expert and would have to have the follow-on, you would have to have an entire system. So you would have to say, we have three different types of institutions for children, I can recommended A, B or C. I don't think you can separate the assessment things.

Obviously, the Department had a role in providing some facilities to courts but that's where, in a sense, it broke down, that there wasn't a unified structure that dealt with it. We have a range of institutions for children and we have a range of assessments to help the court to decide which would most suit. That is quite clear that that system did not exist and it would have been much better if it did exist.

Q. I mean, I will say this now, I don't get from -- unlike the Department of Education statements that were put in, there is no sense of regret or any sense of apology on the part of the Department of Justice for its failure to be more proactive in relation to the juvenile justice system at the time. I mean, is that sense there or are you not saying anything about that?

A. Well, it is there, it is just that what we would have done if we were more proactive we would have taken something from the Department of Education into another arm of Government and I can't guarantee that we would have necessarily done it better than Education would have done it. We are two arms of the same Government.

Q. But we are not really talking about something that the Department of Education were doing here now, we are
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talking about something that it appears nobody was
doing, which was to be doing a proper assessment of
offenders before they were sent to institutions and
having in place different alternatives. Because it
appears that the only place that the juvenile offender
could have been sent to at the time was to Daingean?

A. Yes, well I would accept that. It is quite clear up to
the 1960's there was no consideration given to the
assessment of any person who was before the courts,
whether they were juvenile or not. It was only with
the establishment of the probation service that any
kind of systematic approach was given to assist the
courts in assessing offenders, whether they were
juvenile or adults, that's quite clear. Obviously it
would have been much more desirable if the Department
had taken a much more proactive approach in that area.

Q. And that's something that the Department of Justice
regrets?

A. Yes.

Q. The fact of the matter is that a very wide spectrum of
individuals who had been convicted of offences were
sent to Daingean in the period 1940 to 1973; isn't that
right?

A. Well I presume anybody in the age group concerned,
regardless to crime, the only option was effectively,
unless they were certified as unruly, to send them to
Daingean or not send them to any detention centre.

Q. Whilst the Children's Act clearly gave the Resident
Manager a right to refuse entry to somebody who had
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been brought to the doorstep by An Garda Síochána, the
practice was, certainly in relation to the dealings
with An Garda Síochána in Dublin in Daingean, that they
didn't refuse up until about 1970, when they changed
the policy; did you know that?

A. No, I wasn't aware of that.

Q. Are you familiar at all with the correspondence from
Fr. McGonigle to a number of the authorities, including
the Gardaí, making complaint about the fact that
everybody is landing -- people are being -- the An
Garda Síochána are coming at all hours of the day and
night with juvenile offenders who are then simply left
in Daingean with no information about their history, no
information about any particular mental or physical
problems that they might have, and that Daingean was
being left to deal with those as best they could in
those circumstances?

A. No, the first time I saw that was on Friday evening.

Q. Yes. And there is again in the documents that you were
furnished with, I think, and I don't need to go into
them all and certainly I wouldn't, in many cases there
are individuals named in that so certainly I wouldn't
be doing that here. In amongst the pupil files, from
some of the pupil files, I think it is at tab 8 of the
booklet that we gave on Friday last, there is a whole
host of situations there where individual pupils who
were clearly unsuitable for Daingean are referred to
it. Correspondence from the school, some cases to the
probation officers and in some cases to An Garda

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Síochána, indicating that these are pupils who the school should not be taking because of the particular special requirements that these offenders have, and that it is unhelpful both to those offenders themselves but also to the school itself, not just to the staff but obviously to the other pupils in the school that these people who are very unsuitable for Daingean are arriving there. Did you get an opportunity to look through that document?

A. I looked through the document, yes.

Q. Isn't that what emerges from that?

A. Well that seems to be it, yes.

Q. Isn't it also clear there is one particular document which makes a slightly different point, that as one was going through the 1960's it appears that Fr. McGonigle was getting more and more definite in his view that the school would not tolerate what the situation that they had been put under before and he says, for instance, in a document which is about seven pages in, I'm afraid they are not numbered -- but it is eight pages in, it is a letter of 14th May 1969 and it is to Mr. Lannigan, who I think is a probation officer?

A. Yes.

Q. I won't go into the discussion on the individual that's there in the first paragraph of that letter, but in the second paragraph of the letter Fr. McGonigle states:

"Our numbers have been creeping up again in recent weeks and there seems to be prospects that we will reach our usual average of 120 in the near future. In spite of the terrible financial difficulties we have been
experiencing over the past year on
account of falling numbers, I would
hate to see our numbers go up,
especially if that should come about
rather quickly."

So, on top of the issue over the lack of control over
what offenders that they were getting into the school,
there is a concern that he's expressing therein
relation to the numbers being above a manageable level,
above a level where they could do the job in the way
that they saw was necessary?

A. Well, yes, that's it as the letter there.

Q. If one goes to tab 1 of the documents that we
furnished. What we have here is a memorandum which
indicates, and I appreciate it is not something that
would have been sent to the Department of Justice but I
simply want to put it to you and ask you to agree or
not this criticism is justified. It is a document
prepared by Fr. McGonigle for the Provincial on
Daingean and prepared in the late 1960's, in it, on the
7th page, there is some handwritten pages on the top
right hand side, the 7th page there, under the
heading "case history".

He refers by comparison to the system in UK in relation
to reception of pupils for the school:

"In England the practice is that a
number of different case histories are
submitted to the superintendent of the
school, he then picks out the boys that
are most suitable for his school, i.e.
as regards the type of boy already in
residence, the kinds of training that
his school specialises in, proximity or
distance from boys' homes etc. Insofar as
it is humanly possible to judge from
papers records, the superintendent can
build up an ideal community in the
school. Of course not all cases work out the way one would anticipate or
like.

The practice here in Ireland is quite
different. When boys are committed by
Dublin courts the first intimation we
get of this is the arrival of the boy
and his escort at the school. Rarely
does the particular Garda officer
accompanying the boy even know the boy
before he picked him up at Marlborough
House that morning.

Past history, the guard just has not a
cue. It would be some help if he
could talk to the Garda who had been
dealing with the boy and had brought
him to court. It seems, that in some
dim and distant age in the
unenlightened past, a blanket agreement
was between the school authorities and
the Garda in courts whereby any boy
who was sent down would be accepted.
Now we are paying for all this
monstrous arrangement which spares the
Gardaí and the court the trouble of
compiling a file on each case dealt
with. This must stop. No constructive
rehabilitation can be insinuated
without background history, family
conditions, social, education,
environmental and medical records.

The system which initiated this and
allowed such conditions to continue
cannot be called anything but
iniquitous."

That criticism enshrined in -- which Fr. McGonigle had
in his report to the Provincial, that was a justified
criticism wasn't it, is it something that you would
agree with?

A. I don't know the full facts, but to the best of my
knowledge all you would get is an order of committal from the courts. So there wasn't any arrangements in those days to have any kind of case history, to my knowledge, but I don't know the facts.

But it was an iniquitous system, wasn't it, to have a situation where people were arriving down to the school in those circumstances with no information at all and knowing that no assessment had taken place even before they were sent there, that was iniquitous?

A. Sorry?

Q. Wasn't the criticism that describes that system iniquitous?

A. Well it certainly wasn't a desirable situation. Obviously if your intent is to try and reform people the more information you have the better.

Yes. Now, if you go on then to tab three, which is an indication of the new policy which Fr. McGonigle insisted upon, albeit quite late in the day from the point of view of St. Conleth's or Daingean, which was to close in 1973, he said here in a letter to the Commissioner of An Garda Síochána -- did you have an opportunity to read this letter, I should say, Mr. Martin?

A. I did, yes.

He said in that letter, which is dated 13th September 1971:

"I would be obliged if you could convey the following information to the members of your force through your information circular, the Children Act 1908 states that the managers of certified school may decline to receive
any youthful offender or child proposed to be sent to them

For this reason, the procedure in the courts has been that the judge before passing sentence on a boy asks the Gardai if the managers in St. Conleth's was willing to accept the boy. Very often a particular Garda officer dealing with the case contacted the manager on the day of the court or the evening before by phone asking him to accept the boy if he was sentenced.

THE CHAIRPERSON: Just slow down a bit Mr.

MR. O'HOSINE I am sorry, yes. I will read that sentence again:

"For this reason the procedure in the courts has been that the judge before passing sentence on a boy asks the Garda if the manager at St. Conleth's was willing to accept the boy. Very often the particular Garda officer dealing with the case contacted the manager on the day of the court or the evening before by phone asking him to accept the boy if he was sentenced.

We have found this procedure to be very unsatisfactory. As of this date, we will not accept any boy if we do not have a full written report from the Garda and the probation officer at least one week before the day of the court. This gives us an opportunity to assess the boy and see if he's suitable for the open type system that we have in operation at the school."

Then it indicates that the office is to be open from 9:30 to 5:30.

"In the past we have been waiting all hours of the night by Garda escorting boys from the court, our staff are not prepared to work such long hours any longer".

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THE CHAIRPERSON: The only problem with that, Mr. O'Hoisi is that the Garda has written off a week beforehand, "here are the full details of a boy I am bringing before the court." He doesn't know the boy is going to be sentenced to jail.

MR. O'HOISIN: I appreciate it is not idea, but it appears that...(INTERJECTION).

THE CHAIRPERSON: He's clearly saying "look, we need information." I am not sure that the particular solution as suggested is --

MR. O'HOISIN: Is feasible.

THE CHAIRPERSON: -- is terribly feasible. but the point about the need for assessment.

MR. O'HOISIN: It seems that as if it is almost to try and take the place of the absence of an assessment that this is here, but again it doesn't appear to be a very feasible alternative.

142 Q THE CHAIRPERSON: You see, Mr. Martin makes the point, if I understand, he says "look, you have to bear in mind the division between the two Departments, a fundamental issue", be it right or wrong and he acknowledges that it causes problems. The second thing that you have to bear in mind is that assessments would really address the needs
of the child with reference to the suitability of an
institution, where you have a range of institutions, if
you don't have a range of institutions admittedly it
would help Fr. McGonigle more, from the point of view
if he is going to be detained, that's where he's going
to be detained. That's one of the rationals for an
assessment out of the way.

It strikes me in light of that, and I mean obviously
one has to have sympathy for the manager of an
institution, that maybe what he is really saying is
that somebody should have been saying, whether it be in
one Department or another, what am I trying to do here?
I mean, that's one of the things you get. What are we
actually trying to do with this child? Maybe the
courts should have been asking that as well, somebody
should have been asking whether it was that question of
the child accused of a crime or a child not accused of
a crime, for whatever reason, what are we trying to
achieve. It may seem simplistic.

What do you say to that, Mr. Martin?
A. I would agree completely because obviously if you are
going to assess the child you are trying to find out
the best way of disposing of that child.

UNKNOWN SPEAKER: Disposing.
A. Sorry, disposing in the sense of a
court...(INTERJECTION).

Q. THE CHAIRPERSON: How to deal with the child?
A. How the court would -- what type of solution and at
that stage, as you said, the only option open to court
if the child was 15 and was convicted of a crime, if
they were going to detention there was only one place
of detention, the other alternatives were probation or
a fine and there was no real alternatives.

Q. THE CHAIRPERSON: I mean, it would clearly
have helped, it ought to
have helped the institution to know more about the
child who is coming in, assuming the institution was
saying "what's the best we can do for this child?"
Well, if it is a child with this problem we should...".
I mean the same sort of issue arises in the institution
as it does outside the institution?

A. Yes. I would have thought at that stage, well maybe
not in the 1970's but certainly in the 1950's and
1960's, the only information you would have basically
is a Garda report that would say if they knew details
of the family and what the crime was and where the
child lived but there wouldn't be much more than that.
If the probation service by 1971 you might have a
probation report which would have more detail because
they would have interviewed the child.

Q. MR. O'DOHERTY: Can I suggest to you
that -- I appreciate the
point that if you have only one place to send them to
some extent other than helping the school in knowing
who they are getting, the usefulness of an assessments
may be open to question. But can I suggest an
alternative use that would have been a very important one. If assessments had been done and it emerged from those assessments that the particular offender was not suitable for the type of environment in Daingean you then would have had to face up to the fact that there was not proper facilities in place and the Department of Justice would have had to take that on board, if judges were...(INTERJECTION)?

THE CHAIRPERSON: Stop. I mean, that's a good point.

A. It did arise.

Q. THE CHAIRPERSON: I mean, that would have emerged?

A. And it did emerge in the 1970's because the Department of Education, when Marlborough House was replaced by Finglas, they said they would not longer be responsible for certified detention of certified youths, there was a long journey before we got to the stage now where the Department of Justice said "we will now take over the full responsibility for all aspects of juvenile" -- at that stage in 1971 the Department of Justice's response would have been, "it is a matter for the Department of Education to provide a range of facilities suitable for these children, not the Department of Justice.

THE CHAIRPERSON: Yes.

Q. MR. O'HOISIN: Can I just move on then to -- and I don't have too many more questions to ask. To just another document which was sent to the Department of Education and again
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in relation to the reception policy, it is at tab 5, which is a document headed "St. Conleth's School, Daingean, Co. Offaly, Outline of Reception Policy".

This is a document dated 1st March 1972. I think on the index page it may be wrongly dated 1978, but 1st March 1972 and date stamped from the Department of Education, 20th March 1972. Again just a comment, obviously it is quite late in the day from Daingean's point of view, given that it was to close very shortly thereafter, but the policy at this stage was to accept only those boys who would benefit from our treatment programme, is what the school was saying. That's a policy, I take it that you would agree with, that any people who were involved in running an institution should be concerned that they should only be receiving pupils in who would benefit in some way?

A. Well obviously -- you have to forgive the Department of Justice's attitude coming in here, but obviously in some cases in the public interest is that the child is detained.

Q. Yes, I take the point.

A. Yes. Overall, yes, it would be much better if they were going to an institution where they would benefit from it.

Q. The philosophy behind the whole Children's Act and reformatory schools was more in terms of rehabilitation rather than the...(INTERJECTION)?

A. Yes, exactly.
THE CHAIRPERSON: That's 1972; is that right?
MR. O'HOGHIN: Yes.
THE CHAIRPERSON: You said it seems 1978.
MR. O'HOGHIN: The index, I think, that we had up on it, had wrongly indicated at the beginning of that book indicated 1978, but it is 1972.
THE CHAIRPERSON: It is 1st March 1972.
MR. O'HOGHIN: Yes.
THE CHAIRPERSON: Thank you very much.
MR. O'HOGHIN: If you then go down the page slightly:

"Why we adopted this policy? Up to November 1972, accept anyone and everyone was the rule, to decline to accept was very much the exception. Because of that policy of general acceptance we found that an alarmingly high proportion of very unsuitable boys were finding their ways here. This rendered our staff's function purely custodial and any treatment programme was absolutely irrelevant. In this frustrating situation Brother were merely warders without the physical supports of a prison which led to a conflict of roles in the Brother and the result of confusion in the mind of the boys. Is he a Brother or is he a screw? The large numbers of such a custodial situation with declining staff members not only rendered meaningful relationships between staff and boys unattainable, but repressive measures for the purpose of containment were the order of the day."

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That's a fairly frank assessment at the time from the school of the difficulties that they had been under in circumstances where they have had to accept all comers to the school, people who were suitable and in lots of cases, people who were unsuitable; isn't it?

A. Well I'm not in a position to judge but I wouldn't disagree. Obviously up to then they had decided to take everybody and obviously in those cases it was effectively the emphasises was more on custodial rather than educational. The whole purpose of the 1908 Act was to separate educational from custodial, put the emphasis on the educational side.

Q. Just on the next page again, rather than prolong it, but in the fourth last paragraph on the next page:

"Up until 16 months ago all of these, the violent, the emotionally disturbed, the psychopathic were accepted without question. In the selection proves the majority of them were rejected as being unsuitable for an open treatment type school of rehabilitation. Some went to Marlborough House, while others were left to roam the streets free.

Nobody, least of all the Department of Education, gave a second thought to the problem as long as we took in everyone. Now the public is worried and becoming vocal. Not quite as bad as it was in the condemnation of those managing the institutions after the publication of the Kennedy Report. The Minister is embarrassed and would like us to take him out of his difficulty. In other words, take everyone again, but this would be impossible for we would be returning to the old iniquitous system of breaking boys and breaking staff".

Do you see the point that he is making there?
Mr. James Martin

1. A. Well I can see his point of view, yes.
2. Q. And there is merit in it, that whilst the school would take everybody who was sent there that a problem in some respects was brushed under the carpet?
3. A. Well, obviously the issue of -- when there was only one institution dealing with that particular age there was a problem because you didn't have a range of facilities dealing with those people.
4. THE CHAIRPERSON: That's Fr. McGonigle's document, is it?
5. MR. O'HOSIN: Yes.
6. THE CHAIRPERSON: Thank you very much.
7. Q. MR. O'HOSIN: I appreciate that we are in a sort of grey area here between the Department of Education and the Department of Justice, the Department of Education have indicated an apology essentially for their shortcomings in relation to the matter, is that also the case with the Department of Justice?
8. A. In the context of the running of Daingean?
9. Q. Yes. Sorry, in the context of the general policy issues that we have been dealing with here and the failure of the Department of Justice to be more proactive?
10. A. There was a clear failure on the Government to come up with a system that suited -- that dealt with all the problems and we were part of that and we apologised for that.
11. Q. I should say, the comment no doubt will be made, but it
is important for me to say obviously the Oblates have also accepted a responsibility in relation to the matter and have indicated through their apology in relation to it, so it is something that a number of parties have something that they have to regret; isn't that correct?

A. Yes.

MR. O HOISIN: Thank you.

END OF EXAMINATION OF MR. MARTIN BY MR. O HOISIN

THE CHAIRPERSON: Thank you very much,

MR. O HOISIN: Are you all right so far, Mr. Martin?

A. Yes.

THE CHAIRPERSON: You don't need a break? If you need a break let us know.

A. I'm fine, Chairman. Thank you.

THE CHAIRPERSON: All right, Mr. McGrath.

MR. JAMES MARTIN WAS THEN EXAMINED, AS FOLLOWS, BY

MR. MCGRATH:

Q. MR. MCGRATH: Mr. Martin, I appear --

David McGrath, senior counsel with Marcus Dowling on behalf of the Committee as an amicus curiae. I represented a number of people who had allegation to make about institutions during
the various hearings that the Committee and amicus curiae in a number of these public sessions.

What I am particularly interested in dealing with is the situation, vis-a-vis the position with regard to the Department of Justice and the relationship it would have had with the Department of Defence, and the so--sorry, the Department of Education and how they interacted with one another over a significant period of time.

Now, you have set out very clearly in your statement this morning that as far as the Department of Justice was concerned they, first of all, had responsibility for the detention of offenders 16 and over and that they had responsibility for certifying and maintaining a register of places for the detention of children, essentially that was their situation. You have set out fairly clearly that until recent times the Department of Justice had certain views in relation to what responsibility they should have for people under the age of 16 who were in detention.

I am just wondering, you have set out various reasons for that, was there a situation where there were kind of budgetary considerations there or were there considerations of principle or was it a case it was preferable if another workload wasn't brought on the Department?
A. I think there was two. There was a budgetary -- certainly looking at the files, one of the aspects was budgetary in the sense that the Department didn't see that there would be any overall savings to the State if they transferred the function from the Department of Education to the Department of Justice. If it worked out that we could do it more cheaply because of the prison service then that would be an argument that you would make at Government in favour. But that was one aspect. There would have been a feeling that if the Department -- and I haven't seen this in the file so it is kind of folk memory, there would be a feeling in the Department of Justice that if we were going take over the issue we would have to have the resources to make a good job of it and there wasn't any guarantee until quite recently that you would get the resources.

There was also the question of principle, the view was we were responsible for adult offenders and we shouldn't treat children the same way we treat adult criminals and therefore it is better to separate the dealing of children from dealing with adult offenders because I suppose the mindset of justice would be dealing with adult criminal offenders.

Just to elaborate slightly on that, the mindset of the Department changed in the sense that the Department of justice became the Department of Justice, Equality and Law Reform and it brought in a lot of other areas that
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were perhaps less to do with the criminal justice system, more to do with rights, and including things like childcare. So the Department as a Department got a much broader brief than it had until quite recently. In terms of your input into the industrial schools or the reformatories, it does appear that around the time that Mr. Haughey was the Minister for Justice that the Department became somewhat involved in various aspects of what was happening in the system at that particular time?

A. Yes. The committee set up by Mr. Haughey was addressing one of the issues, one of the issues that it was addressing was juvenile delinquency and quite clearly moved outside of its ambit.

Q. Within that you had Mr. Barry who was the secretary of the Department was the Chairman of that committee, you had Mr. McCarthy who was from Justice as well, you had Mr. Dáibhíd, who was from Education and you had Mr. Tobin from industry and commerce?

A. Yes.

Q. You actually had three different Departments coming together to have a look at a particular system. It would appear that during the deliberations of this committee that they, in fact, ended up making inquiries into Artane, which really wouldn't have been part of Justice's?

A. Yes.

Q. Marlborough House, which you had some vague connections with, then the industrial schools in Letterfrack and
Clonmel, which all -- then there is also mention in one of the interdepartmental committee occasions when they met, of Lakelands girls industrial school as well. So they would seem to have had the consideration of a lot of areas which might not necessarily have readily on the basis of Justice excluding things have fallen within their remit?

A. Yes, and I presume that's why it was set up as an interdepartmental committee because while dealing with issues that fell directly within its remit, it was extended beyond that, as I said, to areas that wouldn't normally fall within its...(INTERJECTION).

Q. Am I correct in this assessment, that the inquiries that they were making were because very serious concerns arose at this particular time?

A. It is hard to tell from the files. Artane seemed to come on the agenda because Fr. Moore, the chaplain, approached the Department and raised something specifically. So it varied depending -- in some cases they would have looked at particular areas, in other cases it seems that outside people made a complaint or something like that.

Q. But it came within their remit and it did express various concerns that arose?

A. Yes.

Q. As time went on they were making certain recommendations as they thought to how the way that things should proceed?

A. That's correct.
To correct deficiencies that they could see in the system?

A. Yes.

It would appear also from the papers at that time that Mr. Haughey as Minister was quite proactive almost or gung-ho on the idea of getting these particular reforms through?

A. He would have had a reputation as a very proactive Minister in reforming lots of areas.

In that regard we have seen, I think, in your discovery, these are contained in Phase III witness examination, these were documents that were supplied to us last Friday, Chairman, and I assume it is the discovery from the Department, this booklet, which I assume you have a copy of?

THE CHAIRPERSON: It doesn't look like ours, ours comes in...

MR. McGRATH: Well this is the way we received it on Friday.

THE CHAIRPERSON: Very good.

MR. McGRATH: I assume it is exactly the same as divided up.

THE CHAIRPERSON: Ms. Fergus and Mr. Ward and Ms. McHugh will be in a position to...

MR. FERRITER: I might be assistance, Chairman, I act for the Department here. Mr. Martin has footnoted each document to which he refers to, he has a folder which
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is organised in sequence with accordance to those footnotes. If it wasn't too inconvenient for Mr. McGrath to refer to the footnotes when he says things he would be able to locate the document very quickly. I don't know if that is of any assistance.

MR. McGRATH: A lot of the documents here are in here as well, I may have marked them the wrong way.

THE CHAIRPERSON: I understand. The only thing is if you are using the one we sent you, I don't think you would have any problem because it would be in the same order. Well it will be in the Department's order. But if you are using one of your own.

MR. McGRATH: No. No. This is as it came to me, I have not dismantled it.

MS. FERGUS: It is not in the same order.

THE CHAIRPERSON: I thought I could help you, Mr. McGrath. Carry on, refer to the documents and we will try to follow them as best we can.

MR. McGRATH: If you just give me a moment I will try and find the document that I have here in this.

THE CHAIRPERSON: Or just refer to it and leave it to chance,

Mr. Martin and the rest of us to find where it is,
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1 Mr. McGrath.

2 **MR. McGRATH:** I have it in both books now. So if we are referring to the footnote... (INTERJECTION).

3 **THE CHAIRPERSON:** You now have to be asking your questions without having to find it.

4 167 Q **MR. McGRATH:** A number of these are together in this book and together in this one, so I can deal with it in on that basis.

5 (To the witness) The first one that I was going refer to is a letter written by Mr. Haughey which appears to be a draft and your number on the page is 93/182-16 and you also have F19 on the right-hand corner and five in this book of footnotes.

6 **MR. FERRITER:** Footnote 19.

7 **THE CHAIRPERSON:** What date is it?

8 **MR. McGRATH:** It is October 1963.

9 **THE CHAIRPERSON:** Yes.

10 168 Q **MR. McGRATH:** It is a letter from Charles J. Haughey, who was then the Minister for Justice, to Dr. Patrick J. Hillery, Minister for Education. The letter itself reads:

11 "Dear Paddy, on 31st July last my Department communicated officially to your Department a copy of the minutes of the fourth meeting of the interdepartmental committee on the prevention of crime and treatment of offenders stating that the Minister for Justice had approved in full of the

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committee's recommendation. A summary giving the recommendations was also attached.

Insofar as the recommendations related to the Department of Education the official minute asked what action it was proposed to take to implement the committee's findings. Up to now there has been no reply and unofficial inquiries have failed to discover what, if anything, is being done.

I hope that the interdepartmental committee's recommendations in relation to Marlborough House, the industrial school system will find ready acceptance, more so as the recommendations are subscribed to by the expert from Education on the committee.

In particular, I should like to say so action taken to establish visiting committees and aftercare committees for the industrial schools.

Contrary to views held earlier, in your Department it has now become apparent that the managers of schools such as Artane are not opposed to such a development. I should be glad if you would look into the matter at your early convenience. Yours sincerely."

That particular letter isn't signed but his name is at the bottom of it. Then there is a written note at the top of it which assumes is from somebody senior in the Department:

"Minister, unless somebody prods the Department of Education the committee's work will go for nought to a large extent".

One assumes this letter was drafted for...(INTERJECTION).

A. Yes.

Q. That's the note from I assume, Mr. Barry is writing?
A. It is probably Mr. Barry or the relevant assistant secretary at the time.

Q. At that particular stage it would appear that Mr. Barry is as anxious as Mr. Haughey is to get something done about what the committee had concluded and what it wants done. Then the following page, we have at F20, footnote 20, I think we have the same letter which is on headed notepaper but at this stage there is a line drawn through it and at the bottom is written:

"Letter need not issue. I have spoken to Dr. Hillary".

One assumes that Mr. Haughey has decided that the quickest way to get this dealt with is to speak personally to the Minister in the Department of Education?

A. Just on a point of speculation, it would not be in accordance with normal protocol for one Department to be criticising another Department in writing and certainly for one minister to write to another minister it could lead to kind of conflicts, so I presume that Mr. Haughey felt it wasn't appropriate to issue a written letter and he discussed in some way.

Q. But the import seems to be that that they were anxious to make sure that this moved along?

A. Yes.

Q. Mr. Haughey moves ministry and I think Mr. Lennihan becomes the Minister. The following page then, F21, is a letter of 24th August 1966, again it seems to be -- I'm not sure whether it is the draft letter or whether
it is a change in a letter, because again there are two
copies of this, there is one on that page dated 24th
August 1966 and there is another one which seems to be
on headed notepaper, August 1966, and that also has
some notes at the bottom of it. Again, this letter
seems to be an effort to move things along. It is a
letter to Donagh O'Malley, Esquire, TD, who is now the
Minister for Education, again Mr. Lennihan in the
second last paragraph of that letter on the second page
says:

"If the Department of Education were
willing to assign one energetic officer
to the organisational work involved, I
believe that the beneficial result
would justify the effort 100 fold."

That's a situation where he's hoping to move along the
situation in regard to industrial schools and the lack
of proper aftercare. However, there seems again to be
a note on the second copy of that letter on the
Minister for Justice headed note paper, where that
particular sentence is:

"If the Department of Education were
willing to assign one energetic officer
to the organisational work involved, I
believe the beneficial result justify
the effort 100 fold."

Is crossed out and written underneath it is:

"I would suggest a small
interdepartmental committed of three,
Perhaps two from Education and one from
Justice. If the Department of Education
were willing to assign one energetic
officer of thereto to organisational
work involved I believe that the
beneficial result would justify the
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1 effort 100 fold."

2

3 Is written in there. The next page on, F23, would
4 again appear to be a note to the Minister in relation
5 to those two letters or those drafts. This time it
6 says:

7 "Minister, I think that it would be
8 contrary to all departmental protocol
9 for the Department of Justice to seek
10 to sit in with Education in deciding
11 what Education should do in the
12 industrial school system. That is
13 their job. The interdepartmental
14 committee, of which I am Chairman, is
15 still functioning. This committee have
16 already given their views in a general
17 way to Education as to what might be
18 done but it is for the Department
19 concerned, Education, to work out its
20 own solution.
21
22 In reverse, if Education were to say to
23 us that they would sit in with us to
24 reform the prison system we would
25 strongly resent their intrusion and
26 interdepartmental relations would
27 suffer. I have consulted the senior
28 officers here concerned and none of
29 them would wish to sit in on such a
30 committee."
31
32 Then it is signed and dated 7/8/66 and then written at
33 the side in different writing, we will assume it is the
34 Minister:
35
36 "Okay, revise letter as originally
37 drafted".
38
39 Now, that would seem to suggest that contrary to the
40 original letter at the time of Mr. Haughey, when the
41 Department of Justice were gung-ho at getting the
42 reforms through, that there had been a change of heart

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in terms of having an input into it. Was there, or is there, such sensitivity between Departments that one Department would take great umbrage, or would have at that time have taken great umbrage by interference of another Department?

A. I am just putting my own personal perspective, I don't think that represents a change of heart. Mr. Barry has a very clear mind in his head, the Department would like the Department of Education to do certain things and they encouraged -- they got Mr. Haughey to talk to Dr. (Inaudible) and they got Minister Lenihan to send a letter encouraging the Department. But the line was it is up to the Department of Education to do it and we can't interfere, we can make recommendations and encourage them to do it, but there is a line there that we don't go over. That's how I would interpret the letters.

Q. Does it appear that in a situation where you have a particular problem, let's call it a problem that falls partially within the remit of different Departments, that this correspondence here would seem to suggest that there was something missing in regard to the way that some problem like that was dealt with on the basis that everyone had to be careful not to tread on somebody else, there should have been some mechanism to deal with a problem that spanned more than one Department?

A. The fact is interdepartmental things are always sensitive and there isn't a proper mechanism, the only
mechanism for resolving those issues are at the actual Government. So unless you went to Government. If one Department wants another Department to do something and the other Department doesn’t want to do that the only resolution mechanism is the Government itself. But as I said, there is clearly the Department of Justice wasn’t happy with the response they were getting from the Department of Education but they would only press it so far and that was sending letters of encouragement, so to speak, but they weren’t actually going actually say, "it is our job to supervise what they do in the Department of Education", because I think that would have gone over the line that was being drawn by Mr. Barry.

Q 174 Would you not see that there might be an element of frustration for the people who were involved in an interdepartmental committee that they can spend a long time coming to certain conclusions, making certain suggestions and then nothing happens at all?

A Unfortunately in my experience as a civil servant that frequently happens. I just make the point, just so you fully understand the way the letters went, I think these are in reverse order. I think the letter that has the handwritten attachment, that was drafted by somebody junior to Mr. Barry, that it was changed. The first letter you referred to was the letter that was actually issued. So obviously somebody within the Department felt one thing and the Secretary General felt "no, we are going too far, we are not going that
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Q. THE CHAIRPERSON: The interdepartmental committee, if it is dealing with juvenile delinquency is obviously a matter for both Departments, one would think?

A. Yes. And just to clarify, the interdepartmental committee wasn't established by the Government it was established by the Minister for Justice.

Q. THE CHAIRPERSON: Yes. Presumably with the consent of Minister for Education?

A. Yes, obviously because the Minister for Education supplied things. You could say the recommendations of the interdepartmental committee were more binding on Justice than they would be on Education. Because it wasn't an Education sponsored idea. Subtly, I would say that.

Q. THE CHAIRPERSON: No, I think that's clear. But it makes sense, it makes obvious sense that you are going to have people from each Department if it is to do with that?

A. Yes.

Q. THE CHAIRPERSON: But if the Department of Justice takes up a complaint relating to an institution, right, Fr. Moore makes himself known, rightly or wrongly, if the Department of Justice sort of takes up that, I mean one answer would be, "Look, it is none of your business, it is not in your remit and it doesn't come within the
juvenile delinquency", except by the most tenuous kind of reasoning, but it does imply that they sort of want to pursue it and they are not going to let it go and they are not simply happy to say "over to you and look into this for us and let us know when you have -- if ever you come to a conclusion", they are not doing that?

A. Yes, Chairman, I think certainly in the civil service context, the Department of Justice took up an issue and pursued it, even though it wasn't strictly within its remit for several years afterwards so it was going beyond what would be normal.

Q. THE CHAIRPERSON: I think that's what Mr. McGrath is at, it is an unusual situation?

A. Yes, it is unusual to go that far.

Q. THE CHAIRPERSON: Having regard to the -- I mean Mr. Barry is clearly right if it is him in saying we can't start running another Department, but it is unusual?

A. It is, yes.

Q. MR. MCGRA TH: It is unusual, but it creates an impression that when a specific problem arises that is dealt with by an interdepartmental committee, that when solutions are arrived at by that committee that the thing can just, within the civil service, be allowed die. Partially because of sensibilities and I can understand secondly because it is not necessarily that Department's remit.
But I am worried about, and what concerns me about these letters, is that they give the impression that the sensibilities of one Department for another are more important than find the solution or dealing with the solution to the problem?

**UNKNOWN SPEAKER:** Here. Here.

**A.** I am not sure I would agree with that fully. The Department of Justice had very strong views and pursued them with the Department of Education. I don't know what reasons the Department had -- the Department of Education had for not pursuing it. Obviously the Department of Justice felt it wasn't being pursued vigorously enough by the Department of Education. I am just not in a position to respond as to why the Department of Education didn't do that.

**Q.** **MR. McGRATH:** But if you read the note sent to the Minister:

"The interdepartmental committee, of which I am Chairman, is still functioning. This committee have already given the views in a general way to Education as to what might be done but it is for the Department concerned, Education, to work out its own solution."

And then going on to make the reverse scenario. It does give the impression that maintaining good relations between the Departments and not upsetting the people in Education is more important than actually having the solution acted upon?

**A.** Well I wouldn't agree in the sense that Mr. Barry wasn't noted for his worry about what other people
thought about him and when you read the reports of the
interdepartmental committee he was quite aggressive
with the people from the Department of Education so he
obviously wasn't concerned with what they thought. I
think it was an intellectual thing, his response went
so far and not further rather than a concern about his
relationship with the Department of Education.

Q. In relation to the situation, vis-a-vis the
Departments, this problem arises again, if I understand
it correctly from the papers, some time in the early
1970s, when Mr. Faughner is the Minister for Education
and Mr. Des O'Malley is the Minister for Justice. In
fact, we almost seem to have in these circumstances a
role reversal in terms of the position of the
Ministers, at this stage Mr. Faughner is asking for
assistance from Justice, he's asking them to come on
board in relation to a committee and Mr. O'Malley,
appears from the correspondence, to be running away
from it as quick as he can on the basis that he doesn't
want Justice to get itself immersed in what he sees as
Education's problem. Is that a fair or unfair
assessment?

A. It would appear from the files that come towards the
end of the life of Marlborough House there was serious
problems there, the Department of Justice did arrange
that there was a walk out of the staff by
Education from Marlborough and the Department just did
arrange for members of Garda Síochána and prison
wardens to go in to man the place, but there was a very
heated exchange between the Minister for Education and
the Minister for Justice. Basically, I think, Minister
O'Malley was saying "you got us into this mess and it
is your job to get yourself out and we are not going
accept responsibility." So there is a sense that there
was, in a sense, a very real concern by the Minister
for Justice that the Minister for Justice was going to
get sucked into the problem that he felt wasn't his
area.

184 Q If I can deal with particular areas, I think they are
   at F62 in your book.

A. I don't have the same notation unfortunately.

MR. FERRITER: These are tab 62, it is
   footnote 62 on page 45.

MR. McGRATH: It is a memo.

A. Yes, I have it now.

185 Q This appears to be a memo from your Department; is that
   right?

A. Yes.

186 Q It starts:

"Mr. Lane, Department of Education rang
on 8/7/371 and inquired who would be
our representative or representatives
on the working party as he said had
been arranged at that morning's
conference."

I replied that I was not aware that
there had been any agreement on the
part of the Minister for Justice that
morning to join in a working party.

Mr. Lane in reply asserted that there
had, in his view, been such an
agreement. I replied that I had been
paying close attention and that I had
observed no such agreement. However, I
would consult my authorities and ring
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him back.

Mr. Lane added that the details of the understanding that had been reached by District Justice Kennedy was that she would make no more remands to Marlborough House until 13th July and that the last or the present remands there is due to expire on 19th July. As the working party is to furnish a report they are anxious to commence operations immediately by visiting Clonmel, Daingean, etc., with a view to securing agreement to have remandees taken to these places until St. Lawrence's comes into operation in September.

Further, they would like another joint visit to St. Lawrence's on Friday morning as they are having a meeting with Dél La Salle representatives on Friday afternoon. Having consulted the secretary, I rang Mr. Lane on the phone to him that I felt absolutely correct in thinking that there was no agreement about a working party. I added that Marlborough House is not a matter for the Minister for Justice nor one in which he can be involved. He had made this clear at this morning's meeting and consequently I had no more to say about a working party.

I added that I felt that I should make it plain to him that in this Department it is believed that the Department of Education is endeavouring to involve the Department in something which is not its concern, that this Department is by now aware of this and that at both sides now know situation there is no use in coming to me further.

Mr. Lane replied that he would have to speak to Mr. O'Flóinn who might speak to me. Later Mr. O'Flóinn rang and said that he had entirely the opposite impression to mine regarding the question of the working party, that in fact his Minister had confirmed to him on coming away from the conference that the Department of Justice were now agreeable to join.

I replied in the same terms as I had expressed myself to Mr. Lane whereupon Mr. O'Flóinn said that in these
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circumstances Marlborough House would be closed down on the 19th July and that the Department of Justice would come in for criticism because of the statutory liability which it has as already advised to them as being advised to them by the Attorney General. He asked that this be conveyed to my authorities and informed the secretary briefly...

In fact, a word is missing there. Now, very clearly major fisticuffs between the two Departments?

A. Yes.

Letter of 20th July 1971, written on the top: "Sent by hand at 10 a.m", there is a signature on it, I am not quite sure who the signature is. 20/7/71:

"Dear Padraig, apart from what you said to me personally last week I am told by Departments that subsequent to my discussion with you on Thursday, 8th July about Marlborough House etc. they were approached by your Department to have St. Lawrence's and other centres visited jointly by representatives of the two Departments on the basis that I had agreed to this.

When my Department on my instruction replied that I had not agreed to become involved in this way, it was suggested that as the existing Marlborough House is closing there will be no alternative place of detention and this will lead to criticism of me or my Department because according to your people it is my responsibility. It is clear that there has been much misunderstanding about this whole business and so the position may be clarified for the future. I think it may be useful to put some points in writing. Whatever differences of view there may be as to what ought to be done certain fact are not, I believe, open to dispute.

St. Lawrence's has been provided at a very substantial expense to the State. It was provided explicitly to replace Marlborough House both as a remand home and as a place to detention. This is
shown beyond all doubt in the records of the interdepartmental committee, which sponsored the concept in the early 1960's. A committee which included a representative of your Department. It was envisaged that the law that provides for a month's detention would be amended to permit detention for longer periods.

The building was not then proceeded with because of shortage of funds but the project was revived a few years ago and the building is now complete.

Within the last year your Department informed me that the Del La Salle order would not be able to take boys on remand because by taking remand cases they would be upset the routine of the place and the comings and goings would have a disturbing effect on detainees.

Because of this objection by the Order, a most regrettable last minute one it seemed to me, your Department decided that there should be separate accommodation for remand cases at a site adjacent to St. Lawrence's. And I raised no objection.

Now we are told that the Del La Salle Order will not take the general run of offenders who in the past would have been sent to Marlborough House for detention and the intention is to restrict St. Lawrence's to specially selected offenders who would really be on probation. The condition of probation being that they would reside there for up to 12 months.

As a result, my Department is now being asked to undertake joint responsibility for the provision of other accommodation for ordinary detainees. I could not agree that if we are to be left without a place for detention I must accept the blame or some of it. My Department cooperated with yours in the difficulties that recently arose, and quite frankly one of the unanswered questions about the events in question is whether the full facts ever reached the senior officials of your Department, let alone reaching you.

Be that as it may, the State has
provided this institution as a general purpose place of detention, the suggestion that such an institution should be provided at State expense solely for selected cases has never, as far as I know, even been put forward. I do not think it would be reasonable to blame me for matters on which my Department was not even consulted.

Yours sincerely, Des O'Malley, Minister for Justice."

He, quite clearly, is in quite a state of high dudgeon as far as this is concerned?

A. Yes. Obviously the relationship between the Department of Education and Department of Justice is quite fraught at this stage.

Q. Now, we are at a stage here where Marlborough House, which was suggested needed to be closed in 1952, 20 years later is only closing down. A problem has arisen and to the man in the street it appears that your Department is not prepared to become involved in trying to find a solution to the problem?

THE CHAIRPERSON: That doesn't seem fair, Mr. McGrath. I mean it is matter for interpretation.

MR. McGrath: Yes it is.

THE CHAIRPERSON: One is saying, "Look, it is not our division, it is your section. You agreed to this. No, I didn't, here is what I agreed to." They are saying we have a brand new place, it started up in September, that's what they are saying. It is not really a question of somebody --
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1 surely, whatever.

MR. McGRATH: Sorry, Chairman, it would appear...(INTERJECTION).

THE CHAIRPERSON: Attacking, that's one we don't need to be debating.

MR. McGRATH: What would appear here is that just as Marlborough House is closing a problem has arisen, the Department of Justice have been asked by the Department of Education to come on board on a committee to try and solve a problem that has arisen as a result of the closure of Marlborough House, which is now closing 20 years after it was first recommended it should be closed. And the manner in which the it seems to be dealt with, in my respectful submission, it is something somebody else can disagree with...(INTERJECTION).

THE CHAIRPERSON: Maybe the Department and the Minister were right and maybe they were wrong. What difference does it make?

MR. McGRATH: The difference it makes is this: The point I am making, and it goes back to the earlier point, a problem has arisen and the Department of Justice have been asked for help.

THE CHAIRPERSON: I'm not understanding, it is the Department's of Education's responsibility, it is perfectly clear.

MR. McGRATH: Yes.
THE CHAIRPERSON: Why don't they deal with it?

MR. McGRATH: What I am saying simply is this: Is that there would appear to have been a request for help.

THE CHAIRPERSON: You are describing it as a request for help, I certainly think that's a "please help us." "No, go away." I am not sure that's a legitimate interpretation. But just suppose it is, so what? It is your problem you solve it. Suppose they said that?

MR. McGRATH: It comes back to the question as to whether or not there is any mechanism within the system to solve a problem where there is a major row between two Departments and as to whether or not that row means that the problem doesn't get solved. That's the point.

THE CHAIRPERSON: Mr. Martin, in the circumstances.

MR. McGRATH: It comes on from the point I was making earlier.

THE CHAIRPERSON: It is just a question of keeping the focus on the thing. Mr. Martin, given that there is a dispute between two Departments, is there a mechanism for sorting it out or does the problem simply get forgotten in the war between the Departments?

A. The mechanism for solving it is a decision by the Government to instruct one Department or the other to
do something. In this case, there was a period where there wasn't -- in the early 1970's, my recollection is there was a period where there wasn't always suitable accommodation for problem children and that continued for some time. Now it has been resolved subsequently. And at this late stage the Department of Justice has accepted full responsibility going into the future. It wasn't an issue that went away because it attracted lots of publicity in that period and I don't want to defend the Department of Justice or blame the Department of Education but it is quite clear from the files that the view from the Department of Justice was "this is the Department of Education's problem they are trying to drag us into it and we are going to stand back from it". That seems to be the approach they were taking.

Q. THE CHAIRPERSON: Maybe the were right, maybe they were wrong. But I think Mr. McGrath's point is, in this does the problem become sacrificed, does the problem suffer, does the solution of the problem get postponed?

A. Well obviously the solution of this particular thing was delayed as a result of the fighting between the two Departments, it was resolved eventually but it was quite clear that the Department of Education was drawing its line and the Department of Justice was drawing its line and there was a bit in the middle that wasn't being dealt with.

Q. THE CHAIRPERSON: What should have happened?
A. Well I don't want to take sides of one Department over the other.

Q. THE CHAIRPERSON: No. But there was a dispute and one was right and one was wrong?

A. Then it is a matter for the Government. In one sense the Government...(INTERJECTION).

Q. THE CHAIRPERSON: It should have been referred to the Government?

A. And the Government should say "yes, you are still responsible for this and you go ahead and do it."

Q. THE CHAIRPERSON: It is a Government decision. What should have happened was that the two Ministers at ministerial level, presumably the two Ministers should have said, "we have a problem with our Departments -- sorry, our Departments have a problem we don't have to be writing angry letters about it, we have a disagreement. We need our Government, our Cabinet colleagues to say which of us deals with it, or do we both deal with it"?

A. Yes.

Q. THE CHAIRPERSON: And that didn't happen?

A. I'm not 100% certain, but yes, there certainly was a...(INTERJECTION).

Q. THE CHAIRPERSON: There certainly was a delay?

A. Before the problem was solved.

Q. THE CHAIRPERSON: An early recognition of that, an identification of
that problem would have led to a solution?

A. A quicker solution.

Q. And Mr. McGrath -- so you go along with Mr. McGrath in saying "yes, the delay -- the problem was prolonged because that issue wasn't faced up to", and, as I say, it doesn't matter who is right and who is wrong, the point is it has to be resolved?

A. Yes.

Q. You see, part of my way of looking at this and thinking about this arises from -- if I look through a list of the various examinations of the problems over the years, I mean, we have the Cussen Report in 1936, which made recommendations, okay there are some changes made by the 1941 Act, we have an interdepartmental committee in 1951, which seems to be concerned with Marlborough House; we have the Turim address in 1959 by James O'Connor, BL; we have the interdepartmental committee sitting in the early 1960's, most of its deliberations seem to have been done in 1963. We have a Turim Report which made recommendations in 1966, you have that resulting in the Minister setting up the Kennedy Report in 1970; the Department of Education sets up another interdepartmental committee in 1973, after the change of Government. You have a committee for law reform set up in 1973 as well, and it would appear one of its remits was to deal with childcare. In 1974 you have a task force on childcare services set
up by the Department of Health, which has now been
given the brief to sort out the childcare situation,
although childcare hadn't been transferred to the
Department at that time, as I understand it, but they
have a brief to sort out the problem with it. They
give an interim report in 1975, there is a final report
from that task force which appears in 1980, after it
has run into some difficulties and there are also
alternatives reports from people who were on that task
force who didn't agree with the final report.

There would appear to have been another
interdepartmental committee in 1980. We seem to have
got a Childcare Act in 1991. We seem to have another
Act of 2001 and sometime around 2004 responsibility is
transferred to Justice Equality and Law Reform and you
have a project team set up in 2004 and it gives a
report in 2005 and there is more legislation now to
come, as I understand.

We had something in the region of 1, 2, 3, 4, 5, 6, 7,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 18 reports
between 1936 and now. It seems to have taken 20 years
in some instances for anything to be done about
problems that are recognised. In fact, if you look at
the fact that there was an address in 1959 Turim that
there was the interdepartmental committee in 1963, the
Turim Report in 1966, the Kennedy Report in 1970, it
takes until 1991 to actually get a change in the 1908
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Act. It seems absolutely extraordinary that decisions can take so long. I mean, what purpose have all these various interdepartmental committees and all these reports got? I mean, does anybody take any interest in them whatsoever?

A. Well, I can't answer for all the other Departments, but I don't think your summation is quite fair, because, you know, there was the Cussen Report, there was an amendment to the Children's Act in 1941. So at various stages action was taken and certainly the issue of child protection became a major issue in the 1970's and 1980's. I know there was several attempts by different Department to try and resolve it and they weren't successful. And that's not just in this area, there is the whole question of sexual abuse of children in the community, there is the whole question of what's the best regime to deal with childcare which helped several things but they ran into difficulty with the thing. It is a complicated issue, I am not trying to defend it, it should have happened faster. It is not as if nobody was paying attention, there was a lot of work going into it.

But it appears that at certain times committees were set up for a specific purpose, they reported on that purpose. Is it a case that what they reported on got lost because everyone said "well, there is something more we have to do as well and not that we can do everything together, we can't even do small pieces to solve problems as they are arising." If you have a
committee reporting in 1963 and it has seen problems and has recommended ways in which it should be solved, why is it another 30 years before the 1991 Act comes along?

A. I'm just not able to answer that question. I am sorry.

Q. Is it a problem within the civil service or is it a problem within the manner in which the democratic elected representatives deal with the problem? Why delays of that magnitude?

A. I'm just not able to deal with such a sweeping question. If there is specific issues...(INTERJECTION).

THE CHAIRPERSON: What specifically in 1963 do you say wasn't implemented, Mr. McGrath?

MR. McGrath: Just give me a second, Chairman.

THE CHAIRPERSON: I mean, we are aware of the point you are making from the early days but it is a bit much to say to Mr. Martin, "listen here, between the Cussen Committee and the interdepartmental and so on and so on that's a scandalous state of affairs, isn't it?" But the point you make by way of a comment is something for us to take into account. But it is a bit hard, so he says, "look, if there is something specific you are asking, well and good, I can hope to deal with that by saying, yes, it is dealt with here or here is what happened, as a result of it." Do you know what I mean?
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MR. McGRATH: Yes, I understand where you are coming from.

Mr. Chairman.

THE CHAIRPERSON: I'm not holding you to a specific thing in 1963 into interdepartmental committee, but I am just illustrating that if there is some specific thing that you are saying it is a fairer way to say to Mr. Martin "why didn't this get" -- let's forget about the grammar for a minute, "why didn't this get done earlier when it was recommended then?"

MR. McGRATH: Okay. Mr. Chairman, if you just give me moment.

THE CHAIRPERSON: Yes, take your time.

MR. McGRATH: Sorry, Chairman, I haven't marked in the report and I don't want to spend too much time on it.

THE CHAIRPERSON: That's all right. You have made the general point which is, "look, it is frustrating." Broadly speaking, I don't think Mr. Martin disagrees with that.

Q. MR. McGRATH: I suppose the obvious one is the one that I mentioned already which is taken from 1951 or 1952 to 1972 to close down Marlborough House which, to some extent, it was condemned as far back as 1952 and yet it seems to take forever and that was something that your Department had some significant input into?
A. Yes, the Department does and it seems to have been agreed back as far as 1963 that there were plans to draw Finglas now. Why there was delay, you would have to ask the Department of Education, why there was delay in actually building the new centre and that. But it seems to have been taken as a fait accompli in 1963 that Finglas was going be built that and that there was going to be an assessment centre but it didn't come into fruition until the early 1970's.

Q. Now, you do have some point in one of your booklets, I think, there is a copy of the Kennedy Report.

A. Yes.

Q. Appendix G is a matter that I want to bring up. It is a matter that has been expressed as concern of some of the people who are in care. I know that, to some extent, the Department of Justice wouldn't have covered the institutions that many of the clients I would have had here or at the Redress Board, you haven't covered them. But there are a certain aspects. If you go to appendix G.

A. Yes.

Q. This covers the reasons why a child may be taken into care under Section 58 of the Children's Act, 1908.

That provides:

"When a child is in need of care or control if he's under the age of 15 years and he is (A) found begging or receiving alms, whether or not there is any pretence for singing, playing, performing, offering anything for sale or otherwise or being in any street premise or place for the purposes of so begging or receiving alms."
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It goes on:

"If found not having a home or settled place of abode, or visible means of substance or is found having a parent or guardian who is not exercising proper guardianship; or (C) is found destitute, being an orphan or not being an orphan and having both parents or a surviving parent or in the case of an illegitimate child his mother undergoing penal servitude..."

Then it goes on in various other matters there. The first couple of them there, A, B, C, would seem to be very similar to some of the offences that would have been committed under the Vagrancy Act which adults could be convicted of and could end up being incarcerated.

A lot of the people who were put into various homes would have been taken before the courts on those particular grounds. They would have been committed on the basis that they were begging, in other words receiving alms, or that they were found wandering or had insufficient means, which are all matters that would have been dealt with under the Vagrancy Act. In that regard one of the matters that concerns the people who were in the institutions is that they feel as a result of those that they were criminalised and that that meant that they weren't able to get a job in the civil service because they had a criminal record, that they weren't, as you say, able to become a teacher because again they had a criminal record, they weren't
allowed to sit on jury service and that was something that is of great concern to them.

Can you tell me, on behalf of the Department, are you in a position to say that you will look into that situation and see if those problems can be resolved for them?

A. Certain. But my understanding that if you are taking under Section 58 there is no question of any criminal conviction or any criminal record, I may be wrong but I am not aware.

Q. The question I am simply asking is this, I am going put it in this way if I can. This is a concern that many of them have, all right, that they are criminalised. Now, what I'm asking you is on behalf of the Department can we have an undertaking that you would look into that issue and try and deal with it or and if necessary deal with the situation and decriminalise them if that is the situation, that they believe and they are having these particular problems?

A. Certainly I will undertake on the behalf of the Department to look into it. There might be a problem that it might be a question of public perception rather than legality, but it is certainly something we...

... (INTERJECTION).

UNKNOWN SPEAKER: It is reality.

A. We will look into it.

Q. MR. McGRATH: Let us put it this way, as far as the people are...
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cconcerned they can feel that as of here you are going
to go and you are going see if there is anything
necessary to be done, you are going to inquire into it
and if necessary that something will be done to deal
with it?

A. Yes.

Q. I think I have covered the main areas I want to but
there was one other matter that was brought to my
attention and it is something that I was only given a
copy of this morning. I'm afraid you won't have seen
this documentation, the man who was dealing with this,
his father was taken ill at the weekend so he didn't
get the papers at an earlier stage. I am going to try
and hand a copy of this document to the Committee and
to the witness. (Same Handed to the Committee and to
the witness)

Q. THE CHAIRPERSON: Just before we leave the
last topic. When
Mr. Martin has looked into the matter of the question
of people who do believe that they were criminalised
and there is a variety of reasons for that, when you
have looked into that and decided to do whatever you
are going to do about it, would you please let us know
the result of your investigation, whether you decide to
do something or don't decide or whatever you decide to
do?

A. Certainly, Chairman.

UNKNOWN SPEAKER: Where will we find out?

A. Well, it will be made public.
THE CHAIRPERSON: My understanding is that two things are going to happen, Mr. Martin is going to look into the thing and when he comes to the conclusion as to what their view is of the issue he will decide and the Department, presumably there are other people in the Department besides Mr. Martin who may say "no, you are wrong." But as far as he's concerned he will do that and they will decide what they will decide and presumably announce what they have decided.

In the meantime they will send to us whatever information they have gleaned as a result of that. We already have some information, a good deal of information in relation to that and we will be taking our course on that, which will not be dependent on what Mr. Martin does and neither will his decision be dependent on anything we do. All right. That is an important issue, I don't want to be -- I mean, it is right to clear it up. Now you have one other area, Mr. McGrath.

MR. McGRATH: There is a the booklet has been handed in to you. If you go to the very end of that book, to the last three to four pages.

THE CHAIRPERSON: Thank you very much.

MR. McGRATH: I think the page is marked 140, it is an extract from the book by John Cooney on John Charles McQuade. Now,
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at page 152 of the book, in the third paragraph on the page, the paragraph reads as follows:

"The centenary celebrations took place as two senior Gardaí at Dublin's Fitzgibbon Street station were prevented from pursuing allegations of abuse by two Christian Brothers of boys at Artane Industrial School. The superior, or the Reverend Brother, TM Lenane, and the school chaplain Fr. William Kenny succeeded in hushing up a potential scandal with the assistance of McQuade and Justice Minister Gerald Boland. In a climate of opinion hostile to prosecution the two Gardaí were told not proceed with the case".

Now, that's that a serious allegation in relation to workings of the Department and a very serious allegation in relation to two Gardaí being prevented from exercising their duty. Have you been able to find anything in the records, because certainly there is nothing in the discovery that I have seen that would suggest that there is anything documented in your Department in relation to that?

A. No, there are no records that we can find that relates to this, nor would I expect to find any records. Just to clarify, it wouldn't be the Department, they refer specifically to a minister. Like, the Department normally does not have any role in the question of a prosecution, it would normally not get involved in a prosecution or not to prosecute somebody.

Q. As far as this allegation is concerned, there is an allegation that two members of the guards were somehow or other persuaded not to exercise their duty, was
Mr. James Martin

there any sort of -- after this came out, was there any sort of inquiry being made in the Department to follow this allegation up?

A. No, to the best of my knowledge, no, but then there is not enough material -- like there is the guards who were apparently told they weren't allowed to -- the person making the allegation, the person who were supposed to be the victim of it, there isn't really enough material there to carry out an investigation, it is a bit vague about the role of McQuade and the Justice Minister.

Q. Has the Department even been able to identify the two Gardaí who were supposed to have...(INTERJECTION)?

A. As I say, we didn't conduct an investigation, but I don't think there is any way -- unless one of the Gardaí involved came forward or the person who made the allegation was able to identify them, there would be no way the Department would be able to identify...(INTERJECTION).

Q. But surely the Department of Justice, with its links with the Garda Commissioner, can find out what guards were investigating an allegation of a sexual crime in the past?

A. Well it would be possible to write to the Commissioner. But like this suggests that they weren't even allowed investigate it, so there may not even be a file. I don't see how we could pursue it without some information as to who is making the allegation or the dates. But if somebody has more detailed information
Mr. James Martin

1 we would be happy to pursue it.
2 214 Q Now there is another allegation that I am aware of, I
3 don't have a copy of the book unfortunately. As I
4 understand it in a book "Always in the Convent Shadow
5 By Margaret Mately", she was writing about her
6 experiences in the Good Shepherd Convent in Cork and
7 she alleges in her book that Judge McCarthy, I think,
8 who was the judge in the circuit court in Dublin, the
9 Children's Court, used to send children to a convent
10 down there and his sister was the head nun, did that
11 ever come to attention of the Department or anything
12 like that?
13 A Not that I'm aware of.
14 215 Q Would it be something that you think that the
15 Department should be concerned about, if it was
16 happening?
17 MR. FERRITER: Chairman, I have some
18 concern here, this question
19 is not based on any material that has been put before
20 the Department of Justice or the Commission either. I
21 think it is a little bit unfair to ask Mr. Martin to
22 speculate on a matter in the absence of any prior
23 notice of this issue at all, it is a very vague
24 question being put.
26 THE CHAIRPERSON: Yes. People make
27 allegations, I suppose
28 there is a limit to what the Department can track down.
29 I am not sure even if the facts were established it

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might be a matter that we could comment on. But I'm not sure it is a matter that Mr. Martin can go chasing after and investigate.

(By Order of the Chairperson of the Investigation Committee this portion of the transcript has been deleted).

The Chairperson: Let's not go too far, Mr. Lankford. I see the difficulty that you are in, I have to say. I sympathise with it.

(By Order of the Chairperson of the Investigation Committee this portion of the transcript has been deleted)

The Chairperson: Hold on, before you get too worked up, Mr. Lankford.

Unknown Speaker: How we were treated was much more outrageous and very sensitive.

The Chairperson: I have to say it seems to me unfortunate that something that is impossible for this witness to comment on, practically impossible for his Department to have investigated should be put. However, Mr. Lankford, as far as possible the line we have taken is that we don't try to stifle debate or consideration, people have to exercise their calm reflection. I don't want to get into a big finger wagging exercise,
certainly from my point of view, I think that's unfortunate that that reference was made, because it does direct us to everything that anybody has ever written in a book and any allegation and I don't think it is fair to take them out and highlight them and I hope it is not for sound bite purposes. I am not prepared to believe that and I am not going to ask Mr. McGrath to respond. Let me simply say I think it is unfortunate that that was included. However, let's leave it at that and probably the less said the better.

MR. McGrath: I will leave it at that.

THE CHAIRPERSON: Thank you very much, Mr. McGrath.

END OF EXAMINATION OF MR. MARTIN BY MR. McGrath

THE CHAIRPERSON: Now, Mr. Ward.

MS. Kirby: I have just one question. Ms. Kirby for Marlborough House.

THE CHAIRPERSON: Ms. Kirby, does Ms. Kirby have anything to say,

MS. Kirby: I have one question.

THE CHAIRPERSON: Certainly.

MR. James Martin was then examined, as follows, by

MS. Kirby:

216 Q. Ms. Kirby: I represent the residents

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Mr. James Martin

1. who were -- a resident who was in Marlborough House. You have outlined the fact that from 1963 onwards there was an interdepartmental committee and that the Department of Justice maintained the Department of Education responsible for Marlborough House, but in 1963 there were definitely issues being raised between the Departments. Now, in the statement furnished there have been -- without going into any details. There have been specific complaints of abuse and there were specific complaints of abuse between 1968 and 1969. Now, that's referred to in a statement and I think you say at the beginning of that statement that the complaints of abuse were invariably referred to the Department of Education as the Department had responsibility for management of the institution.

But then there is an overview of documents held by the Department of Justice in relation to specific abuse. Specific instances of abuse which had been raised by, I think, the complaints where children who were in Marlborough House but they had been raised by in one case a district justice and in another case a probation welfare officer. Those are in the records of the Department of Justice. Can you tell us were any steps taken by the Department of Justice when they had records of specific abuse made in relation to certain children in response to those allegations of abuse?

A. Unfortunately not, no. What was done was when -- if there are specific examples of a probation officer
Mr. James Martin

reporting, the probation officer would have reported
back to the Department as its employer and we passed
them on to the Department of Education for action by
them. And we didn't pursue it. Obviously in this day
and age we probably would have reported them to the
Gardaí for criminal investigation. But in those days,
the line between corporal punishment and assault wasn't
as clear cut but all that was done by the Department
was the complaints were forwarded to the Department of
Education for action by them because they were the
employer of the people against whom the allegations
were being made.

217 Q. Was there any follow-up following on from that? You
14 said they were forwarded to the Department of
15 Education, was there any follow-up on foot of that?
A. To the best of my knowledge there was no follow-up, the
17 complaints were passed on and the Department didn't
18 pursue it after that.

MS. KIRBY: Thank you.

END OF EXAMINATION OF MR. MARTIN BY MS. KIRBY

THE CHAIRPERSON: Now, Mr. Ferriter.
MR. FERRITER: I have no questions for
Mr. Martin.

MS. FERGUS: I have just one question.
THE CHAIRPERSON: I am sorry. Yes,
Ms. Fergus.
Mr. James Martin

MR. JAMES MARTIN WAS QUESTIONED, AS FOLLOWS, BY THE

COMMISION:

218 Q MS. FERGUS: Mr. Martin, I am just
wondering, do you know what
system of inspection that the Department of Justice
operates today in relation to places like Finglas and
Oberstown?

A. We don't operate any, that's a matter for the
Department of Education, they are the Department of
Education institutions.

219 Q And you don't have any responsibility for those centres
in terms of inspection?

A. No,

MS. FERGUS: That's great. Thank you
very much.

END OF QUESTIONING OF MR. MARTIN BY THE COMMISION

THE CHAIRPERSON: You still have no
questions.

MR. FERRITER: I have no questions.

THE CHAIRPERSON: Ms. Shanley.

MS. SHANLEY: I have no questions. Thank
you.

THE CHAIRPERSON: Thank you very much
Mr. Martin and thank you
everybody for your cooperation. You are finished now,
Mr. Martin. Thank you very much.
Mr. James Martin

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Assistant [1] - 4:7
assisting [1] - 9:15
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