

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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1921, ON 17 FEBRUARY 2017

SOLE MEMBER: MR. JUSTICE PETER CHARLETON, JUDGE OF THE
SUPREME COURT

HELD IN DUBLIN CASTLE
ON TUESDAY, 6TH MARCH 2018 - DAY 60

60

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 6TH MARCH
2 2018:

3
4 CHAIRMAN: I am sorry I am a bit late, I managed to
5 lock myself into a stairwell, so there we go. 10:03

6 MR. MARRINAN: Sergeant McCabe, please.
7

8 THE WITNESS WAS CROSS-EXAMINED BY MS. BURNS:

9 1 Q. MS. BURNS: Thank you very much, Chairman. Good
10 morning, Sergeant McCabe. My name is Tara Burns and I 10:03
11 am representing Superintendent David Taylor. As I
12 indicated to the Chairman yesterday, I am hoping to be
13 relatively short, so perhaps we can get through this as
14 quickly as possible.

15 A. Okay. 10:03

16 2 Q. Sergeant McCabe, as you are aware, Superintendent
17 Taylor obviously accepts that a meeting occurred in his
18 house, both on 20th September 2016 and also on 21st
19 September 2016, but, as Mr. Marrinan referred to
20 yesterday, some details in relation to what you say he 10:03
21 said to you on the night of the 20th September 2016, we
22 differ on.

23 A. Okay.

24 3 Q. So if I could perhaps just go through a few
25 preliminaries in relation to how that meeting came 10:04
26 about. It seems clear, Sergeant McCabe, that in terms
27 of you meeting with Superintendent Taylor, that you had
28 a specific agenda and purpose in initiating and
29 pursuing that contact with Superintendent Taylor,

1 which. As you referred to in evidence yesterday, was
2 that you wanted to know what had happened to you and
3 you thought that he should know something?
4 A. Absolutely.
5 4 Q. I see. And it also seems clear from the evidence that 10:04
6 you gave yesterday that you were very determined in
7 relation to pursuing that contact, you stated in
8 evidence that you intended to go and go on at it in
9 terms of meeting Ms. Taylor and then initiating the
10 contact again in September of 2016? 10:04
11 A. Yes.
12 5 Q. While I don't want to go into the details of it, in
13 relation to the actual day that you met Superintendent
14 Taylor, you were aware that there had been a very
15 significant and grave family crisis the previous 10:05
16 evening?
17 A. Yes, I was.
18 6 Q. And I think you knew the details in relation to that
19 also?
20 A. Yes, I did. 10:05
21 7 Q. I see. And despite that, you attempted and were
22 successful in pursuing the meeting which had already
23 been set up with Superintendent Taylor?
24 A. Well, I sent him a text in the morning time just to see
25 that I was up in Dublin all day and if they wanted to 10:05
26 meet at 5:00 I was free and I got a text back.
27 8 Q. That had been the initial arrangement --
28 A. Yes.
29 9 Q. -- isn't that correct? The previous morning, the early

1 hours of the morning it was indicated that meeting
2 wouldn't proceed but the next day you initiated the
3 contact again?

4 A. On the same day that I got their text at 2:00 in the
5 morning. 10:05

6 10 Q. Yes, I see. Now, in terms of your purpose in
7 contacting Superintendent Taylor, arising from your
8 evidence yesterday, it seems that that was a twofold
9 purpose. We heard evidence that your relationship with
10 senior management and most particularly Nóirín 10:06
11 O'Sullivan had come to an all-time low and you were
12 extremely distrustful in relation to Nóirín O'Sullivan
13 at that stage?

14 A. At that stage, I probably was.

15 11 Q. I see. And I think also then the information that you 10:06
16 had received from John McGuinness also emerged and
17 possibly was a main focus for you in terms of seeing
18 where this information had come from, is that correct?

19 A. It wasn't the main focus. I know there was rumours
20 happening and I just wanted to find out who was 10:06
21 spreading the rumours and starting them, starting and
22 spreading them.

23 12 Q. I take it that the information that you had received
24 from John McGuinness had been a catalyst to initiating
25 or seeking to initiate contact with Superintendent 10:06
26 Taylor?

27 A. It probably was.

28 13 Q. I see. Now, in relation then to the actual meeting,
29 you have indicated that the meeting took approximately

1 three hours in Superintendent Taylor's house?

2 A. Yeah.

3 14 Q. And you have also given information that you took notes
4 in relation to that meeting?

5 A. I did. 10:07

6 15 Q. And from the evidence that you gave yesterday, you said
7 that you started taking notes approximately half an
8 hour after the meeting commenced?

9 A. Yeah, probably that.

10 16 Q. So we have a situation where two-and-a-half hours 10:07
11 elapses and we have one page of notes from you in
12 relation to the meeting?

13 A. That's correct.

14 17 Q. I see. Clearly, you didn't take a verbatim account in
15 relation to the actual meeting? 10:07

16 A. No, I didn't.

17 18 Q. I see. Now, I assume, Sergeant McCabe, that the
18 information that you were receiving from Superintendent
19 Taylor, it must have been deeply distressing and
20 shocking? 10:07

21 A. It was hard to take.

22 19 Q. I assume that you were in somewhat of a whirlwind
23 receiving this information all on the one evening?

24 A. Well, it wasn't as bad as the John McGuinness episode
25 because I was -- I prepared, I'd say, Chairman, to 10:07
26 expect along the similar line.

27 20 Q. But nonetheless, you are receiving detailed information
28 from Superintendent Taylor as to what not only his
29 actions were but information in relation to Martin

1 Callinan also?

2 A. Yes.

3 21 Q. I see. In relation then to the actual information that
4 was imparted to you by Superintendent Taylor, your
5 evidence yesterday indicated that the rumours that he 10:08
6 was spreading about you on foot of a direction from
7 Martin Callinan related to the sexual assault
8 investigation in 2006?

9 A. Yeah, that was partly it.

10 22 Q. I see. Well, in your evidence yesterday you referred 10:08
11 to the fact that he said to you he was spreading
12 rumours about the fact you had been investigated for a
13 sexual assault, that Martin Callinan had indicated to
14 him to run you down and bring up the alleged sexual
15 assault? 10:08

16 A. Yes.

17 23 Q. So that was the information that he was imparting to
18 you?

19 A. Yes.

20 24 Q. What he was giving other people was in relation to the 10:09
21 sexual assault allegations?

22 A. Yes.

23 25 Q. And also when you referred to his information to you
24 about Martin Callinan and text messages, again your
25 evidence yesterday referred to the specific sexual 10:09
26 assault allegations in 2006?

27 A. Well, what I said was in relation to all the text
28 messages ex-Commissioner Callinan would compile them, I
29 was told, and send them on to Superintendent Taylor.

1 26 Q. Yes. I know you said that, but in terms of the content
2 of those text messages, what you specifically said in
3 terms of the content of them, was that Martin Callinan,
4 Superintendent Taylor told you, was compiling text
5 messages for onward dissemination in relation to the 10:09
6 sexual assault allegations.

7 A. I don't think he actually just said that, I think, you
8 know, he said that he sent, he sent hundreds of text
9 messages. So I presumed they were all kind of vile.

10 27 Q. Well, if I could just ask that Sergeant McCabe's 10:10
11 evidence from yesterday be brought up on screen.
12 CHAIRMAN: Certainly we will do that, Ms. Burns. What
13 page?
14 MS. BURNS: 175, please, sir.
15 CHAIRMAN: Yes. Do you appreciate now what Ms. Burns 10:10
16 is putting to you; that she is saying what David Taylor
17 was telling you was centred on the D allegation. Now,
18 let's be careful about using allegation and
19 allegations.

20 A. Yes. 10:10
21 CHAIRMAN: Because allegations means two or more, but
22 what she is saying is everything was centred on the D
23 matter. So I'm just clarifying that for you.

24 A. Okay.
25 CHAIRMAN: And I wasn't asking you to answer that. 10:10
26 A. Okay.
27 CHAIRMAN: Yes. If we hang on. Has it come up?
28 MS. BURNS: Page 175, please.

29 28 Q. And so, reading down from the top of the page, there is

1 reference who he had sent the text messages to, he
2 said, that being Superintendent Taylor, that he had
3 sent them to other senior Gardaí, he said that he had
4 sent them to journalists, then questioned the ones he
5 sent to the Gardaí, what was the content of them, and 10:11
6 your reply is:

7
8 "It was just in relation to this allegation that was
9 made against me back in 2006."

10
11 And then you are asked: 10:11

12
13 "And the ones that he sent to the journalists?

14 A. He said it was the same. He said that when I'd be
15 on the news, he said that Martin Callinan would compile 10:11
16 a text message and send it, and sent it to him and he
17 would send it on."

18
19 So certainly from your evidence yesterday, Sergeant
20 McCabe, it seemed that what you were indicating in 10:11
21 terms of what Superintendent Taylor told you, was that
22 the information that was being imparted via text
23 messages and Martin Callinan compiling text messages
24 related specifically to the allegation made against you
25 in 2006. 10:12

26 A. Yes.

27 29 Q. Yes. Thank you. So in terms of the reference that you
28 made in evidence yesterday regarding Superintendent
29 Taylor saying to you that Nóirín O'Sullivan was the

1 pusher?

2 A. Yes.

3 30 Q. Can you explain to us what information he gave you
4 about that?

5 A. Well, it was a word that I never used before and I was 10:12
6 taking the notes down in front of him and he said that
7 she was the pusher, and she knew everything.

8 31 Q. Well, did he say the pusher about what?

9 A. No, he -- well, I assumed it was in relation to
10 something or other, but he actually called her that 10:13
11 word.

12 32 Q. I see. You see, Superintendent Taylor takes issue with
13 him having said this in relation to the allegations
14 made relating to you. So, while there is reference on
15 your note to pusher, Superintendent Taylor takes issue 10:13
16 with that actually being in relation to what was being
17 imparted to journalists?

18 A. I didn't use that word. He -- he used the word pusher.
19 I just -- I made my notes as he was talking and I made
20 notes in relation to everything which he was saying. 10:13

21 33 Q. Well, I wonder did you, Sergeant McCabe, because as you
22 have accepted, what has been provided and what
23 represents your notes from the evening in question is a
24 one-page relatively short document --

25 A. Absolutely. 10:14

26 34 Q. -- with words on it?

27 A. Yes.

28 35 Q. So with respect, you didn't take a full note regarding
29 all of the conversation that you had with

1 Superintendent Taylor for three hours that night?

2 A. I didn't take the full --

3 36 Q. Clearly. That is obviously.

4 A. But I noted the important issues.

5 37 Q. I see. You see, Superintendent Taylor's stance in 10:14
6 relation to this is that, in discussing Nóirín
7 O'sullivan, he wasn't discussing her pushing this
8 agenda in relation to you, but instead, he did discuss
9 with you her actively pursuing a prosecution as against
10 him? 10:14

11 A. No, that is absolutely false.

12 38 Q. I see. But you accept that the note you make, makes no
13 reference to what she is supposed to be pushing about?

14 A. He was talking in relation to text messages about me
15 which he was sending out. 10:15

16 39 Q. I see. Well, Superintendent Taylor doesn't accept
17 that.

18 A. Okay.

19 40 Q. But if we could look at the evidence that you gave to
20 the Tribunal yesterday regarding this issue. Your 10:15
21 evidence very much focused on what Superintendent
22 Taylor told you that Martin Callinan said to him. So
23 if I could summarise your evidence about that. You
24 referred in the course of your evidence to
25 Superintendent Taylor to having been ordered to do this 10:15
26 on the authority of Martin Callinan; you said that
27 Martin Callinan wrote the texts; you said that Martin
28 Callinan had said that McCabe had to be buried; you
29 said that Martin Callinan was the main person, that

1 Superintendent Taylor said that to you?

2 A. Yes.

3 41 Q. What is it that N6ir6n O'Sullivan was supposed to have
4 done in all of this in light of the evidence that you
5 have given regarding Martin Callinan's actions? 10:16

6 A. What he was telling me was, he said to me in relation
7 to all this, in relation to Martin Callinan's text
8 messages and then he said she was the pusher, and I
9 wrote that word down.

10 42 Q. Well, did you ask him specifically what she had done to 10:16
11 be the pusher?

12 A. No, because it was in the frame of talking in relation
13 to text messages in relation to Martin Callinan.

14 43 Q. I see. But an awful lot of detail was imparted to you,
15 and you have provided that in the course of your 10:16
16 evidence, in relation to Martin Callinan's role
17 regarding all this, and I have gone through it, I don't
18 intend to go through it again unless you wish me to do
19 so, but a lot of information about what Martin Callinan
20 said and did, but the only reference to what N6ir6n 10:16
21 O'Sullivan is alleged to have done is that a text
22 message would be sent to her and her reply would be
23 "perfect"?

24 A. Yes.

25 44 Q. Well, did you not ask Superintendent Taylor if she was 10:17
26 the pusher, what actions did she take?

27 A. No, because I was talking to him in relation to text
28 messages of ex-Commissioner Martin Callinan, and he was
29 telling me of what he was ordered to do, and then he

1 said ex-Commissioner O'Sullivan is the pusher. Now,
2 I'm not saying that, I took notes of all I heard of
3 him.

4 45 Q. well, with respect, now, I don't want to keep going
5 over this, Sergeant McCabe, but you didn't take notes 10:17
6 of all that you said and heard from him, because we
7 have a one-page document that is very short and very
8 disjointed; you accept that?

9 A. well, it was an awkward spot in his room.

10 46 Q. Oh, I understand that, Sergeant McCabe. 10:17

11 A. And when I was interviewed, in relation to this module,
12 I just said -- in relation to the pusher, or -- how
13 would I use the word pusher?

14 47 Q. well, that is what I am wondering about. The fact that
15 there is reference on your note to the word pusher, is 10:18
16 this something that you are putting on your notes, an
17 interpretation of your notes, rather than you having a
18 recollection of Superintendent Taylor saying this to
19 you specifically in relation to Nóirín O'Sullivan on
20 that? 10:18

21 A. He specifically said it. I was taking notes. I asked
22 him if I could take notes. I got the paper off him and
23 the pen off him. I was sitting almost beside him on
24 the other couch, which I was near, and he exactly
25 called her that, the pusher. 10:18

26 48 Q. well, he called her the pusher you say, and you have a
27 note of the pusher in your handwritten note, but what
28 further information do you have in relation to how she
29 is the pusher?

1 A. I don't know. What happened was, I was discussing in
2 relation to text messages and he was explaining what
3 was happening and then he said she was the pusher.

4 49 Q. I see. But he told you an awful lot about what Martin
5 Callinan did, and as I have said, we have gone through 10:19
6 that, and fair detail in relation to Martin Callinan
7 ordering him to do Y, X and Z, things that Martin
8 Callinan said, the reference in your evidence to him
9 telling you that Martin Callinan was the main person.
10 So having received all that information in relation to 10:19
11 Martin Callinan, did you not have an interest in
12 finding out what Nóirín O'Sullivan's role was in
13 relation to this, bar the fact that she had sent the
14 word "perfect" in response to text messages sent by
15 him? 10:19

16 A. No, I'm 100 percent sure, as I was discussing in
17 relation to text messages, in relation to Martin
18 Callinan -- or sorry, ex-Commissioner Martin Callinan,
19 then he said after that, he said she was the pusher,
20 and they are the words I wrote down, and he would have 10:19
21 seen me writing them down.

22 50 Q. I see. Well, we know that. Obviously he was present
23 and you were present.

24 A. Mm-hmm.

25 51 Q. And notes were taken. 10:20

26 A. Mm-hmm.

27 52 Q. But in relation to the reference to pusher, you accept
28 you didn't ask him anything more about it?

29 A. It led up to exactly what was happening in relation to

1 text messages, but as I said earlier on, if it was in
2 relation to his case, no, I'd know that.

3 53 Q. I see. But in terms then of what your evidence is,
4 that the reference to pusher is in relation to the
5 malicious rumours that were being spread about you, you 10:20
6 didn't ask him any more information about that?

7 A. No, I didn't, no.

8 54 Q. You didn't. I see. In relation then to the manner in
9 which information was disseminated about you by
10 Superintendent Taylor, you are aware that there is an 10:20
11 issue between both of you regarding what he said to you
12 on the night and what you say he said to you on the
13 night and Mr. Marrinan referred to this yesterday.

14 A. Right. And what is the issue, can you just let me
15 know? 10:21

16 55 Q. Of course I will.

17 A. Thanks.

18 56 Q. So, Sergeant McCabe, what you say is that
19 Superintendent Taylor told you that Martin Callinan
20 created texts and that hundreds of texts were sent by 10:21
21 Martin Callinan to Dave Taylor and that he then
22 forwarded them on to senior members, journalists and
23 TDS --

24 A. Yes.

25 57 Q. -- containing malicious rumours about you. 10:21

26 A. Yes.

27 58 Q. And those rumours relating to the sexual assault
28 allegation in 2006.

29 A. Yes.

1 59 Q. That is your position, am I right about that?
2 A. Yeah, that is exactly what he informed me. And I went
3 back to him on the next morning in relation to the
4 hundreds of text messages, I wanted to clear that up,
5 and he said there could be thousands. But I put in, in 10:21
6 relation to my protected disclosure, in relation to
7 hundreds. And if I could refer to the protected
8 disclosure in relation to Superintendent Taylor, do you
9 have it on screen there or could I just have a look at
10 it? 10:22
11 60 Q. Is it Superintendent Taylor's protected disclosure?
12 A. Yes.
13 61 Q. Just one moment and I will get the reference for it.
14 It's volume 1, page 4, I think.
15 A. Sorry, just my glasses have broken. So it's in 10:22
16 relation to page 8.
17 62 Q. Yes.
18 A. You have page 8 of this. Yeah, page 8. And it's the
19 last page, and what he says in relation to the text
20 messages, on the second paragraph he says: 10:23
21
22 "This included a significant number of updates or
23 information in relation to Sergeant McCabe. On many
24 occasions they would acknowledge receipt of these text
25 messages." 10:23
26
27 But the line I was looking at is in relation to the
28 fourth paragraph down:
29

1 "I can confirm that a huge number of interactions took
2 place between myself, the Commissioner and Deputy
3 O'Sullivan by way of text messages."

4 63 Q. Yes, Sergeant McCabe. But there is no reference there,
5 and within the protected disclosure, or indeed within 10:23
6 any of the interviews that have been held with
7 Superintendent Taylor, that the content of that huge
8 number of interactions taking place by way of text
9 messages were all relating to the scurrilous rumours
10 being spread regarding you and the 2006 sexual assault 10:23
11 allegation?

12 A. No, I disagree. He actually said to me in relation to
13 hundreds of text messages, and that's why I went back
14 to him the next day, I wanted to clear that up.

15 64 Q. I see. Could I firstly perhaps put to you what his 10:24
16 position is --

17 A. Okay.

18 65 Q. -- in relation to what he says he said to you on the
19 night in relation to this.

20 A. Okay. 10:24

21 66 Q. Firstly, he accepts that he said to you that there was
22 a very large number of texts, hundreds of texts sent by
23 him to senior management in relation to you.

24 A. Okay.

25 67 Q. But he does not accept that he said that what was being 10:24
26 texted about on those occasions was in relation to the
27 scurrilous rumours regarding the 2006 allegation. He
28 says that his contact with senior management and indeed
29 with Martin Callinan and Nóirín O'Sullivan in terms of

1 text messages related to informing persons regarding
2 any development or media broadcast that occurred
3 regarding you. So while, yes, there would have been
4 substantial text messages sent, the text messages
5 didn't relate to the rumours regarding you and the 10:25
6 sexual assault allegation in 2006.

7 A. No, I think you are wrong, because --

8 68 Q. Sorry, I am not wrong, Sergeant McCabe. They are what
9 my client's instructions are.

10 A. Sorry. 10:25

11 69 Q. I am just simply indicating to you what my instructions
12 are.

13 A. I don't mean you are wrong, Ms. Burns. But I went back
14 to him on the next morning specifically to ask him in
15 relation to hundreds of text messages because I wanted 10:25
16 to get this right and he did say to me it could have
17 been thousands.

18 70 Q. I see.

19 A. Now I didn't put thousands into the protected
20 disclosure, I wanted to be careful, to be accurate. 10:25

21 71 Q. Firstly, in relation to your handwritten notes and the
22 typed version that had been provided to the Tribunal,
23 thankfully, that we can read them, there is no
24 reference within that document to this portion of the
25 conversation that you had with Superintendent Taylor, 10:26
26 isn't that correct?

27 A. Well, as you can see, in relation to notes I took was
28 just a page.

29 72 Q. Yes.

1 A. And I wrote down different words of what exactly he
2 said to me. I wasn't saying this or alleging anything.
3 But I did go back to him on the following morning for
4 ten minutes, because I wasn't going to put something in
5 the protected disclosure which wasn't right. 10:26

6 73 Q. But can we just take this step-by-step, Sergeant
7 McCabe. Firstly, we will deal with your notes from the
8 evening in question.

9 A. Yes.

10 74 Q. If you want to have a look at them, obviously have a 10:26
11 look at your notes. There is a typed version in volume
12 2 page 444.

13 A. Yes.

14 75 Q. Anywhere on that page is there reference to the
15 information regarding the hundreds of text messages 10:26
16 sent or indeed any reference to Martin Callinan
17 creating text messages and sending them to
18 Superintendent Taylor?

19 A. No, because in fairness, I asked him if I could take
20 notes and I took brief notes. 10:27

21 76 Q. He said yes.

22 A. Yes.

23 77 Q. He knew you were taking notes.

24 A. But I mean, I didn't -- in relation to that meeting, I
25 reported everything that he said to me, everything. 10:27
26 And I even stress that we had to get it right word for
27 word.

28 78 Q. I will return to getting it right word for word in a
29 moment, but presently, what I'm asking you about are

1 the notes that you took on the evening in question and
2 I think you accept that there is no reference on that
3 note to the hundreds of text messages, to Martin
4 Callinan having created text messages and sending them
5 to Dave Taylor for onward transmission? 10:27

6 A. No, because I didn't take detailed notes.

7 79 Q. No. I understand that. And you go back the next day
8 to Superintendent Taylor and that is accepted and it's
9 accepted by Superintendent Taylor that you asked him
10 were there hundreds of notes, is that really what you 10:28
11 are saying -- sorry, hundreds of text messages, and
12 Superintendent Taylor accepts that he said that there
13 could have been hundreds, if not more. He doesn't
14 accept that he used the word thousands but I don't
15 think there is much of an issue in terms of that. But 10:28
16 the second day when you returned to him, do you take a
17 note in relation to that meeting?

18 A. No, I specifically went back just in relation to the
19 hundreds of text messages.

20 80 Q. I see. So specifically the issue that you are 10:28
21 concerned about, specifically the reason for going back
22 to Sergeant McCabe [sic], you don't take a note on the
23 second occasion about the one issue that you are
24 concerned about that has caused you to return to him?

25 A. No, because it was a ten-minute meeting, in and out. 10:28

26 81 Q. I see. Did you discuss the details of the text
27 messages in terms of what they were about and how
28 they'd come into being on the second day?

29 A. On the second occasion, no.

1 82 Q. No. And that is Superintendent Taylor's recollection
2 of it as well. So the height of the meeting on the
3 second day was your concern about the number of text
4 messages?
5 A. I wanted to get it right. 10:29
6 83 Q. I see. But you didn't take a note in relation to that?
7 A. No, I didn't, because it was a ten-minute meeting.
8 84 Q. I see. Well, Superintendent Taylor denies that he said
9 to you that Martin Callinan had created these texts and
10 sent them on to him. And he also denies that he said 10:29
11 that his contact in terms of hundreds of text messages
12 with senior management, with journalists and with TDs,
13 was in relation to the specific malicious rumours
14 regarding the sexual assault in 2006?
15 A. Sorry, I just wasn't listening to you, the last bit 10:29
16 there, what were you saying?
17 85 Q. Superintendent Taylor denies --
18 A. Oh, denies.
19 86 Q. -- that the hundreds of text messages, him accepting
20 that a very, very large quantity of text messages were 10:30
21 sent, but that hundreds of text messages were sent in
22 relation to those specific issues.
23 A. No, Ms. Burns, I have to completely disagree with you.
24 87 Q. I see. Well, in relation to that, then --
25 CHAIRMAN: Ms. Burns, can I just intervene for just a 10:30
26 second. You appreciate that what is opened between
27 yourself and Superintendent Taylor is --
28 A. Yes, Mr. Chairman.
29 CHAIRMAN: -- you might call it a chasm. You are

1 saying that he said to you that Martin Callinan was
2 inventing, composing texts that were about the D
3 allegation, the fact that you had been investigated,
4 that you were a sex abuser, effectively, but what he is
5 saying is, no, he never said that to you and that any 10:30
6 reference that he ever made to texts was that you were
7 being closely monitored in relation to your media
8 presence so that if you were on the radio or if anyone
9 had written an article, let's say, in the Cork Examiner
10 or if there was a 'Prime Time' programme he would send 10:31
11 out hundreds of texts to various people, informing them
12 of your media presence and what was being said about
13 you. Do you see the difference?
14 A. I see the difference, yes.
15 CHAIRMAN: Yes. And do you see that he is saying that 10:31
16 he never said anything in relation to Martin Callinan
17 composing, if you like, accusatory texts about sex
18 abuse and then passing them on to David Taylor for
19 further dissemination?
20 A. He absolutely said it, absolutely said it. 10:31
21 88 Q. MS. BURNS: You see, Sergeant McCabe, if what you say
22 Superintendent Taylor said to you was true and having
23 regard to the fact that what is being disseminated is
24 solely in relation to the sexual assault allegation in
25 2006, did you wonder why Martin Callinan had to 10:32
26 continually create text messages sending them to
27 Superintendent Taylor?
28 A. Well, what happened, Ms. Burns, when I called to his
29 house, he informed me of all of this, and we spoke at

1 length in relation to the -- the wife spoke at length
2 as well and she was saying we believed all these
3 rumours, Maurice, we believed everything, we used to
4 hate to see you on the television, hate to see your
5 name. We discussed this. But he 100 percent said to 10:32
6 me Martin Callinan compiled all the text messages, he
7 said, he didn't just say some, he said all, and he says
8 I got them and I sent them on.

9 89 Q. You see, that is the very important I am trying to make
10 and perhaps I am not making it very well, Sergeant 10:32
11 McCabe. Is that, if Martin Callinan is supposed to
12 have created all of these text messages but all of
13 these text messages solely relate to the sexual assault
14 allegations in 2006, what was the necessity to create
15 all of these text messages? There was the one 10:33
16 scurrilous rumour that was being spread, surely the
17 text message could simply have been copied and
18 forwarded?

19 A. Well, in relation to that, he said to me Martin
20 Callinan had compiled all the text messages and he says 10:33
21 I got them and I sent them on. Now, I would have
22 nothing to gain by saying this if it wasn't true. This
23 is exactly what he said to me, exactly.

24 90 Q. And from Superintendent Taylor's position, he has
25 nothing to gain by taking issue with you in relation to 10:33
26 this, but the fact of the matter is there is a dispute
27 between both of you --

28 A. There is.

29 91 Q. -- in relation to the matter?

1 A. Yeah, there is.

2 92 Q. And what I am asking you is: Having been told that
3 what is being disseminated in these text messages is
4 the sexual assault 2006 allegation and having been told
5 that Martin Callinan is sending all of these text 10:33
6 messages, and there is the reference to hundreds, did
7 you not wonder, well, what is the content of all of
8 these messages? If it's all only in relation to the
9 one sexual assault allegation in 2006, why weren't the
10 text messages just continually forwarded rather than 10:34
11 being recreated hundreds of times?

12 A. Well, Ms. Burns, all I will say to you is this: When I
13 arrived at his house he said he destroyed me and then
14 he went into the conversation in relation to Martin
15 Callinan, and then we spoke a long time in relation to 10:34
16 seemingly all other allegations, they used to hate
17 seeing me on the television or the radio and that, in
18 relation -- they believed all the stories. But he, a
19 thousand percent, said that Martin Callinan compiled
20 texts and sent them to him. Now, it's extremely hard 10:34
21 to make that up. It is.

22 93 Q. Well, what I am wondering, Sergeant McCabe, is, is it
23 possible that on the night in question, being in an
24 upset state, which you must have been, having heard all
25 this, receiving all of this information, that perhaps 10:35
26 you misremember and misremembered when you made your
27 protected disclosure, the information that was being
28 imparted to you, or that you misinterpreted information
29 that was being imparted to you on the night?

1 A. No, I didn't. And what I can say in relation to that
2 is this: when I informed the legal team in relation to
3 the meeting and what was said, I kind of said I am not
4 going here again, I don't want, you know, to be -- have
5 a commission and be pushed into anything, you know, I 10:35
6 said I don't want to report this and in relation my
7 legal team said well, you are obliged to report it, you
8 are a member of An Garda Síochána.

9 94 Q. I see.

10 A. And all I did was, I reported what he told me. 10:35

11 95 Q. I see. So you didn't wonder then why there was a
12 necessity to recreate all of these messages, hundreds
13 of messages, on each and every occasion?

14 A. I don't know in relation to the contents of the
15 message, but in fairness, how do you make up such a 10:36
16 story? He told me that.

17 96 Q. I see. You didn't think it strange that Martin
18 Callinan wouldn't simply issue a direction to Dave
19 Taylor as to what the contents of the text messages
20 were to be rather than he himself creating the text 10:36
21 messages?

22 A. Yeah, but in relation to -- Ms. Burns, I mean, it's not
23 that he said Martin Callinan had compiled some of the
24 texts, he actually said he had compiled all of the text
25 messages. He says I got them and I sent them on. 10:36

26 97 Q. I see. And that is the very point I'm trying to make,
27 Sergeant McCabe, in relation to Martin Callinan
28 creating all of the text messages. Did it not strike
29 you as strange that Martin Callinan had to create

1 hundreds of text messages in relation to one single
2 scurrilous allegation in 2006?

3 A. No, it didn't. Because at the meeting they were
4 talking about all the other rumours that they heard in
5 relation to me, but I mean -- 10:37

6 98 Q. Sorry, who was talking about all the other rumours?

7 A. Michelle Taylor was saying we believed all the rumours
8 about you, we used to hate to see you on the news,
9 hate.

10 99 Q. I see. 10:37

11 A. And in fairness, all I did was, I reported what he said
12 and it would be, it would be hard to invent a story
13 like that. He told me, I mean, Martin Callinan had
14 compiled all of the text messages. And I am sorry, but
15 that is the truth. 10:37

16 100 Q. No, I understand your position, Sergeant McCabe. We
17 will have to differ on that obviously.

18 A. We will.

19 101 Q. Superintendent Taylor will give evidence in relation to
20 it in due course. 10:37

21 A. Yes.

22 102 Q. However, you also told the Tribunal yesterday that
23 Superintendent Taylor told you that Martin Callinan had
24 instructed him to use his phone to tell journalists
25 about the allegations. How do you marry that with 10:38
26 Martin Callinan being the composer of all of the text
27 messages and David Taylor simply being the person who
28 passed them on, on your version of events of what was
29 said to you on the night?

1 A. Well, I mean, I am not saying in relation to all -- I
2 mean, I am sure there was other contact between Martin
3 Callinan and Dave Taylor.

4 103 Q. But not that you are sure, you were told this. You
5 gave evidence yesterday that Dave Taylor told you that 10:38
6 Martin Callinan said to him to use his phone to tell
7 journalists about the allegations.

8 A. Yeah, because when I would be appearing on the news or
9 the television or the radio, it would be a flurry of
10 information in relation to me and it was to do me down 10:38
11 at all costs. And sorry, Ms. Burns, I just want to say
12 this point: I was very accurate in relation to my
13 protected disclosure. I didn't want to put in one word
14 which was wrong. And I stand by it.

15 104 Q. I see. Well again, I am going to come to that in a 10:39
16 moment, Sergeant McCabe, when we are just finishing up,
17 which I hope to do very shortly. Just in relation to
18 the suggestion that hundreds of text messages are sent
19 and your confirmation the following day, if not
20 thousands, all containing allegations in relation to 10:39
21 the sexual assault allegations in 2006, all created by
22 Martin Callinan and passed on by David Taylor, which is
23 what you say that you were told on the night in
24 question, despite all of that, am I correct that the
25 only person that you hear anything back from in 10:39
26 relation to rumours being spread about you is from John
27 McGuinness?

28 A. But I met him earlier.

29 105 Q. You met him in May I think, isn't that right?

1 A. Yes, I did, yes.

2 106 Q. Yes. But that is the only person that you get a
3 whisper back in relation to rumours being spread about
4 you?

5 A. Oh yeah, I didn't know any of this. 10:40

6 107 Q. I see. So Mr. Clifford, who you have dealings with, he
7 never gave you information that there are rumours
8 around the place, is that right?

9 A. He mentioned it once a year or two I think before that,
10 somebody in Longford had said something about me. 10:40

11 108 Q. I see. So hundreds if not thousands of text messages
12 having been sent, the only person who in fact gives you
13 information is John McGuinness and Michael Clifford
14 perhaps had mentioned something the previous year?

15 A. Yeah, but in relation to this, Ms. Burns, I mean, why 10:40
16 would I say a statement in relation to Martin Callinan
17 had compiled the text messages, because the proof would
18 be there? So, why would I invent that?

19 109 Q. Well, that is what I am wondering, Sergeant McCabe. Is
20 it possible, having heard all of the distressing 10:40
21 information that you heard on the night in question,
22 that you jumbled this together and aren't accurate in
23 relation to that information?

24 A. Well, I went back on the next morning specifically to
25 find out, and he told me that. And in the protected 10:41
26 disclosure which he has here, he has mentioned a huge
27 amount of text messages.

28 110 Q. Well, just to be clear, Sergeant McCabe; in relation to
29 going back the following morning, you have already said

1 in evidence, having carefully been brought through this
2 by me, you did not discuss the contents of the text
3 messages the following day, the purpose only of your
4 meeting with Superintendent Taylor was to confirm the
5 number of text messages? 10:41

6 A. Yes --

7 111 Q. The details weren't discussed the next day?

8 A. No, not the next day.

9 112 Q. No. And in terms of the protected disclosure that you
10 referred to that Superintendent Taylor made, yes, 10:41
11 indeed, Superintendent Taylor accepts that he had very
12 large amount of communication in relation to you with
13 senior management, with journalists, but not in
14 relation to the scurrilous rumour being spread; in
15 fact, he says he never text any journalist in relation 10:42
16 to the scurrilous rumour that you found out about on
17 the night.

18 A. Well, he informed me of that.

19 113 Q. I see.

20 A. So it's his word against mine at this stage. 10:42

21 114 Q. Finally, Sergeant McCabe, you have said over and over
22 again, both yesterday and today, that you were so
23 anxious to ensure that what you said in your protected
24 disclosure was 100 percent accurate?

25 A. Yes. 10:42

26 115 Q. And you have talked about speaking to your legal team
27 and being very, very careful, it's the one thing you
28 were terribly anxious about?

29 A. That's correct, Chairman.

1 116 Q. And I take it from that, that everything in your
2 protected disclosure you were very anxious to ensure
3 was correct and accurate in terms of what you were
4 being told?

5 A. Yes, I was.

10:42

6 117 Q. You see, I don't understand then, Sergeant McCabe,
7 having gone through what we went through when we
8 started the cross-examination about specifically what
9 you are told by Superintendent Taylor regarding the
10 rumours and your acceptance in the course of the
11 cross-examination and also the evidence that you gave
12 yesterday that was put up on the screen, that what you
13 were being told was being spread was in relation to the
14 sexual allegations, how it is in your protected
15 disclosure at page 245 that you say that Superintendent
16 Taylor provided information to you that the rumours
17 being spread was that you were "a serial sex abuser who
18 abused my own children and nieces".

10:43

10:43

19 A. That is on page 245.

20 118 Q. 245.

10:43

21 A. Yes.

22 119 Q. Now, nowhere in your evidence, either yesterday or
23 today, and there having been an acceptance by you in
24 relation to what was said to you regarding the rumour
25 that was being spread, related only to the 2006
26 allegation, how is it that your protected disclosure
27 refers to the information being provided to you by
28 Superintendent Taylor relates to you being "a serial
29 sex abuser who abused my own children and nieces"?

10:44

1 A. Yes.

2 120 Q. He didn't say that to you?

3 A. He did.

4 121 Q. Well then, why haven't we had evidence of that?

5 A. Can I just -- what happened is this: He informed me of 10:44

6 the incident in Dundalk and then in relation to the

7 meeting at the Red Cow, and then of Martin Callinan --

8 sorry, ex-Commissioner Callinan heading back to

9 Dundalk. And it was I said to him, was that in

10 relation to me? He said, it was. Was that in relation 10:44

11 to me and my family? And he said, it was. Was that in

12 relation to me interfering with my family? And he

13 said, it was.

14 122 Q. Well, Sergeant McCabe, with respect, your protected

15 disclosure specifically refers to what in fact you say 10:45

16 John McGuinness told you.

17 A. Yes.

18 123 Q. And you gave that evidence yesterday?

19 A. Yes.

20 124 Q. And we have been through this. We started off the 10:45

21 cross-examination in relation to what rumour was being

22 pedalled?

23 A. Yes.

24 125 Q. And you very clearly and carefully, having looked at

25 your evidence yesterday, accepted that what 10:45

26 Superintendent Taylor was saying to you was in relation

27 to the 2006 allegation?

28 A. Yes.

29 126 Q. Nowhere, and having been given every opportunity by

1 myself in terms of what was the rumour that you were
2 being told about, it is in your protected disclosure
3 and now you say, well no, actually he told me that as
4 well?

5 A. No, I think in fairness now you have to put it right. 10:45
6 You were asking me in relation to text messages and
7 what we discussed at the house. He brought up the
8 issue of Dundalk. He informed me the whole thing.
9 When he came back, I says, was it in relation to me?
10 He says, it was. Was it in relation to me and my 10:46
11 family? He says, it was. And was it in relation that
12 I abused? And he said, yes, it was.

13 127 Q. Well, even if we accept that, Sergeant McCabe, where is
14 the reference to nieces in that?

15 A. Sorry, can I -- so I said to him, John McGuinness is 10:46
16 right? And he says, he is.

17 128 Q. I see. Well, Sergeant McCabe, obviously there is a
18 dispute between yourself and Superintendent Taylor and
19 in due course we will hear about that. Just give me
20 one moment, please. And just one other thing that 10:46
21 Mr. Conlon reminds me. In relation to this, and the
22 essence of the meeting, the essence of the rumours, the
23 very reason that you have pursued Superintendent Taylor
24 in terms of attempting to hold a meeting with him, in
25 the notes that we have had on screen at page 244, there 10:46
26 is no reference in the notes to either the allegation
27 of the sexual assault allegation in 2006, or indeed the
28 wider allegation that is referred to in your protected
29 disclosures?

1 A. Look it, the meeting was a stressful meeting in
2 relation to both parties, I suppose, in relation to
3 what they had, but all I'm telling you is this: I was
4 very, very careful in what I was going to write down.
5 I didn't make this up. I reported what he -- all I am 10:47
6 doing; I am not saying I have evidence against either
7 of the commissioners, all I am saying is, this is what
8 he told me.

9 129 Q. Yes. And you were aware that Superintendent Taylor
10 intended also to make a protected disclosure? 10:47

11 A. I was aware on the following day.

12 130 Q. He said that to you, is that right?

13 A. Yeah.

14 MS. BURNS: I see. Thank you very much, Sergeant
15 McCabe. 10:47

16 A. Thank you, Ms. Burns.

17 CHAIRMAN: Could I just stop for a moment. Ms. Burns,
18 you are definitely going to get the Browne v. Dunn
19 prize in this Tribunal for having actually put your
20 client's instructions. 10:47

21 MS. BURNS: I remember the Morris Tribunal.

22 CHAIRMAN: Yes, I know you do, yes, thank you. Can I
23 just ask you perhaps, just to make sure as to whether
24 there is a dispute or isn't a dispute; do you remember
25 there was a reference to a man called Kieran and he was 10:48
26 supposed to be monitoring everything that Sergeant
27 McCabe did on Pulse up in Garda Headquarters, that was
28 one thing, and I was wondering was that accepted or
29 denied. And then secondly, there was a reference to

1 the file on Sergeant McCabe allegedly kept in
2 Headquarters, and God knows I have spent some hours in
3 Headquarters, the file being named Oisin. Those were
4 two things. I don't know if you want to address those.
5 Maybe you don't have specific instructions on them, I 10:48
6 don't know.

7 MS. BURNS: Mr. Conlon has taken specific instructions
8 from our client in relation to the documentation that
9 was disseminated. I took the view to simply narrow
10 issues to what seemed to be in dispute yesterday. 10:48
11 would the Chairman give me some moments, and perhaps
12 somebody else could proceed and I will just confirm my
13 instructions in relation to those?

14 CHAIRMAN: Yes, certainly. And there was a third thing
15 that I wanted to mention, and again it's just, please 10:48
16 forgive, it's a ticking exercise in my own mind as to
17 what is there and I have a very clear idea now as to
18 what the position of David Taylor is and thank you for
19 that. It's just that there has been perhaps a
20 somewhat, look, one could say a softening or a 10:49
21 vagueness in relation to the three statements made by
22 David Taylor, particularly to our investigators, in
23 relation to Nóirín O'Sullivan and what she knew. And
24 the evidence of Sergeant McCabe is that David Taylor
25 said to her -- you have dealt with pusher and dealt 10:49
26 with it very fully, but he said that she knew
27 everything that was going on and that, I think you have
28 covered the whole point of the texts, if there weren't
29 such texts from Martin Callinan she could hardly reply

1 "perfect" to them, so that is out of the way. But the
2 statement that Nóirín O'Sullivan knew everything that
3 was going on, David Taylor telling her that, I don't
4 know whether that is still accepted. And if you like,
5 we can come back to that.

10:49

6 MS. BURNS: I can confirm -- yes. I can confirm that
7 to the Tribunal, that that is Superintendent Taylor's
8 position, that Nóirín O'Sullivan knew everything that
9 was going on. In relation to the two other issues, I
10 do have instructions but I would prefer just to quickly
11 confirm those and return to you shortly.

10:50

12 CHAIRMAN: That is fine. We will move on perhaps and
13 thank you very much, Ms. Burns.

14
15 THE WITNESS WAS CROSS-EXAMINED BY MR. Ó MUIRCHEARTAIGH:

10:50

16 131 Q. MR. Ó MUIRCHEARTAIGH: Thank you, Chairman. I am
17 Fíonán Ó Muircheartaigh and I am counsel for Alison
18 O'Reilly.

19 A. Okay.

20 132 Q. The Tribunal, as you know, is charged with establishing
21 whether the media were used improperly to destroy your
22 reputation by briefing them about false sexual
23 allegations that were made against you. I have a few
24 questions, if you might help the Tribunal in that
25 regard. The first one is about the earliest
26 indications you had that this was a media issue? I
27 mean, all that Tusla stuff that went on, there was no
28 media involved in that. But sometime you became aware
29 that the media were interested in this. Yesterday

10:50

10:50

1 morning, for example, Mr. Marrinan, when he was
2 speaking to you, he mentioned the Paul Williams
3 articles and they were in April 2014, but was there any
4 time before that that you were aware that the media was
5 talking about allegations that were made about you in 10:51
6 2006?

7 A. In '06 was I aware? Oh sorry, about the '06.

8 133 Q. When did that come into - what you said - the public
9 domain, if you like?

10 A. I think the first time I heard that there was a rumour, 10:51
11 I think it was Alison O'Reilly was at my house with
12 another person, and she asked me about it in the
13 kitchen and put it to me.

14 134 Q. How did that meeting arise?

15 A. It was, I know they arrived at the house, I know that 10:51
16 John Wilson had brought her to the house, I am not too
17 sure did he just arrive or did he ring.

18 135 Q. And do you know the date of that meeting,
19 approximately, or could you find it out for us?

20 A. I possibly could. If I had it, it would be maybe all 10:52
21 the better. But you don't have it, do you?

22 136 Q. I don't have the precise date.

23 A. Okay.

24 137 Q. We believe it was in early 2014, very early 2014.

25 A. I would say you are right. 10:52

26 138 Q. In any event, can you give us any idea of what happened
27 at that meeting?

28 A. Well, it wasn't a meeting, it was kind of a visit, and
29 it lasted for about 20 minutes because I got slightly

1 annoyed, you know. But Alison O'Reilly informed me
2 that there was a rumour going around that I sexually
3 assaulted a girl.

4 139 Q. And what was your response to that?
5 A. I says, no, I didn't. And she -- I think she, I think 10:52
6 she told me that, me and Lorraine were there, I think
7 she said well, everybody has it. And I said no, it
8 didn't happen. And I think that was the end of the
9 conversation.

10 140 Q. Very good. Can I ask you about David Taylor? 10:53
11 A. Yes.

12 141 Q. When he told you about this campaign to destroy your
13 character, did he give you any idea when it started?
14 A. Well, he said I think it was in 2012 and '13. I am not
15 too sure did he say that on the night or is that in the 10:53
16 protected disclosure he made.

17 142 Q. Unfortunately, I don't have that protected
18 disclosure --
19 CHAIRMAN: Yes, it may help, Mr. Ó Muircheartaigh, to
20 say that the dates Superintendent Taylor was Garda 10:53
21 Press officer was from July 1st, 2012 to May 31st,
22 2014. It may help.

23 MR. Ó MUIRCHEARTAIGH: Thank you very much, Chairman.

24 143 Q. And the only other question I really want to ask about
25 David Taylor is: You did say that he mentioned TDs and 10:54
26 journalists and various other people that got these
27 messages, that they asked to be spread about you, did
28 he give you any names of any of the journalists that he
29 contacted?

1 A. No, and I will answer that maybe with a second answer;
2 I didn't even want to know, I didn't ask.

3 144 Q. And I have one last question for you: Were you
4 approached by Debbie McCann at any stage?

5 A. Never. 10:54

6 145 Q. Thanks very much, sergeant.

7 A. Thank you.

8 CHAIRMAN: Just, Mr. Ó Muircheartaigh, if I could be so
9 kind as perhaps again on the Browne v. Dunn matter and
10 thank you for your help, is it Alison O'Reilly's case 10:54
11 that she was never approached about David Taylor to
12 have a rumour spread to her about Maurice McCabe and
13 child sex abuse? Is that the position I can take down?

14 MR. Ó MUIRCHEARTAIGH: I would have to confirm that,
15 but I believe that is what the position is. 10:55

16 CHAIRMAN: If you wouldn't mind confirming that, it
17 would be very helpful, just again it's a box-ticking
18 exercise. Thank you. So, Mr. Gillane?

19

20 THE WITNESS WAS CROSS-EXAMINED BY MR. GILLANE: 10:55

21 146 Q. MR. GILLANE: Good morning, Sergeant McCabe. Can I
22 just indicate to you at the outset I have just got a
23 small number of questions?

24 A. That's okay.

25 147 Q. And in relation to my questions, none of them either 10:55
26 explicitly or implicitly involve any criticism of you,
27 I can give you that reassurance.

28 A. Okay, thank you, Mr. Gillane.

29 CHAIRMAN: And Mr. Gillane, if you wouldn't mind just

1 reminding Sergeant McCabe, you appear for?
2 MR. GILLANE: Yes. I appear for RTÉ and its employees
3 that are concerned with what the Tribunal is inquiring
4 into.
5 CHAIRMAN: Yes. 10:55
6 A. That is okay, Mr. Gillane. Nice to see you again.
7 148 Q. MR. GILLANE: Good to see you too, Sergeant McCabe.
8 And I think in terms again just to let you know of my
9 questions, I intend to ask you questions really that
10 are concerned with sort of context and chronology and 10:55
11 legal argument can follow in due course further down
12 the line about what things might mean.
13 A. Grand, Mr. Gillane.
14 149 Q. In the first instance, and I don't know whether this
15 will be of any significant importance to the Tribunal, 10:56
16 if I can deal with what was mentioned yesterday which
17 was the broadcast on the 24th February 2014 which
18 related to the claim by Martin Callinan that you had
19 refused to cooperate, isn't that right?
20 A. All right, okay, yeah, that one. 10:56
21 150 Q. Now, just in relation to that, I think it was suggested
22 to you yesterday that Paul Reynolds had broadcast a
23 story in that connection at two o'clock, this may be
24 relatively unimportant, but I think it should be just
25 pointed out, in fact Mr. Reynolds didn't broadcast 10:56
26 anything until five o'clock that day, does that accord
27 with your memory?
28 A. I would say you are right, because I didn't hear about
29 it until I was rang by two people.

1 151 Q. Yes.

2 A. And I think I was rang about four o'clock that day, I
3 was in the car driving.

4 152 Q. All right. And in relation to that day, do you
5 remember Mr. Reynolds trying to contact you? 10:56

6 A. I don't remember.

7 153 Q. All right.

8 A. I have his number but I don't -- I don't remember.

9 154 Q. All right. Well, again I am not going to put it
10 further than this: He recollects trying to contact you 10:57
11 but being unable to, but certainly that evening he
12 spoke to you?

13 A. He did speak to me in the evening time after the
14 broadcast.

15 155 Q. Yes. And in the evening time, I think he sought a 10:57
16 response from you in relation to this suggestion in
17 relation to what was being put in terms of you not
18 cooperating, isn't that right?

19 A. No, I think he was looking for a statement that I was
20 going to give out. 10:57

21 156 Q. Yes. Well, exactly. He was looking for what you had
22 to say on the issue, isn't that right?

23 A. Yes.

24 157 Q. And I think you indicated to him that you weren't
25 prepared to give that statement to him but that you had 10:57
26 a preference to give it to 'Prime Time', that
27 programme, later on the same evening?

28 A. That's correct.

29 158 Q. And that is why, and again I apologise for interrupting

1 yesterday, I just wished to point out that that
2 statement was in fact on the same day?

3 A. It was.

4 159 Q. 'Prime Time' is another programme people are familiar
5 with it, that is also broadcast by RTÉ, isn't that
6 right? 10:57

7 A. That's correct.

8 160 Q. And 'Prime Time' broadcast your statement on that
9 evening, I think, in full, isn't that right?

10 A. That's correct. 10:58

11 161 Q. And I think that was a statement by you which was
12 pretty much a demolition, if I can put it that way, of
13 the suggestion that you had failed to cooperate?

14 A. That's correct.

15 162 Q. And I think in the course of that, you refer to the 10:58
16 fact that there were a number of media people who were
17 interested in running this story, isn't that right?

18 A. Yes.

19 163 Q. And I think in particular, the print media were
20 interested in running it the following day and you were 10:58
21 anxious to get your version out in this form, isn't
22 that right?

23 A. Yes.

24 164 Q. And I think in particular, I think there was a
25 journalist from The Irish Times who had contacted you 10:58
26 and had also indicated he was going to be running the
27 story, is that right?

28 A. Yes.

29 165 Q. Now, can I also suggest to you then that in relation to

1 that, as soon as 'Prime Time' had broadcast your
2 account of events and your denial of this suggestion
3 that RTÉ news then also immediately, in terms of its
4 radio bulletins thereafter, also gave a full account of
5 what you were saying in relation to this issue? 10:59

6 A. Well, I didn't hear it but I saw it --

7 166 Q. You may not have heard it. And can I also suggest to
8 you and again you may not have heard this, but on the
9 following morning Paul Reynolds himself also reported
10 on your version of events, you may not have heard that? 10:59

11 A. I didn't hear it, but I heard about it. I heard that
12 he was annoyed that I wouldn't give him the statement I
13 think the night before.

14 167 Q. In any event, he gave prominence the following day to
15 what you were saying? 10:59

16 A. So I believe.

17 168 Q. Yes. And again, the genesis of this story appeared to
18 be something connected to references in the Dáil to the
19 fact or to the suggestion, wrongfully, that you had
20 failed to cooperate and this is how that story grew 10:59
21 legs?

22 A. That's correct, Mr. Chairman.

23 169 Q. Now, I think also, and again this may not be
24 particularly important but I think I should just say it
25 for clarity, I think yesterday and again it was put to 10:59
26 you perhaps in a long question that part of what
27 Mr. Reynolds had broadcast on the 24th was that you'd
28 refused to meet Assistant Commissioner O'Mahony and you
29 agreed that that was correct, but I think in fact, if

1 one looks at the broadcast, those words never appear.

2 A. This is the broadcast --

3 170 Q. On the 24th?

4 A. -- in the late afternoon?

5 171 Q. Yes. 11:00

6 A. Yeah, but I didn't hear the broadcast.

7 172 Q. All right. So this was something that you inferred

8 from what you had heard about it?

9 A. I was told, I was told by two people.

10 173 Q. All right. Well then the broadcast can speak for 11:00

11 itself.

12 CHAIRMAN: I am sorry, Mr. Gillane, again can I just

13 clarify, forgive again the tidy legal mind, but I think

14 we started off talking about the 9th May 2016, which is

15 the leak -- 11:00

16 MR. GILLANE: I am coming to that in a moment.

17 CHAIRMAN: Oh sorry. Well, perhaps you would help me

18 as to where we are now.

19 MR. GILLANE: This is the broadcast on the 24th of

20 February, I was trying to do with it chronologically, 11:00

21 Mr. Marrinan had dealt with that yesterday.

22 CHAIRMAN: I am sorry, you are going to have to remind

23 me. I am just lost.

24 MR. GILLANE: This was the suggestion that Mr. Reynolds

25 had broadcast a report that Mr. McCabe had refused to 11:00

26 meet Assistant Commissioner O'Mahony and that was not

27 correct. I just wanted to place that in context and I

28 think we are largely in agreement about the sequence of

29 events.

1 A. That is the sequence of events, yes.

2 174 Q. If I can move on then as quickly as I can then to the
3 broadcasts on the 9th May, Sergeant McCabe. And again,
4 in relation to the 9th May, can I just indicate to you
5 explicitly that I have no intention of trying to get 11:01
6 you to change your mind about any view you might have
7 about any particular broadcast, you are entitled to
8 your opinion on what anyone says on the national news
9 media, all right.

10 A. Okay. Thanks, Mr. Gillane. 11:01

11 175 Q. But again, I just want to place some things in context
12 here, if I can, having regard to some of the things
13 that were said yesterday. You are probably aware, but
14 just if you can just tell me whether you are or not,
15 that prior to RTÉ broadcasting anything on the 9th May, 11:01
16 other media organisations in the press, in the printed
17 press in particular, were running stories right up to
18 the 9th May apparently on the basis of leaked copies of
19 the O'Higgins Commission report?

20 A. Yeah, I think it was on Northern Sound. 11:01

21 176 Q. Northern Sound, I think in terms of your statement to
22 the Tribunal you specifically instance that, I think
23 you also instance a Mr. Mooney, isn't that right --

24 A. Yeah.

25 177 Q. -- as the journalist? 11:02

26 A. On Northern Sound. He did an interview on Northern
27 Sound.

28 178 Q. Yes. And I think you also say and I think your words
29 were that he rubbished you in relation to your account

1 of events in an article in The Sunday Times, is that
2 right?

3 A. That's correct.

4 179 Q. And that is all before 9th May?

5 A. Sorry, on The Sunday Times, I am just not familiar with 11:02
6 that one.

7 180 Q. I think you indicate, I will get the reference to it,
8 you say:
9

10 "After the O'Higgins Report, subsequent media coverage 11:02
11 and in particular The Sunday Times, John Mooney, who
12 was working with the leaked report, gave...
13 interpretation of it."

14 A. Yeah, but it was on Northern Sound, it wasn't actually
15 on the paper. 11:02

16 181 Q. You then go on to say:
17

18 "In an interview John Mooney did on RTÉ a fortnight
19 before the Paul Reynolds broadcast he reported that
20 O'Higgins had "literally rubbished... allegations". 11:02

21 A. I think he was on RTÉ.

22 182 Q. But my point being that it appeared that Mr. Mooney
23 seemed to have access --

24 A. He was first.

25 183 Q. -- and he was writing for The Sunday Times and he was 11:03
26 the first --

27 A. He was the first.

28 184 Q. -- in with this, and you were unhappy with what he was
29 reporting, isn't that right?

1 A. That's correct.

2 185 Q. I don't know if you are aware that the Irish
3 Independent similarly before Mr. Reynolds or RTÉ
4 broadcast anything, had also published reports on the
5 basis of what appeared to be leaked copies of the 11:03
6 O'Higgins Report?

7 A. I am not too sure.

8 186 Q. I mean, for example, on 29th April the Irish
9 Independent reported that Mr. Shatter had be cleared
10 and had acted appropriately and made no reference at 11:03
11 all to the fact that many of your complaints were
12 upheld.

13 A. Yes, I remember that.

14 187 Q. You remember that?

15 A. I do. 11:03

16 188 Q. I think it's the position that the London Times Irish
17 edition was also running some stories and you may be
18 aware that I think the Irish Examiner also was printing
19 stories in relation to leaked copies of the report or
20 based on it, is that right? 11:03

21 A. I think so, yes.

22 189 Q. And I think the Irish Examiner, for example, had run a
23 story in the week prior to RTÉ broadcasting anything
24 referring to the quote from the report that you had
25 been never less than truthful, isn't that right? 11:04

26 A. That's correct.

27 190 Q. So just to put that in context, that all of that was
28 sort of out there, if I can put it that way, prior to
29 the 9th May?

1 A. Yes.

2 191 Q. All right. Now, on the 9th May, there were a number of
3 broadcasts on RTÉ, and again, just to contextualise
4 this. You referred in your evidence yesterday to, I
5 think, a single broadcast and that you didn't like it 11:04
6 and that it was a bit one-sided and in your protected
7 disclosure I think you referred to a series of
8 broadcasts which you describe as disgraceful throughout
9 the 9th May?

10 A. Yes. 11:04

11 192 Q. All right. And just in relation to that, is it the
12 position that it was a number of broadcasts that had
13 given you concern?

14 A. Well, what happened was this: I listened to the
15 broadcast at twenty past eight on the morning, and now, 11:04
16 it was awful, but I didn't listen to any more in the
17 afternoon. You know, I let Lorraine listen to them but
18 I didn't listen or watch.

19 193 Q. I understand. And Lorraine is your wife, she had heard
20 some of that -- 11:05

21 A. Yeah, she did.

22 194 Q. -- is that right, and she report back to you on some of
23 the contents?

24 A. Yes.

25 195 Q. Again if I can just try, and I will be no more than 11:05
26 five or ten minutes in relation to this, and as I say,
27 to reiterate, I am not going to try to convince you
28 otherwise; if you are upset, you are upset and you are
29 entitled to be. There was a series of radio broadcasts

1 on the day and also a series of televised broadcasts,
2 isn't that right?

3 A. Okay, yeah.

4 196 Q. And in relation to the Morning Ireland one, which I
5 think is the one you must have heard at that hour of 11:05
6 the morning, that was a radio programme presented by
7 Fran McNulty, isn't that right??

8 A. Yes.

9 197 Q. And I think you probably accept that, given the fact
10 Morning Ireland is a programme that lasts for a couple 11:05
11 of hours, it was in a position to give the report more
12 detailed treatment than perhaps reports later in the
13 day?

14 A. And it did.

15 198 Q. And it did. In terms of that detail, I am going to 11:05
16 come to some of that in a moment, I think, and correct
17 me if I am wrong, what particularly concerned you or
18 upset you at the time as I understand it was that the
19 report included the use of the word lie?

20 A. That's correct. 11:06

21 199 Q. And I am not going to attempt to argue with you about
22 that, but that is undoubtedly in the report in the
23 morning. Isn't it the case that in that morning
24 programme, on Morning Ireland, that I think each and
25 every one of the incidents in respect of which you had 11:06
26 made legitimate complaints was separately and
27 independently gone through, if I can put it that way,
28 with the exception I think of the unmanageable chapters
29 which related to Pulse and I think Garda management,

1 isn't that right?

2 A. I am just not too sure now, I wouldn't mind listening
3 to it again.

4 200 Q. The Tribunal will hear evidence in due course. I won't
5 mislead you. But, it went through the incident on the 11:06
6 bus, Cafolla's, Lakeside, Crossan's, all separately?

7 A. Yeah. But it just highlighted I think the bare facts.

8 201 Q. Yeah, well, we will hear about the pressures on
9 journalists in presenting programmes and time
10 constraints and so on, but in terms of the bare facts I 11:07
11 am just going to suggest this to you: In terms of the
12 incident on the bus, Mr. Reynolds explicitly said - and
13 I am quoting him now - that you were quite correct in
14 relation to the Lakeside assault; he explicitly said
15 you correctly identified deficiencies in that 11:07
16 examination and took steps; in relation to the Cafolla
17 incident he said that you had been commended for your
18 diligence and duty; in relation to the computer case,
19 he said that you had been, quote, "quite rightly
20 exonerated"; there was reference, and just to be fair 11:07
21 to you, to the, quote, "lie" and that related to the
22 assault in Crossan's, isn't that right?

23 A. Yes.

24 202 Q. But again, just in relation to that, in the context of
25 the programme, Mr. Reynolds said in that context that 11:07
26 you were quote, "quite right" to be suspicious of the
27 withdrawal of the complaint in that case, and also, in
28 the context of the describing it as a lie, Mr. Reynolds
29 explicitly referred to your concern as genuine and

1 commendable and then quoted in the same sentence Judge
2 O'Higgins's terminology, which I think was the use of
3 the word untruth. Do you remember that?

4 A. I do.

5 203 Q. All right. And I am also going to say to you that 11:08
6 later in the same programme, Mr. Reynolds referred to
7 your concerns as genuine, he referred to them as
8 legitimate and he also quoted the report as indicating
9 that you were a dedicated and committed member of An
10 Garda Síochána? 11:08

11 A. I didn't hear that one. All I listened to was at
12 twenty past eight one.

13 204 Q. All right. Now, there was then a 9:00am bulletin which
14 was presented by Brian Jennings, and in that bulletin
15 you were referred to as genuine twice and that your 11:08
16 concerns were legitimate and that was referred to
17 twice. Again, you may not remember that or you may not
18 have heard it?

19 A. I didn't hear it.

20 205 Q. Can I also then just take you to another programme, and 11:08
21 this may or may not be important ultimately when
22 submissions are made on this but I just want to be fair
23 to you to bring it to your attention because
24 Mr. McGuinness opened some time ago now and made
25 reference to this particular aspect. The Seán O'Rourke 11:08
26 programme also covered this particular story on the
27 day, did you hear that?

28 A. On the same day as the --

29 206 Q. On the same day?

1 A. I didn't hear that.

2 207 Q. I think on the day the programme was presented by
3 Keelin Shanley?

4 A. Okay.

5 208 Q. And there was an interview on that programme with 11:09
6 Lorcan Roche Kelly?

7 A. Okay.

8 209 Q. And in relation to this programme the word lie was used
9 as well, and again, I am not going to get into an
10 argument with you about that, you are entitled to your 11:09
11 views on that, but the word was used by Ms. Shanley,
12 not by Mr. Reynolds.

13 A. Okay.

14 210 Q. All right. And to put that in context, it was used by
15 Ms. Shanley in an interview that she was conducting 11:09
16 with Mick Clifford, of whom we have heard about
17 yesterday in the course of your evidence?

18 A. Yes.

19 211 Q. He is a well-known, very well regarded journalist,
20 isn't that right? 11:09

21 A. Yes.

22 212 Q. And Mr. Clifford has in the past written a number of
23 articles in praise of the work you have done, and
24 rightly so?

25 A. Yes. 11:09

26 213 Q. Now, I think in the context of that programme and the
27 use of the word lie there, that was in a question to
28 Mr. Clifford, and while you may not have heard it and
29 just to be fair to you and to you know that

1 Mr. Clifford was given full scope and did give, on that
2 programme, a number of answers setting out how you had
3 been vindicated and in particular he advanced on RTÉ,
4 on that programme, your particular interpretation of
5 the word corruption, again not an argument I want to 11:10
6 get into, but all of that was advanced by Mr. Clifford
7 on that programme. And the position is that
8 Mr. Clifford also I think in that programme indicated
9 that where there were conflicts of evidence in relation
10 to the individual investigations, that your version of 11:10
11 events was preferred over the versions of others on, I
12 think, nearly every occasion and that was also
13 broadcast as part of that programme.

14 A. Okay.

15 214 Q. Now, if I can then move on and I am going to finish 11:10
16 soon. The first television programme dealing with this
17 matter was a TV package at one o'clock presented by
18 John Finnerty. Did you see that?

19 A. No.

20 215 Q. And in that, just to be fair to you, there was 11:11
21 reference to a lie which was reported to have been in a
22 report by you to a senior officer. All right. But in
23 the course of that programme at one o'clock
24 Mr. Reynolds on three occasions referred to your
25 concerns as genuine, on three further occasions 11:11
26 referred to your concerns as legitimate, and on other
27 occasions referred to you as, quote, "dedicated,
28 committed", that you had courage, that you performed a
29 public service at considerable cost and in that

1 bulletin on the RTÉ one news also indicated that the
2 view of the judge was that the public owed you a debt
3 of gratitude?

4 A. Okay.

5 216 Q. Now, at the same time, at one o'clock on the radio, 11:11
6 there was another broadcast again dealing with this
7 story, which commenced indicating again that you were
8 dedicated, committed, genuine and legitimate, there was
9 an interview with Mr. Reynolds on that programme, did
10 you hear it? 11:11

11 A. No.

12 217 Q. And in the course of that he repeated that, and also
13 referred to your courage, he referred to the personal
14 cost to you of what you had done, and again repeated
15 that the public owed you a debt of gratitude. And 11:12
16 again just to be complete because, I see it in some of
17 the papers, in this broadcast he also went on to
18 explicitly deal with your interpretation of the word
19 corruption. Again not an argument I want to get into
20 and maybe other parties will, but he broadcast what 11:12
21 your interpretation of that word was. And he also
22 indicated in the course of that interview that the
23 judge's view was that the public can repose trust in
24 you and I think he also said about the individual
25 cases, Mr. Reynolds in the course of that interview 11:12
26 said you were correct about all of them because flaws
27 were found in all of them. All right?

28 A. Okay.

29 218 Q. To come back then to the television broadcasts, there

1 was another broadcast at six o'clock on the News at
2 One. And again, I know there is a reference to
3 Reynolds broadcasts, but Mr. Reynolds is part of a
4 broadcast obviously that involves other people and I
5 think the Six One programme on this day was presented 11:12
6 by Mr. Dobson and Ms. Ní Bheoláin, and in the course of
7 that again there was a reference to it being suggested
8 that a lie had been told by you in an internal Garda
9 report to be fair to you. But again, in this
10 programme, you are referred to as genuine, dedicated 11:13
11 and committed on two occasions at least in respect of
12 each, that you displayed great courage and you acted in
13 the interests of public service. Now, in the course of
14 that report where Mr. Reynolds had given those
15 indications, I don't know if you saw this or heard 11:13
16 about it but RTÉ had an interview in the course of this
17 news item with Claire Daly, TD, and Claire Daly is
18 somebody you know and has been a champion of some of
19 the things you have been pursuing over the years, isn't
20 that right?? 11:13

21 A. Yes.

22 219 Q. In the middle of this report Claire Daly did, what is
23 called in the business, a piece to camera and she
24 referred to you -- and RTÉ broadcast this in the
25 context of this report, she referred to you as heroic? 11:13

26 A. I was aware of that.

27 220 Q. All right. And that was broadcast as part of that
28 programme. Mr. Shatter was also interviewed in the
29 course of that programme, not by Mr. Reynolds but by

1 Mr. Dobson and I think in the course of that interview
2 Mr. Dobson specifically put it to Mr. Shatter that you
3 were right about a lot of your complaints and that you
4 had done a considerable service. Were you aware of
5 that?

11:14

6 A. No.

7 221 Q. And then to move briefly then to the last two
8 broadcasts, one on the radio, which was the Drive Time
9 programme, I think that is presented by Ms. Wilson but
10 I think on this occasion in terms of this report it was 11:14
11 Mr. Boucher-Hayes was dealing with it. And I think
12 this programme commenced and this, I am going to
13 suggest to you, was a feature of much of the coverage
14 when the report was ultimately published, it commenced
15 with the headline effectively indicating Mr. Callinan 11:14
16 was cleared of corruption, however you define it, and
17 then Mr. Boucher-Hayes went into detail in the report.
18 I think he might have referred to it as a Late Late
19 Show report, I think he used the phrase there is
20 something for everyone in it. And he then went on to 11:15
21 indicate, I think parts of the report were read out,
22 that people were criticised and exonerated, on one
23 reading it could be described as the boy who cried
24 wolf, but that is a selective reading, you were genuine
25 in everything you do? 11:15

26 A. I listened to it back a few days later.

27 222 Q. And again Mr. Boucher-Hayes repeated your suggestion
28 that you hadn't intended to allege corruption I think
29 in the broader criminal sense.

1 A. Okay.

2 223 Q. And lastly, then, Sergeant McCabe, and thank you for
3 your time, there was a broadcast then at nine o'clock
4 then on the TV, I don't know if you saw that, a TV
5 package? 11:15

6 A. Was it long after --

7 224 Q. The Nine O'Clock News?

8 A. Was it long after the Northern Sound one?

9 225 Q. I think it was on at nine o'clock that night?

10 A. No, I didn't see that. 11:15

11 226 Q. On the same day?

12 A. No.

13 227 Q. Again here, this programme made no mention of the word
14 lie but you were again described as genuine, your
15 concerns legitimate, dedicated and committed. In the 11:15
16 course of this, the Claire Daly interview was repeated
17 where you were described as having an heroic role, and
18 Mr. Reynolds I think was also interviewed, and he
19 specifically indicated that your courage was applauded,
20 that you had been vindicated in much of what you had 11:16
21 said, that he had also repeated that you were dedicated
22 and committed and Mr. Reynolds' words, I hope I have
23 got them right on this particular interview, was that
24 if you hadn't done what you had done we wouldn't know
25 about the failings. And I think there is also a 11:16
26 comment in that broadcast from Mr. Reynolds that, you
27 know, people were saying that everyone was a winner and
28 everyone is a loser, people will take from it what they
29 will. You didn't see that but I hope that is an

1 accurate summary of what is contained in that report.
2 I should also indicate as well, sorry, before I finish,
3 you made reference yesterday when you were annoyed or
4 angered by the morning report to the fact that you
5 contacted RTÉ? 11:16

6 A. That's correct.

7 228 Q. And you may not remember who you spoke to there but in
8 fact you were put through to Mr. Ray Burke?

9 A. Okay.

10 229 Q. Who is the chief news editor, and do you remember 11:17
11 speaking to him?

12 A. I spoke to somebody, I don't know who it was.

13 230 Q. And I think the position is that you complained that
14 the reporting was erroneous or wrong and in particular
15 your concern then was the use of the word lie? 11:17

16 A. I think I asked him if they could read out the actual
17 paragraph and the build-up to the word lie.

18 231 Q. I think the position is that Mr. Burke didn't swat you
19 off, I think the position is he said he would look into
20 it and he went away and did look into it and then rang 11:17
21 you back?

22 A. That's correct.

23 232 Q. And I think he read then the passage from the O'Higgins
24 Report, which I think is at 10.86?

25 A. Did I read that to him, is it? 11:17

26 233 Q. He read it to you, is that right?

27 A. I am not too sure.

28 234 Q. I think he went to check it, then rang you back, read
29 that and then indicated he wasn't going to change the

1 News at One, he was going to stand over the programme
2 as it was.

3 A. I think he informed me that he was talking to Paul
4 Reynolds and he said that Paul was going to stand by
5 what he said. 11:18

6 235 Q. Yes. Do you remember Mr. Burke reading to you the
7 paragraph --

8 A. I don't remember him reading the paragraph.

9 236 Q. And I think you ended that conversation by telling him
10 that he would be hearing from your solicitor? 11:18

11 A. Yes.

12 237 Q. And I think a solicitor's letter did arrive at
13 approximately five to one. Thanks very much, Sergeant
14 McCabe?

15 A. Can I just ask you in relation to the earlier article 11:18
16 on the 22nd, Morning Ireland, I thought it was a nasty,
17 a nasty article.

18 238 Q. And --

19 A. I was working at the time and I heard it and, you know,
20 my heart was sinking. But even the kids were on the 11:18
21 school bus and heard it and rang back home to say, what
22 is going on now?

23 239 Q. But I hope I have made it clear you are entitled to
24 whatever view you took --

25 A. You did. 11:18

26 240 Q. -- as an individual. News is news, and sometimes it's
27 unpleasant and I don't want for a second to suggest
28 your upset was anything but genuine.
29

1 A. That's okay.

2 CHAIRMAN: Mr. Gillane, again I have the same
3 box-ticking exercise, Browne v. Dunn comes into it
4 again. Thank you for your help. The relevant
5 paragraph, [k], requires me to investigate whether 11:19
6 Commissioner O'Sullivan, using briefing material from
7 Garda Headquarters, influenced or attempted to
8 influence the broadcasts on RTÉ of the 9th May. And
9 you will appreciate yesterday there was some debate, a
10 question was put, it may well have been put by me, that 11:19
11 I asked Sergeant McCabe whether he thought RTÉ was a
12 spineless organisation that simply did what Garda
13 Headquarters told them to do, and then there was an
14 exchange with Mr. McDowell in relation to a particular
15 paper from which an inference, it is said, could be 11:19
16 taken at a later stage. Now, let's leave that aside.
17 But it would help to know what is the position of RTÉ
18 as to whether the broadcasts of the 9th May were
19 influenced or were attempted to be influenced by
20 Commissioner O'Sullivan using material from Garda 11:20
21 Headquarters; is the answer to that, that RTÉ says no
22 or says yes or says something that is perhaps more
23 nuanced?

24 MR. GILLANE: I will deal with it directly, as you
25 asked me directly. I didn't question the witness 11:20
26 because I thought the agreed position was there is no
27 evidence from him on this topic.

28 CHAIRMAN: At this particular time there is not. At
29 this particular time there is not, I agree.

1 MR. GILLANE: That proposition that you have put is
2 rejected.

3 CHAIRMAN: Right. Thank you.
4

5 MR. MCDERMOTT: Chairman, on behalf of Tusla I want to 11:20
6 reiterate the comment we made at the end of our closing
7 submission, which was to apologise to Mr. McCabe and to
8 his family for the errors Tusla made and which affected
9 them. I said that at the end of my closing submission.
10 I am not sure Mr. McCabe was present in the room on 11:20
11 that occasion, I know he has attended every day, I am
12 only repeating it simply because I am not sure he was
13 there that day and it's important that he is here to
14 hear it.

15 SERGEANT MCCABE: Yes, and I really appreciate that, we 11:21
16 accept it.

17 MR. MCDERMOTT: Thank you.

18 SERGEANT MCCABE: And thanks, Mr. McDermott.

19 CHAIRMAN: Mr. Hogan or Ms. Gleeson for the individual
20 barristers, is that the next thing? 11:21

21 MS. GLEESON: I don't have any questions.

22 CHAIRMAN: For the barristers you don't have any.
23 Then, Mr. McCann for the Department of Justice?

24 MR. MCCANN: Similarly, thanks very much to Sergeant
25 McCabe for making himself available, I have no 11:21
26 questions for him.

27 CHAIRMAN: And then, Mr. Murphy for the Garda
28 Commissioner and ex-Commissioner Callinan and
29 ex-Commissioner O'Sullivan.

1 MR. MURPHY: Thank you, Chairman.

2

3 THE WITNESS WAS CROSS-EXAMINED BY MR. MURPHY:

4 241 Q. MR. MURPHY: Morning, Sergeant McCabe. My name is
5 Shane Murphy and as the Chairman has said, I act on 11:21
6 behalf of former Commissioner Callinan, former
7 Commissioner O'Sullivan and also acting Commissioner
8 Ó Cualáin and senior Gardaí. And just, Chairman, by
9 way of reference, with the help of Ms. Mullan for the
10 Tribunal, we have managed to bring into the system 11:21
11 again some of the older documents from the O'Higgins
12 section. So, insofar as I refer to them, I will refer
13 to them as old documents and page reference, if that is
14 of assistance to your registrar.

15

11:21

16 Sergeant McCabe, I would like to talk to you briefly,
17 if I can, at the beginning about the O'Higgins
18 Commission. I think you have been here for the last
19 couple of weeks where evidence has been given by
20 different witnesses.

11:22

21 A. Yes.

22 242 Q. And I think also yesterday you gave some very helpful
23 evidence in the course of the transcript which is
24 referred to I think at page 140, and I think there you
25 said: 11:22

26

27 "Well, if I can tell you, Mr. Chairman, if I can say
28 this: I accept the O'Higgins Report, absolutely, 100
29 percent. So if we can move on, you know, I do accept

1 it and I see what you are saying, Chairman."

2

3 And just, that particular answer, I think would be very
4 helpful to try and shorten this part of my
5 cross-examination. But first of all, can I ask you 11:22
6 just to confirm that in terms of the O'Higgins
7 Commission it was preceded, as Mr. Marrinan has led you
8 through yesterday, by a series of complaints that you
9 have made from, say, 2007, 2008 onwards, which began to
10 increase in number about standards in policing in the 11:22
11 Bailieboro area?

12 A. That's correct.

13 243 Q. And I think you will agree with me also that the
14 statements Mr. Marrinan has brought you through suggest
15 that your complaints in relation to sloppy policing, 11:23
16 bad policing, dereliction of duty began to increase in
17 the period 2009 onwards?

18 A. That's correct.

19 244 Q. I think you will also agree with me in terms of the
20 statements, which the Tribunal has seen, that those 11:23
21 statements were very specific at certain times focused
22 on particular instances in the Bailieboro area and
23 elsewhere?

24 A. That's correct.

25 245 Q. And I think that we can move forward to 2011. By that 11:23
26 stage in 2011, I think you had been advised by your
27 solicitor, Mr. Costello, you had issued proceedings
28 already in the High Court in 2009?

29 A. I think that's correct.

1 246 Q. Yes. And I think just again in headline terms there is
2 no dispute about this, I think, those proceedings were
3 proceedings seeking damages arising from the complaints
4 you were making about what you said were the failures
5 of management in Bailieboro? 11:23
6 A. I think that's correct.
7 247 Q. Yes. And I think in the terms of the complaints you
8 made, you made specific complaints against Chief
9 Superintendent Clancy, you made complaints against
10 Chief Superintendent Rooney, and Superintendent 11:24
11 Cunningham, at various stages?
12 A. That's correct.
13 248 Q. Yes. And I think that those complaints were circulated
14 by you and by your solicitor and I think at various
15 stages you made communication with the Minister for 11:24
16 Justice?
17 A. That's correct.
18 249 Q. And could I ask you to be shown, if possible, in a new
19 book at page 545, a document which I think you wrote
20 and prepared. Sorry, it's in volume 2 of the new book, 11:24
21 page 545. 544 in fact.
22 CHAIRMAN: Just to clarify, Mr. Murphy, as we are going
23 there, we are sitting for the full day, so you are not
24 under any time pressure and neither is Mr. McDowell. I
25 perhaps should have said that at the start. 11:24
26 250 Q. MR. MURPHY: And sergeant, in terms of the document
27 itself, can I just ask you please to look at page 544,
28 I think it's a document that you are familiar with.
29 A. That's correct.

1 251 Q. Because you prepared it.
2 A. That's correct.
3 252 Q. And this is entitled "A brief statement of proven
4 facts"?
5 A. That's correct. 11:25
6 253 Q. And in terms of that document, is it fair to say that
7 lists a series of different complaints about poor
8 policing?
9 A. Yes.
10 254 Q. It's a summary of the complaints that you are making at 11:25
11 the time you wrote this document?
12 A. Yes, a brief document.
13 255 Q. Could you help the Chairman and myself to understand,
14 when do you think that document was prepared by you?
15 A. I am not too sure when. All I know was that I was 11:25
16 interviewed in relation to it, in relation to Byrne and
17 McGinn.
18 256 Q. Yes.
19 A. And Chief Superintendent McGinn, she went through the
20 incidents and she asked me about them and took notes. 11:25
21 257 Q. So, could we agree that is probably around 2011?
22 A. If you say that --
23 258 Q. In or around that time?
24 A. I don't know, because I have no date on it.
25 259 Q. And just in terms of the document itself, I think apart 11:25
26 from the features, can I just draw your attention to
27 say six bullet-points down, you say that there was --
28 "officers were supporting corruption to save
29 themselves", do you see that?

1 A. I do, yes.

2 260 Q. And maybe two bullet-points further down after dealing
3 with discipline, "suppressing an important document
4 which highlighted wrongdoing in Bailieboro"?

5 A. I do. 11:26

6 261 Q. The next point after that, there is a reference to
7 "suppressing an important document which highlights
8 problems in Bailieboro".

9 A. Yes.

10 262 Q. And then just at the top of the page, the very first 11:26
11 line:
12
13 "I brought several issues to the superintendent and he
14 ignored every one of them."

15 A. That's correct. 11:26

16 263 Q. And to which superintendent did that refer?

17 A. That would have been Superintendent Clancy, I presume.

18 264 Q. Yes. And in terms of the overall approach, I think the
19 document itself also you mentioned in the fifth line,
20 that you say you were victimised, bullied and - the 11:26
21 print is very poor - ridiculed for highlighting the
22 issues?

23 A. That's correct.

24 265 Q. So I think you accept, if you turn over the page to
25 page 545, you make reference to an allegation that you 11:26
26 were targeted by very senior officers?

27 A. That's correct.

28 266 Q. At page 545. And then below, we have a series of
29 exhibits, documents, which presumably were submitted by

1 you to the Byrne/McGinn investigation?

2 A. Yes.

3 267 Q. Now I think at that point would you agree with me that
4 insofar as those allegations were concerned, they were
5 directed very much towards the management of the force 11:27
6 in the Bailieboro area?

7 A. That's correct.

8 268 Q. Could you please then turn forward in the booklet to
9 page 546.

10 A. Yes. 11:27

11 269 Q. And this is a document Mr. Marrinan showed you
12 yesterday. And this is addressed to Mr. Oliver
13 Connolly on 23rd January 2012. And you indicate there
14 that you are making a complaint and you are making it
15 for the attention of the confidential recipient and you 11:27
16 are making it pursuant to the Garda Síochána
17 (Confidential Reporting of Corruption or Malpractice)
18 Regulations of 2007?

19 A. That's correct.

20 270 Q. And then could I ask you please to turn to the next 11:27
21 document, which is 547. Here we have, I think, on the
22 first page, a reference to Superintendent Clancy in the
23 third paragraph?

24 A. That's correct.

25 271 Q. And I think you agree, you identify him as the 11:28
26 superintendent in charge of Bailieboro and then you
27 list a few of the matters which you have concerns?

28 A. That's correct.

29 272 Q. And I think in the bullet-points that follow we have a

1 series of bullet-points, moving down through page 547
2 and 548, and I think they all largely deal with matters
3 that ultimately went to the O'Higgins Commission for
4 its consideration?

5 A. Yeah, I think nearly of them all went. 11:28

6 273 Q. Yes. And down at the end of page 549, I think, you
7 said:

8
9 "The above are only a few of a catalogue of failures
10 involving Superintendent Clancy. These incidents, 11:28
11 along with many more relating to him, were investigated
12 by Assistant Commissioner Derek Byrne and Byrne,
13 despite upholding the serious ones, came to a decision
14 that the complaints against Superintendent Clancy were
15 not substantiated in any way and he made no adverse 11:28
16 findings against Clancy. Alarminglly, Commissioner
17 Callinan and Deputy Commissioner Rice agreed with
18 Byrne. However, it may be the case that Derek Byrne
19 hid evidence, material and certain findings from his
20 superiors because he was the commissioner in charge of 11:29
21 the region at the time of the wrongdoing and he
22 received a bonus."

23 A. Yes.

24 274 Q. I think then on the next paragraph you said:

25
26 "I find it hard to understand that the Commissioner of
27 An Garda Síochána has rewarded Superintendent Clancy,
28 placed him on a promotion list for the rank of chief
29 superintendent. One of the incidents alone is enough

1 to question Superintendent Clancy's suitability for his
2 present task, let alone promotion. It has sent out a
3 message to the force that if you ignore your duty, are
4 grossly negligent --"

11:29

5
6 So there is a reference there to negligence.

7
8 "-- and then also hide and cover up, you will be seemed
9 suitable for promotion."

11:29

10
11 So I think it's fair to say at that point you were
12 making a complaint that Superintendent Clancy was
13 grossly negligent and hid things and covered up things.

14 A. Yes.

15 275 Q. And then if we move down to the last paragraph, please,
16 there, you also said:

11:29

17
18 "I now wish to make a complaint against Commissioner
19 Martin Callinan. I make it under the Charter of the
20 Garda Síochána (Confidential Reporting of Corruption
21 and Malpractice) Regulations. It's my belief that
22 Commissioner Callinan should have known of the
23 malpractice, some of which is listed above, has made a
24 serious error of judgement by placing Superintendent
25 Clancy on a promotions list. The evidence is clear,
26 and it is corruption, as defined by the An Garda
27 Síochána Confidential Charter on Reporting. Gardaí --"

11:30

11:30

28
29 Then you have particulars.

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- engaged in:
1. Falsifying records.
 2. Erasing official records.
 3. Erasing reported incidents.
 - ...
 - c. Destroying official records.
 - D. Altering official records.
 - E. Covering up investigations.
 - ...

11:30

11:30

Gross dereliction of duty on a national scale and it appears the Commissioner was or is aware of it all. It also questions the whole Pulse system, whereby Gardaí can erase, alter and destroy any record or information without any accountability or sanction."

11:30

So I think you were saying that these were very serious allegations and that they reflected corruption.

A. Yes, Mr. Murphy.

276 Q. Do you agree?

11:31

A. Yeah.

277 Q. Yes. Thanks. And then just turning over to the next page, at the top of the page, you say you also make a complaint against Assistant Commissioner Byrne, because you say:

11:31

"He failed to uncover and report serious dereliction of duty, falsification of Garda records, and serious incidents not being investigated."

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Do you see that?

A. I do, yeah.

278 Q. And then finally, in the last paragraph I think you complained that you were a fearful of retaliation and reprisals. You said:

11:31

"It's very hard to take... see the intimidation and victimisation concerning members of from An Garda Síochána who appear to have the support of the Garda management."

11:31

So I think that document was then sent to Mr. Connolly, isn't that right?

A. That's correct, Mr. Murphy.

11:31

279 Q. Sure. And just could I ask you to turn please forward to the next document, which is the transcript which has been referred to, and it starts at page 552, and this is your discussion which you recorded, I think without Mr. Connolly's knowledge, but you recorded it on tape, and could I ask you just to turn to page 561.

11:31

A. Yes.

280 Q. And I think you have been discussing various issues in relation to your complaint. But you are very specific in the middle of page 561 and quoted as saying:

11:32

"But no, Oliver. Oliver, what is happening here at the moment is the Commissioner --"

1 I presume that is Commissioner Callinan.
2
3 "-- is saying it's okay to falsify records, it's okay
4 to destroy records, it's okay that a lady was killed
5 below in Limerick. We can do all that. We don't have 11:32
6 to investigate any cases any more. We don't have to
7 investigate assaults, abductions, kidnappings, sexual
8 assault, just leave it. And if there's any
9 investigation we will cover up."
10 11:32
11 And I think you ascribed all of that to Commissioner
12 Callinan, is that correct?
13 A. I described it to him?
14 281 Q. Yes, you ascribed it to him, the Commissioner?
15 A. Oh, yeah. What you read out earlier. 11:32
16 282 Q. Where you are referring to the Commissioner, just to
17 assist the Chairman to understand --
18 A. Oh, yes, sorry, I see that.
19 283 Q. Thank you. And this is what you wanted the Minister
20 for Justice to understand as well? 11:32
21 A. Yes.
22 284 Q. Yes. Now, would you agree at that time from this
23 communication that you were anxious to secure a
24 commission of investigation into your complaints?
25 A. I think our solicitor, or my solicitor wrote, I think 11:33
26 to the Justice Department in relation to that.
27 285 Q. Yes. And again, there is no dispute about that.
28 A. Okay.
29 286 Q. And insofar as the sequence is concerned, months went

1 by and again the Tribunal has seen this documentation,
2 could I ask you please to be shown book 4 of the new
3 documents at page 1103.

4 A. Sorry, 11?
5 287 Q. 1103, please. 11:33
6 A. Yes.

7 288 Q. And I think Mr. Marrinan showed you some of this
8 yesterday, so I am not going to repeat the parts that
9 he has shown.

10 A. That's right. 11:34
11 289 Q. There's one or two parts that I think were perhaps
12 passed over inadvertently, but could I ask you to turn
13 to the second page, 1104?

14 A. Yes.

15 290 Q. And in 1104, can I ask you to look please at the second 11:34
16 paragraph, and you said this, you raised a question,
17 five lines from the end of that paragraph:

18
19 "I asked what level of wrongdoing, malpractice or
20 corruption has to be alleged against an assistant 11:34
21 commissioner or commissioner before you will take
22 serious cognisance of it and not to seek a report from
23 the commissioner. The corruption, I reported, is at
24 the highest level and it has been covered up."

25 A. Okay. 11:34
26 291 Q. And I think then also Mr. Marrinan has asked about you
27 about the succeeding paragraphs but could I ask you to
28 move to the very end at page 1105. And you will see
29 there is a sentence beginning "my allegations".

1 A. I see that, Mr. Murphy.

2 292 Q. Just to confirm for the Chairman, your allegations
3 were, one, serious corruption?
4 A. Yes.

5 293 Q. Two, malpractice? 11:35
6 A. Yes.

7 294 Q. Three, gross dereliction of duty?
8 A. Yes.

9 295 Q. Four, perverting the course of justice?
10 A. Yeah. 11:35

11 296 Q. And five, and this involves senior Garda management and
12 it involved a cover-up by senior management?
13 A. Yes.

14 297 Q. And just two paragraphs above, I think you emphasise
15 this point again for the attention of the Minister and 11:35
16 you said:
17
18 "I state once against the evidence relates to
19 corruption as defined in the Confidential Reporting
20 Charter, perverting the course of justice and 11:35
21 attempting to pervert the course of justice on a
22 massive scale."
23 A. I see that.

24 298 Q. I think yesterday, in answer to Mr. Marrinan, you
25 accepted that this was in his words, a ratcheting up of 11:35
26 the nature of the complaints made?
27 A. Yes.

28 299 Q. Can you explain to the Chairman why that was so?
29 A. Well, Mr. Chairman, as I said yesterday, can I just --

1 can I go back to maybe '08 or --

2 300 Q. Perhaps stay in 2012 first.

3 A. Okay. Yeah.

4 CHAIRMAN: In fairness, Mr. Murphy, it may help,

5 because otherwise we will have to go back to it. If 11:36

6 you want to say something about 2008, and then if you

7 wouldn't mind just moving as swiftly as you can to

8 Mr. Murphy's question about 2012.

9 A. I will. When I made my allegations in relation to poor

10 policing and bullying in 2008, I stressed to the 11:36

11 investigator, Chief Superintendent Terry McGinn, that I

12 wasn't making any allegation of corruption or

13 criminality and that it was -- and at no stage, you

14 know, that I was. And she gave evidence on day 7 at

15 the O'Higgins Commission in relation to this. So if we 11:36

16 can move on it on then to 2011. We get -- I get a

17 letter, which is circulated to everybody in

18 Cavan-Monaghan and Sligo, and it's saying that it's

19 written on behalf of Assistant Commissioner Derek Byrne

20 and the Commissioner, Martin Callinan -- well, it's not 11:37

21 written on their behalf, but they have approved the

22 letter. And the letter says nothing in relation to

23 Maurice McCabe's allegations. In relation to the

24 heading, is allegations made by Sergeant McCabe, and it

25 says that there is nothing there, nothing found, 11:37

26 really, a few systemic issues. And then it goes on to

27 congratulate, you know, the Gardaí involved in relation

28 to it. Now, we wrote up to Garda Headquarters in

29 relation to that letter, and they sent us a

1 correspondence back, which I am sure is probably here,
2 and they said the same thing. And I was aware of all
3 the incidents that I reported, but I think more
4 importantly, I was aware of all the hundreds of Pulse
5 records that were falsified and erased after they had 11:37
6 been taken from me. I had the -- I had a copy of the
7 original Pulse records for myself, and in early 2011 I
8 checked the system to see what was happening to all the
9 documents, and I could see then exactly what happened.

10 301 Q. Is it fair to say from what you said there, you weren't 11:38
11 happy with the outcome of the Byrne/McGinn report in
12 2011?

13 A. I wasn't happy with aspects of it.

14 302 Q. Aspects. And in fairness I think it's also the case,
15 is it not, that they took a view that 11 out of 40 of 11:38
16 your complaints had been upheld?

17 A. They had, yes.

18 303 Q. Yes. So if we move to 2012, I think in answer to the
19 earlier question, you are pushing at this stage through
20 the confidential recipient to communicate to the 11:38
21 Minister because you want another inquiry?

22 A. That's correct.

23 304 Q. As a result of that your allegations get much more
24 serious and they do become corruption and perversion of
25 the course of justice, isn't that correct? 11:39
26 A. Yes.

27 305 Q. And I think in relation to that process, as a result of
28 that and other matters, the O'Higgins Commission is set
29 up?

1 A. That's correct.

2 306 Q. And I think you participated in its hearings --

3 A. I did.

4 307 Q. -- throughout all that time?

5 A. Yes. 11:39

6 308 Q. So insofar as that is concerned, the Minister and/or
7 the Government, looking at your complaints, were
8 looking at complaints on different levels. First of
9 all, would you agree with me, they were looking about
10 complaints of a type you had made since 2008 which were 11:39
11 about poor policing at the ground level in Bailieboro?

12 A. That's correct.

13 309 Q. Then they were looking at a new addition to this, which
14 was allegations against middle-ranking officers,
15 Rooney, Clancy and Cunningham? 11:39

16 A. At the same time, they were the same time.

17 310 Q. And also those allegations began to become more serious
18 by 2012, they moved from the allegations of negligence
19 to being allegations of corruption?

20 A. Well, it was based on the circular. 11:40

21 311 Q. But you did agree yesterday that this had ratcheted it?

22 A. Oh, I did agree, because of the circular.

23 312 Q. In terms of that process, effectively a kind of a
24 pyramid of accusations began to develop. We move up
25 from the ground level to the middle management and the 11:40
26 next complaint was made against Assistant Commissioner
27 Byrne?

28 A. That's correct.

29 313 Q. And then went to the very top?

1 A. That's correct.

2 314 Q. Against Commissioner Callinan?

3 A. That's correct.

4 315 Q. So that the complaints as they were sent to the
5 O'Higgins Commission had those different levels? 11:40

6 A. They had.

7 316 Q. Yes. And that was something which had developed
8 between 2008 and 2012?

9 A. Well, no, it was after the -- after the Rooney letter,
10 that's -- it was the first time that I alleged 11:40
11 malpractice or corruption.

12 317 Q. Well, previously in 2008 the allegations you were
13 making were pretty serious, weren't they?

14 A. They were, but in -- Terry McGinn -- in relation to
15 Chief Superintendent Terry McGinn, had given evidence 11:41
16 on day 7 at the O'Higgins Commission, and I think it's
17 important if we could look at those two pages.

18 318 Q. Yes. Even before we go to those two pages, is it
19 correct to say you sent an email of 23rd March 2009 to
20 the Minister for Justice in which you refer to a 11:41
21 complaint of malpractice and corruption in Bailieboro?

22 A. Yeah. Because that is when the charter came in.

23 319 Q. And all that is before July 2011?

24 A. Yes.

25 320 Q. Yes. And then also I think when you met with Assistant 11:41
26 Commissioner Byrne in the Hillgrove Hotel, the meeting
27 that was referred to yesterday, I think you said that
28 this was, there had been an attempt to cover up
29 malpractice and that there was cover-up and wrongdoing.

1 And you then said:

2

3 "I have uncovered evidence of corruption, wrongdoing
4 and gross dereliction of duty by the Gardaí."

5 A. That's correct.

11:41

6 321 Q. That is in 2010. So we move on into 2011. And you
7 have told us --

8 CHAIRMAN: Maybe just, I am sorry, Mr. Murphy, I missed
9 a detail, if you wouldn't mind just going back, please.
10 The letter to the Minister is 23rd March 2009. And
11 then, you are saying in relation to 2010.

11:42

12 MR. MURPHY: That is the 26th of November 2010, and
13 that is a statement or a complaint which is made after
14 his meeting in the Hillgrove Hotel with Assistant
15 Commissioner Byrne.

11:42

16 CHAIRMAN: This is where there was the kerfuffle over
17 the records and the arm waving, etcetera.

18 MR. MURPHY: Yes.

19 CHAIRMAN: And that was written to whom? I do have the
20 date, 15 November 2010.

11:42

21 MR. MURPHY: It was effectively a statement of
22 complaint, I think it was ultimately intended for his
23 superiors but in the course of that particular
24 complaint I think Sergeant McCabe also alleged that
25 Assistant Commissioner Byrne, and I quote:

11:42

26

27 "was perverting the course of justice by preventing me
28 from reporting wrongdoing."

29

1 So just to be clear, I mean there is no dispute about
2 this, these are the documents at the time.

3 CHAIRMAN: I appreciate that.

4 322 Q. MR. MURPHY: And it's to help the judge understand the
5 chronology. 11:42

6 CHAIRMAN: It does. Do you agree with that?

7 A. With the sequence of events?

8 CHAIRMAN: Yes, and that you had written --

9 A. Yeah, I do, yeah.

10 323 Q. MR. MURPHY: Thank you. So if we move forward I think 11:43
11 then to the Commission of Investigation, and I will
12 come back to specific points on this earlier on, I
13 wonder could you be shown, please, this would be on the
14 old system, chapter 3 of the O'Higgins Report. At
15 paragraph 5.1. And sergeant, this will appear on the 11:43
16 screen only because it's part of the older
17 documentation.

18 A. That is okay, Mr. Murphy.

19 324 Q. Thank you. Paragraph 3.1. My understanding at page 23
20 of the report. 11:43

21 CHAIRMAN: Just give us a second. Is it coming up?

22 MR. MURPHY: My understanding is, Chairman, that it's
23 been put into your system without pagination of the
24 ordinary kind.

25 CHAIRMAN: If you give us a second, Mr. Murphy, we will 11:43
26 try and get it up for you.

27 MR. MURPHY: Yes. Within the report itself it would be
28 page 23, which is on the bottom.

29 CHAIRMAN: Mr. Murphy, maybe the right thing to do is,

1 I don't think we ever had the full O'Higgins Commission
2 report actually on the system. I mean, it was referred
3 to a number of occasions and on each such occasion, as
4 I remember it I took out my copy and then a copy was
5 handed to the witness. So, Ms. Herlihy is going to go 11:44
6 and get a copy of the report for the benefit of
7 Sergeant McCabe so that he can follow the particular
8 points you are making.

9 MR. MURPHY: Certainly, Chairman. I had understood it
10 was in the system itself. 11:45

11 CHAIRMAN: No, I don't think it ever was, Mr. Murphy.
12 That is the problem. If we could maybe hold on a
13 minute. She only has to go up the corridor.
14 Mr. McDowell, that doesn't place you at any
15 disadvantage? 11:45

16 MR. MCDOWELL: I have the report.

17 CHAIRMAN: You have it here, all right.

18 MR. MURPHY: Chairman, perhaps I might just ask another
19 question arising from yesterday.

20 325 Q. Sergeant, just while we are on that document to come, 11:45
21 just a small point, but it could be one which is
22 important to the Chairman. I think yesterday in the
23 course of your evidence at page 28 Mr. Marrinan asked
24 you about events in 2008 where you had discussions with
25 Superintendent Clancy and can I just ask if that can be 11:45
26 brought up on the screen, please, page 28. And you
27 will see, please, at line -- sorry, 26, I beg your
28 pardon, if we could start at 26. Thanks. At paragraph
29 26 line 14, you say:

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"Now, on 12th February 2008 you wrote to Superintendent Clancy about the Cootehill assault, you complained about the poor use of TV. Why were you writing to the superintendent at the time?"

And then you went on to say in relation to what you just said. Answer:

"Yes.
You said you were doing the file."

11:46

And you said:

"Yes."

11:46

And turning over to page 27, there were a number of other questions, if we can move down to page 28. And you may recall that this was where Mr. Marrinan was asking you about why you were writing to Superintendent Clancy, urging him to do things in relation to the DPP's directions.

11:46

A. Yes.

326 Q. And you may remember that Mr. Marrinan said to you:

"So, where did this come from all of a sudden at this stage?"

11:46

And you said:

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"Exactly. And that's it. It came all of a sudden. So Superintendent Clancy asked me if I would do a document in relation to the history I had in relation to Mr. D and he would ask that the directions of the DPP be given to me and to Mr. D."

11:47

Do you see that?

A. I see that.

327 Q. You also went on to say at line 23:

11:47

"Well, it didn't become an issue for me and I mean he had just asked me to do it. He felt very sorry for me I think after the whole incident, but he asked me to do it which is on record in the O'Higgins Commission."

11:47

Do you recall that?

A. That's correct.

328 Q. Again, just to help your memory on this score because this wasn't a document referred to yesterday, can I ask you to be shown a document which the Tribunal has just circulated this morning, I wonder could Ms. Mullan be sure that the sergeant has that, a single document?

11:47

CHAIRMAN: Is that back in volume 4?

MR. MURPHY: This, Chairman, is a single document from Superintendent Clancy, the Tribunal has just circulated this, this morning. It's page 1200.

11:47

CHAIRMAN: It's at the very, very end, if you want to take it out of volume 4.

1 329 Q. MR. MURPHY: Do you have the letter?
2 A. I have it here.
3 330 Q. Thanks very much. This is a letter that was actually
4 written prior to the events you were talking about
5 yesterday. This is a letter you will see at the top 11:48
6 right-hand side, date stamp of the 7th February 2008,
7 do you see that?
8 A. Yes.
9 331 Q. And then says:
10
11 "Complaint from Sergeant Maurice McCabe concerning 11:48
12 incidents on the 15th and 17th October 2007."
13
14 And it says:
15
16 "I refer to the above matter and to previous 11:48
17 correspondence.
18
19 In relation to the issue raised by you concerning the
20 dissemination of the DPP's directions to the D family I 11:49
21 have received a report from Inspector N Cunningham on
22 the matter. Inspector Cunningham states that in
23 December 2006 he was directed to investigate an
24 allegation made by Ms. D against Sergeant Maurice
25 McCabe. Inspector Cunningham states he submitted the 11:49
26 file to the DPP and that on receipt of the DPP's
27 directions he communicated with the D family and to
28 Sergeant Maurice McCabe. Mr. and Mrs. D were informed
29 of the DPP's directions and undertook to communicate

1 the DPP's directions to their daughter Ms. D. Inspector
2 Cunningham informed the D family on the 24th April
3 2007.

4
5 Inspector Cunningham stated that he communicated the 11:49
6 DPP's direction exactly as it was given and in
7 accordance with Section 12 of the Guidelines for
8 Prosecutors Document issued by the Office of the
9 Director of Public Prosecutions signed by
10 Superintendent Clancy." 11:49

11
12 So just three points on that, sergeant.

13 A. Yes.

14 332 Q. I think first of all, we know from the dates here that
15 that communication to the D family was on 24th April 11:49
16 2007?

17 A. Yes.

18 333 Q. But also, does this letter not suggest that between
19 that date and the 7th February there had been previous
20 correspondence. And that, thirdly, in the second 11:50
21 paragraph, that it was you who had actually raised
22 issues with Superintendent Clancy about the
23 dissemination of the DPP's directions to the D family?

24 A. Okay.

25 334 Q. So just in terms of yesterday, is it possible that in 11:50
26 fact you were incorrect and that contrary to what you
27 said yesterday, in fact it was you who was asking
28 Superintendent Clancy about the issues?

29 A. Well, in relation to that, Mr. Chairman, I have a

1 recording in relation to it and I was speaking to my
2 legal team this morning and I hope to get it and hand
3 it in to the inquiry, and it shows what I said
4 yesterday in evidence. I actually -- I don't remember
5 seeing that, seeing that document, I don't know -- was 11:50
6 it discovered at the O'Higgins Commission?

7 335 Q. And actually, what it refers to is something different,
8 Sergeant. Again, just to assist new this regard, it's
9 possible you have forgotten this, but doesn't it
10 suggest clearly in the second paragraph that you, you, 11:50
11 Sergeant McCabe, had raised issues concerning the
12 dissemination of the DPP's directions to the D family
13 prior to 7th February 2008, not the other way around?

14 A. Yeah, but it may have been after the incidents on the
15 street and at the station, but you can -- I'd prefer to 11:51
16 give the records that we have in to the inquiry.

17 336 Q. Yes. Well, just in terms of this letter though, before
18 you commit yourself to that, you do agree that this
19 letter on its face suggests that you raised an issue?

20 A. Yeah. Well, it may have been after the meeting on the 11:51
21 street or at the station but I can't put any more
22 because I don't recall this.

23 337 Q. Just to assist the Chairman insofar as you refer to the
24 tape we haven't seen, that is a tape that is after 7th
25 February? 11:51

26 A. That is a tape on 11th March.

27 338 Q. Of March, yes. So my point is that in terms of that
28 communication, that is all to deal with subsequent
29 events, but this letter of the 7th February shows that

1 you were raising the issue with Superintendent Clancy
2 between the end of April 2007 at some point and 7th
3 February of 2008?

4 A. Yeah. But it may have been the incidents on the street
5 and in the station, but on the 26th of February he 11:52
6 asked me to do a document and we will hand in a -- I
7 know there is a conflict.

8 339 Q. And again I just want to -- would you agree with me
9 that what this letter shows is that before that date
10 you had raised issues with him concerning the 11:52
11 dissemination of the DPP's directions to the D family?

12 A. Yes. But it may have been as a result of the incident
13 on the street.

14 340 Q. Of course.

15 A. In October. 11:52

16 341 Q. Yes. But my point is simply, and I think you don't
17 disagree from what you said, it was you who was raising
18 the point, not Superintendent Clancy?

19 A. I may have been raising it at the time, but the 26th of
20 February is in relation to what he raised. 11:52

21 342 Q. Yes. Very good.

22 CHAIRMAN: well, I think that is the point. Sometimes,
23 if you like, in relation to an issue a thing just dies,
24 it just goes away, sometimes it has an afterlife, if
25 you like. 11:52

26 A. Yes.

27 CHAIRMAN: But I had always understood up until
28 yesterday that you had been, and I think Ms. Leader in
29 opening the particular module that we are actually on

1 now, had said a reasonable person would have understood
2 your position on this matter, which was that you wanted
3 the DPP's letter, which effectively exonerates you from
4 any charge of sexual assault against the small child,
5 who later is obviously Ms. D, and you wanted that 11:53
6 circulated not just to you, because you had actually
7 got it from the local State solicitor over the phone
8 and you remembered it and you rang him twice and
9 presumably you made notes about it, but also to the D
10 family, and that was your anxiety. Now, that was 11:53
11 described as reasonable. But from the evidence
12 yesterday, it seems to be that Superintendent Clancy
13 wasn't the one leaving that dead or behind him, that he
14 was raising it unexpectedly. So what Mr. Murphy is
15 asking you is, isn't it the case that the documentation 11:53
16 shows that you were the one effectively pushing the
17 issue, and perhaps reasonably and understandably, but
18 you were the one pushing the issue that the DPP's
19 directions should be given, not just a euphemism, but
20 the full directions should be given to the D family in 11:54
21 order to calm things down, that is the question that is
22 being put to you.

23 A. Yes, and I understand that, Mr. Chairman. But as I
24 said, it may have been from the incident on the street
25 in October, but in relation to the -- in relation to 11:54
26 document -- or the -- the document I did on the 26th
27 February, in relation to Superintendent Clancy asked me
28 to do that document and I did it and he didn't -- he
29 didn't deny that at the O'Higgins Inquiry. But I think

1 the recording, it should be -- it should explain
2 everything, Mr. Chairman. But I see where you are
3 getting at. Yes.

4 343 Q. MR. MURPHY: And really what I am saying, I think,
5 Sergeant, the recording won't help us in relation to 11:54
6 what happened before the 7th February, but this seems
7 to suggest that you were raising this, perhaps because
8 of the incident on the street, but you were raising it.
9 A. It may have been the incident on the street, but, I
10 mean, I didn't recall it whatsoever. 11:55

11 344 Q. I think we know that, so far, and this emerged I think
12 also from yesterday, the transcript that was referred
13 to yesterday I think you accepted didn't make any
14 reference - it's at page 1061 of the papers - there is
15 no reference to the Ms. D allegation there, and I think 11:55
16 you suggested that somehow there was something missing
17 from that?
18 A. Yes, yes, absolutely.

19 345 Q. And finally just on that point, I think at the end, in
20 the last paragraph, and this is something I think you 11:55
21 agree with, you have identified at an earlier stage
22 about this, that there were guidelines for prosecutors
23 issued by the office of the DPP.
24 A. That's correct.

25 346 Q. As an experienced sergeant, you were familiar with 11:55
26 those?
27 A. That's correct.

28 347 Q. And they just gave directions as to how people, whether
29 complainants or potential victims, should be told how

1 the DPP had decided whether to prosecute or not to
2 prosecute?
3 A. That's correct.
4 348 Q. And I think it's fair to say in layman's terms - we
5 won't use any legal jargon here - but in terms of 11:55
6 layman's terms, from your experience, those directions
7 were very curt --
8 A. That's correct.
9 349 Q. -- and very simple?
10 A. Yes. 11:56
11 350 Q. And that was because I think the DPP, historically, has
12 always guarded his or her capacity to take decisions
13 very carefully?
14 A. Yes.
15 351 Q. And not to give reasons for his decisions? 11:56
16 A. Yes.
17 352 Q. Thank you.
18
19 Chairman, I think, and I am very grateful to your team,
20 I think that the report of the O'Higgins Commission is 11:56
21 now available, and I wonder if the sergeant could be
22 given a copy, please.
23 CHAIRMAN: Yes. Oh, it's actually on the -- it's on
24 the system, we have put it on the system. I don't know
25 how we did that so quick, but apparently we did. 11:56
26 MR. MURPHY: If I could ask your registrar, please, to
27 turn to chapter 3, which is page 23 of the internal
28 pagination of the report.
29 353 Q. And, Sergeant, I think you are obviously very familiar

1 with this report, and again I will try and get through
2 this as quickly as I can.

3 A. Okay.

4 354 Q. But just in terms of the report itself, and we will
5 come back to the hearings themselves after this, but 11:57
6 looking at the report to begin with, this is what the
7 Chairman had to say, if I could draw your attention to
8 a number of points. The first point is at 3.1 in the
9 first sentence, and he said that:

10 11:57

11 "You --" Sergeant McCabe "-- were the central figure in
12 this Commission of Investigation and that you were a
13 dedicated and committed member of An Garda Síochána,
14 that you had brought to public attention certain
15 investigations where the public wasn't well-served, 11:57
16 that you had highlighted certain legitimate concerns
17 about procedures and practices in place at Bailieboro
18 Garda Station."

19

20 Do you see this? 11:57

21 A. Yes.

22 355 Q. And then do you see about six lines down, he makes
23 reference to a particular case -- or, sorry, indicate
24 that the events of the Commission have been very
25 stressful for you and for your family, and that you 11:57
26 considered that you were being wrongly blamed for
27 certain errors in the investigation of the M case and
28 that you were subjected to disciplinary proceedings for
29 the first time in a long career and that this was

1 especially upsetting because you had no part in the
2 investigation, and that you also had reason to believe
3 that you were being set up and wrongly implicated in
4 important aspects of the M, a separate investigation.
5 And then the Chairman said this -- or the Commissioner
6 said this:

11:58

7
8 "Your understandable beliefs in that regard remain
9 unproven."

10
11 So I think in that regard the Chairman took the view
12 that one aspect of this that you were concerned with
13 had not been proven. But he went on to say at
14 paragraph 3.2 that you:

11:58

15
16 "... impressed the Commission as being never less than
17 truthful, even if prone to exaggeration at times, and
18 that, in common with many other witnesses, your
19 recollection of some events is diminished because of
20 the passage of time."

11:58

11:58

21
22 Do you see that?

23 A. Yes.

24 356 Q. And I think there can be no disagreement because you
25 have indicated yesterday you agreed with the report?

11:58

26 A. I do.

27 357 Q. Some of the complaints that you made were upheld in the
28 report, especially in respect of the quality
29 investigations examined by the Commission?

1 A. That's correct.

2 358 Q. Other complaints have been proven to be overstated or
3 exaggerated and some were unfounded and some have been
4 withdrawn?

5 A. That's correct. 11:59

6 359 Q. So I think you very fairly accept that not all of the
7 things that you brought to the Commission were upheld
8 by the Commission. But if we go back to what I
9 mentioned earlier on about the pyramid, I think it's
10 fair to say that most of the complaints you made about 11:59
11 poor policing on the ground were upheld, isn't that
12 right?

13 A. That's correct.

14 360 Q. I think some of the views taken by Byrne/McGinn were
15 not upheld by the Commission? 11:59

16 A. That's correct.

17 361 Q. And there were also a number, a smaller number, where
18 matters that you believed to be established weren't
19 established?

20 A. That's correct. 11:59

21 362 Q. And then just turning over to the following page, again
22 at paragraph 3.4, the Commission accepts your bona
23 fides, it said that you had shown courage, performed a
24 general public service. And then it says that:
25
26 "While some of your complaints have not been upheld by
27 the Commission, that you are a man of integrity who the
28 public can trust."
29

1 And that is the assessment of the Commission. Do you
2 see that?

3 A. Yes.

4 363 Q. Yes. Now, the next paragraph comes to deal with the
5 question of the complaints of corruption, and these are 12:00
6 the allegations made against the senior officers, and
7 they are identified as:

8
9 "Complains of corruption against the then-Garda
10 Commissioner, Martin Callinan." 12:00
11

12 It notes that:

13
14 "The Charter established under the regulations does not
15 define corruption or malpractice, but it includes not 12:00
16 only matters which constitute criminal behaviour but
17 also other conduct such as breaches of discipline,
18 abuse of authority and a range of other matters. It
19 was submitted on behalf of Sergeant McCabe that he
20 hadn't intended to make allegations of criminal conduct 12:00
21 against the Commissioner, but rather an abuse of power
22 only."
23

24 Then the Commissioner says this:

25 12:00
26 "The allegation was understood by the Commissioner to
27 be one of criminal conduct. The hurtful allegation was
28 based on the belief, unsupported by any evidence, that
29 the Commissioner put Superintendent Clancy on a

1 promotion list. The complaint was in part a device to
2 ensure that the complaint came before the Minister for
3 Justice and Equality. At that time a complaint against
4 the Commissioner had to be referred to the Minister,
5 and this is dealt with in chapter 13." 12:01

6
7 And the former Commissioner is vindicated.

8
9 And do you see then, Sergeant, in the next paragraph,
10 paragraph 3.6, again in relation to the pyramid of 12:01
11 accusations made against senior officers, the
12 Commission says:

13
14 "The complaints of corruption in the context of the
15 CHARTER were also made against Assistant Commissioner 12:01
16 Byrne, Chief Superintendent Rooney and Superintendent
17 Clancy. In each case, the Commission understands those
18 hurtful complaints to be unfounded and those against
19 whom the complaints were made had to live for many
20 years under the strain of those allegations. No direct 12:01
21 allegation of corruption was levelled against
22 Superintendent Cunningham. So far as may be implied,
23 they are also unfounded."

24
25 And then finally just on this point, please, to the 12:01
26 next page, 3.9, where it said:

27
28 "There were a very large number of complaints against
29 Chief Superintendent Clancy examined in detail in the

1 report. He is exonerated of any wrongdoing and is the
2 subject of only occasional and very mild criticism."

3
4 So I think those were the sort of headline points that
5 the Commission had made. They accepted that you 12:01
6 performed a public service, they accepted that you were
7 correct in relation to those ground level
8 communications, by and large, and complaints, but
9 they'd completely rejected the allegations against the
10 senior officers in those terms. 12:02

11 A. Yes.

12 364 Q. And then turning, please, to chapter 13, if I might.
13 CHAIRMAN: We will accept that that is so, Mr. Murphy,
14 certainly, but do you want to reserve the question
15 until you have completed the extracts, is that the 12:02
16 idea?

17 MR. MURPHY: I do, yes, if I can, please. I think I
18 can infer from the last answer the sergeant accepts
19 that. But just in terms of chapter 13, this deals with
20 the investigation into your complaints, Sergeant, in 12:02
21 relation to matters (a) to (i) in the terms of
22 reference, and you will see there is a chronology, and
23 I think, again, I won't delay the Chairman, or you,
24 with this. But if you just look, please, at paragraph
25 13.2, it just starts the chronology which Mr. Murrinan 12:02
26 went through yesterday.

27 CHAIRMAN: I think if you give us a page number.

28 MR. MURPHY: Page 284.

29 CHAIRMAN: Say that again, sorry? 384?

1 MR. MURPHY: 284, please.

2 CHAIRMAN: 284.

3 MR. MURPHY: Thank you very much.

4 365 Q. That is a chapter entitled:

5

6 "Investigations by An Garda Síochána, Minister for
7 Justice and Equality."

8

9 And just moving forward, if I could, to ask the
10 registrar to bring it to page 296, please.

11 And, first of all, Sergeant, I think this might help
12 you, at paragraph 13.66, it says that your solicitor

13 sent a letter to the Minister for Justice on the 16th
14 June 2018 and effectively asked for the establishment

15 of a commission under the Commissions of Investigation
16 Act of 2004. Do you see that, 13.67 and .66?

17 A. Sorry, just one second.

18 366 Q. The page number that is on the screen, Judge, at the
19 bottom, is the one I have referred to, which is 296.

20 It's the pages within the report itself. On the
21 left-hand side should be paragraph 13.66.

22 CHAIRMAN: Yes.

23 MR. MURPHY: Thank you.

24 367 Q. And I think there you see there is a reference to the
25 request, at paragraph 13.67, from your solicitor to the

26 Minister for Justice to establish a commission of
27 investigation under the Commissions of Investigation

28 Act. Do you see that?

29 A. Yes.

12:03

12:03

12:04

12:04

12:05

1 368 Q. And there then follows a series of documents. It's
2 part of the chronology. I don't propose to visit
3 those. Could I ask you to turn forward to 13.77.
4 Thanks. And there, this refers, at 13.77, to the
5 meeting between yourself and Mr. Connolly in 2012. It 12:05
6 says:

7
8 "It is not entirely clear what transpired at the
9 meeting. There is a difference of recollection."
10 12:06

11 But the Commission says:

12
13 "However, the confidential recipient and Sergeant
14 McCabe are both aware that one of the legal
15 consequences of the complaint being made against the 12:06
16 Commissioner under the regulations was that the
17 complaint would have to be sent to the Minister for
18 Justice. It is also clear that Sergeant McCabe
19 involved the Minister in his complaints is a desirable
20 development and that was part of the reasoning for 12:06
21 making the complaint."

22
23 Now, it then goes on to say:

24
25 "I think it would be a gross abuse of process and most 12:06
26 unfair to the Commissioner to involve the regulations
27 in the absence of a genuine complaint. The evidence
28 before the Commission falls short of establishing that
29 such was the case. All of the complaints of Sergeant

1 McCabe against the Commissioner was motivated in part
2 by his desire to ensure the matter came before the
3 Minister. The Commission is satisfied that Sergeant
4 McCabe did hold genuine concerns that there was some
5 impropriety in the promotion of Chief Superintendent
6 Clancy." 12:06

7
8 And then it shows in the next paragraph that the
9 complaints escalated, what we talked about a few
10 moments ago, against Commissioner Callinan and 12:07
11 Assistant Commissioner Byrne.

12
13 And could I ask you then, please, to turn forward, just
14 to assist the Chairman to understand the process of
15 matters. 13.84, please, at page 300. And again, this 12:07
16 indicates that, in evidence to the Commission, that
17 you, Sergeant, withdrew all the allegations of
18 impropriety of any type against Assistant Commissioner
19 Byrne in the matters in which the Commission is
20 concerned, is that right? 12:07

21 A. That's correct.

22 369 Q. And again, I think in the course of the Commission
23 hearings, the evidence would have been tested under the
24 superintendence of Mr. Justice O'Higgins, but that was
25 the result, isn't that right? 12:07

26 A. Yes.

27 370 Q. And I think it goes on to say, this is in contrast to
28 the position which you adopted concerning the former
29 Commissioner, it then refers to paragraph 13.88:

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"Sergeant McCabe's only subsisting complaints against Assistant Commissioner Byrne are in relation to the quality of the Byrne/McGinn report and these complaints have been addressed elsewhere."

12:07

And just turning then, please, if you would, to the next page, page 301, paragraph 13.88, and this was the complaint against Commissioner Callinan, and the complaint that was made of corruption was:

12:08

"Placing Superintendent Clancy on a promotion list. Sergeant McCabe told the Commission he was guarded in his complaints against the Commissioner by stating in his report to the confidential recipient that Commissioner Callinan may not have been given all the evidence of my complaints. He may have been misled by the investigation team. This doesn't alter the fact that a complaint of corruption subsisted."

12:08

And this I think is in response to your early suggestion in paragraph 13.87 that your submission had been that the allegations of corruption were to be understood other than in the sense of criminal activity. So here we have the Commission saying that you maintained in your evidence to the Commission that it was your belief that the Commissioner "has influence in promotions", and that is a quote. You didn't withdraw the allegation against the Commissioner,

12:08

12:08

1 despite being invited to do. And then they have an
2 extract from the transcript there where you are being
3 asked by the Commissioner, not by the Garda
4 Commissioner but by the Commissioner who was
5 investigating, Mr. Justice O'Higgins. He says:

12:09

6
7 "Just a couple of questions -- "

8
9 Sorry, this is, in fact, by the Commissioner.

10 12:09

11 "Just a couple of questions very briefly just to
12 confirm on behalf of Commissioner Callinan that the
13 complaint that you made against him in 2012, you accept
14 that was without foundation, is that correct?"

15 12:09

16 And you replied:

17
18 "No, I am not saying that. I spoke about it here. I
19 was guarded in relation to that. He may not have known
20 the full facts."

12:09

21
22 Now, having put that extract in, I think Mr. Justice
23 O'Higgins then said at 13.89:

24
25 "It must be stated clearly and unambiguously that there
26 is not a scintilla of evidence to support an allegation
27 of any type of corruption against the former
28 Commissioner, and, in the context of such grave
29 allegations, the former Commissioner is entitled to

12:09

1 have his reputation vindicated. In the matters under
2 consideration, any aspersions cast on the integrity of
3 the former Commissioner were unfounded and were deeply
4 hurtful."

12:09

5
6 And then says:

7
8 "Why? Because the former Commissioner wasn't
9 responsible in any way for placing Superintendent
10 Clancy on a promotion list. He had no power to do so."

12:09

11
12 Do you see that?

13 A. Yes.

14 371 Q. So here I think we have a position that although the
15 Commission noted that you had said to it that you
16 didn't really intend to raise corruption, it says at
17 paragraph 13.88 on page 301 that no matter what you
18 said, it didn't alter the fact that a complaint of
19 corruption subsisted, and that complaint was rejected
20 completely and totally on the basis that there was no
21 evidence to support it whatsoever, isn't that correct?

12:10

12:10

22 A. That's correct.

23 372 Q. So insofar as those findings were concerned, you can
24 see, and you have read this obviously in great detail,
25 that the serious allegations, the gravest allegations
26 made against the senior officers were all dismissed and
27 the foundation allegations in relation to policing were
28 largely upheld. But can we go back now to the
29 beginning of the Commission's hearings. And insofar as

12:10

1 they were concerned, I have to suggest to you that the
2 way in which the Commission went about its business was
3 that it held its hearings in private, isn't that
4 correct?

5 A. That's correct. 12:11

6 373 Q. It was supervised by a very senior judge, retired,
7 Mr. Justice O'Higgins?

8 A. That's correct.

9 374 Q. I think that the atmosphere, you now accept, was one
10 where there wasn't any shouting? 12:11

11 A. Yes, I agree.

12 375 Q. Yes. Just to be clear, I think a letter was received
13 yesterday from your solicitor. Perhaps that could be
14 put on the screen if it's available.

15 A. Yes. 12:11

16 CHAIRMAN: Well, you can read it out, Mr. Murphy, if
17 you like. I think we don't generally put
18 correspondence on the system. It is on the system?
19 What page is it? We did circulate it, I think, to
20 parties. 12:11

21 MR. MURPHY: We have definitely copies of it. This is
22 the letter of 5th March. Mine is marked, but perhaps
23 if anyone has a clear copy it could be provided.

24 CHAIRMAN: No, we do. If you just give us a page
25 number. 12:11

26 MR. MCGUINNESS: Sorry, Chairman, we circulated it but
27 it isn't on the system.

28 CHAIRMAN: Okay. We did circulate it but we didn't put
29 it on the system. So everyone has a copy of it. All

1 right. You can read it out if you like, Mr. Murphy.
2 376 Q. MR. MURPHY: Sergeant, again perhaps I can just help
3 you on this one. This is a letter written by your
4 solicitor, Seán Costello, the 5th of March, it's
5 yesterday morning, and it says -- it's addressed to the 12:12
6 Tribunal:

7
8 "Re: Our client, Sergeant Maurice McCabe.

9
10 Dear Ms. Mullan, 12:12

11
12 As indicated in recent contact with the Tribunal, there
13 is one issue I wish to clarify in advance of our client
14 giving evidence to the Tribunal. In the written
15 statement made by our client at page 12, he stated that 12:12
16 he told counsel for the Commissioner to stop shouting
17 at him during the cross-examination of the O'Higgins
18 Commission. This statement was included due to an
19 error on the part of a person in my office during the
20 preparation of the statement. We sincerely regret this 12:13
21 error. The transcript and the audio recordings
22 accurately disclose the tone and manner in which our
23 client was cross-examined. In any event, the most
24 important issue should be what happens at the
25 Commission rather than the tone or volume of the 12:13
26 cross-examination of any witness, including our
27 client."

28 A. Yes.

29 377 Q. And I am sure Mr. Costello wrote that letter on your

1 instructions, Sergeant?

2 A. Yes.

3 CHAIRMAN: I am sure. And I think in the meantime,
4 during the break, if I can call it that, I think we did
5 circulate an audio disc to everybody of all the 12:13
6 occasions on which Sergeant McCabe gave evidence.
7 MR. MURPHY: That's correct.

8 CHAIRMAN: And all of the cross-examinations by
9 everybody of him. I think that is correct. So
10 everyone has had a chance to listen to that, as indeed 12:13
11 I have.

12 MR. MURPHY: And that chance has been greatly
13 appreciated by all the parties, Chairman. So in
14 response to that exercise, this letter was written.

15 CHAIRMAN: Yes. I think the statement was, in fact, 12:13
16 longer. I think you said, it is said that you said in
17 the course of that statement that on occasion you had
18 to ask Mr. Smyth to stop shouting at you.

19 A. Okay, Mr. Chairman.

20 CHAIRMAN: I think that was said. And I am somewhat 12:14
21 mystified as to mistakes, but how a mistake of the
22 dimension of that can be made, but it may be
23 unimportant. Mr. Murphy, you have a question to ask
24 about it, in any event?

25 MR. MURPHY: I have, I have really just two questions 12:14
26 to ask on that point, if I can, Chairman, please.

27 378 Q. I think the first is just in terms of your own
28 statement to the Tribunal, which is at page 267, which
29 I think should be in the new booklet. Just the first

1 point, Sergeant, again to assist the Chairman in that
2 regard, at page 267 can I ask you to look at the
3 second-last paragraph, and on the third-last sentence
4 you are talking about being cross-examined on day 3 of
5 the Commission, do you see that?

12:15

6 A. Yes.

7 379 Q. And you said that:

8
9 "I was asked if I had a personal grievance against the
10 Gardaí. I was told that Superintendents Rooney,
11 Cunningham and Clancy and Sergeant Yvonne Martin will
12 all give evidence if my grievance was that they could
13 not convey the DPP's directions to me. The
14 cross-examination was very hostile. I was hardly
15 allowed to answer a question. "

12:15

12:15

16
17 Do you see that?

18 A. Yes.

19 380 Q. And again I have to suggest to you that the audio
20 recordings that we have heard isn't consistent with
21 that.

12:15

22 A. Well, in relation to the transcripts itself, there are
23 a number of occasions where the judge has said to
24 Mr. Smyth let him answer the question.

25 CHAIRMAN: It happens in every case.

12:16

26 A. I know, Judge, yeah, I know, Mr. Chairman.

27 CHAIRMAN: You have a lot of experience in court
28 yourself.

29 381 Q. MR. MURPHY: And then secondly, I think, turning to

1 page 265, please, I think this echoes with the point you
2 made yesterday. At five lines down you said:

3
4 "I had no issue with the vigorous cross-examination I
5 was subject to by the other legal teams. They were 12:16
6 doing their job, to protect their clients. They were
7 thoroughly professional. But I took grave exception to
8 the pejorative and hostile tone adopted by
9 Mr. Smyth SC, so much so that on a number of occasions
10 I had to say Mr. Smyth, 'please stop shouting'." 12:16
11

12 I think that is in quotations.

13 A. Yes.

14 382 Q. And in terms of the top of the page, it says:

15
16 "The hearings were highly adversarial. I broke down on
17 a number of occasions due to the ferocity of attack by
18 counsel for the Commissioner." 12:16
19

20 Do you see that? 12:17

21 A. I do.

22 383 Q. So I have to suggest to you that it would appear from
23 your letter, and I think there can be no disagreement
24 about this, insofar as your letter -- your statement
25 suggested that there was any shouting or intervention 12:17
26 by the Commissioner to stop shouting, that that was an
27 error on the part of somebody else?

28 A. Yes.

29 384 Q. So just to be clear, your solicitor, I think, is

1 saying, on your instructions, it wasn't you who said
2 this, but somebody else put this into your statement
3 through error?

4 A. Yes, through an error.

5 385 Q. Right. And did you get a chance to review your 12:17
6 statement before it was handed in to the Tribunal?

7 A. I did, but it was an error on behalf of somebody else.

8 386 Q. But if you saw --

9 A. Unfortunately, I didn't --

10 387 Q. Oversights can occur. But is it possible you didn't 12:17
11 see this either at the time it was sent in --

12 A. It's possibly I did or I didn't.

13 388 Q. And I am not making a big point of this, but I am
14 asking you just to accept this is clearly a statement
15 that was prepared on your instructions? 12:17

16 A. That's correct.

17 389 Q. Your solicitor has been with you for many years now?

18 A. That's correct.

19 390 Q. I accept there is an error, but you must have seen this
20 and also made the same error before it was sent into 12:18
21 the Tribunal?

22 A. That's correct.

23 391 Q. Thank you.

24 CHAIRMAN: It's kind of a hard to see this as an error.
25 I mean, one of the things I suppose a judge does is to 12:18
26 look to see whether a person is, in giving evidence,
27 reliving an experience as opposed to a liar, who simply
28 looks backs some and puts them across. And there is
29 reference to the ferocity of the examination, there is

1 reference to you saying, Mr. Smyth, please stop
2 shouting at me, there is a reference to you seeking
3 medical attention, there is a reference to you being
4 hardly allowed to answer. And that is the kind of
5 thing, if you like, that is a human-life narrative as 12:18
6 opposed to the kind of thing that perhaps someone who
7 is lying says or perhaps the kind of thing that can be
8 attributed to an error like a word-processing or
9 something like that. And what Mr. Murphy is asking you
10 about there, I suppose, is, is this not an example of 12:18
11 where, on occasions, Sergeant, you may exaggerate
12 matters, and perhaps -- and I think everyone who is a
13 judge, certainly, and is required to be objective,
14 understands this, where a person reliving an
15 experience, in order to get it across to the person who 12:19
16 is listening, namely over here, tries to put emotion
17 into it and perhaps too many words come out that
18 otherwise don't necessarily reflect the objective
19 reality. Is this an instance of that?
20 A. It probably is, Chairman, and I apologise. 12:19
21 CHAIRMAN: No, don't worry.
22 392 Q. MR. MURPHY: I think in fairness to you, Sergeant, I
23 think the position is that Commissioner O'Higgins took
24 the view that you were never less than truthful, but he
25 found that in areas where he rejected your evidence, 12:19
26 there simply wasn't evidence to support them.
27 A. Well, I accept the --
28 393 Q. Even though you believed genuinely that there was,
29 there wasn't.

1 A. Yes, exactly.

2 394 Q. And insofar as that is concerned, can I just perhaps
3 give one example to assist the Chairman and yourself.
4 I wonder if we could have old volume 3 at page 1940.
5 This is just an extract from the hearings. Again just 12:20
6 to assist the Tribunal and to understand this, this is
7 in relation to the allegation of assault and false
8 imprisonment at Cootehill.

9 CHAIRMAN: Now, this is the incident where the teenage
10 girl was going home late at night and she was walking 12:20
11 through Cootehill and she was passing by a housing
12 estate which was then in the course of being built and
13 a man jumped on her and attempted to drag her up
14 towards the waste ground.

15 A. Yes. 12:20

16 CHAIRMAN: which has all the marks of an intended
17 sexual assault about it.

18 395 Q. MR. MURPHY: Sergeant, I am terribly sorry, could I
19 trouble you just to look at the screen for this one
20 because it's not in the hard-copy documents. Thank you 12:21
21 very much. At 1940. So you may recall that this is
22 effectively on I think day 10 of the hearings before
23 the Commission, and you may recall, just looking at the
24 top of page 1940 of the previous day, it had been
25 pointed out to you that one of the complaints you had 12:21
26 made against Superintendent Noel Cunningham, which was
27 one of dereliction of duty, actually was completely
28 undermined by the existence of a document that you
29 hadn't seen at the time when you originally made the

1 complaint.

2 A. That's correct.

3 396 Q. And I think you very frankly acknowledged that that was
4 a mistake, it was an error and you apologised.

5 A. I did, yeah. 12:21

6 397 Q. Yes. But here, the Commission was trying to
7 investigate how this could happen and try to look at
8 your approach towards making complaints generally. And
9 just look at the top, please, of page 1940, and you are
10 asked a question about how you describe Noel 12:21
11 Cunningham, the superintendent. You said:
12
13 "That he had no problem and saw no issues with the
14 gross dereliction of duty."
15 12:22
16 Do you see that?

17 A. Yes.

18 398 Q. And then you are asked about the fact that you have
19 apologised, but it then transpires you may have known
20 about this from speaking to Mr. Seán Guerin about 12 12:22
21 months before the Commission.

22 A. Sorry, what page is that?

23 399 Q. Do you see that you are asked, if you look down, for
24 example, at page 1940, line 15, question 148, you are
25 asked the following question: 12:22
26
27 "Right through the McGinn and Byrne investigation, that
28 caused Superintendent Cunningham considerable distress?
29 A. Yes."

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And then at line 21:

"He will say that all the way up to Guerin and the inquiries that were conducted he remained under a considerable amount of stress.

12:22

A. Absolutely.

Q. It was only yesterday he has an apology and a withdrawal of the allegation. I just want to ask you --"

12:22

And there is an interruption, and then tries to ask why it was that was said. And then if you turn, please, to page 1942, which is two pages further on. And I think you had said in the intervening pages that you hadn't had a right of reply to Byrne/McGinn, you hadn't had an opportunity to a response. But you see there at line 1:

12:23

"If I could just explain one thing, if I had got a right of reply I would have seen this document. When I was interviewed Judge in Sean Guerin's, his, it was the only time that I became aware of this and it was a transcript which was taped and you can hear my voice saying:

'Oh my God I didn't see that, I am sorry.'"

So I think that indicates that Mr. Guerin identified

1 this document to you that exonerated Superintendent
2 Cunningham.

3 A. Yes.

4 400 Q. Yes. If you just turn, please, forward to page 1943,
5 and here you say:

12:23

6
7 "Look, if I had seen the document I wouldn't have made
8 that allegation."

9
10 Could you turn down to line 22, please. And there it
11 says:

12:24

12
13 "... you describe him through two inquiries as a person
14 who abandoned his responsibilities and permitted a
15 gross dereliction of duties, I can't square the circle
16 on that Sergeant McCabe, really are they compatible?
17 A. You can ask me on every single module... and when I
18 criticise him, in relation to this Noel Cunningham was
19 excellent..."

20
21 And:

22
23 "No, I did not have access to the file."

24
25 Just turning to the next page. And then the question
26 is asked:

12:24

27
28 "Why did you make the allegation?"

29

1 And at line 3 you say:
2
3 "A. I made the allegation on the basis of what I knew
4 in the case and I only made an allegation. I didn't
5 say that he actually did it. It was an allegation." 12:24
6
7 Do you see that?
8 CHAIRMAN: We don't see it, actually. What line?
9 MR. MURPHY: 1945, at line 3.
10 CHAIRMAN: It's not. It's the next page, is it? Yes, 12:24
11 we have got it.
12 MR. MURPHY: Sorry, Sergeant. Just to go back to that
13 again. At line 1, it says -- it begins with the words:
14
15 "No, I had not access to that file. 12:25
16 Q. Why did you make the allegation?
17 A. I made the allegation on the basis of what I knew
18 in the case and I only made an allegation. I didn't
19 say that he actually did it. I made an allegation."
20 12:25
21 Do you see that?
22 A. Yes.
23 401 Q. And again just to help the Chairman here today to
24 understand, did you, throughout the course of 2012,
25 2013 and 2014 when you make the allegations, consider 12:25
26 in your own mind that although you were saying
27 something, that you weren't actually saying that the
28 people against whom you said it had done it?
29 A. Sorry, just explain that again, sorry.

1 402 Q. Do you see what you are saying here in that sentence,
2 you are saying that you didn't say that Superintendent
3 Cunningham actually did what was in the allegation, you
4 just made an allegation?

5 A. Yes. 12:25

6 403 Q. And again, you may recall in the earlier correspondence
7 to the Minister you said you had hundreds of more
8 matters that you could bring to his attention before
9 the Commission of Investigation was established?

10 A. Yes. 12:25

11 404 Q. And you were making allegations there. Was it to that
12 standard you were making the allegation?

13 A. I don't follow the question.

14 CHAIRMAN: Well, maybe it might help if I explained.
15 Let's suppose you are doing an investigation, Sergeant, 12:26

16 and let's suppose somebody comes in and says so-and-so
17 came along and smashed the plate glass window on my
18 draper's shop in Bailieboro, let's just say, and the
19 person was Michael O'Toole, picking a name at random.
20 That is an allegation that Michael O'Toole smashed the 12:26

21 window. Now, when you look at the draper's shop you
22 will see the window was smashed. Clearly that
23 happened. So the next thing is, was it Michael
24 O'Toole? And that is the allegation that it was
25 Michael O'Toole. So what Mr. Murphy is asking you 12:26
26 about is, do you see there being a distinction between,
27 I suppose, putting something up for discussion by way
28 of an allegation, making an allegation to say, look, I
29 knew something myself because I experienced it, or is

1 there some other level at which you can make an
2 allegation? That, I think, is what Mr. Murphy is
3 asking you about.

4 A. Okay, Mr. Murphy, and I will just answer that. In
5 relation to the allegation, I made a complaint up to 12:27
6 the Byrne/McGinn inquiry. I got correspondence from
7 them that I would get a right of reply in relation to
8 all the incidents that I reported. I never got a right
9 of reply. I never seen anything. I never got a right
10 of appeal, either. So I didn't see the documentation. 12:27

11 405 Q. MR. MURPHY: Until, I think, Mr. Guerin showed it to
12 you?

13 A. Yes.

14 406 Q. Okay. So I think the question you were being asked
15 was, park the question of the right of reply, why 12:27
16 didn't you come forward 12 months earlier and spare
17 Superintendent Cunningham the pain of having to go
18 through this process of being accused of something
19 where you were sitting on information that showed he
20 wasn't actually guilty at all? 12:27

21 A. Well, I mean, I don't think I could interfere in the
22 process in relation to Seán Guerin, and then he -- he
23 suggested a commission of inquiry and --

24 407 Q. would you agree with me, Sergeant, you could at least
25 have turned around to the Commission on the first day 12:27
26 and said, actually, don't go here, there is -- I have
27 this document, as shown by Mr. Guerin, I know this
28 didn't exist?

29 A. But if you look at the case in question, it was a case

1 involving a young girl, as you said, Mr. Chairman,
2 almost dragged up an alleyway. And when I saw the
3 file, I wrote on the file saying that this is a bad
4 investigation, and A, B and C, and I sent it up to the
5 superintendent, and at the time Superintendent 12:28
6 Cunningham, he arrived at the scene then -- he arrived
7 in Bailieboro on the 19th March. Now, I never got any
8 reply in relation to that. It was sent back down to a
9 sergeant, but it wasn't sent back down to me. But I
10 was expecting the Byrne/McGinn inquiry to come back to 12:28
11 me with all the incidents I reported and show me all
12 the replies that I could give a right of reply.

13 408 Q. I think, as you have indicated, you accept the
14 O'Higgins Report. Can I ask you to go back to the
15 O'Higgins Report, please, at page -- 12:29
16 CHAIRMAN: I think that might be a suitable moment to
17 break for an hour.

18 MR. MARRINAN: Sir, just one matter before you break.
19 Mr. Lambe is here to -- Mr. Lehane is here to --
20 representing Mr. John McGuinness, and he has just asked 12:29
21 if he could ask his couple of questions that he has of
22 the witness before we break for lunch.

23 CHAIRMAN: Yes, certainly. Would you mind, Mr. Murphy?
24 MR. MURPHY: No objection, Chairman.

25 CHAIRMAN: Mr. Lehane, I am sorry I can't see you in 12:29
26 the room. The light is pretty bad. You are up there.
27 Oh, yes. Sorry. So Mr. Lehane is actually for John
28 McGuinness, TD, and anything, in other words, that
29 diverges from your account about what John McGuinness,

1 TD, said to you, he is going to put to you now.

2
3 THE WITNESS WAS CROSS-EXAMINED BY MR. LEHANE:

4
5 409 Q. MR. LEHANE: Good afternoon, Sergeant McCabe. Just in 12:29
6 relation to your meeting with Deputy McGuinness in May
7 2016 at the Merrion Hotel, I am just going to put to
8 you what my instructions -- I have taken instructions
9 overnight in relation to what Mr. McGuinness will say
10 that he said to you in relation to the nature of the 12:30
11 allegations that were being made against you to him by
12 former Commissioner Callinan.

13 A. Okay.

14 410 Q. He will say that he told you that Mr. Callinan had told 12:30
15 him that you had abused your children and that you had
16 abused your nieces as well.

17 A. That's correct.

18 MR. LEHANE: Very good. Thank you, Chairman.

19 CHAIRMAN: So it absolutely accords then with the
20 account given by Sergeant McCabe of the meeting. 12:30

21 MR. LEHANE: well, just yesterday in his evidence,
22 Sergeant McCabe said that he -- that Mr. McGuinness had
23 said that the allegation was that Sergeant McCabe had
24 sexually abused all of his children, and I was just
25 trying to clarify with Mr. McGuinness overnight what he 12:30
26 said, and Mr. McGuinness said that -- or will say to
27 the Tribunal that it was that he abused his children.

28 CHAIRMAN: "I had sexually abused all of my children
29 and my nieces." Yes. well, I am not sure the "all"

1 makes a huge amount of difference, but that seems to be
2 all that is between you.

3 A. It seems to be the same, yes.

4 CHAIRMAN: It seems to be the same. Do you have any
5 recollection specifically of "all" -- I actually don't 12:31
6 think anything is going to turn on it, to tell you the
7 truth. But that is the only difference.

8 A. It seems to be the same.

9 CHAIRMAN: All right.

10 MR. MCDOWELL: Chairman, before you rise, you kindly 12:31
11 indicated to Mr. Murphy that the time pressure wasn't
12 as bad as you feared it might be yesterday. But I
13 would like to have some vague idea about how much time
14 I will have left and how long Mr. Murphy intends
15 cross-examining the witness. 12:31

16 CHAIRMAN: Yes. No, no, that is fair enough. How are
17 you doing, Mr. Murphy?

18 MR. MURPHY: Yes, Chairman, I think I would hope to
19 finish within an hour-and-a-half maximum and maybe
20 within that time. I think the Sergeant has answered a 12:32
21 number of questions which will make --

22 MR. MCDOWELL: I didn't want to be squeezed towards
23 exhaustion. I hope to be brief, but I didn't want to
24 be squeezed to the end of the day.

25 CHAIRMAN: No, I appreciate that. Very good. So we 12:32
26 will break for an hour then. Thank you.

27

28 THE HEARING ADJOURNED FOR LUNCH

29

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 411 Q. MR. MURPHY: Sergeant, thank you. Just before lunch I
4 think we were talking about Inspector Cunningham and
5 the allegation against him. I wonder if you could have 13:32
6 a look at the screen, please, where I think we should
7 have paragraph -- sorry, page 163 of the O'Higgins
8 report, paragraph 8.48, please. At 8.48, please.
9 Thank you. Sergeant, I think we're dealing here with
10 the same complaint we've referred to before lunch, but 13:33
11 I just draw the Chairman's attention, and yours, to the
12 fact that in the O'Higgins report this is what the
13 Judge said:

14
15 "In his initial complaints about the investigation, 13:33
16 Sergeant McCabe contended that Superintendent
17 Cunningham was guilty of 'gross dereliction of duty'
18 and saw no problem with the investigation. At that
19 time Sergeant McCabe was unaware of the two reports
20 written by Superintendent Cunningham referred to above. 13:33
21 He would not have made such a criticism had he been so
22 aware. However, the unjustified criticism of
23 Superintendent Cunningham were undoubtedly a cause of
24 worry and stress for him... the investigation.
25 Superintendent Cunningham made timely and sensible 13:33
26 criticisms of the main aspects of the investigation."

27
28 And I think that was the finding of Mr. Justice
29 O'Higgins in that regard.

1 A. That's correct.

2 412 Q. Yeah. Just one brief point, if I can ask if you can be
3 shown page 193 of the old book, which is volume 3, old
4 rules. Sorry, Sergeant, this one will be on the
5 screen.

13:34

6 A. All right.

7 413 Q. Sergeant, this is just back to day 10 very briefly, the
8 day he's referred to, connected to the Superintendent
9 Cunningham point. And I think if I could draw your
10 attention to the questions you're being asked by
11 counsel at that stage on behalf of the Commissioner,
12 Mr. Smyth. Mr. Justice O'Higgins says:

13:34

13

14 "I think it is a reasonable thing to speculate."

15

13:34

16 And then you said:

17

18 "Listen, Mr. Smyth, honestly if I had seen that
19 document, I worked well with Noel Cunningham, if I had
20 seen that document there is no, and if you want to ask
21 Noel Cunningham, bring him back up here, there is no
22 way I would have written what I have written, there is
23 no way.

24

25 Mr. Smyth: I can't understand on the one hand you say
26 you have a good working relationship with this man
27 and -- "

13:35

28

29 And then you said:

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"He said the same here in evidence."

So just to be clear, I think you in your testimony accepted that Noel Cunningham on this issue was someone with whom you had good dealings, and you discovered belatedly that in fact he had done something you thought he hadn't done? 13:35

A. Yes.

414 Q. Now, can I just take you back to the hearings again, and to an issue which you mentioned yesterday in your evidence, and to go back to day 3 in the O'Higgins hearings. And specifically you mentioned in the course of your evidence yesterday that you believed that your possession of a tape was something that was of material importance to the way in which evidence was being given on that day. I think it's fair to say, and I think you will agree with me, that that particular episode has received a lot of attention, as it were, in the media or in the popular narrative outside the hearings of the Commission. I just want to try and go through the sequence, to help the Chairman to understand exactly the sequence of events. And can I ask you, first of all, in terms of the 18th May of 2015, can I just ask you to confirm, first of all, as you did yesterday, at page 66 of the transcript, at line 17, please, at question 261, and you may recall yesterday Mr. Marrinan asked you a question and he said: 13:35 13:36

1 "I think it would be fair to say that Inspector
2 Cunningham, in a report that he did in relation to this
3 matter, reflected that position, that is reflected in
4 the transcript."

13:36

5
6 And you said:

7
8 "That's correct, Mr. Marrinan."

9
10 Do you see that?

13:36

11 A. Yeah.

12 415 Q. So again, Sergeant, I think we agree on that. And just
13 going back to the events on that day itself, just to be
14 clear; the position is that on that date when the
15 letter of the 18th was handed in to the Commission, we
16 know also from the evidence of Ms. Annmarie Ryan that
17 this document, the report, was also handed in to the
18 Commission, and we know that the notes which were
19 witnessed, I think, by Sergeant Martin were also handed
20 in to the Commission?

13:37

13:37

21 A. No, I think all them were handed in on the Tuesday.

22 416 Q. Well, you see, again, Ms. Ryan has given evidence, and
23 it will be for the Chairman to decide that.

24 A. Okay.

25 417 Q. Let me just suggest to you that, insofar as there may
26 be any disagreement, her evidence is that she put them
27 in at the same time. I think Mr. McDowell has
28 suggested perhaps he didn't receive them until later,
29 but the Commission did receive them, it seems, on that

13:37

1 day.

2 CHAIRMAN: I think that is the evidence, and it does
3 stick in your mind, because, in effect, the report from
4 Superintendent Cunningham was handed in as one of three
5 documents handed in on that day, and it does contradict 13:37
6 the famous letter of the weekend leading up to the
7 18th. So they were both handed in together. But
8 nobody noticed that the two things were inconsistent,
9 particularly paragraph 19. And the evidence also was
10 that Ms. Ryan, because of traffic jams, necessity to go 13:38
11 to the State Solicitor's Office, arrived late and
12 everything was done in a rush. So that is the
13 evidence. Whether I accept it is a different matter.

14 A. Okay, Judge.

15 418 Q. MR. MURPHY: And just secondly, Sergeant, I have to put 13:38
16 it to you that even if we disagree on exactly the
17 timing of that, the alternative version is that your
18 lawyers and the Commission certainly had it by the
19 following day.

20 A. I think the witness, Superintendent Cunningham, was 13:38
21 asked to stand down on the Tuesday afternoon because it
22 hadn't arrived.

23 419 Q. But the documents were themselves furnished, and
24 arrived, from the point of view of Mr. McDowell, he
25 says, Ms. Ryan says otherwise, and it wasn't put to her 13:38
26 to the contrary but that is a matter for the Chairman.
27 But on that day, we know for a fact that that document
28 was handed in, and you agreed yesterday that that
29 document agrees with the transcript of your tape?

1 A. Sorry, in relation to which day was it handed in?
2 420 Q. No, forget about the date. whichever date it was
3 handed in --
4 A. Yeah.
5 421 Q. -- I think you agree yesterday, page 66 -- 13:39
6 A. That the document was the same as my --
7 422 Q. -- Noel Cunningham's report is the same?
8 A. Yeah.
9 CHAIRMAN: In other words, the question is, Noel
10 Cunningham had a consistent narrative the entire way 13:39
11 through which accorded with your narrative.
12 A. It was the same.
13 CHAIRMAN: Yes. And the sore thumb that sticks out is
14 paragraph 19 of the letter --
15 A. Yes. 13:39
16 CHAIRMAN: -- as being different. That is the
17 question.
18 A. Yes, that's right.
19 423 Q. MR. MURPHY: And we've heard evidence in relation to
20 that, that that is an error, that is clearly an error. 13:39
21 But insofar as at the same time as that was handed in,
22 a letter from Superintendent Cunningham showing a
23 correct version was handed in and it's consistent with
24 your transcript. So again, I just want you to reflect
25 on what we said a few moments ago about what you can 13:39
26 prove, what you genuinely think to be the case, where
27 you may be mistaken.
28 A. Okay.
29 424 Q. Okay. And if we look at this situation, can I just say

1 to you, would you agree with me that if, for example,
2 you had no transcript on either the Tuesday or the
3 Monday, so you never handed it in at all, a correct
4 version of the Mullingar meeting, that is to say Noel
5 Cunningham's, would have been given to the Commission? 13:40

6 A. Well, Mr. Murphy, I have to be fair, and I object to
7 that. I think only for the recording, I think it was
8 crucial.

9 425 Q. Well, you see, I have to suggest to you it wasn't
10 crucial at all. Just reflect again on the question 13:40
11 I've asked. Let's say you had no tape, it didn't
12 exist, and there was no transcript, the Commission
13 would have had a correct version of the Mullingar
14 meeting from Noel Cunningham's account in writing on
15 either of those two days, isn't that correct? 13:40

16 A. I can't agree with that, Mr. Murphy, at all. I'm
17 sorry.

18 426 Q. Why not?

19 A. Because in relation to the Monday morning, we got the
20 document, a five-page document, and we went in and we 13:40
21 had a look at it, and then it was -- I read it and I
22 said that document is false, at the end of it it is
23 false, and I told my legal team that I had a
24 tape-recording of that meeting. So I was up in the
25 witness box in the afternoon and I was cross-examined 13:41
26 on that 19, and everybody heard it in the room and I
27 said, that is absolutely false, and I said it twice. I
28 then had to go home and search the attic, and I got a
29 mobile phone, an old mobile phone, and it had the

1 meeting of the Mullingar on it. I brought it in to the
2 Commission on Tuesday morning, over to my legal team,
3 and they informed Mr. Justice O'Higgins that we had a
4 transcript of the Mullingar meeting and it would show
5 that I didn't say the allegation, what was in paragraph 13:41
6 19.

7 427 Q. And my point, Sergeant, is that, at the very same time,
8 the correct version of events had been handed in to the
9 Commission, can we agree on that, in writing?

10 A. I think if we look at the transcripts, it shows that 13:42
11 Superintendent Cunningham is in the box and we are
12 looking -- we are looking for the notes of the
13 transcript.

14 428 Q. Yes.

15 A. Or, sorry, of the Mullingar meeting, and I think he 13:42
16 stood down until the notes were handed in. Now, I may
17 be --

18 429 Q. But in terms of timing, would you agree with me that at
19 that time the Commission was in possession of the
20 correct version in writing from Noel Cunningham, a 13:42
21 version which you accept is the same as your
22 transcripts?

23 A. Yeah -- no.

24 430 Q. I'm sorry, the answer to that question is yes or no?

25 A. No. It's no. I'll just tell you, Mr. Murphy, and I 13:42
26 have, you know, admitted a few things here, but I have
27 to say, and it is in my heart, that I think if I hadn't
28 got the recording of the Mullingar meeting, I think it
29 would have been serious for me.

1 431 Q. And again, I have to put it to you, Sergeant, that it's
2 for the Chairman to decide --

3 A. Yes, it is.

4 432 Q. It is.

5 A. I accept that, Mr. Chairman. 13:42

6 433 Q. And if, as I've suggested to you, your transcript had
7 never existed, I'm putting it to you that the correct
8 version of the Mullingar meeting would have been in the
9 Commission's possession together with the erroneous
10 page 19? 13:43

11 A. Well, Mr. Murphy, I disagree.

12 434 Q. Well, do you say it wouldn't have been in their
13 possession?

14 A. It is up to the Chairman to decide.

15 435 Q. I agree. Well, are you saying that it wouldn't have 13:43
16 been in their possession if --

17 A. No. What I accept is that if I didn't have the
18 tape-recording of the Mullingar meeting, I was in
19 trouble.

20 436 Q. That is your subjective assessment? 13:43

21 A. It is, yes.

22 437 Q. But the Commission, which ultimately then broke for a
23 number of weeks, spotted it by the next hearing day and
24 the matter was immediately identified and acknowledged
25 and corrected and there was a ruling by Mr. Justice 13:43
26 O'Higgins, isn't that right, on day 5?

27 MR. MCDOWELL: Judge, I have to object to this. The
28 Commission only came to the correct conclusion after it
29 studied Sergeant McCabe's transcript and the notes that

1 had been handed in to it. It is not true to say that
2 it was immaterial.

3 MR. MURPHY: well, can I ask the registrar to --

4 CHAIRMAN: well, I note what you say, Mr. McDowell, and
5 it could be one or the other or it could be both. And 13:44
6 I note it and I will consider that point.

7 MR. MCDOWELL: Judge, all I can say is, the transcript
8 doesn't suggest that the Commission thought that the
9 tape was irrelevant or whatever.

10 CHAIRMAN: No, it didn't. It referred to the tape and 13:44
11 it also referred to Superintendent Cunningham's actual
12 report of the meeting, which, when he was asked about,
13 he said, look, that's what happened and I'm not saying
14 anything different. There's an issue, Mr. McDowell, in
15 relation to it. 13:44

16 MR. MCDOWELL: He was cross-examined on it eventually.

17 CHAIRMAN: Yes.

18 MR. MCDOWELL: I have forgotten on what day, I think it
19 may have been the 24th June, when it was finally an
20 agreement that Mr. Smyth, that the letter of the 18th 13:44
21 June -- or 18th May was incorrect.

22 CHAIRMAN: It was agreed. And the issue for me, and
23 I'm not expressing any view on it, was it the tape.

24 MR. MCDOWELL: I will deal with it in cross-examination
25 then, Judge. 13:45

26 CHAIRMAN: Yes. But I'm finding it hard, Mr. McDowell,
27 to not accept Annmarie Ryan's evidence that the
28 document was handed in, together with the inconsistent
29 document, on the same day. It is the kind of thing

1 that happens in court cases, you know.

2 MR. McDOWELL: That all presuppose that somebody would
3 have adverted to the exact word used in it and that
4 Sergeant McCabe would have been in a position to
5 contradict it confidently. 13:45

6 CHAIRMAN: Well, possibly, that could well be a point.
7 And again, I'm not saying yea or nay to any of this. I
8 am just saying that I note the position.

9 MR. MURPHY: Thank you, Chairman.

10 438 Q. Just to pick up on Mr. McDowell's last observation, you 13:45
11 accepted yesterday, at page 66, that Noel Cunningham's
12 account of the Mullingar meeting is the same as the
13 transcript, isn't that right?

14 A. His report and the transcript are the same.

15 439 Q. Yes. So, in fact, any examination of his report would 13:45
16 have demonstrated that there was no conflict with the
17 transcript, isn't that right?

18 A. Yes.

19 440 Q. Yes. And could I ask you to be shown page 1493 in the
20 old book, please. This will be on the screen, 13:46
21 Sergeant.

22 A. Okay.

23 441 Q. So this is a part of the hearing at the end of the
24 process, it's on day 5, everyone has said what they
25 have to say about the document and the transcript, and 13:46
26 could I draw your attention to line 22, question 47,
27 Mr. Justice O'Higgins, he says:
28
29 "Does it change anything? As Superintendent Cunningham

1 put it in his report, he said in his report he thought
2 the motivation of Sergeant McCabe in making the
3 observations and the request on February 28th, he says
4 what he thought, the transcript would appear to offer
5 some support for Superintendent Cunningham's view of
6 it." 13:47

7
8 Do you see that?

9 A. Yeah, I do. Some support, yeah.

10 442 Q. So my point is that there was actually no clash as of 13:47
11 that date and the matter was resolved by the judge,
12 isn't that right?

13 A. There was no clash after I produced the tape-recording
14 of the meeting and after I had it transcribed.

15 443 Q. Parking your view about what you did, I am putting it 13:47
16 to you that actually the Commission had material that
17 Mr. Justice O'Higgins said lent support for what
18 Superintendent Cunningham said, which you accept is the
19 same as your tape, very simple?

20 A. Yes, but he also had the tape-recording as well. 13:47

21 444 Q. I accept that, absolutely.

22 A. Okay.

23 445 Q. I'm not suggesting that your tape didn't form part of
24 the equation, but I'm saying to you if your tape had
25 never existed, the correct version of events would have 13:47
26 been given, and secondly, insofar as there is any
27 misapprehension by people outside this room that
28 Superintendent Cunningham was giving a false version in
29 his report, his report is correct, and you agree it is

1 correct?

2 A. I disagree with that, Mr. Murphy. Sorry.

3 446 Q. Do you disagree that his report is correct?

4 A. No, his report --

5 447 Q. Is correct? 13:48

6 A. -- and the tape-recording is correct.

7 448 Q. Thank you.

8 A. But in relation to the 19 paragraph --

9 449 Q. And he has accepted that --

10 A. -- I was cross-examined on that, and I had to go home 13:48
11 and get a transcript of a tape-recording to prove that
12 I didn't say what I was cross-examined on. And nobody
13 said after that, sorry, Maurice, we made an error, you
14 know.

15 450 Q. But I think ultimately in the course of the judge -- 13:48
16 the testimony on the same page, page 1504, please, this
17 again was a question put by Mr. Gillane on behalf of
18 the Commission. Can you just look at the top of the
19 page -- sorry, the bottom of the next page:

20 13:48

21 "Mr. Gillane, can I ask you, following on from that,
22 there's no point in wasting our time in relation to a
23 matter if it doesn't arise."

24

25 Now, this is the Commission speaking. 13:48

26 A. Sorry, Mr. --

27 451 Q. Sorry, it is important. If we have line 20 on page
28 1503, please. Okay. So this is not the Garda
29 Commissioner speaking, this is Mr. Justice O'Higgins'

1 counsel at the time speaking, and he says this:

2
3 "Can I ask you, following on from that, Superintendent,
4 it's just that there's no point in us wasting our time
5 in relation to a matter if doesn't arise, and I know 13:49
6 you didn't write this letter, but again I infer from
7 your evidence that in relation to paragraph 19 of the
8 letter written by the Chief State Solicitor that has
9 been referred to morning, that following then is, I put
10 it no higher than this, the wrong end of the stick. In 13:49
11 the course of this meeting Sergeant McCabe advised
12 Sergeant Cunningham that the only reason he made the
13 complaint against Superintendent Clancy was to force
14 him to allow Sergeant McCabe to have the full DPP
15 directions conveyed to him. That doesn't appear to be 13:49
16 right."

17
18 Then the answer from Mr. Smyth, acting on behalf of the
19 Commission [sic], is:

20
21 "That's correct." 13:50
22

23 So that is accepted at that stage and effectively
24 matters moved on.

25 CHAIRMAN: well, is that a witness that's answering,
26 Mr. Murphy? 13:50

27 MR. MURPHY: I beg your pardon, that's Superintendent
28 Cunningham, yes.

29 CHAIRMAN: Yes, that's Superintendent Cunningham.

1 452 Q. MR. MURPHY: So ultimately, Superintendent Cunningham
2 is giving evidence. He's not making any case different
3 to your case; in fact, he's saying that this report is
4 the same as what's on the tape. So both of you are
5 effectively proving the same thing. It's not a 13:50
6 question of you disproving what he's failing to prove;
7 you are both saying yes, that's -- you are agreeing.
8 A. I don't agree with you.
9 453 Q. You don't agree that you agree with Superintendent
10 Cunningham, is that your answer? 13:50
11 A. No, I'll tell you why, because in relation -- this
12 arose on the Friday. We had to get -- we had to ask
13 them for a document on the Monday, and that document
14 was approved twice, I think, by Superintendent
15 Cunningham. I went up to the witness box Monday 13:50
16 afternoon and I gave my evidence and then I had to go
17 home, search for a phone, come in on Tuesday, hand the
18 phone over to my legal team, and they informed
19 Mr. Justice O'Higgins that we had a recording of the
20 meeting in Mullingar, and it was adjourned then until 13:50
21 the 24th June, which was day 5, and in the meantime, I
22 transcribed what was on the phone and gave it up to the
23 O'Higgins Commission and it was introduced on the 24th.
24 454 Q. And I think you said that before, Sergeant, and I'm not
25 disputing that. But what I am saying to you is that, 13:51
26 would you not agree that ultimately this matter was put
27 to bed by the Commission on day 5 and it was clear, as
28 you've agreed, that Superintendent Cunningham in his
29 report was correct?

1 A. Only the report.

2 455 Q. It was correct, yes?

3 A. Only the report.

4 456 Q. And insofar as paragraph 19 was erroneous, to go no
5 further than this morning, I think you'd agree with me, 13:51
6 it's possible for people, even such as yourself, in
7 conjunction with your lawyers, to make a mistake in
8 relation to a document and it's possible that that is
9 what happened here as well?

10 A. I think we have a disagreement and I think it's up to 13:51
11 the Chairman to --

12 457 Q. Well, I fully accept that indication if you disagree,
13 but I wanted to put my case to you. We can let the
14 Chairman decide.

15 A. Understandably, yeah. I think we should, yeah. 13:51

16 458 Q. But you are aware, and there is one consequence of
17 this, that the popular narrative would appear to have
18 assumed for quite some time that Superintendent
19 Cunningham and Sergeant Martin had done something wrong
20 in relation to their meeting with you in Mullingar, or 13:52
21 in relation to giving evidence at the Commission, and
22 that's incorrect too, isn't it?

23 A. The evidence hadn't been heard.

24 459 Q. Yes.

25 A. And I think -- 13:52

26 460 Q. Well, would you agree with me, Sergeant Martin didn't
27 give any evidence?

28 A. No.

29 461 Q. No.

1 A. No, she didn't give any evidence, no.

2 462 Q. And again, that is matter for the Chairman to decide.

3 A. I think it is a matter for the Chairman.

4 CHAIRMAN: Yes. Well, both of them were then referred
5 by the Garda Commissioner to GSOC. 13:52

6 A. I saw that, Mr. Chairman.

7 CHAIRMAN: That is something that I won't understand
8 until my dying day, particularly Sergeant Martin.

9 A. Particularly Sergeant Martin.

10 CHAIRMAN: Who had done absolutely nothing wrong. 13:52

11 A. Apparently she did nothing wrong.

12 CHAIRMAN: There was no hint of it.

13 A. No.

14 CHAIRMAN: And yet she is investigated by the police
15 Ombudsman. 13:52

16 A. Yeah.

17 CHAIRMAN: At the behest of the Garda Commissioner.

18 463 Q. MR. MURPHY: But the position, Sergeant, I think on day
19 5 is that you knew that she hadn't given evidence, is
20 that right? 13:53

21 A. Oh, yeah, I knew she hadn't given evidence.

22 464 Q. You knew that Superintendent Cunningham had given
23 evidence and had given evidence in relation to the
24 document and in relation to the report?

25 CHAIRMAN: I suppose the difference between you is that 13:53
26 Mr. Murphy is putting to you, look, there is a
27 difference between an error in a document, which could
28 be deliberate, which could be mistaken, he's leaving it
29 up to me to decide that, which is only right.

1 A. Yeah.

2 CHAIRMAN: And actually going in and committing
3 perjury, which is a different kettle of fish.

4 A. True.

5 CHAIRMAN: And you'd probably agree perjury never 13:53
6 happened, but as regards the document itself and
7 perhaps inconsistencies in it, the way it is put,
8 etcetera, etcetera, you're taking a different view and
9 you felt you were on the receiving end of that and that
10 it was wrong. 13:53

11 A. Yeah.

12 CHAIRMAN: It may be fairer to say that.

13 A. Yes, it is, it is, Mr. Chairman. And I'd prefer if you
14 could rule on it. But just in relation to day 5 --
15 MR. MURPHY: Yes. 13:53

16 A. -- when it arose then, to correct whatever error or
17 misinformation, I mean all Superintendent Cunningham
18 had to say was, I mean, you know, there's no way
19 Sergeant McCabe said this.

20 465 Q. Superintendent Cunningham handed in his report, 13:54
21 confirming the correct action.

22 A. Yes, I do know that, but he was examined for an hour on
23 it.

24 466 Q. And then matters stopped because you produced your
25 tape. But if he had been allowed to carry on as his 13:54
26 examination had been given and asked about his report,
27 that is the evidence that he would given, isn't that
28 clear?

29 A. I think we're at odds, Mr. Murphy, and I would prefer

1 if the Chairman could deal with it.

2 467 Q. Perhaps. But I just have to put it to you formally
3 that that is the case as we see it also. Now, can I
4 just move back also in relation to the process which is
5 at hearing before Mr. Justice O'Higgins. I wonder if 13:54
6 you could be shown 2235, please. This will be in the
7 old book, so it will be on the screen. Sorry, it's at
8 2235, please, volume 3 of the old book.

9 CHAIRMAN: Are you happy with that?

10 MR. MURPHY: I think so, Judge, yes. I wonder if it 13:56
11 could be scrolled back just briefly to the previous
12 page, the bottom of page 2234.

13 468 Q. Now, at this stage in the course of the hearings the
14 Commission is looking at issues in relation to what
15 Garda Murray had done, and do you see at page 2234 at 13:56
16 line 23 --

17 A. Yes.

18 469 Q. -- Mr. Justice O'Higgins says:
19
20 "At this stage I think it would be fair to say, Garda 13:56
21 Murray did a great deal of hard work, he showed a great
22 deal of commitment at that stage, even to the extent of
23 challenging the DPP's directions on the basis that it
24 was given under a slight misapprehension."
25
26 And you said:
27
28 "Yes."
29

1 And then can I ask you to turn to the next page and at
2 line 13, question 367. You see here that the Judge
3 asked you a question and he said:

4
5 "Okay. One final thing and I am only going to ask you 13:57
6 because it is part of the inquiry. If I were to say to
7 you, Sergeant McCabe, that you have a lot of concerns
8 about a lot of things, some of which may be justified,
9 some of which may not, but that there is tendency at
10 times at least that you shoot first and ask questions 13:57
11 afterwards."

12
13 He says:

14
15 "The reason I say this is that in the course of this 13:57
16 and other modules there have been allegations made
17 about people and then you've responded by saying, oh, I
18 didn't know about this, or I didn't know about that at
19 the time - for example, the medical report here, the
20 report of the superintendent there, in respect of 13:57
21 certain allegations that you've withdrawn. If somebody
22 suggested to you that at times you tend to shoot first
23 and ask questions afterwards, what would your response
24 to that be?"

25
26 And you say:

27
28 "To be honest, Judge, I wouldn't accept that."
29

1 But if you turn to the following page, page 87 at line
2 21, again the Judge says to you:

3
4 "It wasn't to say that you were right or wrong in
5 relation to the accuracy of your complaints or in 13:58
6 relation to the criticism, but you have withdrawn
7 certain things, you have said had I known then what I
8 know now my position might have been different. It's
9 just in that particular context I was inviting your
10 comment." 13:58

11
12 You said:

13
14 "Right. Judge, on that, I have never said I was right
15 all along. All I wanted was reasonable standards not 13:58
16 high standards."

17
18 So I just have to suggest to you that if you even take
19 our last discussion, there are occasions where I
20 appreciate you have a strongly held view, but there 13:58
21 clearly have been circumstances where some of your
22 strongly held views have not been supported by
23 evidence, and I think you have accepted that.

24 A. Yeah, but also Mr. Murphy there were a number of
25 incidents that I was blamed for and it was in the wrong 13:58
26 as well.

27 470 Q. But in terms of the episode we just talked about, for
28 example, with Superintendent Cunningham, that is an
29 example, I have to suggest to you?

1 A. Which is that? In relation to the tape-recording?
2 471 Q. This is the suggestion about the recording --
3 A. About the recording?
4 472 Q. -- and the transcript, yes.
5 A. I disagree, Mr. Murphy. 13:59
6 473 Q. And again, we'll we agree it is a matter for the
7 Chairman to decide.
8 A. Yes.
9 474 Q. Very good. Now, Sergeant, in overall terms, can I just
10 say to you that in terms of the process that was 13:59
11 conducted by Mr. Justice O'Higgins, I have to suggest
12 to you that all of that was dealt with in a very calm
13 and measured way by him, would you agree?
14 A. By him, absolutely.
15 475 Q. And I have to suggest to you formally, as is required, 13:59
16 to put it to you that Commissioner O'Sullivan did not
17 do anything to have matters that were inappropriate put
18 to you to discredit you?
19 A. Well, Mr. Murphy, in relation to that aspect alone, you
20 have to see where I was coming from, because we 13:59
21 insisted, so we did, that Mr. Smyth would get a firm
22 direction or his firm -- what word am I looking for? --
23 instructions off his client, and I think we asked for a
24 second time, and it came back to say in relation to --
25 in relation to my motive, that the instructions were 14:00
26 reaffirmed and then we looked for a five-page -- or we
27 asked for the allegations in writing. We ended up
28 getting a five-page document, which was almost false,
29 and this was handed in on behalf of the Commissioner.

1 So what was I to think?

2 476 Q. well, for example, we know today that a statement was
3 handed in by you --

4 A. I appreciate that.

5 477 Q. -- to this Tribunal and, you know, there's a 14:00
6 possibility there of significant error, and your
7 lawyers have said it was their error. So we both
8 agreed earlier, I understood, that errors can occur?

9 A. Errors can occur.

10 478 Q. And it is just that type of example I want to suggest 14:00
11 to you that, in the absence of very clear evidence, it
12 is going a step far too far to say that people have
13 acted falsely or deliberately. It may have been
14 accidental, as yours was?

15 A. Yes, but, Mr. Smyth [sic], if you look at all the 14:01
16 document on the file, in relation to this infamous
17 letter on the 18th May they were instructed to make
18 sure it was accurate.

19 479 Q. Yes.

20 A. Every part of it was accurate. Now, they signed off on 14:01
21 the document.

22 480 Q. Yeah.

23 A. And, I mean, they are senior officers.

24 481 Q. Sergeant, you're an experienced and senior officer, and
25 again, just to be fair to you, you signed off on your 14:01
26 statement?

27 A. I totally accept --

28 482 Q. And that's been sitting on this Tribunal's file for
29 months.

1 A. Yeah, but at the same time --

2 483 Q. No, no, no --

3 A. -- Mr. Murphy, can I just say --

4 484 Q. Let me just finish this part. It's been sitting here
5 for months, and so much so and so seriously was it 14:01
6 taken by the Tribunal that it had to issue and
7 circulate the audio tapes so that your team and all the
8 other teams could see if that was correct?

9 A. Yes. And I apologised to the Chairman today for an
10 error. But I'm just saying to you, just look at what I 14:01
11 was facing with; I was facing with a document on that
12 Monday morning, and my legal team -- after reading it,
13 I said I have that recorded. And they said, why didn't
14 you tell me, Maurice? And I said because it wasn't
15 relevant. And, I mean, I had to go home that evening, 14:02
16 search for the phone, and I'm of the belief, and it's
17 up to the Chairman just to make his decision, but I'm
18 of the belief, if I hadn't got the tape-recording, I
19 was in serious trouble.

20 485 Q. And I suggest to you that that is a completely 14:02
21 erroneous belief, and again that is a matter for the
22 Chairman to decide.

23 A. And I understand that, Mr. Murphy.

24 486 Q. Can I come back to yesterday briefly in relation to the
25 process. I think in the course of the evidence 14:02
26 yesterday, you said, at page 101 of yesterday's
27 transcript, that after the comment was made by
28 Commissioner Callinan in relation to the word
29 "disgusting", that you believed floodgates opened in

1 relation to yourself?

2 A. That's correct.

3 487 Q. But just again to pause for a moment. I think this
4 morning you agreed with me, do you not, that, in fact,
5 you had been complaining of being victimised since 14:03
6 2008?

7 A. The early part of it. I went to Mullingar in July
8 2008.

9 488 Q. Yes.

10 A. And after the first year I didn't get any victimisation 14:03
11 until about 2013 or '14.

12 489 Q. Right. Can we just pause there for a moment then,
13 Sergeant. On the 28th April 2008, did you make a
14 complaint to the Human Resource Management Centre of An
15 Garda Síochána about Superintendent Clancy's failure to 14:03
16 deal with a number of matters?

17 A. I did.

18 490 Q. On the 15th October 2008, as part of the investigation
19 into the resource management issues, human resources,
20 did you meet with -- did you also relate to another 14:03
21 complaint of "harassment, bullying, discrimination,
22 victimisation", and this was made against
23 Superintendent Clancy?

24 A. Eh, is that a statement I made?

25 491 Q. Yes. 14:03

26 A. Okay. Well, if it is a statement I made, yeah.

27 492 Q. Could I have page 451, please, of book 1 of the new
28 book. Sorry, it may, in fact, be 463.

29 CHAIRMAN: Just help us again, Mr. Murphy, if you

1 wouldn't mind.

2 MR. MURPHY: Yes.

3 CHAIRMAN: Just help us here, Mr. Murphy, if you
4 wouldn't mind. You are referring to the statement.
5 Just tell us the date of it and who it was to. 14:04

6 MR. MURPHY: Yes. If we could scroll -- 28th April
7 '08. If we can scroll, please, up to the top of the
8 document, further again. So this is a statement made
9 by you on the 28th April 2008.

10 A. Yeah. 14:05

11 493 Q. I think you're familiar with this statement?

12 A. I think I am, yes.

13 494 Q. And again, you'll agree with me that that is a
14 statement in relation to complaints of being harassed
15 and victimised? 14:05

16 A. Yeah. It was the first of them.

17 495 Q. And I think that if we could have page 1106, please.
18 This is, I think, in the new book. This is a letter, I
19 think, of 7/1/2014.

20 A. Yeah. 14:06

21 496 Q. Could we please have the title of the document, thank
22 you. And I think that this letter is written,
23 therefore, immediately prior to PAC Committee hearings
24 in 2014?

25 A. Yeah. I think it's a fortnight prior, isn't it? 14:06

26 497 Q. A fortnight before, yeah. And I think here you can see
27 the title. It says:
28
29 "Ongoing harassment, intimidation, victimisation for

1 reporting corruption."

2 A. That's correct.

3 498 Q. Just scroll down please, registrar, if you might. Then
4 there is a request to say:
5
6 "I need to take appropriate steps to be protected. Can
7 you advise me and put in place a welfare and protection
8 policy as a matter of urgency."
9

10 And also you indicated in the previous paragraph that
11 you had been subjected to unbearable harassment and
12 intimidation by the Garda authorities. So would you
13 agree with me, just based even on those three
14 documents, that between 2008 and 2014, you had engaged
15 in correspondence and/or had made statements about
16 these issues, and, insofar as that's the case, to
17 suggest that floodgates opened after Commissioner
18 Callinan said anything is an exaggeration?
19 A. No, it's not, because I said to you a minute ago that
20 it started in late 2013.
21 499 Q. What were all these other letters then written back in
22 2008?
23 A. I went to Mullingar. A year after going to Mullingar,
24 everything settled.

25 500 Q. But you issued proceedings in 2009 in the High Court?
26 A. Well, that's my legal team.
27 501 Q. That's your legal team. I see. But I think you agreed
28 this morning that those proceedings exist and they are
29 before the High Court and they're all about what

1 happened in 2008 and 2009, they're all about alleged
2 bullying, alleged harassment. That's what that case is
3 about, isn't it?

4 A. Yeah. But what I'm saying to you is, about a year
5 after I went to Mullingar it stopped.

14:08

6 502 Q. But your case continues?

7 CHAIRMAN: Yes. Again, just to try and get this back
8 into focus for my own sake, in terms of a chronology.
9 This letter where you say, can you advise me, please,
10 and put in place a welfare and protection policy as a
11 matter of urgency, I need to be protected, I need
12 appropriate steps to be taken, I have reported loss of
13 revenue to the State, all of this was building up to
14 the PAC?

14:08

15 A. This was, yes.

14:08

16 CHAIRMAN: Which was a parliamentary hearing.

17 A. Yes.

18 CHAIRMAN: And it was concerned certainly with loss of
19 revenue, that is very important, and also the abuse of
20 the Pulse system and the penalty points was obviously a
21 very important thing for everybody in the country. But
22 if that is the 7th January, Commissioner Callinan, the
23 disgusting remark, was the 23rd January.

14:08

24 A. Yes.

25 CHAIRMAN: And that's -- you'd add on two weeks to get
26 to that. I think that is the point that Mr. Murphy is
27 making to you.

14:08

28 MR. MURPHY: Yes.

29 A. Yeah. And as I said to you just here a few minutes

1 ago, I said it started in late 2013.

2 503 Q. MR. MURPHY: But you actually sued in 2009, on 12th
3 November 2009.

4 A. Yeah, but it was for a previous case in Bailieboro.
5 And looking at my legal team here, I think I really 14:09
6 couldn't answer.

7 CHAIRMAN: well, I think, and again I don't want to cut
8 across you, Mr. Murphy, but it is just to clarify the
9 point. As I understood your evidence, Sergeant, when
10 you were answering Mr. Murrinan, it was a bit of a 14:09
11 rollercoaster ride, it was a kind of up and down, and
12 you said that following upon the remark on the 23rd
13 January, on the television, by Commissioner Callinan in
14 relation to yourself and another whistleblower as the
15 name that was given to the two of you, things became 14:09
16 unbearable, it was kind of gloves off.

17 A. Yeah, things were tough.

18 CHAIRMAN: Yes. Now, I understand that to be your
19 evidence. You also said, look, moving to Mullingar,
20 you were working with a group of young men and women 14:10
21 and you were getting great support, they were very
22 good. But what Mr. Murphy is putting to you is: if
23 you look at any particular point through this time and
24 before Commissioner Callinan does anything, there are
25 definite complaints of why you need to be protected and 14:10
26 that you are being harassed, that there are problems.
27 That is the line of questioning.

28 A. Mm-hmm.

29 CHAIRMAN: So maybe that is the thing to be addressed,

1 if you can help.

2 MR. MURPHY: Sure.

3 A. Can I just ask -- sorry.

4 504 Q. MR. MURPHY: Again, you indicated in your evidence that 14:10
5 because what you say Commissioner Callinan said, that
6 somehow floodgates were opened, and I think you
7 specifically said:
8
9 "I think that after that comment the floodgates were
10 opened. It was hard to take." 14:10
11 A. Yes, I do believe that.

12 505 Q. But prior to that time you had been complaining about
13 harassment, since 2008?

14 A. Yeah, but it stopped a year or so after I went to
15 Mullingar, and there was a break until the penalty 14:10
16 points came out in December 2012. But it was in late
17 2013 that I was starting to get more hassle again.

18 506 Q. And again, I have to suggest to you that any connection
19 between that and the retired Commissioner Callinan is
20 incorrect. 14:11
21
22 Can I just move on for one other issue. Can I ask you
23 just to look at your evidence yesterday. I think you
24 were, at page 12, asked some questions by Mr. Marrinan.
25 I think here you told us at the end of page 12 that you 14:11
26 had been working with Superintendent Cunningham, you
27 were working with him every day, and you say:
28
29 "I did feel that if he had the directions earlier I

1 should have been told. I was annoyed at the fact I had
2 to ring him on the 23rd looking for the directions."

3

4 And I think that's what you told us yesterday.

5 A. Yes.

14:12

6 507 Q. Now, I think this issue was covered in the O'Higgins
7 Commission. I wonder if we could be shown, in the old
8 table, pages 1125 to 1124 -- sorry, 27. Just stopping,
9 please, at the page on the screen, Sergeant.

10 A. Yeah.

14:12

11 508 Q. In the course of Superintendent Cunningham's evidence
12 we have him dealing with matters of procedure, and he
13 says to the Judge:

14

15 "I'm explaining it wrong. The file was prepared by the
16 superintendent, sent to the State solicitor, sent to
17 the DPP." 14:13

18

19 The Judge says:

20

14:13

21 "Yes.

22

23 And the DPP's directions come back to the State
24 solicitor and they are sent to the office of the
25 superintendent." 14:13

26

27 Do you see that?

28 A. I do.

29 509 Q. If we scroll down just a little bit more, please,

1 further down again and further down again to the next
2 page. So we have here at line 3:

3
4 "What was the date of the letter?"

14:13

5
6 Superintendent Cunningham said:

7
8 "I received directions. It was dated, Judge, the 5th
9 April 2007."

14:13

10
11 Then he was asked was there any other date. It was
12 received in the State solicitor's office on the 11th
13 April. So if we move down, please. He says:

14
15 "It's date stamped in Rory Hayden's office -- "

14:13

16
17 That is the state solicitor who spoke to you.

18
19 " -- on 11th April 2007."

14:13

20
21 Then, question:

22
23 "When did you receive the communication?"

24
25 Superintendent Cunningham said:

14:13

26
27 "On the 24th April 2007 I opened that envelope in
28 Monaghan Garda Station."
29

1 And then we move down to the next part:

2

3 "You took certain action. I think there were two
4 parties involved, there was the victim and there was
5 the -- what did you do? 14:14

6 A. I immediately contacted the victim's parents. I
7 informed them I wished to speak to them. I was aware
8 that the victim was a minor. I said to them do they
9 want -- "

10

11 And then carry on, please. The Judge said: 14:14

12

13 "I take it you informed them of the --"

14

15 He said: 14:14

16

17 "No, I drove to their house. I informed them there."

18

19 "Immediately after --"

20

21 Line 6: 14:14

22

23 "Immediately after I left their home I rang Sergeant
24 Maurice McCabe.

25 Q. Did you get a response? 14:14

26 A. It went to his answering machine. I told him I
27 wished to meet him."

28

29 Scroll down again, please. And insofar as that's done,

1 he indicates his attempts to make contact with you
2 after that date. Now, I think you had said in your
3 evidence yesterday, and I quote from page 12:

4
5 "I was working with him since 5th April, I was working 14:14
6 with him every day."

7
8 And we know from the O'Higgins Commission that
9 Superintendent Cunningham indicated that, in fact, he
10 had come back to the relevant area on the 24th, moved 14:15
11 into action straightaway.

12 A. Yes.

13 510 Q. But you weren't there at that time, do you remember
14 that?

15 A. I wasn't where? 14:15

16 511 Q. And this is an issue which was addressed by Mr. Justice
17 O'Higgins, wasn't it?

18 A. I wasn't where, sorry?

19 512 Q. You were on sick leave at that time, weren't you?

20 A. I was what? 14:15

21 513 Q. On the 24th?

22 A. Em, that issue arose at the O'Higgins Commission, em --

23 514 Q. In this section.

24 A. Pardon?

25 515 Q. In this section. For three weeks, you were on sick 14:15
26 leave.

27 A. Yes.

28 516 Q. And he told the Commission that he attempted to make
29 contact with you.

1 A. He did.

2 517 Q. And eventually he did.

3 A. Yes.

4 518 Q. So just looking back at the dates, we know from the
5 timeframe of the evidence given by Superintendent 14:15
6 Cunningham that it would be an indication that they may
7 not have even been received until 11th April and not by
8 him until the 24th April.

9 CHAIRMAN: I think the evidence here had been, in fact,
10 that he was away; apparently he was on secondment as 14:16
11 acting superintendent somewhere else.

12 A. In Bailieboro.

13 CHAIRMAN: Yes. And then had come back. So he was
14 away for a couple of months.

15 A. Yes. 14:16

16 CHAIRMAN: Had come back, and then the letter was
17 waiting for him when he came back after a gap, I
18 suppose between the receipt of the letter and him
19 opening it up, about 12 days.

20 A. I see. I think he was in Bailieboro from the 11th 14:16
21 until the 24th.

22 CHAIRMAN: I'm not sure. But that was what his
23 evidence was.

24 A. Yeah, okay.

25 CHAIRMAN: That he had to go somewhere else to be 14:16
26 acting superintendent or something --

27 A. He was actually acting in Bailieboro.

28 CHAIRMAN: Was he?

29 A. He was.

1 CHAIRMAN: I thought he maybe had to cover a different
2 station. That was the evidence. I will go and back
3 check it.

4 A. Okay, Mr. Chairman.

5 CHAIRMAN: But I think what is being put to you by 14:16
6 Mr. Murphy is that, look, if you actually look at the
7 dates, if he really opened the letter on the 24th, he
8 actually rang you on the 24th.

9 A. Yeah, well, in relation to that Mr. Chairman, I
10 produced or I disclosed in relation to my diary, and it 14:16
11 shows that I rang him on the 23rd April '07 and I asked
12 him if the DPP's directions were back, he said yes, I
13 will have the craic with you later, they are positive.
14 And that is written in a diary that I produced to
15 O'Higgins and to here. 14:17

16 CHAIRMAN: Yes. No, and I think I can appreciate that.
17 But I think I can appreciate as well, knowing how these
18 things work, that if you have a close relationship with
19 the local state solicitor, and it's clear to me that
20 you did, for instance, that he would have it as well 14:17
21 and that they probably chatted about things, for all I
22 know, a few days after the letter was received. I have
23 no idea, but that would be a kind of thing that might
24 happen?

25 A. Yeah, absolutely. But as I said, I produced a diary 14:17
26 and it shows that I rang him on the 23rd.

27 519 Q. MR. MURPHY: And the evidence was, to the Commission,
28 that he didn't get the material until the 24th.

29 A. Yes.

1 520 Q. So insofar as his evidence was concerned, I have to
2 suggest to you that he told the O'Higgins Commission
3 that he had done everything he can to move into action
4 after he received the directions, but you were on leave
5 at that time? 14:18

6 A. Well, just, Mr. Murphy, I rang him on the 23rd and I
7 asked him if the DPP's directions had come back, and he
8 said yes.

9 521 Q. You see, I have to suggest to you that you told us this
10 morning that you accept the O'Higgins report, and this 14:18
11 is matter that has been adjudicated by the O'Higgins
12 report, isn't it?

13 A. I said the findings of the O'Higgins report.

14 CHAIRMAN: Sorry, I don't mean to interrupt,
15 Mr. Murphy, but just because it is a detail that may be 14:18
16 important. Rory Hayden, and no one is going to
17 criticise him for what he did, I mean, as I said, there
18 always a close working relationship between him, you,
19 the superintendent or, as he was then, the inspector.

20 A. That's correct. 14:18

21 CHAIRMAN: So have you any idea when Rory Hayden
22 actually rang you? Because possibly he would have rung
23 Superintendent Cunningham the same day - well, we don't
24 know that.

25 A. Yeah, well, I have, Chairman, and I disclosed the 14:18
26 diary. He rang me on the 11th April --

27 CHAIRMAN: Yes.

28 A. -- at 9:30 in the morning.

29 CHAIRMAN: Yes. So you knew you were in the clear from

1 then?

2 A. From then.

3 CHAIRMAN: In the course of the conversation, did he
4 ever say to you, by the way, I'm going to ring Noel
5 Cunningham, or anything like that?

14:19

6 A. No, no, he didn't, no.

7 522 Q. MR. MURPHY: Sergeant, can I take you to another point.
8 This is moving to the period after the O'Higgins
9 Commission developed and after you say that there were
10 issue which you took umbrage with in the way in which
11 you were being examined or treated or cross-examined by
12 counsel on behalf of the Commissioner. I think you
13 suggested that back-up and support had broken down. I
14 wonder if you could show a document, please, which is
15 in a separate bundle, in the new bundles, and it should
16 have a page number 1193. Now, just to assist the
17 Tribunal, this is a document which is effectively a log
18 of all contacts in terms of outreach to you, and I
19 think part of this you've already mentioned. You see
20 the letters "EAS"?

14:19

14:19

14:20

21 A. Yeah, Employment Assistance Service.

22 523 Q. And can you just describe to the Chairman what that is?

23 A. It's a welfare officer that's in each division,
24 Mr. Chairman, or each region.

25 524 Q. Yeah.

14:20

26 A. And I became friendly with him and I met him on a lot
27 of occasions.

28 525 Q. So can we just look very quickly, looking at the first
29 page, at details, all the points of contact you had in

1 2009, 2010, then turning over the page to 2011, 2012,
2 '13, '14, '15, and just turning again over to the next
3 page, some of the dates appear to be out of kilter. We
4 have April 2015, May 2015, then we come up to the 19th
5 May 2015. Just to be clear, in the days prior to that 14:21
6 we have contacts with John Barrett and yourself, is
7 that correct?

8 A. Eh, on what date, Mr. Murphy?

9 526 Q. Well, let's take it back, if we can --

10 A. On the 9th June? 14:21

11 527 Q. Let's take it back even further, actually, just to put
12 it in sequence. Can you go back, please, to the
13 previous page. You see the 1st September 2014?

14 A. Yes.

15 528 Q. And there's a Chief Superintendent O'Brien met with the 14:21
16 member. Is that Barry O'Brien?

17 A. Yeah, Barry O'Brien.

18 529 Q. And Barry O'Brien was the person you had asked to deal
19 with you?

20 A. That's correct. 14:22

21 530 Q. And that's because you had been contacted by the Garda
22 management to seek to help to address your concerns?

23 A. Yeah, to nominate a member.

24 531 Q. And you nominated him?

25 A. I did. 14:22

26 532 Q. Then on the 11th September we have got a meeting
27 between Chief Superintendent O'Brien and your
28 solicitor, Séan Costello, at your solicitor's office?

29 A. Yes.

1 533 Q. And then we go through the months of September, October
2 and January. The 16th December we have another meeting
3 with Chief Superintendent O'Brien.

4 A. Yes.

5 534 Q. And then moving up to the 6th March 2015, Chief 14:22
6 Superintendent McLoughlin, HRM, met with the member.
7 Do you see that?

8 A. I see that, yes.

9 535 Q. And then in March 2015 we've got text messages from
10 John Barrett to you. During that time, you've heard 14:22
11 evidence given in relation to attempts to meet with you
12 and to deal with you by the HR department. Does this
13 all reflect the communications you would have had with
14 them at that time?

15 A. Yeah, and my legal team. 14:22

16 536 Q. And then just turning over to the next page, if we can
17 go down through April, through May, okay. If we pause
18 there for a moment, please, at the 19th May. Now, as I
19 understood the evidence that had been given by you
20 yesterday, certainly from the questions suggested on 14:23
21 your behalf, that, after day 3, basically the whole HR
22 effort towards you broke down and nothing happened
23 thereafter?

24 A. In relation to me, no.

25 537 Q. In relation to you, okay. So can we just move forward 14:23
26 then on to the 26th May. You've got a message from
27 John Barrett and also from the EAS, you've got a
28 message from Superintendent McCarthy in Naas on the 6th
29 June, you've more messages from Mr. Barrett throughout

1 June, at least six or seven of them, more contact with
2 the EAS, contact between you on the 1st July, into
3 July, more contact with Mr. Barrett. And is it correct
4 to say that Mr. Barrett was partially assigned to try
5 and communicate with you during that time? 14:24

6 A. Yes, he was.

7 538 Q. Yes. And then we look at July itself, moving down from
8 the 8th to the 16th, 20th, and, for example, on the
9 20th July, John Barrett again; moving forward to 2016,
10 it continues throughout that time as well; 9th May 14:24
11 2016, Superintendent Murray. What was that about?

12 A. Pardon?

13 539 Q. Superintendent Murray, 9th May 2016?

14 A. Oh, em, I'm not too sure.

15 540 Q. Chief Superintendent McLoughlin, HRM, 10th May 2016? 14:24

16 A. I think that may have come after the leaked report.

17 541 Q. And do you see then further down after the 12th May,
18 Chief Superintendent Wheatley, phone call to you?

19 A. Yeah.

20 542 Q. And the following two pages are I think predominantly 14:25
21 communications between you, the EAS and Mr. Barrett?

22 A. Yes.

23 543 Q. And they go all the way up to this log on the 7th
24 October 2016?

25 A. Yes. 14:25

26 544 Q. And what time did you cease working in An Garda
27 Síochána that year?

28 A. Pardon?

29 545 Q. Did you cease working or full-time working in An Garda

1 Síochána that year?

2 A. I think it was -- it probably was May or June, I think,
3 of '16, Chairman.

4 546 Q. And notwithstanding that, contact continued through
5 this process with you after that? 14:25

6 A. Yes.

7 547 Q. Yeah. So I just have to again put it to you, suggest
8 to you formally, that insofar as it may be suggested to
9 the Chairman that any actions on Commissioner
10 O'Sullivan's part terminated HR outreach, in fact the 14:25
11 log suggests that it continued?

12 A. It continued in relation to the welfare officer and
13 John Barrett. But in relation to the Mulvey thing, it
14 ended after O'Higgins started.

15 548 Q. I appreciate that. 14:26

16 A. Okay.

17 549 Q. But in terms of the rest of the contact?

18 A. Yeah.

19 550 Q. And I think you've indicated, as I understood your
20 evidence, that Mr. Barrett was very solicitous for you 14:26
21 and he was keen to meet with you and to talk to you.
22 Did he, in fact, encourage you to go back to work?

23 A. Yes, he did.

24 551 Q. And did you tell him you couldn't?

25 A. I told him I couldn't at that stage. 14:26

26 552 Q. And what reason did you give him?

27 A. Em, I think it was mediation going on at the time.

28 553 Q. And did you give him any other reason?

29 A. I don't think so.

1 554 Q. Did you say you couldn't return to work on the advice
2 of your lawyers?
3 A. No. I think that was an error, actually, because I
4 seen that in his report. And Mr. McDowell, actually,
5 he never told me that, to stay off, you know. 14:26

6 555 Q. But Mr. Barrett had recorded that in his report?
7 A. He had recorded it in his report, yeah.

8 556 Q. That you couldn't return to work on the advice of your
9 legal team while Nóirín O'Sullivan was still
10 Commissioner? 14:26

11 A. Well, I just felt, and after the letter of the 6th --
12 of the 18th May 2015, I thought that was -- that was an
13 issue.

14 557 Q. So just to be clear, you thought that you couldn't go
15 back at that stage, but you weren't advised by your 14:27
16 legal team, is that right?

17 A. I wasn't.

18 558 Q. Okay. But Mr. Barrett was encouraging you to go back
19 to work?

20 A. He was asking me if I could go back, and I did explain 14:27
21 to him in relation to what happened on the 15th May.

22 559 Q. And he was encouraging you in 2016?
23 A. Or the 18th. Yeah, he is encouraging me, but he's also
24 just ringing me only to keep in touch. And the welfare
25 officer, as you can see there, I mean, I kept in touch 14:27
26 with him. My phone calls to him, and even my meeting
27 for coffee with him, was very helpful.

28 560 Q. I think it's fair to say that your evidence indicates
29 that it was your choice not to return to work for the

1 present time?

2 A. I felt it was awkward and I was unable to.

3 561 Q. I see. Can I just move on from that, please, to deal
4 with the evidence that you gave yesterday concerning
5 Mr. Taylor. I wonder if book 1 of the new book could
6 be accessed, please. 14:27

7 CHAIRMAN: It may help parties if I perhaps say the
8 following, Mr. Murphy, and I'm certainly not going to
9 try and curtail you in any questions you feel are
10 appropriate on that, but certainly vis-à-vis Ms. Burns, 14:28
11 the difference between what her client instructs her
12 was said and what Sergeant McCabe reports as being
13 said, is very important. But as regards attributing
14 any of that to superintendent -- sorry, to Commissioner
15 Callinan, at the moment I simply can't do that. It may 14:28
16 be different if Superintendent Taylor gives evidence,
17 it may be different if those to whom he allegedly said
18 what he said give evidence, but at the moment it is a
19 mere allegation reported by somebody else, so it's a
20 question of dúirt bean liom go ndúirt bean léi', and I 14:28
21 couldn't possibly rely on it at the present time, that
22 may change, and you will appreciate how it could
23 change. But that may help you in terms of your
24 approach to it.

25 MR. MURPHY: I'm very grateful to the Chairman for that 14:29
26 direction.

27 562 Q. And also I was just going to say that Sergeant McCabe
28 also said something I think today at around 10:47, and
29 the quotation was:

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"I'm not saying that I have evidence against either of the Commissioners. All I'm saying is, this is what he told me."

14:29

This is in the interchange with Ms. Burns. So I think you very fairly accept, Sergeant, that anything you may have said yesterday isn't evidence against Commissioner Callinan. All you were doing is reporting what somebody else had said to you - hearsay evidence, in effect.

14:29

A. Yeah, well I'll tell you, Mr. Murphy, sorry, if I can bring it a bit further. I have no evidence in relation to those allegations. It's just exactly what I was told --

14:29

563 Q. Yes.

A. -- by Superintendent Taylor, and I just want to stress that to you.

564 Q. No, no I respect that.

A. In relation to your clients, and Commissioner O'Sullivan the same. I have no evidence.

14:29

565 Q. And I think the Chairman and I are agreeing with you that this is hearsay evidence, it isn't evidence at all. And your phrase that you're not saying that you have evidence against either of the commissioners, all you're saying is this is what you were told?

14:30

A. Yes.

566 Q. And if that is the case --

MR. MCDOWELL: It is evidence. It is evidence of what

1 he was told. It is not evidence of the truth of what
2 he was told.

3 CHAIRMAN: No, I totally agree it is evidence of what
4 he was told. Yes, Mr. McDowell, you are absolutely
5 right about that. 14:30

6 A. And that's what I meant.

7 CHAIRMAN: But in terms of the questions that I am
8 being asked to investigate --

9 MR. MCDOWELL: I am with you completely on asking
10 questions. To comment on it is irrelevant, Judge. 14:30

11 CHAIRMAN: Well, it is, it is really. It is different
12 if it is your client who is alleged to have said it, in
13 which case the precise terms of it do become important.

14 MR. MCDOWELL: Yes. Quite clearly there's no point in
15 asking my client to comment on the substance of what he
16 was told another person had said. That's all. 14:30

17 CHAIRMAN: No. But if there is any issue in relation
18 to -- well, I don't see how there can, on Mr. Murphy's
19 instructions, be any issue as to the precise thing that
20 was said. Superintendent Callinan -- sorry, I beg your
21 pardon, Commissioner Callinan has given a statement
22 indicating, look, he never said any such thing. So
23 that is the situation, and I am aware of that. 14:30

24 MR. MURPHY: Yes. I can shorten matters, Judge. We
25 think it is clear everybody agrees what was said
26 yesterday is not evidence of the truth of its contents,
27 it's merely hearsay evidence. 14:31

28 CHAIRMAN: Yes.

29 MR. MURPHY: And I will shorten it on this point by

1 just simply asking you to just confirm, as you said
2 yesterday, that that is the case, and, that being so,
3 Judge, I don't propose to ask any detailed question of
4 this witness in relation to it, other than to say -- to
5 put it formally to him that all of those matters are 14:31
6 denied by my clients, in particular by Commissioner
7 O'Sullivan and Commissioner Callinan.

8 A. Yes.

9 567 Q. Fully denied.

10 A. Yeah. 14:31

11 568 Q. And they have made statements to this Tribunal and have
12 been investigated and interviewed by the interviewers
13 and they firmly deny those allegations.

14 A. I've seen the statements.

15 569 Q. Yes. 14:31

16 CHAIRMAN: So you accept you can't add anything apart
17 from attempting to honestly report what was said to you
18 by, for instance, Mr. McGuinness, by honestly
19 attempting to report what was said to you by
20 Superintendent David Taylor. 14:32

21 A. Exactly.

22 MR. MURPHY: And I think, Chairman, just for clarity,
23 the same applies in relation to what the witness has
24 said concerning Mr. McGuinness, and if I can adopt the
25 same position in that regard as well. 14:32

26 CHAIRMAN: Exactly. That is what I just said.

27 MR. MURPHY: Thank you, Chairman.

28 CHAIRMAN: And just before we go -- Mr. McDowell,
29 sorry. Ms. Burns, you wanted to come back in relation

1 to a couple of things?

2 MS. BURNS: Yes, Judge, it might be appropriate before
3 Mr. McDowell examines his client.

4

5 SERGEANT MCCABE WAS FURTHER CROSS-EXAMINED BY 14:32

6 MS. BURNS:

7

8 570 Q. MS. BURNS: Just in relation to the Pulse question that
9 the Chairman posed, Superintendent Taylor accepts that
10 he discussed with Sergeant McCabe the issue in relation 14:32
11 to Pulse records and Pulse records being maintained in
12 respect of Sergeant McCabe. However, firstly, he
13 didn't -- he doesn't accept that he named any
14 individual, as he doesn't know any such person within
15 Crime and Security who would be engaged in that 14:33
16 activity. And just to further clarify, although this
17 may not be an issue for Sergeant McCabe, it's not that
18 Superintendent Taylor was actually aware that Sergeant
19 McCabe's Pulse records were being monitored, but he was
20 making that assumption, because that would be the norm 14:33
21 when a member is under investigation or scrutiny.

22 CHAIRMAN: Does that help you in any way?

23 A. Well, Mr. Chairman, at the meeting he told me that in
24 relation to -- my activity on Pulse was being monitored
25 by a person called X - will I just say X or say the 14:33
26 name?

27 CHAIRMAN: No, the name is a very common name in
28 Ireland, as I understand it.

29 A. Kieran.

1 CHAIRMAN: Yes. Well, there is about half a million,
2 I'm sure. Yes. You wrote down the word "Kieran".
3 A. I did, yeah.
4 CHAIRMAN: But Superintendent Taylor's belief is that
5 he never mentioned a word, he never actually told you 14:33
6 you were under monitoring, he simply assumed it, and
7 you may have discussed it, would that be a fair way of
8 putting it.
9 MS. BURNS: Yes, yes, Chairman.
10 A. No, I disagree. 14:34
11 CHAIRMAN: What do you say about it?
12 A. He told me that I was being monitored on Pulse by a
13 person called Kieran at Garda Headquarters, my
14 activity.
15 MS. BURNS: And, Chairman, the other issue that you 14:34
16 asked me to take instructions in relation to is the
17 issue regarding the computer server with the name
18 Oisín. Superintendent Taylor does accept that this was
19 discussed by himself and Sergeant McCabe. However,
20 again just to clarify that, it's not that 14:34
21 Superintendent Taylor is saying that he knows for a
22 fact that Sergeant McCabe was listed on that computer
23 server, but he's making that assumption on the basis
24 that it would be the norm that when a member is under
25 investigation, that there would be a file created on 14:34
26 the Oisín computer server.
27 CHAIRMAN: Yes. I thought, Ms. Burns, and again thank
28 you very much for clarifying these matters, but I
29 thought -- the way I took the evidence was as follows:

1 that there's a special file on you, or a special
2 computer file on you up in Garda Headquarters, named
3 Oisín. Now, I mean, I know from visiting Garda
4 Headquarters there is a system called Oisín, but that
5 is a different thing.

14:35

6 MS. BURNS: Yes.

7 CHAIRMAN: This was that there is a special hidden file
8 up in Garda Headquarters named Oisín and it is all
9 about Sergeant McCabe.

10 MS. BURNS: No, that is not what Superintendent Taylor
11 was conveying in terms of discussing this issue with
12 Sergeant McCabe. He obviously isn't within, or was
13 never within, at this particular time, within that
14 division of An Garda Síochána that would have had
15 access to that computer server, so it was an assumption
16 that he was making rather than specific knowledge.

14:35

14:35

17 CHAIRMAN: What do you want to say about that?

18 A. He told me that there was an intelligence file on me at
19 Garda Headquarters and it was in the name of Oisín and
20 it was a grandson of Mr. X.

14:36

21 CHAIRMAN: Well, a particular individual, yes. Well, a
22 high level superintendent.

23 A. Yes.

24 CHAIRMAN: Okay. Does that help? Do you want to ask
25 any other questions? I mean, you have put the Browne
26 v. Dunn material, Ms. Burns.

14:36

27 MS. BURNS: I don't intend to ask any further questions
28 in relation to it.

29 A. Thank you, Ms. Burns.

1 CHAIRMAN: Mr. Ó Muircheartaigh.
2 MR. Ó MUIRCHEARTAIGH: Chairman, you asked me to
3 clarify for you about Alison O'Reilly and Detective
4 Inspector Taylor. I have checked with my client and
5 she never spoke to Taylor about Maurice McCabe. 14:36
6 CHAIRMAN: For good or bad. Thank you very much.
7 MR. O'DONNELL: Chairman, if I may, my name is Séan
8 O'Donnell. I am a solicitor acting for the HSE. If I
9 might very briefly just address Sergeant McCabe.
10 14:36
11 SERGEANT MCCABE WAS CROSS-EXAMINED BY MR. O'DONNELL:
12
13 571 Q. MR. O'DONNELL: I act for the HSE and Rian Counselling,
14 which is part of the HSE, and I have been asked by my
15 client on behalf of the HSE and Rian to offer a sincere 14:36
16 apology to you for the error made by Rian and for the
17 distress and hurt caused to you and your family as a
18 result of that error. I hope you can accept that?
19 A. Absolutely, and thanks very much, on behalf of me and
20 Lorraine and our five children. 14:37
21 MR. O'DONNELL: Thank you.
22 CHAIRMAN: I think that clears up everything. And RTÉ
23 have said no, they weren't briefed negatively, or
24 attempted to be briefed negatively by Garda
25 Headquarters. So, Mr. McDowell, do you want to ask 14:37
26 some questions?
27
28 SERGEANT MCCABE WAS EXAMINED BY MR. MCDOWELL:
29

1 572 Q. MR. MCDOWELL: Sergeant McCabe, when the O'Higgins
2 Commission was established, it was established partly
3 at your request, isn't that right?
4 A. That's correct, Mr. McDowell.
5 573 Q. And when you were preparing for it, had you any 14:37
6 impression as to what your role would be at the
7 O'Higgins Commission?
8 A. Well, I had a couple of meetings with -- sorry --
9 574 Q. With your legal team, is that what you are saying?
10 A. My legal team, Mr. Costello, and it was just that we 14:38
11 were kind of, I wouldn't say a watching brief, but
12 maybe a witness in one module, I think, it was the
13 computer module.
14 575 Q. I see. And put it this way: Did you expect to be
15 centre stage in all of the modules? 14:38
16 A. No, I didn't.
17 576 Q. And did you expect that your role would be described
18 later as central?
19 A. No, I didn't.
20 577 Q. I see. Did you have any consultation with counsel for 14:38
21 the O'Higgins Commission itself, Mr. Gillane or others?
22 A. No, I didn't.
23 578 Q. I see. And on the first day, that we were dealing with
24 the Lorraine Browne module, is that right?
25 A. That's correct. 14:39
26 579 Q. And as far as you were concerned, had you any
27 significant role in relation to that module?
28 A. No, I hadn't.
29 580 Q. On day 2, when former Chief Superintendent Rooney was

1 giving evidence, he was asked about a meeting with you
2 arising out of the Ms. D thing, isn't that right?

3 A. That's correct.

4 581 Q. And I think it's the case that, contrary to what is
5 being said here on a few occasions, Mr. Gillane, for 14:39
6 the Commission, first intervened to query the relevance
7 of this, isn't that right?

8 A. He did, yeah.

9 582 Q. In the course of that afternoon, on a number of
10 occasions, Mr. Smyth was asked, was he not, on whose 14:40
11 instructions he was pursuing that line of inquiry?

12 A. That's correct.

13 583 Q. Is that right?

14 A. Yes, yeah.

15 584 Q. And, in particular, he was asked was it on the express 14:40
16 instructions of the Commissioner of An Garda Síochána
17 that he was pursuing that line of inquiry?

18 A. Yes, that's correct.

19 585 Q. And I think the answer came back on two occasions that
20 it was? 14:40

21 A. It was.

22 586 Q. And you were left under no impression that this was
23 being done at the request of Chief Superintendent
24 Rooney or Superintendent Cunningham or indeed
25 Superintendent Clancy? 14:40

26 A. No.

27 587 Q. Isn't that right?

28 A. Yeah.

29 588 Q. When the discussion took place on that day, as to why

1 this line of examination was being pursued, Mr. Smyth
2 gave his reasons, is that right?

3 A. He did, yes.

4 589 Q. In the course of that exchange, you heard him say that
5 your integrity and your credibility were in issue, 14:41
6 isn't that right?

7 A. That's correct.

8 590 Q. There's an argument as to who raised the word
9 "integrity" first, but he affirmed that your integrity
10 was being challenged the whole way through, isn't that 14:41
11 right?

12 A. That's correct.

13 591 Q. Can you tell the Commission what you felt about that
14 coming from the Commissioner of An Garda Síochána?

15 A. I was astonished. Em, I couldn't understand it. 14:42

16 592 Q. At that time, we've had all the evidence of all of the
17 supportive meetings and discussions that had been
18 happening between yourself and the Commissioner and
19 people connected with the Commissioner, isn't that
20 right? 14:42

21 A. That's correct.

22 593 Q. Including Mr. Mulvey, and other support and mediation
23 mechanisms, isn't that right?

24 A. That's correct.

25 594 Q. And you had been appointed at that time, had you not, 14:42
26 to the Professional Standards Unit of An Garda
27 Síochána?

28 A. I had, for a short time.

29 595 Q. And can you just indicate to the Tribunal what that

1 appointment to the Professional Standards Unit of the
2 Tribunal was about, what were you to do in that
3 Professional Standards Unit?

4 A. It was to clean up in relation to the penalty points on
5 the system, the fixed charge notice, and I think I was 14:43
6 on them for about three or four months. They asked me
7 to show them what was happening on the system, and how
8 it was able to be kind of overrun and we did a report
9 then in January '15 and it tightened up everything.

10 596 Q. I see. And how did that sit with your integrity being 14:43
11 challenged on the instructions of the Commissioner as
12 the Commission was told at the time?

13 A. How did it sit?

14 597 Q. How did that sit, your presence on that Professional 14:43
15 Standards Unit, with a statement that your integrity
16 was being challenged the whole way through the
17 Commission?

18 A. Well, it was changed, because I was appointed just to
19 look at the penalty points and it was clear that I was
20 a trusted person just to do it. I knew the system 14:43
21 inside out. And I was thanked afterwards for assisting
22 this.

23 598 Q. And we've heard, and I don't think there's any
24 controversy about it, that, on the first day, the
25 Chairman of the Commission, Mr. Justice O'Higgins, had 14:44
26 said that if anybody was going to impugn the character
27 of anybody else, they should first seek the permission
28 of the Commission to do so, isn't that right?

29 A. Well, if you say that, yeah. I agree with you.

1 599 Q. It is in the transcript, in his opening speech --
2 A. Okay, well if it is.

3 600 Q. -- that that was to be done.
4 A. Okay.

5 601 Q. And had you any warning that the question of your 14:44
6 dealings with the authorities arising out of the Ms. D
7 allegations was going to be raised in this Commission?
8 A. No.

9 602 Q. Or on that module?
10 A. No. 14:44

11 603 Q. You've given evidence that the Commission directed that
12 if this line of questioning was to be proceeded with,
13 that it had to be put in writing?
14 A. That's correct.

15 604 Q. Isn't that right? 14:45
16 A. That's correct.

17 605 Q. And on the following Monday you arrived at the
18 Commission, is that right?
19 A. That's correct.

20 606 Q. And a letter was presented to your legal team and to 14:45
21 yourself?
22 A. That's correct.

23 607 Q. Setting out the basis of their -- on which they wished
24 to pursue their cross-examination of you, isn't that
25 right? 14:45
26 A. That's correct.

27 608 Q. Just in relation to that, what was your reaction when
28 you saw that letter?
29 A. Well, as you know, I saw it last --

1 609 Q. Sorry?

2 A. I saw it last off the legal team, and I said to you --

3 610 Q. You'd better not say what you said to me.

4 A. Sorry.

5 611 Q. What was your reaction? 14:46

6 A. It was astonishing, on the basis that I had the full

7 DPP's directions and on the basis that I didn't say

8 what was alleged that I said at the meeting in

9 Mullingar on the 25th August 2008.

10 612 Q. We know that at lunchtime of that day you contacted 14:46

11 your superiors in Mullingar, isn't that right?

12 A. I did, and I asked for a meeting that evening.

13 613 Q. And what did you ask them to do?

14 A. I told them that evening that I couldn't stay a

15 sergeant in charge of the traffic corps when I was 14:46

16 being questioned in relation to my motives and

17 credibility.

18 614 Q. I see. And could I ask you now to go to page 1439 in

19 the original books, please. This is a submission that

20 was made on behalf of the Commissioner and others on 14:47

21 the 11th June?

22 A. Yes.

23 615 Q. You've seen this document?

24 A. I have seen it, yes.

25 616 Q. Could I ask you in particular to look at a number of 14:47

26 paragraphs there, at page 1452, please. Paragraph 68

27 reads:

28

29 "Sergeant McCabe's next actions are not absolutely

1 clear as the witnesses' memories of their conversations
2 with him differs slightly, but it appears that he
3 wanted something additional from the DPP so as to
4 establish his innocence to the complaining party. It
5 is possible that these differences are because Sergeant 14:48
6 McCabe himself changed his approach slightly over time
7 and with different colleagues. It appears that he
8 requested from Chief Superintendent Rooney that he
9 contact the DPP to seek a declaration of his
10 innocence." 14:48

11

12 Firstly, was that true at all?

13 A. No, no, it wasn't.

14 617 Q. And secondly, it goes on:

15

16 "It is understood that should he give evidence on this
17 point, Superintendent Michael Clancy will say that
18 Sergeant McCabe also contacted him seeking the DPP's
19 file in order to show it to the complaining party."

20

21 Is that correct?

22 A. No, that's not correct.

23 618 Q. "Whatever the exact nature of the request, they each
24 refused, and Chief Superintendent Rooney's evidence is
25 that Sergeant McCabe was very angry at the refusal." 14:49

26

27 Is that correct?

28 A. That's not correct.

29 619 Q. And then the next paragraph:

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"Sergeant McCabe then made a series of complaints against other officers in Bailieboro station, including Superintendent Clancy, against whom he alleged a lack of support."

14:49

So we stop there and say, they are suggesting in paragraph 69 that it was subsequent to the angry meeting with Superintendent Rooney that you made your allegations against other members in Bailieboro?

14:49

A. In Bailieboro, yes.

620 Q. Is that right?

A. No.

621 Q. Just stopping there. That was clearly putting it in a time sequence that you were demanding all of these things from the DPP and meeting with Chief Superintendent Rooney?

14:50

A. Yeah.

622 Q. And that then you set about making allegations against other members of the force, is that right?

14:50

A. Yes.

623 Q. "Chief superintendent Rooney appointed Superintendent Cunningham to investigate these complaints. Superintendent Cunningham attempted to meet Sergeant McCabe to discuss the complaints and finally did so on the 25th August 2008."

14:50

He didn't come to you to discuss the complaints on that day, isn't that right? He wanted a statement from you

1 in relation to these matters?
2 A. He wanted a statement in relation to the Mr. D matters.

3 624 Q. Yes. And then they say:

4
5 "On this occasion Superintendent Cunningham was 14:50
6 accompanied by Sergeant Yvonne Martin. It is
7 understood that Superintendent Cunningham and Sergeant
8 Martin will give evidence that Sergeant McCabe said at
9 the meeting that the complaint which he had made
10 alleging lack of support as referred to in a preceding 14:51
11 paragraph was a bid by him to have the full DPP
12 directions conveyed to him and the complaining party.
13 This is recorded in a report of the meeting jointly --
14 prepared jointly by Sergeant Martin and Sergeant
15 Cunningham." 14:51

16
17 Now, at this stage we're on the 11th June. Counsel
18 appear to, on the account given by Mr. Murphy here
19 today, to have been in possession of the report at that
20 time, isn't that right? 14:51

21 A. That's correct.

22 625 Q. I think that's a point that it's suggested that all of
23 this would have unravelled because this report was
24 handed in on the Monday the 18th to the Commission?

25 A. Yes. 14:52

26 626 Q. But here we are on the 11th June, weeks later, and this
27 account, this statement is being made, isn't that
28 right?

29 A. That's correct.

1 627 Q. And it's being stated that this is recorded in a report
2 of the meeting prepared jointly by Sergeant Martin and
3 Superintendent Cunningham?
4 A. That's correct.

5 628 Q. And it wasn't so recorded, isn't that right? 14:52
6 A. That's correct.

7 629 Q. And that is a false statement, isn't that right?
8 A. That's correct.

9 630 Q. And even if the report had been handed in to the
10 Commission, we're now on the 11th June, stating that it 14:52
11 had, that the report conveyed that, isn't that right?
12 A. That's correct.

13 631 Q. Then it says:
14
15 "It's submitted that these interactions are critical to 14:52
16 the understanding of the behaviour of Sergeant McCabe
17 and of the responses of the various officers to his
18 complaints. Prior to this, complaints had been few in
19 number and dealt with, adequately dealt with.
20 Thereafter, they multiplied and show a tendency to 14:53
21 exaggeration, such as in relation to this incident,
22 which was recognised by, among others, Assistant
23 Commissioner Byrne and Chief Superintendent McGinn."
24

25 Firstly, it was stated that what they had just stated 14:53
26 in paragraph 70 was critical to an understanding of the
27 behaviour of yourself, isn't that right?
28 A. I see that, yes.

29 632 Q. And thereafter they refer to an exaggeration of this

1 incident, which was recognised by Assistant
2 Commissioner Byrne and Chief Superintendent McGinn?

3 A. That's correct.

4 633 Q. And that was because you had described it as a sexual
5 assault, is that right?

14:53

6 A. Yes.

7 634 Q. And they had decided that that was an exaggeration?

8 A. Yes.

9 CHAIRMAN: It's hard to know what else could have been
10 on the man's mind.

14:53

11 MR. MCDOWELL: Exactly.

12 635 Q. In any event, at this stage they're saying that your
13 interaction with -- the false account of your
14 interaction is critical to an understanding of your
15 behaviour, and secondly, they cite as an example of
16 your tendency to exaggeration a perfectly correct
17 statement by you that this was a sexual assault on
18 passengers on the bus in the Lorraine Browne incident,
19 isn't that right?

14:54

20 A. Yeah, and false imprisonment as well.

14:54

21 636 Q. And then they say:

22

23 "These issues will be relevant to subsequent modules
24 where they can be considered again."

25

14:54

26 And they say:

27

28 "However, in relation to this specific module --" and
29 this is the point I want to bring to your attention

1 " -- it is submitted that Sergeant McCabe's
2 disaffection motivated him to contact Ms. Browne to
3 encourage a complaint to GSOC and to include it in his
4 'brief proven facts pertaining to my complaint'
5 document." 14:55

6
7 well, first of all, the accusation that you were
8 disaffected, was that ever made?

9 A. No.

10 637 Q. This was being stated on behalf of the Commissioner,
11 because these are her written submissions -- 14:55

12 A. I see that.

13 638 Q. -- that you were a disaffected member.

14 CHAIRMAN: Mr. McDowell, I have made a mistake. I
15 didn't call on the D family as to whether they had any
16 questions. It may be that you are well able to speak
17 up. Did you want to ask any questions on behalf of -- 14:55
18 MR. HOGAN: No, Chairman, we have no questions.

19 CHAIRMAN: And I am sorry, Mr. Hogan, I did mention
20 your name, but -- 14:55

21 MR. HOGAN: No, I caught that, Chairman.

22 CHAIRMAN: All right. well, I'm sorry, it just wasn't
23 clear to me.

24 MR. HOGAN: Thank you, Chairman.

25 CHAIRMAN: I am sorry, Mr. McDowell, yes. 14:55

26 Mr. McDowell, if it helps, it is clear to me, given
27 that there was people jiggling their privates perhaps
28 outside their clothes and were making reference to
29 their private parts, were grabbing women by the

1 buttocks and constantly talking about sex --
2 MR. MCDOWELL: Sexual matters.
3 CHAIRMAN: Yes. Well, I mean, that fits in the
4 definition.
5 MR. MCDOWELL: Yes. 14:56
6 CHAIRMAN: Isn't it an assault in sexual circumstances?
7 MR. MCDOWELL: Yes, absolutely.
8 CHAIRMAN: Well, that makes sense to me anyway.
9 MR. MCDOWELL: Absolutely.
10 639 Q. And can I just add to that. You later found out, is 14:56
11 that right, that the Byrne/McGinn report never
12 considered Ms. Lorraine Browne's statement, never saw
13 it, isn't that right?
14 A. And never read it, yeah.
15 640 Q. And never read it. And secondly, although the 14:56
16 Commissioner was now saying that your account of this
17 incident was exaggerated?
18 A. That's correct.
19 641 Q. And the Byrne/McGinn report, in fact, and we'll come 14:56
20 back to that at a later stage, never interviewed any of
21 the victims in any of the incidents to which you
22 referred at all?
23 A. That's correct.
24 642 Q. It was a paper exercise in which they spoke to the 14:56
25 Gardaí but not to the victims, is that right?
26 A. I think in almost them all or nearly them all.
27 643 Q. Now we come to the question of your disaffection. The
28 Commissioner is now alleging that you are a disaffected
29 member of the force, in writing, on the 11th June.

1 what was your reaction to learning that that had been
2 stated?

3 A. I didn't like it whatsoever. It was wrong. It wasn't
4 true.

5 644 Q. And I think that these submissions, just to be 14:57
6 absolutely a hundred percent correct, were never
7 actually shown to your legal team until after the
8 Commission was over, isn't that right, until these
9 proceedings started?

10 A. Until these proceedings started. 14:57

11 645 Q. But you now know that you were being accused of
12 disaffection on the 11th June, on the instructions of
13 the Commissioner, is that right?

14 A. Yes. And I never was, ever.

15 646 Q. And that was in a private document which was sent to 14:57
16 the Commission?

17 A. That's correct.

18 647 Q. Now, I will just bring you down to paragraph 74. I
19 don't want to dwell too much on this.

20 14:58

21 "There appears to be a failure to supervise Garda
22 McCarthy but only in a sense that a proactive approach
23 ought to have been taken. As it is clear, Garda
24 McCarthy did not facilitate his own supervision, in
25 that he kept the facts to himself." 14:58

26

27 And then they say:

28

29 "It would be unfair to lay any blame for this entirely

1 at the door of Garda McCarthy's unit sergeant as the
2 officers who complained of his conduct also have a role
3 in his supervision which cannot be ignored."
4
5 That was a statement that you must share the blame for 14:58
6 this, isn't that right?
7 A. Yes, and that was the Kingscourt case. I had nothing
8 to do with it.
9 648 Q. I see.
10 CHAIRMAN: You weren't on that particular case? 14:58
11 A. At all.
12 649 Q. MR. MCDOWELL: So I just want to pause at this stage.
13 This document was never shown to you at the time, but
14 insofar as it's suggested that everything had been
15 cleared up on Monday 18th or Tuesday 19th May 2015, 14:59
16 that is emphatically not the case, isn't that right?
17 A. That's not the case at all.
18 650 Q. And, in fact, it was on the 24th June, after a
19 considerable argument, that the Commissioner's counsel
20 was persuaded that the documents that they had relied 14:59
21 on and the transcript didn't support the case that had
22 been made, isn't that right?
23 A. That's correct.
24 651 Q. Because the suggestion might be there that somehow
25 everything -- that everybody was aware, some time on 14:59
26 Monday 18th May or Tuesday 19th May, well we've got
27 this wrong, we've got the wrong end of the stick here.
28 A. No, that didn't happen.
29 652 Q. But the situation was radically different --

1 A. It was.

2 653 Q. -- as we can see. Going back, if I may, to 2008, you
3 drew to Superintendent Clancy's attention a series of
4 bullet points. Are they 21 in number?

5 A. I think so. 15:00

6 654 Q. Something of that kind. And you asked for his support,
7 is that right?

8 A. I did.

9 655 Q. I think, subsequently, the Byrne/McGinn report recited
10 that you had effectively lost control of the station -- 15:00

11 A. That's correct.

12 656 Q. -- in that year, is that right?

13 A. That's correct.

14 657 Q. And I think that you yourself accepted that you had
15 failed to maintain adequate, to keep up the standards 15:00
16 of An Garda Síochána in the station, is that right?

17 A. Yes, I did. But I said that it wasn't -- it was
18 through no fault of my own.

19 658 Q. I see.

20 CHAIRMAN: well, it would seem the conversation you had 15:01
21 with Superintendent Clancy was, there was a dialogue as
22 to who should be supporting whom and you felt there was
23 a lack of support for your efforts, would it be fair to
24 say that?

25 A. Yes, Mr. Chairman, that would be correct. 15:01

26 CHAIRMAN: well, I don't know what the situation was,
27 but that was certainly what was being said.

28 A. It was, Mr. Chairman, yes.

29 659 Q. MR. MCDOWELL: And in relation to the matters that you

1 raised with Superintendent Clancy in February of 2008,
2 the 21 points, am I right on the date, or is it
3 January?
4 A. Yeah. January.
5 660 Q. Sorry? 15:01
6 A. Sorry, January.
7 661 Q. January. Those were matters which you considered were
8 of importance to the policing function in Bailieboro,
9 is that right?
10 A. That's correct. 15:01
11 662 Q. And even though by March of the following year you had
12 indicated that you wanted to step down and step away
13 from Bailieboro, is that right?
14 A. No, it was March of the same year.
15 663 Q. Same year. Sorry, 2007? 15:02
16 A. Yeah.
17 664 Q. You still regarded these matters as ones which should
18 be investigated and dealt with?
19 A. Yes.
20 665 Q. And addressed by Garda management, is that right? 15:02
21 A. That's correct.
22 666 Q. Now, when Chief Superintendent McGinn was deputed to
23 carry out an investigation, did you have dealings with
24 her?
25 A. I had a number of meetings with her. 15:02
26 667 Q. And I think she gave evidence about this to the
27 O'Higgins Commission, is that right?
28 A. Yes, she did, on all of the modules.
29 668 Q. And just in relation to the evidence she gave, I think

1 to the public. I am not alleging corruption or
2 criminality by any members or nor have I any evidence
3 to support this allegation'."

4 670 Q. I see.

5 A. And then on the second page -- 15:04

6 671 Q. This is page 20, is it?

7 A. Yeah. And she then says:

8

9 "And that is where he asked me to focus my
10 investigation on and that was the important matter for 15:04
11 him. But obviously as the Commissioner had charged me
12 with a much broader investigation, including
13 allegations of corruption and criminality,
14 disciplinary, my focus was much broader."

15 672 Q. I see. So can we take it then that when you first 15:04
16 interacted with Chief Superintendent McGinn, you were
17 concerned with the low policing standards, is that
18 right?

19 A. That's correct.

20 673 Q. And addressing them, is that right? 15:05

21 A. That's correct.

22 674 Q. And you were not making any allegation of corruption
23 against anybody at that point?

24 A. I was not.

25 675 Q. I see. And at some stage the McGinn inquiry turns into 15:05
26 the Byrne/McGinn inquiry, is that right?

27 A. That's correct.

28 676 Q. And did you cooperate fully with that inquiry?

29 A. I did, fully.

1 677 Q. And did they conclude that you were well-motivated and
2 bona fide in all of your complaints?
3 A. That's correct.

4 678 Q. Were you told by Chief Superintendent McGinn that you
5 would have an opportunity to reply in writing to 15:05
6 whatever findings they made?
7 A. She said I would get a right of reply, but I think, a
8 year later, it changed to a criminal investigation, I
9 think.

10 679 Q. I see. 15:06
11 A. I have to be fair.

12 680 Q. An investigation of whom?
13 A. Of the incidents.

14 681 Q. I see.
15 CHAIRMAN: I'm not sure, Mr. McDowell, just to clarify, 15:06
16 I don't think there is any allegation against Chief
17 Superintendent McGinn.
18 A. No, none whatsoever.

19 MR. MCDOWELL: I'm not making an allegation. I'm just
20 saying that, at the beginning, she indicated to you 15:06
21 that you would have a right of reply to -- or that you
22 would be informed of the outcome and have a right of
23 reply in relation to the matters.
24 A. Yes, she did.

25 MR. MCDOWELL: That is all I am saying, Judge. 15:06
26 CHAIRMAN: That is fine, yes.

27 682 Q. MR. MCDOWELL: And when were you first informed of the
28 meeting -- sorry, of the outcome of the inquiry and in
29 what form?

1 A. It was on the 11th October 2010, I met Assistant
2 Commissioner Byrne.

3 683 Q. Where did that happen?

4 A. It happened at Monaghan, at the Hillgrove Hotel in
5 Monaghan. 15:07

6 684 Q. I see. And you met the assistant commissioner, is that
7 right?

8 A. That's correct, yeah, and Chief Superintendent --

9 685 Q. And the chief superintendent.

10 A. -- McGinn. 15:07

11 686 Q. Can we just pause there. Were you handed any document
12 at that stage?

13 A. I was handed, yeah, a document which, it was bullet
14 point really, or boxed document, a five-page.

15 687 Q. And in relation to the matters of which you had 15:07
16 complained, I think, in summary, you were told that a
17 number of them had been upheld and another number of
18 them had not been upheld, is that right?

19 A. Yes, and a number of them were ongoing.

20 688 Q. And another number were ongoing, is that correct? 15:07

21 A. That's correct.

22 689 Q. And can you indicate on that occasion how the question
23 of Pulse records arose?

24 A. When they were giving me the outcome of the
25 investigation, I thought they'd look into the whole 15:08
26 procedure in relation to what I reported up to
27 Superintendent Clancy, and after I got the final -- or
28 after they finished reading out the incidents to me and
29 what cases were upheld, I told them that I had

1 information in relation to Pulse records that involved
2 a lot of cases that hadn't been proceeded with.

3 690 Q. Had you printouts of those Pulse records?
4 A. I had printouts of them.

5 691 Q. Where did you have them when the meeting started? 15:08
6 A. I had them first of all in Mullingar, and I travelled
7 from Mullingar over to Monaghan and I had them in my
8 car.

9 692 Q. You left them in your car when the meeting started?
10 A. Yeah, and I had an AGSI member with me, Dominic Flynn, 15:09
11 a sergeant.

12 693 Q. And did you at some stage in the meeting go out and
13 bring in to the meeting the printouts of the --
14 MR. MARRINAN: I'm sorry, sir, if I can interrupt
15 Mr. McDowell here. There's a question of the relevancy 15:09
16 of this. This is a matter that I moved over fairly
17 quickly, with the agreement of Sergeant McCabe, it has
18 to be said.

19 MR. McDOWELL: Sorry, My Friend --

20 MR. MARRINAN: Perhaps if I can just finish what I am 15:09
21 saying. With the agreement of Sergeant McCabe. The
22 problem is that former Assistant Commissioner Derek
23 Byrne and Chief Superintendent McGinn aren't, in fact,
24 on notice or represented on this module.

25 MR. McDOWELL: Sorry, Judge, I'm not going into the 15:09
26 matter that Mr. Marrinan --

27 CHAIRMAN: No, I think it is a fair point,
28 Mr. McDowell.

29 MR. McDOWELL: Well, Judge, I'm not going into the

1 matter that Mr. Marrinan thinks I am. I just want to
2 be clear about that.

3 CHAIRMAN: Yes. As I understand this, a case was
4 issued in relation to this.

5 MR. MCDOWELL: I'm not going into that, Judge. 15:09

6 CHAIRMAN: No.

7 MR. MCDOWELL: I just want to establish one thing.

8 CHAIRMAN: Yes. No. Well, please do then. Yes.

9 694 Q. MR. MCDOWELL: Did you hand over eventually -- if I can
10 put it, did Assistant Commissioner Byrne end up in 15:10
11 possession of those printouts?

12 A. Yes.

13 695 Q. Had you kept photocopies of those printouts yourself?

14 A. I had, yeah, at Mullingar Garda Station.

15 696 Q. That is all I wanted to establish. 15:10

16 CHAIRMAN: No, I understood that then from today.

17 MR. MCDOWELL: That is all I wanted to establish.

18 CHAIRMAN: Was there any - sorry, I beg your pardon -
19 as you're on that, and it just reminds me of a note I
20 made; did you at any stage say anything to the effect, 15:10
21 I will bring this job to its knees.

22 A. No, no, no, never.

23 CHAIRMAN: Yes. I don't know anyone saying that
24 against you actually, but it is just something in the
25 ether, but anyway we can move on from it so. 15:10

26 A. Never said that.

27 697 Q. MR. MCDOWELL: In any event, subsequently, Sergeant
28 McCabe, did you look at what had happened to many of
29 the Pulse records that you'd handed over on that

1 occasion?

2 A. Yeah, a couple of months later, I just went in to Pulse
3 and I looked at the entries that I had.

4 698 Q. And what had happened in a great number of those cases,
5 will you tell the Chairman? 15:11

6 A. Well, they all were updated. Instead of being
7 invalidated, which is the procedure and it goes across
8 the screen invalidated, they were updated, and they
9 were updated to, I think you could say that all of them
10 had been changed in some way or other. 15:11

11 699 Q. Can I just take, say, an example. If I ask you just to
12 give just a couple of examples of the nature of the
13 changes that had taken place?

14 A. Okay. Well, Mr. Marrinan, okay --

15 700 Q. No, no, go ahead. 15:11

16 CHAIRMAN: Don't worry about people making faces. I
17 wouldn't be able to do my work if I stopped every time
18 I saw a face. I don't mean Mr. Marrinan now, I mean in
19 the room.

20 A. Yeah, Mr. McDowell, em -- 15:12

21 701 Q. MR. MCDOWELL: I just want just a flavour of the kind
22 of changes that were taken, say in relation to insured
23 vehicles seized and found on the premises?

24 A. Okay. Well, there was a lot, or multiple cases of
25 people who had been stopped in relation to no insurance 15:12
26 and they would have admitted to the guards to no
27 insurance on the vehicle and the car was seized.

28 702 Q. And what happens to seized cars normally?

29 A. Either they are crushed after police property

1 application or they are given back to the owner if he
2 pays a fine, and put on a lorry.

3 703 Q. But are vehicles seized if the owner says "I have my
4 insurance at home and I will produce it"?
5 A. No. And that's what happened with these. 15:12

6 704 Q. Yes.
7 A. These incidents were updated to say that the insurance
8 was produced.

9 705 Q. I see. And would you just give one other example in
10 relation to a found-on instance? 15:13
11 A. Yes. There was a pub inspected at quarter to three in
12 the morning.
13 CHAIRMAN: That is quite late, even by Irish standards.
14 MR. McDOWELL: Even by some standards.

15 A. And it was inspected at quarter to three by a sergeant 15:13
16 and two guards and they said that it was in full flow,
17 I think 40 people on the premises. I think the owner
18 was, believe it or not, drunk. And when I looked the
19 incident up again, it said "inspected premises, all in
20 order". 15:13

21 706 Q. I see.
22 CHAIRMAN: All right. well, Mr. McDowell, certainly
23 I'm getting a flavour of things.
24 MR. McDOWELL: Yes, that is all a flavour.
25 CHAIRMAN: In fact, it's a very strong flavour. 15:13
26 MR. McDOWELL: Yes.
27 CHAIRMAN: But again, I read the O'Higgins Commission
28 report, and that is among the most serious aspects of
29 it. Because you will remember the case that was taken

1 in the High Court, I think it was before Mr. Justice
2 Geoghegan initially and it went to the Supreme Court
3 about the fines department of the Department of
4 Justice, which was abolished.

5 MR. MCDOWELL: Yes. 15:14

6 CHAIRMAN: So we have gone from one thing to the other.
7 Well, it's not happy about it. But you can take it I
8 am not happy, because Mr. Justice O'Higgins wasn't
9 happy.

10 MR. MCDOWELL: Exactly. It didn't make happy reading. 15:14

11 MR. MURPHY: Sorry, Chairman, but just in the light of
12 your indication, there is actually a passage in the
13 report from Mr. Justice O'Higgins, from paragraph 12.62
14 onwards, where he specifically finds that none of these
15 criticisms involve corruption, and this 15:14
16 cross-examination is proceeding on the basis it seems
17 to me to be relevant, but it doesn't take it into
18 account --

19 CHAIRMAN: Well, Mr. Murphy, look, it's about the
20 police, it's about the country, it's about having 15:14
21 independence and having a functioning organ of police.
22 Now, the O'Higgins report does not make happy reading,
23 that is all I am saying. I am not saying anyone was
24 corrupt, and I am not drawing that inference. In fact,
25 I regard myself as being bound by Mr. Justice O'Higgins 15:15
26 and not being entitled to go beyond that. But the
27 O'Higgins report, if one takes a fair-minded view of
28 it, makes shocking reading.

29 MR. MURPHY: Well, Judge, insofar as it deals with

1 issues of corruption, those paragraphs indicate that
2 there was no finding of corruption. That is the only
3 point I wish to make.

4 CHAIRMAN: No, there is no finding of corruption. But
5 there's lots of times I go to court and I can't make a 15:15
6 finding of whatever there is, there is no evidence, but
7 I am bound by that and I stick by that.

8 MR. MURPHY: That is the only point I wish to make.
9 Thank you.

10 CHAIRMAN: That is fair enough. 15:15

11 707 Q. MR. MCDOWELL: So, Sergeant McCabe, this was -- did you
12 have any further engagement with the Byrne/McGinn
13 process thereafter?

14 A. No, because it was taken over, so it was, by Assistant
15 Commissioner Naci Rice, or Deputy Commissioner Naci 15:15
16 Rice.

17 708 Q. And again, I think he took over the inquiry and
18 conducted what has been called here I think a desktop?
19 CHAIRMAN: A desktop study, I think, was it?

20 MR. MCDOWELL: A desktop study of it, is that a fair 15:16
21 description of it?

22 A. That's correct.

23 CHAIRMAN: And he was appointed on the 2nd November
24 2010, as I understand it.

25 MR. MCDOWELL: Yes. 15:16

26 709 Q. And then can I ask you about, in that context, the
27 Rooney letter. When was the Rooney letter circulated
28 in your division, your former division?

29 A. It wasn't circulated in my division. I got a phone all

1 from a Garda member in relation to it and I got it
2 faxed over to me, and it was in July 2011.

3 710 Q. I see. And you've described how you felt it was a kick
4 in the teeth. But effectively is it fair to say that
5 it said that -- it was headed up "Allegations by 15:16
6 Sergeant McCabe", is that right?

7 A. Yeah, that was the heading.

8 711 Q. And it effectively said that, apart from minor
9 procedural matters, there was no substance in any of
10 the matters that you had -- the allegations you had 15:17
11 made, is that right?

12 A. That's correct.

13 712 Q. And it was circulated to all posts in Cavan-Monaghan?
14 A. Cavan-Monaghan and Sligo.

15 713 Q. And Sligo, is that right? 15:17
16 A. Yes.

17 714 Q. At that point I think your solicitors wrote to the
18 Garda authorities, is that right --

19 A. That's correct.

20 715 Q. -- complaining about it, and it was brought to the 15:17
21 attention of the Commissioner personally, isn't that
22 right?

23 A. That's correct.

24 716 Q. And the response that you received, I think, stated
25 that, first of all, you received a response, I think, 15:17
26 on the 8th December 2011, isn't that right?

27 A. If that's the date, that's the date.

28 MR. MURPHY: Chairman, I wonder if Mr. McDowell could
29 put this on the screen, if that is possible.

1 CHAIRMAN: Yes. The letter from Chief Superintendent
2 Rooney to the various stations on 4th July 2011, and
3 then have you got a page number, I wonder, for that,
4 Mr. Murphy or Mr. McDowell?

5 MR. MCDOWELL: I don't.

15:18

6 CHAIRMAN: You complain to the Commissioner about that
7 virtually straightaway.

8 A. Yes.

9 MR. MARRINAN: It's in Volume 1, page 279, sir.

10 CHAIRMAN: In this particular set of documents?

15:18

11 MR. MARRINAN: Yes.

12 MR. MCDOWELL: I don't know whether Deputy Commissioner
13 Rice's response to your solicitor's complaint is in the
14 book, is it?

15 MR. MURPHY: I just wonder, Chairman, was this matter
16 ever put to Chief Superintendent Rooney?

15:18

17 CHAIRMAN: Chief superintendent Rooney certainly did
18 deal with the letter of the 4th July 2011, and what he
19 said about it was that he had had a conversation with
20 Derek Byrne, he misunderstood the conversation, that
21 his letter was misplaced, he said it was the wrong
22 letter to send at the time and he apologised for it,
23 and that when he read the full Byrne/McGinn report, or
24 perhaps had some knowledge of it some other way, he
25 realised that there were very serious things brought to
26 the attention of Byrne/McGinn that they reported on as
27 being upheld by their investigation.

15:18

15:19

28 MR. MURPHY: I agree, Chairman. The point I'm making
29 is that this document that My Friend is seeking to rely

1 upon, I don't believe this document was put to him.
2 MR. MCDOWELL: No, but, I mean, this document was
3 irrelevant to him. This was a letter --
4 CHAIRMAN: well, can I have a look at the document and
5 just let's see what the story is. You don't need to 15:19
6 hand it to me. If it's here, it's here. I have the
7 documents as well as everybody else.
8 MR. MCDOWELL: I don't think it is there, Judge.
9 CHAIRMAN: Is it not? well, I am just losing the
10 narrative a wee bit, Mr. McDowell. As I understand it, 15:19
11 we have the Chief Superintendent Rooney letter of the
12 4th July 2011. As I understand it as well, Sergeant
13 McCabe complains to Garda Headquarters about that, and,
14 fine, that is understandable. But then where are we
15 going after that? And then Assistant Commissioner Naci 15:20
16 Rice then is the person doing the Byrne/McGinn review
17 and he reports on the 8th March 2011. So maybe you
18 would just let me see the document, would you mind, Mr.
19 McDowell.
20 MR. MCDOWELL: Yes. 15:20
21 (Document handed to the Chairman)
22 CHAIRMAN: So this is from Naci Rice, Deputy
23 Commissioner. Can I just read it.
24 MR. MCDOWELL: Just so that you will be aware,
25 Chairman, I'm only introducing this to show that there 15:20
26 was awareness at Commissioner level of the letter, that
27 is all.
28 MR. MURPHY: In that regard, I think that wasn't put to
29 any of my witnesses.

1 CHAIRMAN: well, have you read this letter, Mr. Murphy?
2 MR. MURPHY: No.
3 CHAIRMAN: well, can I hand it to you, perhaps.
4 MR. MURPHY: Certainly.
5 CHAIRMAN: Because I'm not sure that it adds very much. 15:21
6 MR. MURPHY: No, that is my query, I'm not quite sure
7 what the relevance is.
8 CHAIRMAN: No. well, maybe you would just have a quick
9 look at it.
10 (Document handed to Mr. Murphy). 15:21
11 MR. MURPHY: A slight problem, Chairman, which is that
12 this seems to be a reply to a different letter and we
13 haven't seen the original letter. It looks like a
14 reply to Séan Costello & Company, Solicitors.
15 CHAIRMAN: Yes. 15:22
16 MR. MURPHY: And it is not clear, apart from the last
17 paragraph, as to what exactly was the purport of the
18 earlier letter.
19 MR. MCDOWELL: well, it was a standard-form solicitor's
20 letter asking for a retraction, Judge. 15:22
21 CHAIRMAN: well, it was a libel-type letter.
22 MR. MCDOWELL: Yes.
23 CHAIRMAN: Okay, now I understand. And this is a
24 letter which says the letter was justified for the
25 following reasons: to assure people one, two, three, 15:22
26 four.
27 MR. MURPHY: The letter says:
28
29 "The Commissioner doesn't accept your assertions that

1 the report is offensive or amounts to an attempt to
2 undermine the barrister-client..."
3
4 So it is a pre-litigation letter. I just query the
5 relevance of this. 15:22
6 CHAIRMAN: Yes. There is litigation about that letter.
7 MR. MURPHY: Yes.
8 CHAIRMAN: So there's four sets of litigation --
9 MR. MURPHY: At least.
10 CHAIRMAN: -- involving Sergeant McCabe, as far as I 15:22
11 understand.
12 MR. MCDOWELL: The only reason again, Judge, I
13 emphasise, is to emphasise that, in case it might be
14 thought that Chief Superintendent Rooney's letter was a
15 frolic of his own which was not approved or known of on 15:23
16 high, it was known of on high at least in the context
17 of this correspondence.
18 CHAIRMAN: Well, it was certainly known of on high
19 after the event, Mr. McDowell --
20 MR. MCDOWELL: Yes. 15:23
21 CHAIRMAN: -- but I can't say that it was known of on
22 high.
23 MR. MCDOWELL: No, no.
24 CHAIRMAN: Or drafted in Garda Headquarters. And I
25 think I would be taking a leap across the room to say 15:23
26 that.
27 MR. MCDOWELL: No, I am not asking --
28 MR. MURPHY: That is my point, Judge.
29 CHAIRMAN: Yes.

1 MR. MCDOWELL: I'm not asking you to draw that
2 inference, Judge.

3 CHAIRMAN: I think it is a fair point, Mr. Murphy, and
4 I think Mr. McDowell accepts it.

5 MR. MCDOWELL: Yes. 15:23

6 717 Q. So in relation to the Rooney letter and the matters of
7 which you were aware and the alterations that had been
8 made to the Pulse record consequent on you handing over
9 your Pulse records, what was your attitude to the
10 question of whether Garda management was taking your 15:24
11 allegation seriously thereafter?

12 A. Well, I think the Rooney letter just showed exactly
13 what they were thinking. You know, that there is
14 nothing to see here.

15 718 Q. And what was your view about the commissioner, 15:24
16 assistant commissioner level response to your
17 allegations at that time?

18 A. In that letter?

19 719 Q. No. Arising out of all of these events that you had
20 handed over, that you had informed Assistant 15:24
21 Commissioner Byrne of the Pulse matters, Superintendent
22 Rooney had issued the circular, Garda Headquarters and
23 the Commissioner was aware of the terms of Chief
24 Superintendent Rooney's circular, what was your view of
25 their reaction to all of these matters at the time? 15:25

26 A. My view, that it appeared to me that it looked like a
27 cover up.

28 720 Q. I see. Can you then, just for clarity sake, state what
29 was the -- how did it come about that you and

1 Mr. Oliver Connolly came in contact with each other?
2 A. I think in relation to John Wilson, the other
3 whistleblower, he had been in contact with Oliver
4 Connolly.
5 721 Q. Did you approach Mr. Connolly to start with or did he 15:25
6 come to you?
7 A. He asked to see me.
8 722 Q. I see. And you had your dealings with Mr. Connolly, is
9 that right?
10 A. I had, yeah. 15:26
11 723 Q. And you supplied him with your documentation?
12 A. I showed him documentation.
13 724 Q. I see. It's been put to you by Mr. Murphy that you
14 were effectively, from Mr. Connolly onwards, escalating
15 your complaint in terms of who you were pointing the 15:26
16 finger at in 2012/2013, is that right?
17 A. Yeah.
18 CHAIRMAN: Mr. Connolly and Sergeant McCabe met, I
19 understand, in December 2011 for the first time.
20 MR. McDOWELL: Yes. So in 2012/13 -- 15:26
21 A. Em, yes, I think that's it, Chairman, yeah.
22 725 Q. In 2012/2013 your view was that the matter was being
23 effectively covered up, is that right?
24 A. That's correct.
25 726 Q. The Byrne/McGinn process had come to a halt, is that 15:26
26 right --
27 A. That's correct.
28 727 Q. -- as far as you were concerned. Can you indicate when
29 the disciplinary proceedings, in respect of the

1 computer module, were instituted against you?

2 A. It started in January 2012 I think, or February.

3 728 Q. I think it was November, in fact.

4 A. Is that it, '11?

5 729 Q. In November the disciplinary started, would you agree 15:27
6 with that?

7 A. Of which year?

8 730 Q. Of 2011?

9 A. Yeah. Well, okay, if that's the record.

10 731 Q. And to cut a long story short, a disciplinary process 15:27
11 was commenced against you?

12 CHAIRMAN: It was on the 10th February 2012,
13 Mr. McDowell.

14 MR. MCDOWELL: Well, Mr. Costello was writing a letter
15 in November 2011 looking for details of this process. 15:27

16 CHAIRMAN: Yes. That is what I have noted:
17 Disciplinary proceedings commenced against Maurice
18 McCabe re the Molloy computer.

19 MR. MCDOWELL: I think that was the formal
20 commencement, but Mr. Costello was writing about this. 15:28

21 CHAIRMAN: I see. So that was when the charge sheet or
22 whatever was -- yes.

23 MR. MCDOWELL: I suppose so.

24 732 Q. In any event, to cut a long story short, that
25 disciplinary process was suggesting that you were 15:28
26 negligent or in breach of duty, in that you had mislaid
27 or allowed to be taken away an important exhibit in a
28 sexual offences case, is that right?

29 A. That's correct.

1 733 Q. And how long did it take for you, for that procedure to
2 come to an end, if it started around the beginning of
3 2012?

4 A. It was 16 months exactly.

5 734 Q. At the end of that, again to cut a long story short, 15:28
6 and without going through too much detail, it became
7 apparent that the only evidence that you had ever
8 anything to do with this computer was mistaken or
9 misleading, is that right?

10 A. That's correct. 15:29

11 735 Q. I see. Can you indicate what the effect of that
12 disciplinary charge brought against you was?

13 A. Well, I think I'd go a bit further; if I had been
14 convicted of it, I think it would have been enormous
15 impact. 15:29

16 736 Q. I see.

17 CHAIRMAN: Proceedings terminated on the 6th August
18 2013.

19 MR. McDOWELL: Yes.

20 737 Q. Now can I bring you back to the written submission in 15:29
21 relation to the first module in O'Higgins, which was
22 concerning the handling by probationer Garda Ferghal
23 McCarthy of the Lorraine Browne incident, isn't that
24 right?

25 A. That's correct. 15:30

26 738 Q. It's at page 1439. Can I ask you to go to page 1446,
27 paragraph 40, statement:
28
29 "The matter was reviewed by Chief Superintendent John

1 Grogan on behalf of Assistant Commissioner Clancy.
2 There is an issue as to whether Chief Superintendent
3 Grogan actually authorised the disciplinary
4 investigation as proposed. His letter of the 23rd July
5 2008 appears to authorise an investigation into the 15:31
6 neglect of duty and did not authorise an investigation
7 into acting in a corrupt or improper manner. Both of
8 these charges were then included in Form 1A prepared by
9 Chief Superintendent Rooney and sent to Superintendent
10 Heller. 15:31

11
12 41. Chief Superintendent Grogan gave evidence that if
13 the authorisation was intended to relate to only one
14 charge he would have expressly said so in his letter of
15 authorisation. The reference to corrupt or improper 15:31
16 practice was simply accidentally omitted. Accordingly,
17 the reference to the alleged neglect of duty should not
18 be read as limiting the scope of the investigation. It
19 was not viewed as such by any of the members of the
20 force involved. Furthermore, it had no impact on the 15:32
21 conduct of the disciplinary investigation."
22

23 And we go to the following page, they say at paragraph
24 42, they say:

25
26 "A further issue of concern to the Commission was the
27 combination of allegations of acting in a corrupt
28 manner and acting in an improper manner in the same
29 alleged breach of discipline. As noted by the

1 Commission, this practice is prohibited by Garda HQ
2 Directive 159/08. However, as the Commission also
3 noted, 159/08 postdated preparation of Form 1A relating
4 to Garda McCarthy. The corresponding provision in
5 place at the time was Section 10(10)(3) of the Garda 15:32
6 Síochána Code which provided guidance on the Garda
7 Síochána Discipline Regulations 1989. However, when
8 the disciplinary investigation of Garda McCarthy began
9 the 1989 Regulations were no longer in force as they
10 had been replaced by Garda Síochána (Discipline) 15:33
11 Regulations 2007. Accordingly, at the commencement of
12 the disciplinary investigation there was no direct
13 relevant guidance in place."

14
15 Then they say: 15:33

16
17 "It must, however, be accepted that Chief
18 Superintendent Rooney and Sergeant O'Connell gave
19 evidence that they weren't aware of the directions
20 separating the alleged breaches of acting in a corrupt 15:33
21 manner and acting in an improper manner. Both
22 witnesses indicated that they had used the form of
23 words because it was so described in the Regulations
24 (i.e. paragraph 8 of the schedule to the Regulations)
25 rather than because they believed that Garda McCarthy's 15:33
26 conduct should be investigated as being both corrupt
27 and improper. It is, therefore, unfortunate that the
28 regulations seem to suggest that the two terms should
29 be alleged jointly rather than separately. It is

1 submitted that this may be a matter which could be
2 considered by the Minister for Justice and Equality so
3 the position can be clarified within the text of the
4 Regulations."

5
6 Now, this was in relation to the charges that had been
7 put against a probationer garda arising out of his
8 settling of this incident by a cash payment from the
9 alleged perpetrators --

10 A. That's correct.

11 739 Q. -- to the victims?

12 A. Yes.

13 740 Q. I think nobody suggested that he had acted corruptly in
14 the sense --

15 A. No.

16 741 Q. -- of enriching himself or whatever?

17 A. That's correct.

18 742 Q. Isn't that true?

19 A. Yeah.

20 743 Q. But when you came to use the term corrupt in the
21 documentation that Mr. Murphy brought you through, did
22 you intend at any stage to suggest that the crime of
23 corruption - in other words, taking money for doing
24 something within your remit - had been committed by
25 anybody?

26 A. Never.

27 744 Q. And I think Chief Superintendent McGinn acknowledged as
28 much, is that right?

29 A. Yes.

1 745 Q. And when you used the term corrupt in your later
2 letters to the Minister and to the confidential
3 recipient, did you intend to imply that any of the
4 people had committed the criminal offence of the
5 corruption? 15:35

6 A. No.

7 746 Q. What did you believe, what did you believe you meant by
8 the term corrupt in this context?

9 A. Well, under the Charter there's a definition. But in
10 relation to one of the definitions it's falsification 15:35
11 of official records.

12 747 Q. Yes?

13 A. And they were the Pulse records.

14 748 Q. And just to be clear about this, you took the view that
15 there was evidence that the Pulse records had been 15:35
16 altered in a -- had been falsified, is that right?

17 A. That's correct.

18 749 Q. And you took the view that a blind eye was being turned
19 to this, it wasn't being taken seriously --

20 A. That's correct. 15:35

21 750 Q. -- by the authorities, is that right?

22 A. That's correct.

23 751 Q. And it was in that sense that you suggested that this
24 amounted to corruption within the meaning of the
25 Regulations, is that right? 15:36

26 A. That's correct.

27 752 Q. And I think that at no stage did you ever intend to
28 imply that any of the people, Noel Cunningham,
29 Superintendent Clancy, Chief Superintendent Rooney,

1 Assistant Commissioner Byrne, or the Commissioner of An
2 Garda Síochána, were personally corrupt in the sense of
3 corruption as a criminal offence --

4 A. No.

5 753 Q. -- is that right? 15:36

6 A. Yes.

7 CHAIRMAN: Corruption as a criminal offence under the
8 Prevention of Corruption Act --

9 MR. MCDOWELL: Yes.

10 CHAIRMAN: -- which says that you can't accept money to 15:36
11 do public duties.

12 MR. MCDOWELL: Money or favours.

13 CHAIRMAN: Money or favours, yes. That wasn't in your
14 mind at all?

15 A. Never, never. 15:36

16 754 Q. MR. MCDOWELL: It was never in your mind.

17 MR. MURPHY: Chairman, I want to raise one question,
18 sorry to interrupt my friend.

19 CHAIRMAN: Yes, please.

20 MR. MURPHY: It has arisen once before, which is: My 15:36
21 friend has attempted to make a submission or lay the
22 grounds for a submission that this situation is what
23 you should find. The O'Higgins Commission, it has been
24 pointed out to the witness today, found the opposite
25 and you have indicated repeatedly that this process is 15:37
26 not an appeal against that. And I do infer from the
27 question that this is a prelude to attempting to invite
28 you to reconsider that, and I object to the question on
29 that basis.

1 MR. MCDOWELL: Mr. Murphy should be very clear, let's
2 be clear: The Commission never found that this witness
3 intended to charge corruption in the criminal sense.
4 He never did. And if Mr. Murphy can find a paragraph
5 to that effect, I stand corrected. 15:37

6 CHAIRMAN: Well, now, just looking at the law in
7 relation to corruption, there is the Corruption in
8 Public Office Act, which is a late Victorian Act, and
9 it says that it is a criminal offence to do or purport
10 to do a public duty having accepted money or favours in 15:37
11 that regard.

12 MR. MCDOWELL: Yes.

13 CHAIRMAN: And it goes on to say that there is a
14 presumption in the event that a public official has
15 received money or favours, let us say, the public 15:37
16 officials has got a Mercedes car or a holiday in
17 Morocco, or whatever it may be, there is a presumption
18 that that was accepted corruptly. Now that's what --
19 the definition of corruption in that Act is clear, but
20 it is separate. Now as I understand the case you're 15:38
21 making, Mr. McDowell, through the answers of Sergeant
22 McCabe, is that in saying corruption it was using a
23 head of the Garda Code which uses a different
24 definition --

25 MR. MCDOWELL: Exactly. 15:38

26 CHAIRMAN: -- which is broader and more encompassing.
27 And that on no occasion was it ever alleged before the
28 O'Higgins Commission and on no occasion was it ever
29 said in evidence or in any correspondence to the

1 Minister for Justice and Equality or the Garda
2 Commissioner by Sergeant McCabe that there had been the
3 passing of money or the passing of a favour in order to
4 do or purport to a duty in public office.

5 MR. MCDOWELL: Yes.

15:39

6 CHAIRMAN: If I can hear Mr. McDowell on this and I
7 will come back to you, Mr. Murphy.

8 MR. MURPHY: Certainly.

9 MR. MCDOWELL: If I can shorten this. What the
10 O'Higgins Commission at paragraph 3.5, which was opened
11 today, said:

15:39

12
13 "Sergeant McCabe made complaints of corruption under
14 the Garda Siochana (Confidential Reporting of
15 Corruption or Malpractice) Regulations 2007 against the
16 then Commissioner Martin Callinan. The Charter
17 established under those regulations doesn't define
18 corruption or malpractice, but it includes not only
19 matters which constitute criminal behaviour but also
20 other conduct, such as breaches of discipline, abuse of
21 authority and a range of other matters. It was
22 submitted on behalf of Sergeant McCabe that he had not
23 intended to make allegations of criminal conduct
24 against the Commissioner but rather of an abuse of
25 power only. The allegation was understood by the
26 Commissioner to be one of criminal conduct. The
27 hurtful allegation was based on the belief, unsupported
28 by evidence, that the Commissioner put Superintendent
29 Clancy on a promotion list. The complaint was in part

15:39

15:39

15:39

1 a device to ensure that the complaint came before..."
2
3 Etcetera. I am just saying, firstly, you --
4 MR. MURPHY: Sorry, before the question is asked can I
5 just reply to that, Judge? 15:40
6 CHAIRMAN: Yes, if you wish.
7 MR. MURPHY: Just to assist Mr. McDowell and the
8 Tribunal, paragraph 13.87 and 13.88 if they can be
9 placed on the screen, from the Commission's report,
10 they're page 308. 15:40
11 CHAIRMAN: Yes.
12 MR. MCDOWELL: Yes, Sergeant McCabe submitted the
13 allegation of corruption --
14 CHAIRMAN: Let's wait for it to go on the screen if you
15 wouldn't mind. Because I don't have it with me. 15:40
16 MR. MCDOWELL: Yes.
17 CHAIRMAN: I had it on other occasions. Will you give
18 us the page again, please?
19 MR. MURPHY: Certainly. It's page 301 and it's
20 paragraph 13.87 and 13.88. 301 of the report. I am 15:41
21 sorry, I don't have the page of the registrar's --
22 CHAIRMAN: Can you help where to find that? It's here.
23 We have got it.
24 MR. MURPHY: Very briefly, Chairman, you can see here
25 that the same argument I think that is being reprised 15:41
26 by my friend, Mr. McDowell, is being put at 13.87.
27 CHAIRMAN: We better go back to 13.87, scroll backwards
28 if you wouldn't mind. I am thinking this should be
29 good, Mr. Murphy, as we've been waiting so long.

1 MR. MURPHY: "Sergeant McCabe submitted that his
2 allegations of corruption were to be taken in the
3 context of the charter provided for under the An Garda
4 Síochána (Confidential Reporting of Corruption and
5 Malpractice) Regulations 2007. In this charter
6 "corruption" is not specifically defined but it
7 includes not only conduct that falls within the remit
8 of the criminal law but also other matters such as
9 maladministration and abuse of power. He submitted
10 that his allegations of corruption were to be
11 understood other than in the sense of criminal
12 activity."

13
14 That is a complete reprisal of what is put forward
15 here. Next paragraph please, registrar, if you
16 wouldn't mind. The Commission goes on to say:

15:42

17
18 "The complaint of corruption against the commissioner
19 was in "placing Supt Clancy on a promotion list".
20 Sergeant McCabe told the commission he was "guarded" in
21 his complaints against the commissioner by stating in
22 his report to the confidential recipient that,
23 "Commissioner Callinan may not have been given all the
24 evidence in my complaints and he may have been misled
25 by the investigation team"."

26
27 Then the Commission says this:

28
29 "This does not alter the fact that a complaint of

1 corruption subsisted. Sergeant McCabe maintained in
2 his evidence to the commission that it is his belief
3 that the commissioner has "influence in promotions".
4 He did not withdraw his allegation."

15:42

5
6 And the Commission went on. So, right throughout
7 chapter 13 in our submission the indications are that
8 the Commission took a view that this was corruption and
9 was understood to be so.

10 CHAIRMAN: Yes. No, Mr. Murphy, it may be that I can
11 help in relation to this. Firstly, as has been said,
12 indeed I said it myself, I'm not appealing the
13 O'Higgins Commission, I have got the greatest of
14 respect for it and for the person who authored it and
15 the manner in which the Commission was conducted.

15:42

15:43

16 Secondly, there are some words, and this was discussed
17 some years ago in front of the Law Reform Commission -
18 what is the definition of rape? - and it was decided to
19 extend it to such matters as, for instance, what is
20 called male rape. Corruption has of course a specific
21 meaning in terms of the Prevention of Corruption Act,
22 but it is also one of those words such, as rape or
23 arson, which automatically conjures up a particular
24 vision. Now it may be that the Garda Code in its
25 labyrinthine attempt to ensure discipline within the
26 Garda force has used a word where perhaps another word
27 would have been a lot better. But that's as far as I
28 would take it. I think the allegation was certainly
29 not that Superintendent Clancy became chief

15:43

15:43

1 Superintendent Clancy because he gave Commissioner
2 Callinan a Mercedes. I think the allegation was that
3 given that the Morris Tribunal says that if something
4 happens within a district it's the superintendent's
5 responsibility, the buck stops there, that there 15:44
6 shouldn't ever have been a promotion. And I accept
7 also that there was no evidence to suggest any charge
8 of malpractice against Superintendent Clancy or against
9 Commissioner Callinan. And I feel myself bound in that
10 regard by the O'Higgins Commission report and perhaps 15:44
11 that helps matters.

12 MR. MCDOWELL: Yes.

13 MR. MURPHY: Finally, Chairman, perhaps it may assist,
14 perhaps this is a matter that could be dealt with by
15 way of submission rather than -- 15:44

16 CHAIRMAN: Well, it is. But I think that is where I
17 stand, Mr. Murphy. I think it is where I stand. And I
18 actually think there are some words that perhaps should
19 not be used, because they just carry a connotation, no
20 matter how carefully you define them. And corruption 15:44
21 is just one of those.

22 MR. MCDOWELL: Judge, I just ask the Tribunal, I don't
23 want to lengthen this, to look at paragraph 13.78,
24 which has already been referred to.

25 CHAIRMAN: Yes. Let's go back to it. 15:45

26 MR. MCDOWELL: He did hold genuine concerns in relation
27 to the promotion of Superintendent Clancy.

28 CHAIRMAN: It says:
29

1 "Although the complaint of Sergeant McCabe against the
2 Commissioner was motivated in part by his desire to
3 ensure the matter came before the Minister for Justice,
4 the Commission is satisfied that Sergeant McCabe did
5 hold genuine concerns that there was some impropriety 15:45
6 in the promotion of Chief Superintendent Clancy."
7

8 And that, as I understand it, was later explained by
9 negligence.

10 MR. MCDOWELL: Yes. 15:45

11 CHAIRMAN: That you couldn't promote someone in those
12 circumstances where such a bad job was being done in
13 their district.

14 MR. MCDOWELL: Exactly.

15 CHAIRMAN: Now, I am taking no view on that beyond what 15:45
16 Mr. Justice O'Higgins took.

17 MR. MCDOWELL: If the Tribunal goes back to paragraph
18 13.82, the importance of not promoting somebody who
19 doesn't deserve promotion is part of the Garda Code.

20 CHAIRMAN: Yes. It is. 15:46

21 755 Q. MR. MCDOWELL: So, in any event, what I am really
22 asking you about, Sergeant McCabe --

23 CHAIRMAN: Mr. Murphy, can I just ask you, to try and
24 settle matters, by which I mean settle calm on the
25 matter, are you content with that? I'm not going to go 15:46
26 beyond anything in the O'Higgins Commission report and
27 I don't believe I am entitled to.

28 MR. MURPHY: Yes, Chairman. No, I merely query whether
29 it is necessary for my friend to ask this witness these

1 kind of questions which seem to be more legal
2 questions.

3 CHAIRMAN: Well, I appreciate that, but what I think
4 the position is, Mr. Murphy, is this: That there is a
5 reference in the O'Higgins Commission report to a 15:46
6 tendency to exaggerate or get things wrong, you have
7 followed that up with your own questions and
8 Mr. McDowell is saying, look, in relation to the use of
9 the term corruption that can't be said because of a
10 particular definition that applies. And I think that 15:46
11 is the point that is being made.

12 MR. MURPHY: I think as a matter of legal definition, I
13 think the position that is being rehearsed before the
14 Commission is that there isn't a specific definition,
15 but it's a wide notion, and therefore, it doesn't just 15:46
16 incorporate monetary benefit.

17 CHAIRMAN: No, it doesn't. And I think the use of the
18 word in that context, as incorporating anything from
19 negligence through to getting a townhouse in Marbella
20 for not doing your duty or doing something that 15:47
21 purports to be your duty is not actually a very pretty
22 us of the word. Yes.

23 756 Q. MR. McDOWELL: I was going to ask the witness, in
24 retrospect, I mean you said you accept the findings of
25 the O'Higgins Commission report. 15:47

26 A. I do, absolutely.

27 757 Q. That included the finding that it was hurtful to the
28 Commissioner to use the term corruption in respect of
29 him and you accept that, is that right?

1 A. I do.

2 758 Q. I think in retrospect if there was some other word
3 between malpractice or other culpable malpractice you'd
4 have preferred to used that, is that right?

5 A. Yeah, malpractice could have been used, maybe, instead 15:47
6 of corruption.

7 759 Q. I see. Going to the question of what happened at the
8 O'Higgins Commission, there are a couple of matters I
9 just wanted to deal briefly with. Firstly, was the
10 suggestion of disaffection on your part, however it was 15:48
11 supposed to be proven, was that ever withdrawn as far
12 as you know?

13 A. No, I don't think it was.

14 760 Q. Can you assist this Tribunal, although on the 24th June
15 the factual underpinnings of their allegation that you 15:48
16 were wrongly motivated fell apart when the letter was
17 looked at by Mr. Justice O'Higgins and his team, isn't
18 that right?

19 A. That's correct.

20 761 Q. Thereafter were you -- it's suggested somehow that the 15:48
21 attack on your motivation or your good faith fell away
22 completely as well, was that your impression of what
23 was happening?

24 A. No.

25 762 Q. Just on a number of specific issues I think that it was 15:49
26 frequently the case that whatever problems you
27 identified in your complaints in relation to poor
28 policing were in fact your own responsibility, is that
29 right?

1 A. That's correct.

2 763 Q. And we'll make submissions to the Tribunal in relation
3 to that?

4 A. That's correct.

5 764 Q. That happened again and again? 15:49

6 A. That's correct.

7 765 Q. In the cross-examination and the submissions that were
8 actually put in --

9 A. Yes.

10 766 Q. -- is that right? And secondly, I think it was also 15:49
11 the case that there was fairly vigorous
12 cross-examination of you on a number of issues and you
13 have no objection to vigorous cross-examination?

14 A. No, I have no objection to vigorous whatsoever.

15 767 Q. I see. And I think you've explained that the inverted 15:50
16 commas quotation about stop shouting was a mistake, it
17 wasn't your making, isn't that right?

18 A. No.

19 768 Q. But I think there were occasions and we will draw them 15:50
20 to the Court's attention where Mr. Justice O'Higgins
21 had to ask for a more moderate tone of voice to be used
22 in relation to you, is that right?

23 A. Yes.

24 769 Q. For instance, on day 31 under cross-examination, you 15:51
25 had to say, you said:

26

27 "-- whether you like it or not --"

28

29 You were asked:

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-- does spell it out, isn't that right?"

And you said:

"Yes, but please ease your voice slightly."

Is that right?

A. That's correct.

770 Q. So you were vigorously cross-examined, the Department of Justice used the phrase aggressive, but you were cross-examined --

CHAIRMAN: No, the Department of Justice --

MR. MCCANN: Department of Justice --

MR. MCDOWELL: Sorry --

CHAIRMAN: I know they did. I know, this is the problem about myths. I mean, we will have flying horses next. What happened was, there was a query and the query said in relation to the stance adopted and that was translated within the Civil Service as an aggressive stance, nobody had said it, no journalist had ever said that, that was internal to the Department.

MR. MCDOWELL: Okay.

CHAIRMAN: Nobody had ever said it. Nobody said it here either. I mean, the myth can't go on.

MR. MCCANN: And Mr. McDowell should withdraw that.

MR. MCDOWELL: And I will withdraw it.

CHAIRMAN: I know. But it was your client who made the

1 mistake I am afraid, Mr. MacCann.

2 MR. MCCANN: Yes, but --

3 MR. MCDOWELL: In any event --

4 MR. MCCANN: I understand Mr. McDowell has withdrawn
5 it. We can leave it at that. 15:52

6 CHAIRMAN: Well, you can take him as withdrawing it,
7 but I'm not sure he did. But as far as I'm concerned,
8 the journalist didn't actually ring the Department of
9 Justice and ask about an aggressive stance, the
10 journalist asked a more nuanced question which, 15:52
11 perfectly responsibly, within the Department of Justice
12 someone said you may also be asked about an aggressive
13 stance. That's all. And that's it. But there wasn't
14 an aggressive stance. And anything that happened
15 before the Commission -- and I will tell you, a lot 15:52
16 worse has happened here. And I'm not saying here and
17 now. I believe you know what I am talking about.

18 MR. MCDOWELL: Nobody is being accused of being
19 aggressive.

20 CHAIRMAN: No, I'm not, but things have happened here 15:52
21 that have gone way beyond anything I have ever
22 experienced in court. But let's not go into it.

23 771 Q. MR. MCDOWELL: Sergeant McCabe, it is the case that
24 nobody ever suggested that the Commissioner sought to
25 accuse you of sexual abuse in the context of the 15:53
26 O'Higgins report, isn't that the case?

27 A. Yes, they didn't.

28 772 Q. But can you tell this Tribunal what your reaction was
29 to the introduction of the Ms. D dimension into the

1 O'Higgins Commission insofar as it was relied upon to
2 explain disaffection on your part? What was your
3 reaction to that happening?

4 A. Well, I suppose it was in relation to two bits of it.
5 The fact that I wanted the DPP's direction clarified 15:54
6 and I wasn't happy with them, that was just nonsense.
7 And the second part was, I didn't admit any grievance
8 or grudge at the Mullingar meeting.

9 773 Q. But having this issue, even by reference only referred
10 to in -- 15:54

11 CHAIRMAN: But I mean, Mr. McDowell, they have to refer
12 to it. If they are going to make a case they have to
13 refer it. The important point is, nobody said, as in
14 the classic case, 'Look, Mr. Snooks,' as the late
15 Seamus Sorohan would have said, 'nobody can believe 15:54
16 your evidence, several children have accused you of
17 abusing them, isn't that correct?' and Mr. Snooks is up
18 on a charge of burglary.

19 MR. McDOWELL: Yes. Have you ever said that Sergeant
20 McCabe? 15:55

21 A. Never.

22 774 Q. That you were accused anew of the original Ms. D
23 allegation?

24 A. Never.

25 775 Q. What was your reaction to it being raised even 15:55
26 referentially in the Tribunal?

27 CHAIRMAN: But I mean the plain reality is, it had to
28 be raised here as well, Mr. McDowell.

29 776 Q. MR. McDOWELL: Did you think it was going to come up

1 again in the context of this?

2 A. No, never.

3 CHAIRMAN: Well, it didn't come up as an allegation,
4 Mr. McDowell.

5 MR. MCDOWELL: No, it didn't come up as an allegation, 15:55
6 but it was mentioned.

7 CHAIRMAN: My God, it has been mentioned here so many
8 times.

9 MR. MCDOWELL: Exactly.

10 CHAIRMAN: Yes. I doubt it is very pleasant for 15:55
11 Sergeant McCabe.

12 MR. MCDOWELL: No, it's not.

13 CHAIRMAN: But it had to be.

14 MR. MCDOWELL: It's not, but, as the Tribunal will
15 recall, Sergeant McCabe wants this dealt with in 15:55
16 public.

17 777 Q. But at the time, I take it that you were not happy that
18 this matter was raised again, you were entitled to
19 leave it behind you, is that right?

20 A. Yes. 15:55

21 778 Q. And going to, I think if it wasn't the Chairman it was
22 Mr. Marrinan, but somebody said that the letter of the
23 18th May 2015 was on the face of it almost nonsensical,
24 isn't that right? If you analyse it, it's almost
25 nonsensical? 15:56

26 A. That's correct.

27 CHAIRMAN: It was me who said that, Mr. McDowell.
28 There's a couple of reasons obviously.

29 MR. MCDOWELL: Yes.

1 CHAIRMAN: Here is an inspector apparently
2 investigating a chief superintendent.
3 MR. MCDOWELL: Exactly.
4 CHAIRMAN: And then there is a reference about a
5 complaint to Superintendent Clancy and then there is a 15:56
6 reference to a complaint against Superintendent Clancy,
7 and then there's one particular paragraph that actually
8 doesn't make sense. Now I appreciate it was all done
9 in haste, but it's a pity.
10 MR. MCDOWELL: Yes. 15:56
11 CHAIRMAN: Yes.
12 MR. MCDOWELL: In relation to the questioning of your
13 motivation, the Byrne/McGinn report had never
14 questioned that, isn't that right?
15 A. No, it was the opposite. 15:56
16 779 Q. Were you aware of any reason why it suddenly should be
17 raised in the context of the O'Higgins Commission?
18 A. No, I wasn't.
19 780 Q. And you see Mr. Smyth said that he didn't introduce the
20 phrase mala fides and he didn't introduce the word 15:57
21 integrity, is it your recollection that he never until
22 the day the Commissioner came along stood back from
23 that, even though the Judge believed that he was
24 impugning your integrity and your good faith?
25 A. Yes. 15:57
26 781 Q. And on that day was that the first occasion that you
27 were told that your integrity was not being challenged?
28 A. Yeah. I think that was day 29, was it?
29 782 Q. Yes. This is the day the Commissioner was about to

1 give evidence?

2 A. Yeah.

3 783 Q. And in the interim, were you at any stage told that
4 your integrity or acting in good faith was now
5 accepted? 15:58

6 A. Never.

7 784 Q. Were you ever asked any questions or was anything ever
8 said to you which suggested that that was no longer an
9 issue in the case?

10 A. No, was not. 15:58

11 785 Q. I see. And in relation to the line of questioning
12 against you personally, was any other witness subjected
13 to the critical line of cross-examination in relation
14 to their motivation or whatever?

15 A. In relation to motivation only or anything? 15:58

16 786 Q. In relation to motivation in the Commission?

17 A. No. No, just me.

18 787 Q. Thank you Sergeant McCabe.

19 A. Thank you, Mr. McDowell.

20 CHAIRMAN: Thanks, Mr. McDowell. Did you have anything 15:58
21 else, Mr. MARRINAN?

22 MR. MARRINAN: Yes, sir. There is one matter that I
23 have to explore with Sergeant McCabe that I didn't in
24 direct examination.

25 15:59

26 WITNESS WAS RE-EXAMINED BY MR. MARRINAN AS FOLLOWS:

27 788 Q. MR. MARRINAN: Sergeant McCabe, you've given your
28 account of your conversation with Superintendent Taylor
29 on the 20th September.

1 A. Yes.

2 789 Q. And then when you went back to him on the 21st
3 September 2016.

4 A. Yes.

5 790 Q. If I can just refer you to page 1183 of the material, 15:59
6 this is a radio broadcast involving Clare Daly TD. And
7 it's on the 6th January -- sorry, 5th October of 2016.
8 And I'm sorry, I don't know who the host is, it wasn't
9 clear from the document.

10 A. Yes, it doesn't matter. 16:00

11 791 Q. And we haven't actually listened to this. But I will
12 just read the host's introductions:
13
14 "The Tánaiste and Minister for Justice Frances
15 Fitzgerald is considering allegations made by two 16:00
16 Gardaí about what they say is an organised campaign
17 against them run by senior Gardaí. We asked the
18 Minister to appear on the programme, she wasn't
19 available. Independent TD Clare Daly has met the two
20 Gardaí who made these latest allegations a short time 16:00
21 ago. I asked her, bearing in mind the obvious
22 limitations of speaking outside Dáil privilege, what
23 the two Gardaí had said to her about the way they were
24 treated."
25
26 All right. So that is quite clearly the introduction 16:00
27 and Clare Daly had spoken to the two Gardaí.

28 A. That's correct.

29 792 Q. I think the two Gardaí who made protected disclosures

1 at this juncture was, first of all, you and, second of
2 all, Superintendent Taylor?

3 A. That's correct.

4 793 Q. And had you talked to Clare Daly after your protected
5 disclosure was made? 16:01

6 A. I probably had a coffee with her probably a week after
7 or whatever.

8 794 Q. And do you recall meeting with her?

9 A. Yeah, I would meet her, yeah.

10 795 Q. And I am just going to go on to the content of what she 16:01
11 says, but the indication is that she met both Gardaí.
12 Did you meet her along with Superintendent Taylor?

13 A. No, never. Never. No.

14 796 Q. So if we could just go on to the content of what she
15 says here, on line 4: 16:01

16

17 "Now we would be aware for a long time now that some
18 people have come forward and made protected
19 disclosures, have been the victims of bullying and
20 harassment and that type of thing. But I suppose what 16:02
21 makes this more shocking is we've seen a lot of what we
22 have been saying and a lot of what they have been
23 experiencing --"

24

25 I think that should read. 16:02

26

27 "-- absolutely vindicated in the most shocking terms by
28 one senior officer, who has admitted that he played a
29 part in that and in essence what's being said is that

1 there was a deliberate and organised campaign to in
2 essence annihilate a whistleblower."

3
4 CHAIRMAN: Our system is acting up.

5 MR. MARRINAN: If we scroll down as I am reading, 16:02
6 please.

7 CHAIRMAN: "-- organised campaign to in essence
8 annihilate a whistleblower." Yes, thank you.

9 797 Q. MR. MARRINAN: "In essence annihilate a whistleblower",
10 this is clearly a reference to Superintendent Taylor's 16:03
11 protected disclosure, isn't that right?

12 A. Yes.

13 798 Q. "The word came out from the top that this person had to
14 crushed, he had to be discredited. Inaccurate personal
15 information was given out about him in the most 16:03
16 horrific way. Text messages sent to the Gardaí.
17 People in the media told, oh, you don't want to be
18 talking to him now, you know all about him, hint, hint.
19 With some more graphic detail with it. Politicians,
20 who I think need to come clean on this, got the 16:03
21 messages about this as well. And basically what it
22 was, was an attempt to isolate and crush this man
23 because he had the audacity to speak out against the
24 hierarchy and I suppose the most serious part of all
25 that is the claim that this was done utterly with the 16:03
26 knowledge of the former and present Commissioner."

27
28 That is a reference to Commissioner Callinan and
29 Commissioner O'Sullivan.

1 A. Yes.

2 799 Q. Did you bring that information to Clare Daly?

3 A. No, I certainly didn't bring her all that information
4 whatsoever. If I had a coffee with her it was general
5 about myself, but I certainly didn't bring that, no. 16:04

6 800 Q. Did you give her a copy of your protected disclosure?

7 A. Never. Never.

8 801 Q. No. Thank you very much. Is there anything else that
9 you would like to say in evidence to the Tribunal that
10 hasn't been covered in the matters that I have gone 16:04
11 through and the --

12 A. No.

13 802 Q. -- and the various other parties?

14 A. Mr. Marrinan, you were excellent, no.

15 16:04

16 THE WITNESS WAS FURTHER EXAMINED BY MR. MCDOWELL:

17 803 Q. MR. MCDOWELL: Judge, there is one thing if I could ask
18 Sergeant McCabe. You have been asked about the
19 sequence of events in terms of bullying and
20 victimisation and isolation, can you just clarify when 16:05
21 to the best of your knowledge? Did it all happen
22 continuously or were there lulls?

23 A. I think there's certainly lulls.

24 804 Q. I mean, for instance, the "Maurice the Rat" thing, when
25 did that happen? 16:05

26 A. That happened in '09.

27 805 Q. And then I think there was something on the internet,
28 is that right, or is that the same thing?

29 A. Same thing.

1 806 Q. Yes. Thereafter, I get the impression from you that
2 when the penalty points issue and the fixed charges
3 issue came into focus that the cordiality disappeared
4 among a lot of members of An Garda Síochána?
5 A. Yeah. I think the gagging order, which was in December 16:05
6 2012, that followed on after that, with the penalty
7 points.
8 CHAIRMAN: So, this is the restriction of your access
9 to Pulse --
10 A. Pulse. 16:06
11 CHAIRMAN: -- in December '12?
12 A. 12th December I think.
13 CHAIRMAN: No, December 2012.
14 A. December 2012, was it, yeah.
15 807 Q. MR. MCDOWELL: As the penalty points honed into view or 16:06
16 into the public domain in 2013 -- sorry, can you just
17 say, did the Rooney letter have any affect on you, do
18 you think?
19 A. Did the Rooney -- pardon?
20 808 Q. Did the Rooney letter have any affect on Garda 16:06
21 attitudes to you?
22 A. Well, I wasn't in Cavan-Monaghan, so it didn't really
23 matter. I was in Mullingar.
24 809 Q. I see. And when the penalty points came to the fore,
25 did you feel cold wind -- 16:06
26 MR. MURPHY: That last question wasn't put to --
27 MR. MCDOWELL: Sorry?
28 CHAIRMAN: Well no, Mr. Murphy, it wasn't. But a cold
29 wind result ing from a letter is surely something that

1 Chief Superintendent Rooney wouldn't know anything
2 about.

3 MR. MURPHY: He certainly wasn't asked whether he knew
4 anything about it.

5 CHAIRMAN: No, he wasn't. And he wasn't asked did he 16:07
6 intend to destroy Maurice McCabe by doing that.

7 MR. MURPHY: No, Chairman.

8 MR. MCDOWELL: I think people intend the natural and
9 probable consequences of what they do, Judge.

10 CHAIRMAN: They do. But this presumption may be 16:07
11 rebutted.

12 MR. MURPHY: Perhaps it's a matter for submissions,
13 Chairman.

14 CHAIRMAN: Yes, it is. And I think we're getting a wee
15 bit lost at this point, yes. 16:07

16 810 Q. MR. MCDOWELL: You see, you did say that the floodgates
17 opened after former Commissioner Callinan used the
18 "disgusting" remark, did you mean by that, that nothing
19 was happening before that?

20 A. Ah no, in '13 it started to get ratcheted because of 16:07
21 the penalty points.

22 CHAIRMAN: I saw it, as I said, as a roller coaster,
23 going up and down, yes.

24 MR. MCDOWELL: I just wanted to be clear on that.

25 CHAIRMAN: That is fine, Mr. McDowell. 16:07
26

27 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

28 811 Q. CHAIRMAN: There are just a couple of things I wanted
29 to ask, if I may. First of all, in terms of any report

1 calling you Maurice McCabe you don't regard that as an
2 insult?

3 A. Not at all.

4 812 Q. CHAIRMAN: All right. Just by way of a shorthand,
5 instead of using your full title. 16:07

6 A. No, not at all.

7 813 Q. CHAIRMAN: I just want to go back to one thing and
8 Mr. Marrinan had asked you about it, but I was just
9 concerned in one respect. You told us about two
10 important meetings that you had in May 2016, first of 16:08
11 all with John McGuinness and thereafter with David
12 Taylor. Now, can I ask you, did you tell David Taylor
13 John McGuinness told me the following?

14 A. Never. Because I didn't meet him until that night, in
15 his house. 16:08

16 814 Q. CHAIRMAN: No, I appreciate that. But in the course of
17 your discussion where he said, look, I was asked to
18 destroy you, did you drop into the conversation at some
19 point John McGuinness told me that Martin Callinan has
20 said that I abused my children and my nieces? 16:08

21 A. Mr. Chairman, how it ended up was, he brought the issue
22 up of Dundalk and the meeting at the Red Cow and
23 heading back to Dundalk. And I said to him, so John
24 McGuinness was right? He said, he was. I says I, in
25 relation to me and my children? And he said, yes. 16:09

26 815 Q. CHAIRMAN: But that would assume he had a knowledge of
27 what John --

28 A. It would assume, absolutely, he a knowledge. But I
29 never told him.

1 816 Q. CHAIRMAN: All right, no. And I get that, and that is
2 fine. The two things that arise out of that are as
3 follows. I mean, you are a forensic person, you do
4 criminal investigations. Firstly, I presume you'd
5 expect the Tribunal to look into whether there were any 16:09
6 texts?
7 A. Absolutely.
8 817 Q. CHAIRMAN: Because that's central to what you are
9 saying. Now I appreciate the questions put to you by
10 Ms. Burns, but that's what you are saying, and in due 16:09
11 course I will make up my mind --
12 A. Absolutely.
13 818 Q. CHAIRMAN: -- as to whether that was said or not.
14 A. Yes.
15 819 Q. CHAIRMAN: And to do whatever is necessary to recover 16:09
16 devices, etcetera?
17 A. Absolutely.
18 820 Q. CHAIRMAN: And that obviously is going to be a breach
19 of certain people's privacy but it can't be helped.
20 A. And if can I say, I mean, it would be silly if I said 16:10
21 such a thing, because obviously there's evidence.
22 821 Q. CHAIRMAN: well, there is or there isn't?
23 A. There is or there isn't, yes.
24 822 Q. CHAIRMAN: But we have spent a great deal of money and
25 time looking into that, by the way. The second thing 16:10
26 is: who was he saying these things to?
27 A. Who was who saying?
28 823 Q. CHAIRMAN: This is to say David Taylor, Superintendent
29 Taylor, who he was saying these things to about you?

1 A. He said to me, in relation to the text messages, he
2 said they're sent to journalists and senior Gardaí and
3 politicians.

4 824 Q. CHAIRMAN: And insofar he's named anybody?
5 A. I didn't -- 16:10

6 825 Q. CHAIRMAN: No, insofar as he has to the Tribunal.
7 A. Oh yeah.

8 826 Q. CHAIRMAN: I mean, I take it your view would be that
9 the Tribunal would have to look into that?

10 A. Well, yes. If they could. I mean, I had no interest 16:10
11 in that night on hearing who the people were.

12 827 Q. CHAIRMAN: Yes.
13 A. But I think they should look into it.

14 828 Q. CHAIRMAN: And from a forensic point of view - I'm
15 using the word forensic as relating to court, relating 16:11
16 to an investigation - an investigation would be
17 incomplete unless the Tribunal did that?

18 A. Yeah. I think so. And I mean - sorry, just a slight
19 stammer - it would be foolish of me to actually say
20 that, because if I was investigating like this, I mean, 16:11
21 you know, I'd have to go on the allegations.

22 829 Q. CHAIRMAN: Yes?
23 A. So I wouldn't say that he compiled the text messages.

24 830 Q. CHAIRMAN: Sure. But I mean the first thing any
25 sensible person would to would say, first of all, look 16:11
26 at the text messages, secondly, find out who he was
27 alleging talking to; are you appealing to those people
28 to come forward and to cooperate with the Tribunal?

29 A. I am, yeah.

1 831 Q. CHAIRMAN: why?
2 A. Because it's more evidence of a smear campaign.
3 832 Q. CHAIRMAN: And if people just decide to hold back and
4 not come to the Tribunal or to refuse to give evidence,
5 if they were indeed contacted by David Taylor, what 16:12
6 have you got to say about that?
7 A. Em, I think if they were journalists they're probably
8 going to act on their source, you know, as they cannot
9 disclose their source. But in relation to other
10 people, I mean, I would expect them to come forward. 16:12
11 833 Q. CHAIRMAN: well maybe, but sometimes people can
12 speak --
13 A. I know.
14 834 Q. CHAIRMAN: -- not in confidence, and secondly, there
15 may be circumstances where a journalist does not have a 16:12
16 privilege. In the event that it is in accordance with
17 the law, are you appealing to them to give evidence on
18 your behalf to back up your allegations?
19 A. Yeah.
20 CHAIRMAN: Thanks sergeant. 16:12
21 A. Thanks, Mr. Chairman.
22 CHAIRMAN: Okay, we've got through a lot. We can go
23 off transcript again, because thank you Ms. Kelly, you
24 and Ms. Downes do a great job.
25
26 THE HEARING THEN ADJOURNED UNTIL THURSDAY, 8TH MARCH
27 2018 AT 10:00AM
28
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