

A “Kerry Babies” Judgment Which Must Be Binned : Three Gardaí Sued Joanne Hayes for “Libel” and Trousered £100,000

Monday 3 April 2023, by [Ó FLATHARTA Tomás](#) (Date first published: 26 March 2023).

As fresh 2023 Irish state investigations continue into the death of a Tralee baby in 1984, we are not hearing the story of Joanne Hayes. Many readers must be wondering - Why?

Contents

- [The Kerry Babies II](#)
- [Two Arrested People - a \(...\)](#)

A huge reason is that three police officers got the book of Joanne Hayes – “My Story” – destroyed. These Gardaí succeeded because of the “discredited” Judge Lynch Tribunal Report.

Today, action is needed on this matter. On a directly related issue, the non-jury Special Criminal Court must be abolished.

The police torturers were connected to the heavy gang which tortured loads of people connected to Irish Republican organisations in the 1970’s and 1980’s. These practices were institutionally protected by the non-jury Special Criminal Court and numerous other state organs and functionaries. This court still exists. Justice sleeps there, and right-wing government parties routinely rubber-stamp a renewal once a year. We need to constantly remind ourselves of Bertolt Brecht’s comment about the root causes of a German Nazi’s rise to power in the 1930’s : concerning capitalist decay “the bitch that bore him is in heat again”. Let’s stop making excuses for the Special Criminal Court. It spread cancer within the police force outwards. Today, the following practical steps are necessary :

1. Immediate Abolition of the Non-Jury Special Criminal Court. 2. Immediate State Investigation of the police torturers in the Joanne Hayes case and the state institutions which facilitated them – up to and including courts, governments, and functionaries. 3. Formal rejection of the Lynch Report, rescinding of the “My Story” libel verdict, compensation for the authors (Joanne Hayes and John Barrett).

The absence of effective action meant in the past – and will mean in the future – that the same system continues – and will continue to generate future “Kerry Babies” Miscarriages of Justice.

“Joanne Hayes wrote her account which was published as My Story in 1985. She, her coauthor and the publisher were sued for libel by three Gardaí. She had compared herself to Nicky Kelly. Kelly and others had been arrested in connection with the Sallins Train Robbery in 1976. Kelly had ‘confessed’. During the two trials there was medical evidence of ‘beatings’. The Court felt that these were either self-inflicted or done by the co-accused. Kelly was found guilty on the basis of his ‘confession’, but jumped bail.

Subsequently, two of the accused were acquitted on appeal as their statements had been taken under duress. Kelly returned to Ireland in 1980, but was imprisoned, though released 'on humanitarian grounds' in 1984."

"Because the Tribunal, as noted in paragraph 28 of the Summary, had found no intimidation or abuse, the suggestion that what had happened to Kelly had also happened to Joanne Hayes was libellous. An out of court settlement was reached; damages and costs of £100,000 went to the plaintiffs. Unsold copies of the book were ordered to be pulped."

The Kerry Babies II

An Garda Síochána have now accepted that their handling of this case fell well below expected standards. I would agree with this; and further, I think that the findings of the Tribunal of Inquiry were also seriously flawed. I do not accept the versions of events that the Tribunal found to be the 'legal truth'.

In my view, what actually happened to the two babies was much simpler than the Tribunal found; and that the Tribunal handicapped itself by its inability or unwillingness to contemplate certain things.

I think that there were only two babies. One was stabbed 'in a frenzy', and found on the beach near Cahirsiveen. Joanne Hayes gave birth to the second baby outside her home and alone; she alone later hid it. Both births happened at roughly the same time, the Cahirsiveen baby's perhaps a couple of days before Joanne Hayes's. Other than this temporal coincidence, I do not think that there is any connection in any way between the two babies; this was two separate and completely unrelated events. (The Tribunal estimated that two 'illegitimate' babies were born every week in co Kerry.)

It was reasonable for the Garda to interview Joanne Hayes and her family; at that time she was the only person who fitted the profile of an unmarried mother who might have given birth though no baby was apparent. It is a mistake to think that if you have only one suspect who fits the profile that you have constructed, then this person must be the only one who could be responsible. This extrapolation is known as the [*Prosecutors' Fallacy*](#).

The Garda missed two opportunities to arrive at the truth.

Firstly, they refused to allow Joanne Hayes to show them where she had disposed of her infant. Had the infant then been found, it seems more than likely that she and her family members would not have been further questioned until they 'confessed'. The wider implications of this were not considered by the Tribunal; several gardaí were pleased that the Tralee baby had not initially been found as it meant they were able to get 'true confessions'.

Secondly, when the blood group tests were available, showing that Joanne Hayes and Jeremiah Locke could not both have been the parents of the Cahirsiveen baby, the Garda should have properly reconsidered what had really happened. They could have applied [*Occam's Razor*](#), seeking the simplest solution consistent with the evidence.

Unhappily, it seems to me that as they had obtained 'confessions' that Joanne Hayes in the presence of family members had murdered her baby in the same way as the Cahirsiveen baby had been murdered, the Garda had a major dilemma of their own making. Either they would have had to admit to themselves and publicly that the statements of 'confession' could not possibly have been correct,

and that they had been obtained by coercion and intimidation; or they, still believing in the truth of the 'confessions' needed an alternative explanation. Hence, the idea that Joanne Hayes had had twins, so that both her second and third statements were 'the truth'. But as she and Jeremiah Locke could not have been the parents of the Cahirsiveen baby, then 'obviously' this was a case of superfecundation; it's not clear whose suggestion this was. There had been another man. After all, so they seem to have thought, she was just that sort of girl, for she already had had one child out of wedlock; thus, she was a woman of 'loose morals'. That superfecundation is extremely rare was irrelevant. By emphasising the facts that fitted with their pre-conceived idea of what happened, and ignoring inconvenient facts which didn't, the Garda were committing the '[Crime of Procrustes](#)'.

Having 'nailed their colours' to the mast as it were, the Garda, through their counsel, persisted with this theory at the Tribunal. One potential lover was found to have his name in biro on Joanne Hayes's mattress. Later, it turned out that he had worked in a shop from where the mattress had been obtained; and he had years previously emigrated to Australia and not returned.

They also suggested that the Cahirsiveen baby's blood group had changed because of immersion in sea water. Or, it was posited that Jeremiah Locke had a [Bombay](#) gene, so that his blood group had been wrongly interpreted as O when it was actually A. Both these suggestions are 'clutching at straws'. It was clearly shown that the Cahirsiveen baby had 'gene fragments' which could not have come from Mr Locke.

Almost at the end of the Tribunal's evidence taking, a superfecundation expert arrived from England. He had been originally called by the Garda in the expectation that his testimony would support their case; on arrival he was issued with a summons by the Tribunal. He unequivocally said that Joanne Hayes could not have been the mother of the Cahirsiveen baby. During later stages of pregnancy, and particularly during labour, there is a foeto-maternal transfusion; that is, some foetal blood enters the mother's circulation. If the baby was, say group A and the mother was group O, then the mother would make antibodies to group A blood. Joanne Hayes's titre (level) of such antibodies was too low for her to have had a group A infant. Had the expert appeared earlier during the proceedings, much of the unpleasant, invasive and frankly abusive questioning of Joanne Hayes could have been avoided.

Although some parts of the Garda investigation were criticised by the Tribunal, and they had at times 'gilded the lily' and they had 'elevated wishful thinking into hard fact', the Tribunal in general accepted the probity of the Garda. In a now notorious, infamous statement during the Birmingham Six's civil suit against the police in 1980, Lord Denning said:

"Just consider the course of events if their action were to proceed to trial... If the six men failed it would mean that much time and money and worry would have been expended by many people to no good purpose. If they won, it would mean that the police were guilty of perjury; that they were guilty of violence and threats; that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous... That was such an appalling vista that every sensible person would say, 'It cannot be right that these actions should go any further'."

During the Tribunal, Judge Lynch said:

"While references were made in the media to the persistence of the Gardaí with the charges against the Hayes family and Bridie Fuller despite compelling evidence to the contrary, the main disquiet expressed through the media was on the basis of a conspiracy on the part of the Gardaí to "frame" or "nail" the Hayes family and Bridie Fuller for responsibility for the death of the Cahirciveen Baby at all costs. When one

considers that the Gardaí involved in interviewing the Hayes family and Bridie Fuller on the 1st May, 1984, were drawn from all parts of Co. Kerry — Abbeydorney, Cahirciveen, Dingle, Killarney, Listowel and Tralee — as well as Detectives from Dublin, the idea of such a conspiracy becomes ridiculous — or, if it were true, monstrous.”

The ‘Murder Squad’ was formed as a response to the ‘Troubles’. Dissidents (and others) were convicted on the basis of confessions, rather than forensic evidence, for they were good at not leaving traces.

To question the probity of the Garda would be not just ‘monstrous’, the ‘appalling vista’ would call into question the correctness of other prior convictions. Although there was disquiet about such convictions, the public policy expression was of unquestioned faith in the bona fides of the Garda, despite private concerns.

The Tribunal therefore could not and dare not question the Garda too deeply; the ‘confessions’ had to be taken as voluntary and uncoerced and thus correct. By so doing, the Tribunal had to construct a version of events which could be tallied with what the Garda thought and said; the Tribunal, unknowingly perhaps, had seriously limited its vision of events. And as the Garda statements had to be ‘true’, it then followed that the Hayes family must have been liars. Like the Garda, by choosing evidence that fitted its conceptions of what had happened, what must have happened, and minimising evidence to the contrary, the Tribunal also committed the Crime of Procrustes.

The Tribunal was correct, though, in thinking that the Garda had not lied; Garda members believed in the superfecundation theory, believed that Joanne Hayes’s final statement was the truth. If you really believe something, yet say things which cannot be true, you are not lying in the sense of telling falsehoods, knowing them to be falsehoods, for the sake of gain. The Garda’s belief in their theory and statements is an example of [grouphink](#).

The Tribunal was established as an Inquiry, but it was run as a trial. The Judge said:

“Now, this Inquiry is neither a criminal nor a civil Trial, but in so far as one can seek an analogy with a Trial, it has some similarity to a civil action by the Hayes family for Damages against the Guards.”

The underlying assumption in a civil action is that both sides are giving their version of the ‘truth’, perhaps lying, perhaps embellishing, and that it is the function of the judge to arbitrate, to find a *via media* which then represents, must be, the truth. This trial does not look outside what is being said. This further limited the ability of the Tribunal of Inquiry’s activities; this type of complaint has been made against both Tribunals and the *adversarial* system used in common law. Whether the *inquisitorial* system used on the Continent is superior is debatable.

There are, in my opinion, questions around the mental abilities of some witnesses. Mike Hayes was described by the Tribunal as ‘slow’, though ‘nobody’s fool’. A garda said he had ‘a degree of native cunning’. Nell McCafferty said he was ‘educationally subnormal’. Ms Bridie Fuller retired from nursing ‘prematurely’, had a ‘drink problem’ thereafter though subsequently stopped. She had a significant disturbance of [circadian rhythm](#); she went to bed in the afternoon, then got up at midnight and stayed up. She had a stroke in September 1984. She gave evidence to the Tribunal from hospital where she was recovering from a second stroke. Sometime before this the family attempted a psychiatric assessment; this seems not to have been done. The Tribunal noted that at times she was ‘suggestible’. Ms Fuller, who had not done midwifery, described how she divided the imaginary infant’s cord long because it was ‘chesty’. This makes no sense. Immediately after delivery infants may sneeze to clear the airway, for they are obligate nasal breathers; they cry to inflate the

lungs, but they aren't 'chesty'. The idea that cutting the cord 'long' has an effect on breathing is absurd.

Joanne Hayes became distraught at times during her questioning, having to leave. During one of these adjournments, she was sedated, apparently on the judge's instruction, but then returned. That she was giving evidence 'under the influence of drugs' was not remarked upon.

The 'theory' of torture, if it can be called that, is that given an adequate stimulus, the person (victim) will eventually tell the 'truth' is rubbish. The stimulus can be physical assault, of the threat of it; or the stimulus can be mental, intended to so disconcert the person that what they say cannot be overlain with lies. What actually happens is that the victim is rendered to confused and scared that they will say anything that they think will end the abuse and torment; and often this is what the interrogators want to hear. In her statement to her solicitor, Joanne Hayes said:

"Alright Liam [Moloney, the Abbeydorney garda], I'll give you a Statement, the one that you want to hear but it is not going to be the truth but I don't want Mom to be charged with murder or I don't want Yvonne [her daughter] to be taken off me."

There was a very similar scenario during the investigation of the murder of [Patricia Curren](#). Further, the ability that inquisitors say they have, knowing when their victims are telling the 'truth' is also rubbish.

The Tribunal relied much more on witness statements and their oral testimony than it did on forensic and scientific evidence. There was no clear pathological evidence that the Tralee baby had been choked, despite the Tribunal's finding that it had been, or evidence that it had been hit on the head.

The oral testimony will have been based on statements and on memory. It's now clear that memories are not like a video recording; memories are actively constructed around key words, and can be added to, modified and embellished and at times can be completely wrong. In an American psychology experiment, students were shown a video of a well dressed business man being mugged. Six months later, when questioned, some of the students maintained it was a white man being mugged by a black man. Of course, the original video showed the mugger to be white, the businessman to be black. In those students their preexisting stereotypes and prejudices had 'overridden' what they had seen. Expecting that testimony, months after the event will always be completely accurate is a misconception. (Today, the usual advice to people who may expect to be put in a difficult position later is to write down what they recall as soon as possible after the event, and as comprehensively as possible.)

During her initial interviews by the Garda, Joanne Hayes said she had given birth alone outside on the farm, and subsequently hidden the baby.

"Ban Gharda O'Reagan had her doubts about the version Joanne had given them, especially when she said she delivered the baby while standing out in the field. The description of where she had hidden the baby had an authentic ring to it. The ban gharda had also made a mental note that, when Joanne was telling them about the birth of her baby on the farm, she got most upset and cried. When Joanne repeated her story during the first hour-and-a-half in the Garda station, Ban Gharda O'Reagan felt a search should have been carried out immediately. *As a junior garda she did not feel it was her place to suggest such a course of action, not with the boys from the Bureau around at any rate.* [My emphasis] (O'Halloran, p125)"

The 'boys from the Bureau' were the Murder Squad from Dublin. This difficulty, of a junior feeling themselves unable to question authority or to suggest a course of action is now well recognised. The [airline industry](#), after several disasters, took heed. Today, there are phrases such as 'This is unsafe' which *any* member of an aircraft crew can use to indicate that they are concerned, and that things must be stopped and reassessed. And the seniors will stop and reassess.

Following publication of the Report there was both praise and criticism of it. The *Sunday Independent* noted that the Report did not 'come up with a comprehensive explanation for the fact that the Hayes family confessed to a crime they had not committed'. In November 1985 Magill magazine, in a 14,000 word editorial, said that 'the Report failed to answer the central question which it was established to answer, that is how people came to make detailed corroborative statements that were shown to be false.'

"The issue...came down to whether one accepted that the confessions were made freely, voluntarily and separately, and that they resulted from a mixture of guilty consciences and tough but fair questioning, or whether they resulted from unfair questioning and suggestions made by the gardaí."

Mr Justice Lynch responded in a 6,000 word article in the same magazine in March 1986. He rejected the criticisms, and concluded,

"I have so far refrained from availing of my legal rights in this regard, but these rights remain alive and available to me at any time that I may wish to avail of them."

The government is now considering how to [distance itself](#) from the Report of the Tribunal which has been described as 'discredited'. Don Buckley and Joe Joyce, who 'broke' the original story in 1984, said recently that the government now had a dilemma, and that '[deeply flawed findings cannot be allowed to stand](#)'. The legal mechanism to 'unaccept' the Report is unclear.

Joanne Hayes wrote her account which was published as *My Story* in 1985. She, her coauthor and the publisher were [sued](#) for libel by three Gardaí. She had compared herself to Nicky Kelly. Kelly and others had been arrested in connection with the [Sallins Train Robbery](#) in 1976. Kelly had 'confessed'. During the two trials there was medical evidence of 'beatings'. The Court felt that these were either self-inflicted or done by the co-accused. Kelly was found guilty on the basis of his 'confession', but jumped bail. Subsequently, two of the accused were acquitted on appeal as their statements had been taken under duress. Kelly returned to Ireland in 1980, but was imprisoned, though released 'on humanitarian grounds' in 1984.

Because the Tribunal, as noted in paragraph 28 of the Summary, had found no intimidation or abuse, the suggestion that what had happened to Kelly had also happened to Joanne Hayes was libellous. An out of court settlement was reached; damages and costs of £100,000 went to the plaintiffs. Unsold copies of the book were ordered to be pulped.

Nicky Kelly received both a presidential pardon in 1992 and substantial compensation.

Both Joanne Hayes and a garda have repeatedly called for DNA examinations, she to show that she was not the mother of the Cahirsiveen baby, he to confirm the superfecundation theory; he wishes the infants to be [exhumed](#) for testing. DNA analysis has now been done on samples from retained tissue. No detail of the examination was given.

There are [two sources of DNA](#) in our cells. Almost all comes from the nucleus, inherited from both parents; it makes us who we all are as unique individuals. From this nuclear DNA a 'profile' can be constructed and compared with the DNA from other people, looking for a match. A tiny amount of

DNA comes from mitochondria in the cytoplasm, mtDNA. Mitochondria are only inherited from our mothers who inherited them from their mothers. It could be that the mtDNA in the Cahirsiveen baby and in Joanne Hayes have been compared and found to be different.

The identity of John, the Cahirsiveen baby, has not been ascertained; his mother has not been identified.

Sources

The Kerry babies case was covered extensively in the press at the time. Following the Garda's statement there have been many recent articles. A Google search brings up over five million 'results'.

[*My Story*](#) was written by Joanne Hayes and John Barrett. It is 'unobtainable'.

The Report of the Tribunal is available [here](#) as a 312 Mb pdf file of scanned images; the file loads very slowly. The Report does not contain the post-mortem reports; it does not contain the Garda file of information or their report. The transcripts of each day's evidence are not available on-line.

[*Lost Innocence: the inside story of the Kerry babies mystery*](#) was written by Barry O'Halloran, an RTÉ journalist and published just after the Tribunal's Report.

[*Truth, Power and Lies: Irish Society and the Case of the Kerry Babies*](#) was written by Tom Inglis, an academic sociologist, and published in 2003. He discussed this recently, [here](#).

[*A Woman to Blame: The Kerry Babies Case*](#) was written by the Derry-born socialist feminist journalist playwright and activist Nell McCafferty. First published in 1985, it was reprinted with a new Foreword [Introduction] in 2010. In the Prologue she wrote:

In the opening days of the 'Kerry babies' tribunal a married man went to bed in a Tralee hotel with a woman who was not his wife. He was one of forty-three male officials — judge, fifteen lawyers, three police superintendents and twenty-four policemen — engaged in a public probe of the private life of Joanne Hayes.

When this particular married man was privately confronted with his own behaviour, he at first denied it. Then he crumpled into tears and asked not to be exposed. He had much to lose, he said. "My wife...my job...my reputation..." He was assured of discretion.

No such discretion was assured to Joanne Hayes, as a succession of professional men, including this married man, came forward to strip her character. The lawyers, doctors and police were guaranteed the full protection and licence of law to do so. The priests who had dealt with her were not called to testify and the Catholic Church stayed silent through the whole affair. However, the Church has ways of making itself heard: when it was all over, the priests of her parish refused to say Mass in her house.

This is the story of professional men, the lawyers, doctors, police and priests, who found woman to blame. It is also the story of one woman and the 'Kerry babies' tribunal.

The March 2023 Garda investigation is not going well :

Two Arrested People - a Woman and a Man - “totally and absolutely deny an allegation of murder”

Gardaí are awaiting tests on DNA samples taken from a couple to see if they are linked to Baby John, the infant found dead on a Co Kerry beach nearly 40 years ago.

A lawyer for the pair – a man in his 60s and a woman in her late 50s – said they [strongly deny killing the baby on April 9th, 1984.](#)

Detectives arrested them at their home in south Kerry on Thursday night and questioned them separately at Listowel and Castleisland Garda stations, where they were held for almost 24 hours before being released without charge.

Gardaí said after their release that they are to prepare a file on the matter for the Director of Public Prosecutions.

The couple’s solicitor, Pádraig O’Connell, said that during Garda interviews they had strenuously denied murdering the baby.

“They were arrested on suspicion of murder and there isn’t a scintilla of evidence against them in that regard – they each totally and absolutely deny an allegation of murder. They were brought in on foot of some DNA results but there’s a huge chasm between DNA tests and murder.”

Mr O’Connell said the first his clients had “learned anything about this was when there was a knock on their door and they went out to find gardaí there”.

Irish Times March 26 2023

Critics of the Irish State’s police force are unlikely to remain quiet :

Gardaí identified obtaining full DNA samples from both the man and the woman as a priority and members of the Kerry traffic corps were on standby on Thursday evening to bring the swab sample to the FSI laboratory in Dublin where they were given priority testing status.

However, as one legal source pointed out, a DNA match itself would fall short of proof that one or both of them had killed the infant.

Mr O’Connell appealed to the gardaí to move quickly on the matter. “I’m urging that the file on this be prepared with due diligence and be sent to the DPP and that the DPP would expedite her decision and I believe my clients will be exonerated,” he said.

[Click here](#) to subscribe to ESSF newsletters in English and/or French.

P.S.

Tomás Ó Flatharta

<https://tomasoflatharta.com/2023/03/26/a-kerry-babies-judgment-which-must-be-binned-three-gardai-sued-joanne-hayes-for-libel-and-trouserred-100000/>