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

HELD IN DUBLIN CASTLE ON THURSDAY, 1ST FEBRUARY 2018 - DAY 53

# 53

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 ON THURSDAY, 1ST FEBRUARY 2018,	
2			AS FOLLOWS:	
3				
4			MS. FRANCES FITZGERALD CONTINUED TO BE DIRECTLY	
5			EXAMINED BY MR. MCGUINNESS:	09:58
6	1	Q.	MR. McGUINNESS: I want to leave the text of the email	
7			of the 15th May behind us.	
8		Α.	Yes.	
9	2	Q.	And just turn to a different issue. You have obviously	
10			seen the statement from Mr. Ken O'Leary of the	10:01
11			Department, the statement which he made to the	
12			Tribunal?	
13		Α.	Yes.	
14	3	Q.	Yes. And could I just ask you, your response to a	
15			couple of issues that arise from that and perhaps we'd	10:01
16			just look at page 3348, it's in Volume 6, if you want	
17			to look at the paper copy.	
18		Α.	Yes.	
19	4	Q.	And Mr. O'Leary is recounting here in the first prove	
20			paragraph:	10:02
21				
22			"While clearly accepting that the Department could have	
23			no role in determining the Garda position in relation	
24			to the Commission, the Commissioner asked me if based	
25			on my experience anything occurred to me which she	10:02
26			might need to be mindful of in addressing this	
27			particular issue with her legal advisers. I suggested	
28			she would have to be guided by her legal advice in	
29			these matters but against the background that the	

Department was not in a position to express any views on the position of An Garda Síochána at the Commission, there was a discussion of factors of which she might need to be mindful in the context of discussion with her legal advisers.

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7 To the best of my recollection the matters mentioned 8 were the needs for sensitivity in relation to protecting the position of Sergeant McCabe, the 9 10 position of other people at the Commission against whom 10:02 11 serious allegations had been made, the likely adverse 12 reaction of the Commission to the introduction of 13 matters which it might consider inappropriate, and the 14 overall duty an the Garda Commissioner to assist the 15 Commission in whatever way possible to establish the 10:03 16 facts of what the Commission had been asked to 17 investigate. The Commissioner was then going to 18 discuss these matters with her legal advisers, and I 19 think I reiterated the view she should be guided by the 20 legal advice available to her. I also believe I 10:03 suggested that from her point of view it might be 21 22 helpful if it was possible to gain more time so she 23 could consider the matters more fully with her legal advisers." 24

10:03

10:02

It then goes on to recount the second phone call there.
Now, obviously he says at the bottom that he doesn't
believe at any stage he alerted the Minister to the
discussion, but it seems clear that Mr. O'Leary

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obviously wasn't and didn't believe it proper to be
 discussing or deciding in any way or advising on the
 legal position that the Commissioner could take and
 presumably you'd agree with that.

A. Yes, I would agree with that.

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But obviously the Commissioner didn't see it as a 6 5 Ο. Yes. 7 potential or doesn't seem to have seen it as a 8 potential interference to receive Mr. O'Leary's views about factors that she might properly consider in 9 conjunction with the stance she was taking. 10 It seems 10.04 11 to be perhaps a different attitude than the one you took when you received the email. You didn't consider 12 13 it appropriate to interfere, as you say, but she 14 appeared to take the view it was appropriate to 15 consult. Is that not a perfectly legitimate point of 10:04 16 view?

10:04

17 A. Which point of view, that I didn't --

18 6 Q. Well, the Commissioner's view?

19 Well, obviously that was a call between Mr. O'Leary and Α. 20 the Commissioner, which, until I read his statement, 10:05 you know, I did not know about. And I think he has 21 22 confirmed that and so has -- well, I am not sure if the Garda Commissioner has but certainly Mr. O'Leary has. 23 24 So it was very much an interaction between the two of 25 And I think he spoke about it, about being a bit 10:05 them. 26 uncomfortable about it, about the actual call, at one 27 point in his evidence, and he stresses there his own point of view of it, and I really can't speak for the 28 29 Garda Commissioner, obviously, in terms of what

approach she took, if that's an accurate reflection of 1 2 the conversation. But I think the response from 3 Mr. O'Leary would very much reinforce, if you like, the point that I had made, or I would make, that in terms 4 5 of my overall approach to the O'Higgins Commission, and 10:06 6 this applied -- and this is what I was trying to 7 explain yesterday, that this would have applied not 8 just to emails, I mean I was -- the point I made about the conscious decision was this was about, from the 9 very moment the O'Higgins Commission was set up, this 10 10.06 11 was about parliamentary questions, it was about topical 12 issues, it was about anything to do with the O'Higgins 13 Commission, that you know, there was a clear role for me which was not one of interfering in any way. 14 SO I 15 can't speak for where the Commissioner was coming from 10:06 16 when she made that, if she made that phone call; all I 17 can say is, you know, what my clear understanding and 18 approach was and that of people working around me. But 19 I do believe it was reflected guite sincerely from the 20 top of the Department of Justice down, that the 10:06 O'Higgins Commission was separate and it would be 21 22 inappropriate and, in fact, probably questionable legally as well, to have, you know, got involved in it. 23 24 7 Yes. Q. 25 So, as I say, I can't speak for how the Commissioner Α. 10.07

26 was thinking, if and when she made that phone call. I 27 can only say that I do think Mr. O'Leary was trying to, 28 you know, in response, make the point that there wasn't 29 a role in terms of whatever was going to happen at the

O'Higgins Commission.

2 Yes. well, obviously understanding that point of view 8 Q. and understanding Mr. O'Leary's response to not 3 intervening or interfering, but the issue about the 4 5 sensitivity of dealing with Sergeant McCabe, were you 10:07 surprised not to have been told by Mr. O'Leary that the 6 7 Commissioner had phoned him twice that afternoon? 8 Well, I think I said this yesterday as well, that if, Α. as a Department, as a Minister, I had taken the 9 decision that the O'Higgins Commission, that I -- I and 10:08 10 11 the Government had established it, that there was work 12 to be done down there in relation to the range of 13 issues that were on the table. in every -- I would say 14 in every consultation within the Department and no 15 matter who it was with, if I was dealing with -- and 10:08 16 you know it obviously was raised quite a lot in the 17 Dáil, in parliamentary questions and I would be doing 18 both oral and written parliamentary questions, the 19 consistent message and approach was that the O'Higgins 20 Commission was effectively, you know, it was 10:08 self-contained, unless there was -- I think there might 21 22 have been one or two technical issues that arose during 23 that period that were raised with the Attorney or maybe 24 with the Department but purely, purely technical. SO 25 it was very clear from the senior members in the 10.08 26 Department of Justice and from myself, as Minister and 27 advisers, everyone, that this was a self-contained Commission of Investigation that had been set up with 28 29 the judge dealing with any issue that arose there, and

1 that would have been very much the approach that would 2 be taken consistently by everyone. So anything that, 3 you know, touched on that, there was a clear response; whether it was an email, one or two or three or four 4 5 emails, whatever it was, that was the approach, that it 10:09 6 was very much -- you know, my understanding is that it 7 would probably have been certainly inappropriate, if 8 not illegal, and from the point of view of political interference, as I say, I would be answering different 9 questions if I had done anything that seemed to 10 10.09 11 interfere with the legal strategy of any party there. 12 Yes. Well, it's not so much a question of interference 9 Q. 13 as perhaps having knowledge of or maybe even a 14 coordinated position as to how a person in Sergeant 15 McCabe's position would be treated rather than 10:09 interfering with the Commission? 16 17 But it was in the context of the Commission, and so Α. 18 that -- and how Sergeant McCabe was being treated 19 within the Commission I would very much see as a matter 20 for the judge and for the legal teams to deal with. Ι 10:10 mean, if there was an issue that arose, I mean, I would 21 22 assume that the legal teams of all parties down there 23 would deal with it, or that the judge would deal with 24 it. You know, whatever. And that they would -- that 25 is where the protection of Sergeant McCabe would take 10.10It was not for me as Minister to have any 26 place. 27 involvement in how that was happening. I mean, I assume that if, if any one of the legal teams, for 28 29 example, had felt that a judicial review was mentioned

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1 in the conversation with Richard Barrett I think, but 2 as I say, that did not reach me by the time that email 3 came to me, but if that had happened obviously we would be in a totally different situation, but we weren't in 4 5 that position; we were in a situation where the 10:11 Commission were ongoing, there were legal teams 6 7 representing Sergeant McCabe, there were legal teams 8 representing all the parties, and at a later point some officials from the Department. 9

- 1010Q.Yes. I understand that. But the question really10:1111relates to your expectation of being informed by your12Deputy Secretary that the Commissioner had concerns,13had sought guidance and ought you not to have been14informed of those by the Deputy Secretary?
- A. Well, I understand from what he said that he also had a 10:11
   conversation with Michael Flahive.
- 17 11 Q. Yes.
- 18 That he knew that Michael Flahive at that point Α. 19 obviously, earlier in the day, had been speaking to the 20 I think they discussed, from the Attorney General. 10:11 transcripts, that they discussed that there wasn't a 21 22 legal role for the attorney or for myself, and I -- it 23 was probably on that basis that he decided that, given 24 that we had no role in the O'Higgins Commission anyway, that it wasn't -- it just wasn't something that I 25 10.12needed to be brought in on, because with what purpose 26 27 would be the question?
- 28 12 Q. Yes, that is what I am perhaps coming to now. I mean,
  29 he did have the conversation as indicated with

## 11

Mr. Flahive, and thrice in his evidence he referred to 1 2 Mr. Flahive's email as being the legitimate route for you to be informed about what had happened at the 3 4 Commission. And obviously the email doesn't refer to 5 the telephone calls from the Commissioner. So it would 10:12 appear that there was a deliberate decision not to keep 6 7 you informed of the Commissioner's phone calls, would 8 you agree with that interpretation? Well, I would say there was clearly a decision by 9 Α. Mr. O'Leary at that time that he obviously didn't 10 10.12 11 arrive at a point in the conversation with Michael 12 Flahive where he said, you know, you can include my 13 conversation or he could have, I suppose, sent a 14 separate email to me. I imagine if he had, what it 15 would have said is that I have had a phone call, I have 10:13 clearly laid out, as he says in his statement, the 16 legal strategy, that you know, it's not something for 17 18 us but should ask about X, Y and Z. It wouldn't have 19 changed the approach I would have taken in any way. SO 20 he made that decision as an experienced Justice 10:13 official, but, you know, it's obviously capable of 21 22 different interpretations. 23 But do you disagree with the interpretation that 13 Okay. Q.

- 24 it appears to be a very deliberate decision not to 25 burden you with the knowledge that the Commissioner had 10:13 26 twice phoned looking to consult and consulting in this 27 way with Mr. O'Leary?
- A. Em, not to deliberately burden -- well, I mean, I would
  be well capable of taking the information. I mean it

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1 wouldn't have been a problem if he decided to tell me, 2 I would have dealt with it in the same way. But he made, I think it was -- you know, it was an 3 administrative decision he made that, you know, he 4 5 obviously didn't think it was that appropriate anyway. 10:14 6 14 Q. Okay. It's just I suppose there are two other views on it in the context of the Commissioner had in her last 7 8 lengthy letter to you that we looked at earlier, in the last line she had promised to keep you informed of any 9 developments in relation to Sergeant McCabe. 10 And 10.14 11 perhaps this was an important development that you 12 needed to hear about as having come from the 13 Commissioner, and in the context where you were perhaps 14 going to meet the Commissioner the next day in Dublin 15 Castle, where the memorial service was taking place for 10:14 16 deceased Gardaí, you attended that with the Secretary 17 General --18 Yeah. Α. 19 15 -- and the Commissioner was there, I think, as well, Q. 20 isn't that correct? 10:14 21 Yes. Α. 22 And just in the context of perhaps being thrown into a 16 Q. 23 situation where this was diaried, I think your 24 Department knew you were going there and presumably 25 expected the Commissioner to be there, in that context 10.15would you not expect to be kept up to speed if you 26 27 were, as it were, going to have an opportunity perhaps to speak with the Commissioner on that day? 28 29 But you see, again it was in the context of the Α.

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Commission being underway.

2 17 Q. Yes.

So from that point of view, you know, there was -- as I 3 Α. said to you, there was -- you know, that was seen as, 4 5 you know, it is -- it was something separate. And in 10:15 terms of keeping me informed about Sergeant McCabe, 6 7 there is no way that I would have expected, you know, 8 briefings, and I didn't get them, on what was going on at the Commission. 9

10.15

10 18 Q. All right.

11 A. And this was to do with the Commission.

12 19 Q. Okay.

13 So you know, there were no ongoing briefings about what Α. 14 happened. As I say, until I heard about what has come 15 up here at the Tribunal I didn't know anything about 10:15 16 those interactions, for example, between counsel for the Guards and so on. I didn't know anything about --17 18 rightly. I mean, it wasn't a question of me not being 19 informed. You know, I had no role in knowing the 20 day-to-day proceedings at the Commission. And that's 10:16 the point that I was making yesterday. And I mean, I 21 22 think it's very clear, you know, when commissions of 23 investigation are set up, you know, to create a 24 precedent of me getting involved in what was happening 25 down there, and you suggested yesterday, perhaps, 10.16sending somebody in or whatever, I really think that --26 27 well, I absolutely believe and my view would have been that the Commission was, you know was self-contained. 28 29 20 You did mention the word illegal in one of your Ο. Yes.

14

previous answers to me about two minutes ago.

- 2 A. Yes.
- 3 21 0. And there was a concern on your part that it perhaps might be represented as being improper if you were, I 4 5 don't say getting a briefing but getting some 10:17 6 information or snippets as to what was happening at the 7 Because obviously the information from Commission. 8 Mr. Barrett might be obviously seen to come from the most respectable of sources, from the Attorney 9 10 General's office to the Department, but the 10.1711 communication from the Commissioner then gets, as it 12 were, left out of the frame; was there some concern on 13 your part that this might be illegitimate or being 14 represented as an illegitimate sort of source of 15 information about what was happening at the Commission? 10:17 16 Well, I mean, I didn't have that conversation with Α. 17 anyone because it didn't come up. 18 22 Q. Yes. 19 I mean, so it couldn't have been presented in that way. Α. 20 But on --10:17
- 21 23 Q. Was it part of your concern? It seems to have been
  22 lurking in the background or am I misunderstanding your
  23 rationalising of this?
- A. It's not rationalising. What I am saying is that my
  approach to the Commission was that the Government and 10:17
  I had set up the Commission of Investigation, it was
  getting on with its work. It wasn't appropriate for me
  to have any involvement with it while it was sitting,
  from anybody's perspective. And you know, I think that

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1 is borne out when you, you know, look at the Commission 2 of Investigation, you know, the Act about the privacy, 3 first of all, so it wasn't even -- there was no question of being meant to be briefed on it or told 4 5 about it, because, you know, the hearings were in 10:18 6 private. 7 24 Right. Q. 8 First point. And secondly, it was independent. Α. 9 25 Yes. Q. So it wasn't so much, you know, it wasn't an anxiety, 10 Α. 10.18 11 it was an absolute understanding about the Commission. 12 So in a sense that, you know, the approach that, say, 13 Mr. O'Leary took, I think it's consistent with that. 14 26 Q. Yes. No it seems to be, on face value. 15 Α. Yes. 10:18 16 Can I leave that topic and just ask you very briefly 27 0. 17 about the GSOC report and Mr. McDermott's email that 18 came to your private secretary on 21st May, and that's 19 at page 4936. 20 what volume is that? Α. 10:19 21 28 You may have got a paper copy of it yesterday. Q. But 22 it's in volume 9 at 4936. And I am sure you heard 23 Mr. Power's evidence about this yesterday. 24 I don't think -- did you say 49? Α. 4936? 25 29 0. 10.19I don't have that here. I have 4934 is the last in it. 26 Α. 27 30 Q. We will get you a copy. If you are comfortable looking 28 at it on screen, perhaps we'd just look at the top of 29 the page.

16

1		Α.	Yes.	
2			MR. MCCANN: It would be a lot preferable for the	
3			witness to have the entire document, if that is	
4			possible.	
5			MR. MCGUINNESS: Yes. We will get a copy.	10:19
6	31	Q.	Obviously it came to your private secretary.	
7		Α.	Yes.	
8	32	Q.	There is a paper copy being handed to you now	
9			Ms. Fitzgerald?	
10		Α.	Thank you. [SAME HANDED]	10:20
11	33	Q.	And one of the I think Mr. Power's evidence seemed	
12			to suggest it was something that would be and would be	
13			expected to be brought to your attention immediately,	
14		Α.	Yes.	
15	34	Q.	And I think you are happy to confirm it was at that	10:20
16			time?	
17		Α.	Yes, I am sure it was, yes.	
18	35	Q.	All right. And in terms of the formal report, the	
19			formal report itself was then I think put before you	
20			with a summary from Mr. English and then a covering	10:20
21			submission from Mr. Power, and at 4941, we should see	
22			that document.	
23		Α.	Yes.	
24	36	Q.	And I think, did your counsel confirm that they are	
25			your initials on the top?	10:21
26		Α.	Yes, they are, yes.	
27	37	Q.	Is there a date on that that you can sort of decipher?	
28		Α.	Is it the 7th?	
29	38	Q.	Is it the 7th, is it?	

It looks like the 7th to me, I am not absolutely clear. 1 Α. 2 Without taking things out of context, the first 39 Q. 3 paragraph says: 4 5 "Please see submission below which sets out the 10:21 principal elements of a letter from GSOC informing the 6 7 Minister of the progress of its investigation into a 8 complaint by Ms. D that the Gardaí did not carry out a proper investigation into an alleged sexual assault 9 against her by Sergeant Maurice McCabe. 10 I think the 10.21 11 alleged sexual assault was referred to in a particular 12 context during the recent initial hearings of the 13 O'Higgins Commission of Investigation." 14 15 Do you recollect seeing that or reading that? 10:21 16 I am sure I did, yes. Α. 17 40 And did it strike you as something that was in any way 0. 18 odd at the time? 19 NO. I mean, when I had received this, the 21/5, yes, Α. 20 at that point I would have been aware, and it was 10:22 actually May, I said April yesterday, it was May when I 21 22 was Minister for Justice that I was aware of the Ms. D 23 allegation, because I wouldn't have had any way of 24 knowing about it earlier. It was when I was Minister 25 for Justice, and that was May, actually, not April. 10.22 26 41 Yes. Q. 27 I would, at this point, I would already have been aware Α. 28 of the DPP decision, that there was no basis, and you 29 know that the case -- the allegation, that there was no

18

1			grounds for any further action. I would have been	
2			aware of that from several months before this.	
3	42	Q.	Yes.	
4		Α.	And then I would also be aware of the Independent	
5			Review Mechanism had concluded its work in '14. So	10:22
6			this report from GSOC, obviously it was consistent with	
7			the fact that the original investigation had been	
8			carried out properly.	
9	43	Q.	Yes.	
10		Α.	And that there was no question of any impropriety.	10:23
11			There were some recommendations from the Independent	
12			Review Mechanism in relation to further, you know,	
13			investigations, some more practical, I think,	
14			recommendations to the Guards about who should do	
15			inquiries and that type of thing, investigations.	10:23
16	44	Q.	Yes.	
17		Α.	So this would have been, in a way it was an independent	
18			statutory body also looking at the allegation, and	
19			coming to the same conclusion	
20	45	Q.	Yes.	10:23
21		Α.	that the DPP and the Independent Review Mechanism	
22			had come to as well.	
23	46	Q.	Yes.	
24		Α.	So from that point of view, you know, it would have	
25			been, obviously I would have read it, it was important	10:23
26			statutory independent body had done the investigation.	
27	47	Q.	Yes. And did you see it then in that context as a sort	
28			of double reassurance that there had been no I	
29			suppose, on the one hand there was no cover-up of the	

1 allegation because Sergeant McCabe was a guard, there 2 was no defect in the investigation of the offence, and 3 it had now been confirmed by the second statutory agency that there was no issue with it? 4 5 I was always aware of that. Α. 10:24 6 48 Ο. Yes. 7 Yes, from the time I was aware that the DPP -- the Α. 8 decision the DPP had made and the decision that the IRM had made, which was confirmed at the end of '14 but not 9 notified until '15. 10 10.2411 49 Q. But focusing then on the last sentence of that Yes. 12 first paragraph --13 Yes. Α. 14 50 Ο. -- did that not throw that into high relief as being a 15 very inconsistent matter to have been --10:24 16 But again it would depend on the context. And I Α. 17 suppose in terms of the points that have been put to me 18 on a number of occasions and we will say going back to 19 that first email, I mean, I am -- you know, in that 20 email it would seem from the evidence that has been 10:24 given at this point that in fact that original 21 22 allegation, I think the Chairman has said several 23 times, was never raised at the O'Higgins Commission. 24 Yes. 51 Q. So that if I -- I mean, if I had interfered, and that 25 Α. 10.2526 seems -- perhaps that isn't the suggestion but if it 27 was the suggestion --28 52 Q. NO. 29 -- I would have been interfering in something that Α.

20

1 actually turns out hadn't arisen. So I think that 2 reinforces the point I am making; that there wasn't a role for me, unless there was some extraordinary 3 happenings, likes a judicial review, down at the 4 5 O'Higgins Commission -- over at the O'Higgins 10:25 Commission. 6 7 53 Can I ask you to, as it were, excise any after acquired Q. 8 knowledge, because the only two communications you had received relating to what was happening at the 9 Commission was the email of the 15th and now this sort 10 10.25of reference back to it. 11 12 Yes. Α. 13 Firstly, did you link the to -- did you link what is 54 Q. said there to the information about the Commissioner's 14 stance in the email of the 15th? 15 10:25 16 Well, you know, this was a comment from Martin who said Α. 17 "I think the alleged sexual assault was referred to in 18 a particular context during the recent initial 19 hearings", well, I imagine that I would have, because 20 you know -- but at the time, I mean, when you look back 10:26 on emails, obviously until you see the written email, I 21 22 mean, there's 20,000 emails coming in and hundreds --23 you know, thousands coming into me in the course of 24 that whole period, so -- but looking back you can 25 obviously describe context and how your response would 10.26 26 have fitted in to what your approach would have been at 27 the time. 28 55 Q. Yes. 29 And that is what I was saying yesterday. And in the Α.

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1			same day that this is mentioned here, you know, that	
2			the approach that I would have brought to it would have	
3			been, you know, my understanding of the but yes,	
4			because I would know what it was referring to.	
5	56	Q.	Yes. Obviously just in the context of the period of	10:26
6			time, the original email came in on 15th	
7		Α.	Yes.	
8	57	Q.	you read it at some stage, perhaps the 15th or a day	
9			or two after.	
10		Α.	Yes.	10:26
11	58	Q.	And your private secretary has noted that you have	
12			noted it.	
13		Α.	Yes.	
14	59	Q.	And did you do that by saying noted on the paper	
15			version of it? He said he printed out the paper	10:27
16			version.	
17		Α.	Yes, the usual way I would note emails would be either	
18			that if I was working on them, you know, on my iPad or	
19			either in the office or out of the office that I would	
20			just put a "noted", I would type "noted" on the email.	10:27
21	60	Q.	Yes.	
22		Α.	If he hadn't received it back from me, at that time	
23			there was a lot of hard copy of material printed as	
24			well, and it's possible that he I think Chris said	
25			he might have given me a hard copy and I think that is	10:27
26			likely as well. And in that case, I would just sign	
27			"noted" up at the top of it.	
28	61	Q.	Okay. Anyway, this didn't cause you any worry as to	
29			the Commissioner's position, on its face?	

1 Em, I would -- as you say, I mean, I would have seen Α. 2 this, the main point I would have taken from this would have been that, you know, another independent body was 3 being absolutely clear --4 5 62 Yes. Q. 10:28 -- about how the investigation -- the original 6 Α. 7 investigation was carried out. Yes. Leaving aside any detail about the Commissioner's 8 63 Ο. legal strategy, I don't think you were here for the 9 Commissioner's evidence, but you probably have read it, 10:28 10 11 I take it? 12 Yes. Α. 13 Is that right? 64 Q. 14 Α. Most of it, yes. 15 65 You will have seen, I hope, that from her evidence, she 10:28 Q. 16 made it clear that from, effectively from the establishment of the Commission that she was happy that 17 18 everything that was relevant would come out in the 19 Commission and would be considered within the 20 Commission and considered by a judge and she placed a 10:28 value on receiving the report of the judge who would 21 22 adjudicate on the various matters and make recommendations. But did she ever discuss that with 23 24 you in that general way, about her, as it were, 25 enthusiasm for the Commission process in which 10.29 26 everything would come out, everything would be 27 considered? I think post the publication, I mean, she -- you know, 28 Α. indeed as I had said, I had hoped that that would 29

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satisfy all parties, you know, that the Commission had 1 2 been held, but not during the course of the Commission. 3 66 Q. Not beforehand though --4 I don't believe so. no. Α. 5 67 -- after it had been established, about her general Q. 10:29 attitude towards it? 6 7 I mean, just to make the point, I No, I didn't, no. Α. 8 suppose there were an awful lot of other issues that I would have having, you know, very intense and detailed 9 discussions on with the Commissioner, you know, very 10 10.29 11 detailed meetings about, you know, very current and 12 important issues on an ongoing basis. So you know, 13 there was a lot of other items on the -- that were very 14 important. 15 68 Of course. Q. 10:29 Whether it was, you know, just the normal updating on 16 Α. various criminal issues or discussing -- discussions 17 18 about, you know, it could be ICT, it could be a whole 19 lot of different topics, so just to make that point. 20 Yes. Yes. And obviously the Chairman has your 69 Ο. 10:30 statement which sets out in full all the 21 22 responsibilities and duties. 23 Sure. Α. 24 70 And feel free to elaborate if you need to put anything Q. 25 else in context. Just jumping forward to July, an 10.3026 issue arose arising from a public query sent to An 27 Garda Síochána from one of the media, and it resulted in some email exchanges with the Department and with 28 29 Mr. O'Leary. And could I ask you to look at Volume 3,

1 page 2012.

2 A. Could I just make one other point?

3 71 Q. Yes.

4 And that is, in terms of the terms of reference that Α. 5 the Government gave to the O'Higgins Commission, 10:30 6 clearly there was a real emphasis on the Garda 7 investigation into the various incidents. That was --8 you know, that was really very much the centre part of the work of the O'Higgins Commission. And guite how 9 then other issues, if you like, were worked through in 10 10.31 11 the O'Higgins Commission, so that very much is 12 something that would be determined within, you know, 13 the Commission, just to make that point. But the 14 Government were clear that the investigation into the 15 various incidents were very central. Sorry, what 10:31 16 volume? 17 It's Volume 3 at page 2012. And you have probably seen 72 Q. this before, I take it? It's an email --18 19 Yes. Α. 20 -- from Mr. O'Leary to you on the evening of 4th July, 73 Q. 10:32 21 which appears to have been a Saturday. And it says: 22 "Good Evening, Minister 23 24 The Garda Commissioner phoned to let me know they had

received queries from Colm Ó Mongáin about Sergeant
 McCabe. They were asked was it the case that Sergeant
 McCabe was looking to be taken out of the traffic unit
 in Mullingar and was it the Garda Commissioner who had
 instructed counsel to adopt an aggressive stance

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towards Sergeant McCabe at the O'Higgins Commission.
 The Gardaí are not commenting.

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4 I understand that some weeks ago Sergeant McCabe 5 indicated to his authorities in Mullingar that he no 10:32 6 longer wished -- wanted to stay in his post in the 7 traffic unit, apparently he blamed the Commissioner for 8 this, though he said he could not be more specific as he was bound by confidentiality. This coincided with 9 hearings at the O'Higgins Commission. These hearings 10 10.33 11 are being held in private. There is a probation on 12 disclosing evidence given at them. Sergeant McCabe 13 remains in his post at the traffic unit though in practice his time recently has been taken up giving 14 evidence to the Commission." 15 10:33

17 And then he suggests a number of matters that you might say if they are raised with you, and I don't want to 18 gloss over those but this appears to have been perhaps 19 20 the first instance of a leak or some -- something 10:33 coming out of the Commission in some way. 21 Were you. 22 firstly were you very concerned at that when you received it? 23

A. Well, this was about a media query, this was about RTÉ, This Week programme, where -- had apparently put in this query and this was coming to me by way of information. I was on the programme that Sunday. This was Saturday night at 9:30. My understanding of this would have been it was very much given to me in the

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context of, you know, you may be asked about this.

2 74 Q. Yes.

And this is -- this has come in as a guery to the Garda 3 Α. If I was doing media, it would be -- it 4 Press Office. 5 would be quite normal, we'll say, if I was doing a 10:34 weekend programme, that if there were a range of issues 6 7 being covered, and obviously you would know some of them, you would have an idea about some of them and 8 they might or might not come up. Others might come up. 9 But it would be the practice in the Department to, you 10 10.34 11 know, give an update on, you know, the most recent 12 information on, it could be -- you know, and in this 13 instance I think it was migration issues, terrorism, so 14 they would give me the up-to-date figures, for example, 15 on migration and the number of refugees we had taken in 10:34 16 at that point, how the programme was going, any of the 17 issues that might have arisen at European level, any of 18 the contacts we were having with maybe the Italian and 19 Greek authorities where we were taking the refugees from at that point. That is just one example, and it 20 10:35 would go right through the different topics. So that 21 22 would be normal, you know, that you'd have background 23 briefings. Obviously how you dealt with it was my 24 decision and, you know, what I said was clearly my 25 decision, but this would be background briefings. SO 10.3526 very much in terms of saying, look, this is a query 27 that has come in, if a query had come into my own Press Office they would have contacted me directly --28 29 75 Ο. Yes.

1 -- to tell me that. So, again, I would have adopted Α. 2 the same approach to it. It's not obviously coming directly into your 3 76 0. Yes. Press Office in the sense that it came to the 4 5 Commissioner's office first as you understand --10:35 6 Yes. Α. 7 -- and then was referred on to the Department. 77 And I 0. 8 perfectly understand your response in terms of being possibly -- need to be briefed on the matter, etcetera. 9 But again, it's referencing a phone call from the 10 10.35 11 Commissioner to Mr. O'Leary, and there doesn't appear 12 to be any response from you to Mr. O'Leary on the 13 matter, is that right? 14 Α. I believe that is the case, yes. 15 All right. And did you speak to the Commissioner about 10:36 78 Q. 16 it at any stage, or not? 17 Α. NO. 18 79 Okay. And did you have any concern -- in the light of Q. 19 what you had previously known from the earlier email 20 and the GSOC report, did it raise any concern about the 10:36 effect on Sergeant McCabe of this allegedly aggressive 21 22 questioning, or what the Commissioner was actually 23 doing? 24 Well, I mean, obviously, you know, there was a Α. 25 commission of investigation underway. Sergeant McCabe 10.36 was very central to that because of the range of issues 26 27 he had spoken about and that Mr. Guerin had reported 28 on, so I knew he would be very central to it and 29 involved and that, you know, the Commission would

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obviously go through various stages, different issues
 would be raised, and I very much again saw it that
 Sergeant McCabe was represented at the Commission. I
 didn't see that there was any operational role for
 myself in relation to how that was going at the
 Commission.

10:37

7 80 Q. Yes. But did you discuss --

8 And nothing came to my, you know, attention during the Α. course of the Commission about that, and I do know that 9 Sergeant McCabe, the comment about him in this email 10 10.37 11 from -- I think it must be from -- I am not guite sure 12 where it came from, but it says that he couldn't be 13 more specific as he was bound by confidentiality. So 14 he was taking the same approach to the Commission, and indeed, RTÉ didn't raise it, and, you know, I suppose I 10:37 15 16 wonder was the reason that they didn't raise it because 17 it was about a commission and it was private. So, at 18 that point even though, you know, I obviously had been 19 alerted that this might come up and, you know, without 20 getting any email if, it had come up I know how I would 10:38 have dealt with it. 21

22 81 Q. Yes. Well, obviously it came to the attention of the
23 Garda Commissioner herself --

24 A. Yes.

- 25 82 Q. -- from the Press Office. And she has given her own 10:38
  26 evidence about that. But did you speak to Mr. O'Leary
  27 about what the Commissioner had said to him, if
  28 anything, about the issue?
- 29 A. I don't believe I did.

29

1 83 Okay. All right. So apart from the content of the Q. 2 email, it would appear then you didn't discuss it with 3 anyone or acquire any information or do anything on foot of it, it wasn't necessary to do anything on foot 4 5 of it? 10:38 6 No, it wasn't. And I think in my statement, I mean, I Α. have made the point that, you know, this phrase was, 7 8 yeah, the aggressive stance, that is a phrase that was used by Mr. O'Leary as a result, you know -- you know, 9 that was a phrase he used. It wasn't something that 10 10.39 11 was, you know, that outlined any -- that there was any, if you like -- well, it was just a phrase he used. 12 13 84 Yes. Q. 14 Α. It wasn't indicative necessarily of what was happening. 15 85 It doesn't appear that you were contacted at any stage Q. 10:39 16 from the papers and documents that we have received on 17 behalf of the Commissioner about anything else that was 18 happening at the Commission, isn't that right? 19 I don't believe I was. Α. But after the publication of the report in 2016, 20 86 Ο. NO. 10:39 21 the report came out and then there were media leaks --22 Yes. Α. 23 -- in relation to issues that were alleged to have 87 **Q**. 24 arisen at the Commission. And firstly, from the point 25 of view of you as Minister, what view did you take of 10.4026 those leaks? Had you --27 well, I had received the report at the end of April. Ι Α. had sent it to the Attorney General in line with normal 28 29 procedure, to see if it was okay to publish it, it had

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1 gone a number of other places as well, I think, the 2 Chief State Solicitor's Office, maybe DPP as well, and 3 I was very pleased to get the report, I thought that it was a balanced report. I hoped that it would be a 4 5 basis for resolving, you know, the issues that had 10:40 6 arisen. And two days later, there were those -- the 7 leaks to the various media outlets, and it was apparent 8 leaks. I suppose the view I took was that, first of all, I did not know what was in -- you know, what they 9 were referring to, this idea of the Mullingar meeting, 10 10.41 11 as it's been called, the fact that there had been a 12 tape and all of the information that emerged about 13 that, and I was obviously concerned that, having just 14 got a report that had taken a lot of time, that there 15 had been huge investment in, that suddenly there was a 10:41 16 whole -- you know, a whole other stream of information 17 which, if you like, the quality or the context of which 18 I could not place because it was out of context and it 19 would be very hard to make a decision in relation to it because it was out of context. And I suppose the more 20 10:41 important point in many ways that I was very struck by 21 22 and I think in discussions with my officials and 23 everyone else, was that very importantly, Judge 24 O'Higgins had not made any reference to -- he hadn't 25 made a reference to the issue you have been questioning 10:42 26 me on, about the approach to Sergeant McCabe at the 27 Commission. He had made no -- he had made no direct comment about the behaviour down at the Commission. 28 Не had made comments that it was stressful and it was 29

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1 difficult and people were cross-examined and he would 2 have expected it, I think he said, that it was 3 inevitably stressful because people were being asked in detail and in general about their evidence, but he said 4 5 that for the most part the Commission had been -- you 10:42 6 know, that people had operated properly and he thanked 7 everybody, he thanked the legal teams and the 8 witnesses. So, as a Minister, I had the report, I felt that what I had to go on was the report that I had got 9 from Judge Kevin O'Higgins, and I -- you know, these 10 10.4311 leaks, now having said that, obviously there was --12 they were in the public arena so I had to respond as 13 much as I could to, if you like, the various 14 allegations that were arising, and of course they 15 weren't -- they weren't just about the Mullingar 10:43 16 meeting and the leaks and the tapes, they were making 17 this more general point that the Garda Commissioner, 18 you know, had acted inappropriately and with malice and 19 so on.

So the question of, clearly the question of confidence 21 Α. 22 in the Commissioner was being raised by lots of people 23 24

Yes.

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Ο.

in a lot of different settings in the media and in the Dáil and senate and so on. So, I obviously had to 25 address. insofar as I could. I was concerned, I have 10.4326 to say, because, whether from the point of view of 27 Sergeant McCabe or from the point of view of the guards 28 who were present at the Mullingar meeting, a lot of 29 things were said about them as well --

10:43

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1 89 Q. Yes. 2 -- I was very concerned, actually, about due process Α. 3 for everyone. 4 90 All right. Q. 5 And you know, I felt that, in this context that it was Α. 10:44 6 very hard to see that -- you know, there were an awful 7 lot of things being said about everybody who had been 8 involved, and it was -- I thought it was quite disturbing in terms of due process because we had just 9 had a long and detailed Commission and here we were 10 10.44 11 immediately after its publication, clearly leaked, but 12 I didn't know the accuracy or anything else, but --13 Yes. Can I ask you --91 Ο. 14 Α. Of those. 15 -- you met the Commissioner on 16th May. 92 Q. 10:44 16 Yes. Α. 17 93 And you have provided Ms. Mannion's notes of that. Q. 18 Yes. Α. 19 94 And there doesn't appear to be a departmental minute of Q. 20 that meeting, is that unusual? 10:44 For a formal meeting like that I think it is unusual. 21 Α. 22 I would rely on the officials to take notes at those 23 meetings. 24 95 She identifies as being at the Commissioner -- being at Q. 25 the meeting with the Commissioner, Assistant 10.45Commissioner John Twomey --26 27 Yes. Α. -- and then she has a reference to Paddy --28 96 Q. 29 Forsyth that would be. Α.

Gwei Malon Stenograpi Service Ltc.

1	97	Q.	Patrick Forsyth.	
2		Α.	I would think who that was.	
3	98	Q.	Ken, that is Mr. O'Leary.	
4		Α.	Mr. O'Leary.	
5	99	Q.	John O'C?	10:45
6		Α.	John O'Callaghan who is now in charge of policing.	
7	100	Q.	Yes. And Noel, Noel Waters?	
8		Α.	That would be Secretary General.	
9	101	Q.	Noel Waters. And Stephen?	
10		Α.	Stephen O'Shea, was my	10:45
11			MR. McCANN: I am not sure Ms. Fitzgerald has the note	
12			in front of her.	
13			CHAIRMAN: Have we managed to get it on to the system?	
14	102	Q.	MR. McGUINNESS: Yes, we have. It's just the names and	
15			she is obviously familiar with the names. That is all	10:45
16			I was asking about	
17		Α.	Yes.	
18	103	Q.	that note at the present.	
19			CHAIRMAN: Is it at the very end of the last volume?	
20			MR. McGUINNESS: It is very close to it. It's 4929. I	10:45
21			am not going to ask her anything about the note. I	
22			want to ask her about her recollection.	
23		Α.	Yes.	
24			CHAIRMAN: All right.	
25	104	Q.	MR. McGUINNESS: You received a briefing document in	10:46
26			advance of that meeting, and that's at 4803, and	
27			perhaps you would look at that?	
28		Α.	Yes. That is volume?	
29	105	Q.	It's volume 9.	

Gwei Malon Stenograpi Service Ltc.

1 9. Α. 2 And obviously this was a very busy time. Do you think 106 Q. 3 you had time to read the whole brief? Would it be your practice to try and be as thorough as possible? 4 5 Yes. It would have been the practice of the Department 10:46 Α. 6 to do -- you know, for many of the meetings I would go 7 to they would do a background note and I would 8 usually -- I mean, depending on my degree of information on an issue, I would spend more or less 9 time on it but I would have scanned it, I would 10 10.4711 probably be familiar with most of this. I mean, this 12 is -- you know, I am fairly familiar already with most 13 of the first part of that and then they would have been 14 bringing me up to date, you know, with some of the 15 points about what was happening at that particular 10:47 16 time. So, yes, I would normally read a report like 17 that.

18 I mean, I know you didn't prepare the note but 107 Q. Yes. 19 there is no reference in it to the few communications 20 that there had been about the Commission. for instance 10:47 there is no reference to the email of the 15th May or 21 22 Mr. O'Leary's phone call with the Commissioner about 23 that or -- did you see that as an omission in the 24 report or were you -- did you notice that? 25 Well, I mean, generally speaking it wouldn't be the Α. 10.4726 practice, you know, to go back over emails that had 27 come in, if I was being briefed on anything, you would tend not to be putting specific emails into the 28 29 briefing. And it very much -- I suppose, it's a year

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1 later, the Commission has been published. There is new 2 questions that have arisen. So, you know, things had 3 moved on, but there was clearly questions now about what had actually happened at the O'Higgins Commission, 4 5 it was in a post publication briefing. I wouldn't -- I 10:48 6 personally wouldn't read anything into that as any --7 certainly not any deliberate attempt to omit them, for 8 example.

- 9 108 Q. Yes.
- But clearly we were going to be discussing the legal 10 Α. 10.48 11 strategy, some of these issues would arise. So I mean, 12 I'm sure they were just in the memory of people. Thev 13 didn't pull them out for this particular briefing. And 14 I think they would have been seen as something that had 15 happened at the beginning of the Commission, now we had 10:49 16 the Commission report.
- 17 109 Q. All right.
- 18 And you know -- so, I wouldn't really find it Α. 19 surprising that they weren't specifically mentioned 20 because we were at a different point. 10:49 Obviously the Commissioner was being, on one 21 110 Yes. Ο. 22 view, publicly assailed for what she was perceived to have done or not done at the Commission, and at the end 23 24 of the briefing document at page 16 of it, which is 25 4818, there are passages in there, for instance the 10.4926 second paragraph: 27
- 28 "While you are not in a position to comment on any
  29 evidence given to the Commission in private you are

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1 aware that on publication the Garda Síochána indicated 2 they accepted the report in full and of course that 3 would include all references to Sergeant McCabe including what it said about his having acted in good 4 5 faith." 10:49 6 And then, this is in brackets: 7 8 "Calls for Commissioner to make a statement. 9 It is of course entirely a matter for the Commissioner whether 10 10.50 11 she feels she is in a position or considers it would be 12 appropriate to make any further comment though I think 13 in fairness we have to recognise the very real legal 14 constraints that everyone is subject to here." 15 Α. Yes. 10:50 16 And was there some discussion between you and the 111 0. 17 Commissioner perhaps initiated by her, about publishing 18 her legal advice? 19 Well, she -- I think following that meeting, I think Α. 20 she sent me in some details of her legal advice. That 10:50 was on 18th. But on the 16th and on the 19th, when --21 22 as far as I remember, the 16th meeting had already been set up because there had been, I think at that point, a 23 24 number of murders, the gangland issue was very much on 25 the agenda and that meeting was to discuss gangland, I 10.50 think that is why it was set up, but it was also 26 27 obviously a first meeting on the O'Higgins Report and I think some other issues. 28 So that was a first meeting 29 with a couple of topics on the table. And the more

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1			substantial meeting was on the 19th May, which was, you	
2			know, I think solely related to the O'Higgins Report.	
3	112	Q.	Yes. But in our documents we have, at page 2931, which	
4			is in Volume 5, this appears to be	
5		Α.	Sorry, 2935.	10:51
6	113	Q.	It appears to be a response prepared for your	
7			contribution to and adjournment debate.	
8		Α.	29	
9	114	Q.	2931. I beg your pardon.	
10		Α.	Oh, yes. Thank you.	10:51
11	115	Q.	And I think, was this a matter that was being raised on	
12			a continual daily basis in the Dáil at that point in	
13			time?	
14		Α.	Yes, it was. The Taoiseach was away in America that	
15			week, I think it was the first week back after the	10:52
16			election.	
17	116	Q.	Yes.	
18		Α.	And I was doing the order of business on the Tuesday,	
19			Wednesday and Thursday.	
20	117	Q.	Yes.	10:52
21		Α.	And this topic was brought up. This was a topical	
22			issue which had been agreed by the Ceann Comhairle and	
23			I yes, I had to sorry, this is	
24	118	Q.	You had to stand in, as it were?	
25		Α.	Yes. I was doing the order of business and because	10:52
26			this was so recent an issue it was being brought up and	
27			this was an adjournment debate.	
28	119	Q.	Yes.	
29		Α.	This was on the Tuesday, the 17th, that was the first	

1			day back.
2	120	Q.	And do you recollect delivering this?
3		Α.	Yes, I mean, I would have gone into the Dáil and done
4			this, yes.
5	121	Q.	On the second page of that, 2932, you obviously at the $_{10:53}$
6			bottom, you refer to the issue about disclosures
7		Α.	Yes.
8	122	Q.	and privacy, etcetera. And you say then at the top:
9			
10			"And above all I have a duty too to respect the law. 10:53
11			The duty is not diminished by the fact that some legal
12			reports purport to set out a small part of what may
13			have happened at the Commission's private proceedings."
14		Α.	Yes.
15	123	Q.	"The duty is not diminished by the fact that some legal $_{ m 10:53}$
16			reports purport to set out a small part of what may
17			have happened at the Commission's private proceedings,
18			notwithstanding any legal prohibitions in this regard.
19			I am aware of suggestions that it would not be unlawful
20			for the Commissioner to disclose the instructions she 10:54
21			gave to counsel, that this would not involve disclosing
22			evidence given at the Commission. Leaving aside the
23			legal position set out in the 2004 Act it would seem to
24			me it would be a significant change to the general
25			accepted position that communications between a lawyer $_{ m 10:54}$
26			and client should not have to be put in the public
27			domain. To put it mildly, it would be very unusual to
28			ask any party to a legal proceeding to unilaterally
29			disclose its dealings with its legal representatives.

1In any event, this would involve a partial disclosure2of what happened at the Commission and could serve to3undermine the work of the Commission. It's hardly a4demand deputies would make of any other party to the5Commission."

10:54

10.55

10:55

And you then go on to welcome the Garda Commissioner's
clarifications, and there is a very prescient next
paragraph, which includes the following:

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11 "But what would be very unwise and unfair would be an 12 attempt to rerun the Commission's proceedings on the 13 basis of allegations about what may or may not have 14 happened at a small part of the Commission's 15 proceedings. Suggestions there may be some form of 10:55 16 investigation about what happened at the Commission of 17 Investigation seem to me to fundamentally misunderstand 18 the nature and purpose of commissions of investigation." 19

Leaving aside the irony of that, had the 21 22 Commissioner -- had you and the Commissioner, on the 23 day of the 16th, when you met her, had you been 24 discussing whether she might disclose her legal advice? I think at the meeting of the 16th, I mean there is a 25 Α. 10.5526 possibility that there might have been some comment 27 about her legal advice because -- but I can't be sure, we don't have -- I am not sure it's referenced in any 28 29 place that we did, but obviously that would be -- you

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1			know, during that week, that clearly became an issue	
2			for a variety of reasons.	
3	124	Q.	Yes, yes. It's just on the evening of the 17th, we	
4			know the Commissioner contacted Chief Superintendent	
5			Healy.	10:56
6		Α.	Yes.	
7	125	Q.	And he forwarded the legal advices to her on that	
8			evening.	
9		Α.	Yes.	
10	126	Q.	And then, you apparently appeared on Prime Time	10:56
11			programme and was interviewed about the crisis. Do you	
12			have any recollection of that in detail?	
13		Α.	Yes, I do, very clear. That's right, I was asked a	
14			number of I think the final question I was asked	
15			was, it was, what I saw as a hypothetical question, if	10:56
16			a Commissioner had done X, Y and Z would you then	
17			express no confidence in the Commissioner, and the	
18			response I gave was that I couldn't possibly speculate	
19			about that kind of situation, and that it wasn't	
20			appropriate for me to say if X, Y and Z had happened,	10:57
21			what would you do. That was seen in some quarters as	
22			expressing as not expressing confidence in the	
23			Commissioner.	
24	127	Q.	Yes. The Commissioner gave her own account obviously	
25			of what she did and thought about what was happening at	10:57
26			the time, the vortex	
27		Α.	Yes.	
28	128	Q.	that she was being surrounded by or pulled into.	
29			But she did send her legal advice to you the next	

1			morning, isn't that right?	
2		Α.	Yes.	
3	129	Q.	And perhaps we'd look at 3996 in Volume 7.	
4		Α.	Sorry, what page number is?	
5	130	Q.	3996.	10:58
6		Α.	Yes.	
7	131	Q.	And do you recall receiving it on the morning?	
8		Α.	I am not quite sure at what time I saw it, but yes, I	
9			remember this email.	
10	132	Q.	Yes. And you had the legal advice then. Did you read	10:58
11			it, in fact, or	
12		Α.	I am sure I did at some point, yes.	
13	133	Q.	All right. But it would appear that it raised an issue	
14			that you took the Attorney's advice on?	
15		Α.	That's right.	10:59
16	134	Q.	All right. Now, without going into the Attorney's	
17			advice, you, I think, made a speech in the Dáil on the	
18			18th, a lengthy contribution explaining the position	
19			from your point of view?	
20		Α.	That's right.	10:59
21	135	Q.	Okay. Now, these emails, they don't appear to have	
22			been referred to in your statement. Is there any	
23			reason or previously disclosed to the Tribunal from	
24			the Department at the time, until January, in fact?	
25		Α.	well	10:59
26	136	Q.	Is there any explanation?	
27		Α.	I think both myself and the Department took were	
28			dealing with the period up to the publication of the	
29			O'Higgins Commission, May 11th. I would have taken	

1 this period as, you know, post -- with a different 2 approach post O'Higgins to pre publication. And I had 3 sent them in to the Department, assumed they would also -- if they were part of what was to be discovered, 4 5 that they would be found by the Department. 11:00 6 137 Q. Yes. well, just on that point, did you send them or 7 did they bounce back? Did you get a notice of them 8 bouncing back? Until Mr. Waters gave his evidence I didn't know that 9 Α. they had not arrived at his email address. I had 10 11.00 11 always assumed that they had, and that the Department 12 had a copy of these. It subsequently emerged obviously 13 that the address that was put in was nawaters, the normal addresses in the Department of Justice have a 14 middle, you know, alphabet, they have --15 11:01 16 138 Yes. Q. 17 And I obviously, that is the first time I heard they Α. 18 hadn't arrived, I was very -- you know, it was the 19 first time. And so, I checked back with my own office, 20 they had been sent from my office that afternoon. 11:01 21 139 Yes. Q. 22 I think you have a note from Ms. Mannion, that it says Α. 23 that I had a meeting that afternoon about them with Ken 24 and -- with Mr. O'Leary and with Mr. Waters and that the emails had been sent. She had asked for them to be 11:01 25 26 sent in. But in fact, I have asked my own staff and we 27 have gone through the system, and normally if something 28 bounced back they would resend it immediately, 29 especially, you know, for example, an email to the

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1			Secretary General, they would always we have not	
2			sent send it again obviously because it would bounce	
2			back immediately if that was to happen, and we heard	
4				
			evidence about that yesterday. So I don't know whether	
5			it got caught in the Oireachtas system, it's probably	11:02
6			unlikely, it should have gone back to sender. But I	
7			have spoken to the staff, the two main staff in my	
8			office at that time who would have been more most	
9			likely to be dealing with it.	
10	140	Q.	Yes.	11:02
11		Α.	And they had no first of all, in the system, we	
12			couldn't find a bounce back but you probably wouldn't	
13			at this stage anyway, and they you know, I would	
14			have expected if it came back that it would be sent	
15			again.	11:02
16	141	Q.	But just the context of the time you made your	
17			statement. Obviously the issue of the email of the	
18			15th May 2015 became a political issue in late November	
19			onwards, isn't that right, as a result of Deputy	
20			Kelly's questions?	11:03
21		Α.	Oh, you mean November '17?	
22	142	Q.	Yes.	
23		Α.	Yes.	
24	143	Q.	And you made your statement to the Tribunal then on 4th	
25			December 2017. But when the issue of searching for	11:03
26			emails was a political hot topic and you were obviously	
27			going to make a statement to the Tribunal, did you not	
28			search or have your Oireachtas email account searched	
29			for any relevant emails, communications with the	
-			· , · · · · · · · · · ·	

1			Commissioner in particular?	
2		Α.	Well, as I said, I mean, I can only say that at that	
3			time the discovery was being done by the Department and	
4			we had always said, even you know, it was up to the	
5			publication date, so	3
6	144	Q.	Yes. But can I ask you to look at page 4930, which is	
7			Ms. Mannion's notes.	
8		Α.	Yes.	
9	145	Q.	You see, Mr. Waters gave evidence to the Tribunal that	
10			he didn't receive the emails that I put to him, from 11:04	4
11			your	
12		Α.	Yes.	
13	146	Q.	your device. But this is a short note of a meeting,	
14			and it's not apparent to me that you were necessarily	
15			there, and this may be part of the issue. If we scroll $_{ m 11:04}$	4
16			down there to the middle of the page.	
17		Α.	Yes.	
18	147	Q.	Just down.	
19		Α.	Yes, I would have been at that	
20			CHAIRMAN: Just help me on this particular one, 11:04	4
21			Mr. McGuinness, would you please, because I am not	
22			completely certain. I know Ms. Mannion, I think we got	
23			a contact with her from somebody else who was giving	
24			evidence and then I think people have been speaking to	
25			her, and then she gave us these notes. When and what $_{11:04}$	4
26			are they of and what is the context, if you wouldn't	
27			mind helping me on that, please.	
28			MR. MCGUINNESS: Well, in fact, I think Ms. Fitzgerald	
29			provided the notes through her solicitor and you had	

1			acquired the notes from Ms. Mannion.	
2		Α.	Yes, and I had in January, actually, I found this	
3			reference. I hadn't realised that that was there.	
4	148	Q.	And did Ms. Mannion have original handwritten notes	
5			or	11:05
6		Α.	Yes.	
7	149	Q.	Yes. Okay. We will probably see those in due course?	
8		Α.	This is a copy of those notes.	
9	150	Q.	This is a typed copy of those notes.	
10		Α.	It's a typed copy, yes.	11:05
11	151	Q.	We will look at the original in due course.	
12			CHAIRMAN: But what is it of, Mr. McGuinness? That is	
13			where I am puzzled. I know Ms. Mannion was a political	
14			adviser and they may well attend lots of meetings and	
15			have chats and write speeches but forgive my naivete	11:05
16			but I just don't see the context of this.	
17			MR. MCGUINNESS: Well, the context seems to be a	
18			meeting with Noel and Ken.	
19			CHAIRMAN: Is that with Ms. Mannion	
20		Α.	That is with me.	11:05
21			CHAIRMAN: or the Minister?	
22	152	Q.	MR. McGUINNESS: You think it's with you as well?	
23		Α.	Yes, I do.	
24	153	Q.	Yes. All right. Well, you can then help us fully, as	
25			it were. This issue of the emails from the	11:05
26			Commissioner seems to have been discussed by you then	
27			with the deputy with the secretary and the deputy?	
28		Α.	Yes, I realised that when I looked at the notes	
29			recently.	

1	154	Q.	Yes. And were you told at that time by Mr. Waters that	
2			he had not received these?	
3		Α.	No. Because I think it was subsequent to the meeting	
4			they were being sent on. I think this was a meeting to	
5			say, look, this information is there. And there was	11:06
6			never any question of it not being shared, you know,	
7			with the Department, because it was central	
8	155	Q.	Yes.	
9		Α.	to the situation.	
10	156	Q.	Yes.	11:06
11		Α.	And this was a meeting just to say, look, these emails	
12			have come in and we just want to alert you to them and	
13			so on. That is all.	
14	157	Q.	Yes. That is what I want to ask you about. Was this	
15			the first occasion when you told the Department then,	11:06
16			look, the Commissioner has sent me her legal advice,	
17			and Mr. Waters may have said well, look, it didn't get	
18			forwarded on to me and this is my correct address, and	
19			were they forwarded on to Mr. Waters at that point?	
20		Α.	Yes, that is my understanding from this note.	11:07
21	158	Q.	Okay.	
22		Α.	But as I say, until he gave evidence here, he hadn't	
23			come back to me and said I didn't get it. But I think	
24			events would have just taken over in terms of getting	
25			legal advice generally about the disclosure of	11:07
26			evidence	
27	159	Q.	Yes.	
28		Α.	linking with the Attorney General, having very	
29			detailed discussions about the approach as to what	

1			could be put on the public arena at that point in time.	
2	160	Q.	Yes.	
3		Α.	And very detailed discussions which were very clear	
4			about my role as Minister for Justice in terms of legal	
5			privilege, in terms of breaking legal privilege, the	11:07
6			consequences, the implications as a Minister for	
7			Justice, and so on, very strong very, very strong	
8			advice about that	
9	161	Q.	Yes.	
10		Α.	from the Attorney.	11:07
11	162	Q.	And I think you reflected that in your contribution in	
12			the Dáil	
13		Α.	I did.	
14	163	Q.	on the 18th, on this day, isn't that right?	
15		Α.	Yes.	11:08
16	164	Q.	Now, it's just that when the Tribunal started and when	
17			the opening statement was made it was I think signalled	
18			that the Commissioner had waived her privilege in	
19			relation to her conduct of the O'Higgins Commission, I	
20			think you must have become aware of that?	11:08
21		Α.	For the Tribunal?	
22	165	Q.	For the Tribunal?	
23		Α.	Yes.	
24	166	Q.	Yes.	
25		Α.	For the Tribunal process, yes.	11:08
26	167	Q.	It's just that neither yourself, Mr. Waters or	
27			Mr. O'Leary referred to this issue in your statements	
28			to the Tribunal at all, and I am just wondering is	
29			there any reason for that?	

1		Α.	Not particularly, no. Other than what I have said.	
2	168	Q.	Okay. In any event, you appear to have written a	
3			fairly short letter to the Commissioner, and perhaps	
4			we'd see that at page 2934, this is on the 19th May	
5		Α.	Yes.	11:09
6	169	Q.	is that right? Do you remember that letter?	
7		Α.	Yes. What volume is that?	
8	170	Q.	2934. sorry, it's in Volume 5.	
9		Α.	29	
10	171	Q.	<b>2934.</b> <sup>1</sup>	11:09
11		Α.	Yes.	
12	172	Q.	And it says:	
13				
14			"Dear Commissioner	
15			I refer to our ongoing contacts about matters arising 🔒	11:10
16			in relation to the O'Higgins Repot and in particular	
17			public concerns which have been raised about certain	
18			matters relating to its proceedings. The report is due	
19			to be debated in the Dáil next week. I appreciate	
20			fully the constraints which surround the question of ${}_{1}$	11:10
21			making further public comment about this matter. I am	
22			anxious that nothing would be done which would offend	
23			against the basic principles of the rule of law, for	
24			example, regard has to be had to the statutory	
25			confidentiality of the Commission proceedings, issues 🔒	11:10
26			of the relationship between lawyers and their clients	
27			and questions of basic fairness, nevertheless I think	
28			it would be useful if we met to consider whether there	
29			are any ways public concerns might be met to the	

1greatest extent possible without offending these basic2principles as well as clarifying matters arising from3our contacts. My private secretary will be in touch to4arrange such a meeting."

And was that written by you, as it were, expressly relating to the issue of furnishing the Commissioner's legal advice, either to the Dáil or disclosing it in some other way? 11:10

- Well, I mean, the transcripts obviously from the Dáil 10 Α. 11.11 11 are available from those three days and there was a 12 huge amount of discussion about trying to restore 13 public confidence in An Garda Síochána and given the 14 kind of debate that had taken place, and there was 15 going to be a debate in the Dáil on the 25th, what I 11:11 16 had said on quite a number of occasions in the Dáil that week was that I would get -- I would ask the 17 18 Commissioner to put as much public information as she could on the record, to deal with those public 19 20 concerns, insofar as she could. I felt that that would 11:11 be extremely helpful, and in fact when we had the 21 22 debate in the Dáil on the 25th, I re-read the transcript the other day, a number of deputies thanked 23 24 the Commissioner for putting the information on the public record and felt that it had dealt with the 25 11.12 26 Now, obviously not everybody agreed with that, issues. 27 but the majority in the Dáil agreed with that at that 28 point.
- 29 173 Q. Yes?

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A. And the whole effort clearly was, well, first of all,
 at the meeting of the 19th, I wanted to understand, as
 clearly as I could, what her approach had been, because
 this was post publication, it was after the O'Higgins
 Commission.

11:12

6 174 Q. Yes.

7 And you know, what she assured me, and I did ask her at Α. 8 that meeting, I did put the direct question to her and I remember doing this, you know, was one thing being 9 said in public and was another thing being said in 10 11.12 11 private, because that is clearly what people were 12 saying, and what she said to me was, that she had made 13 it clear that she had not guestioned his integrity. 14 Sergeant Maurice McCabe's integrity and had never 15 accused him of malice and that she wanted to treat, I 11:13 16 think she said, all witnesses equally. And we had a strong discussion, you know, I would say -- you know, a 17 18 very clear exchange, because there were issues out in 19 the public arena, I wanted to put them to her directly. 20 I was reassured that -- what I have just said; that she 11:13 had not questioned his integrity, that she had not 21 22 accused him of malice. And what I think she has 23 subsequently said, but what she said to me at that 24 point was that she wanted the truth, she wanted the 25 truth to emerge at the Commission and she wanted 11:13 26 obviously to cooperate fully with the Commission and 27 that that was her approach.

28 175 Q. Yes.

29 A. And so, I mean, I had a very clear discussion with her

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1			about that	
2	176	Q.	Yes.	
3		Α.	in both, so that I could understand myself where she	
4			was coming from and then obviously deal with the public	
5			trust issues which had arisen.	11:14
6	177	Q.	Okay. And that is a very clear answer as to your	
7			position, but we will look at the notes of	
8			Ms. Mannion's notes in a minute.	
9		Α.	Yes.	
10	178	Q.	And there's some brief departmental minutes. But it	11:14
11			seems clear that you were, and I don't use this in a	
12			pejorative way, you were calling her to account for how	
13			she had approached Sergeant McCabe in the Commission?	
14		Α.	Well, I was getting as clear an explanation as I could,	
15			because it was a matter of public concern. It had been	11:14
16			raised, was being raised outside the Dáil, in the Dáil,	
17			and I clearly wanted to address it and understand it as	
18			much as I could at that moment in time.	
19	179	Q.	Yes. So you were seeking that explanation for those	
20			reasons and she gave you that explanation?	11:15
21		Α.	Yes.	
22	180	Q.	Now, I'm just anxious to get your answer to this	
23			question, first: The Commissioner's conduct of the	
24			O'Higgins Commission at the Commission is the subject	
25			matter of this phase of the Tribunal, and you haven't	11:15
26			included anything in your statement about seeking such	
27			an explanation from the Commissioner and the	
28			Commissioner providing it, in your statement to the	
29			Tribunal. Is there any reason why you haven't included	

1			that?	
2		Α.	Well, I mean, all of that is on the public record in	
3			the Dáil and I suppose I did this statement just after	
4			I had resigned, within five days	
5	181	Q.	Yes.	11:15
6		Α.	and I was focusing on I was focusing on the	
7			emails and so on.	
8	182	Q.	Your statement is made on the 4th in the context of the	
9			political crisis	
10		Α.	Yes.	11:16
11	183	Q.	directed towards the discovery of those emails. But	
12			your evidence now, the last few answers seem to be	
13			directly related to the explanation you were seeking	
14			from the Commissioner as to her conduct of the	
15			Commission and her account of it as given to you in	11:16
16			this meeting, isn't that right?	
17		Α.	Well, and as I put on the public record in the Dáil on,	
18			you know, the 25th and also on a number of occasions	
19			leading to up 25th, I was continually putting	
20			information on the public record.	11:16
21	184	Q.	Yes. But in the context of the issue for the Tribunal,	
22			perhaps it might have been more helpful to have	
23			included that in your statement. Who was at the	
24			meeting with you on the 19th, do you recall?	
25		Α.	I'd have to look at the notes.	11:17
26	185	Q.	Ms. Mannion's note obviously is there at 4930.	
27		Α.	That is volume? 9, is it?	
28	186	Q.	I'm sorry, that is volume 9 again.	
29		Α.	Yes. I think there is an official minute as well,	

1			which probably says who was at that meeting.	
2	187	Q.	Yes.	
3		Α.	Yes, I mean, there may have been others as well but	
4			that's, Mr. O'Leary, Mr. Waters, Mr. O'Callaghan,	
5			myself.	11:17
6	188	Q.	Yes.	
7		Α.	Yes.	
8	189	Q.	And obviously there's some discussion there. You had a	
9			little speaking note prepared by Mr. O'Leary, I don't	
10			know if you recall that, in which some of these matters	11:17
11			are referred to. On the next page, then, it says:	
12				
13			"Recognise the difficult position she finds herself in	
14			with the illegal leaks, recognise the legal restraints	
15			she finds herself in. The Minister has tried to	11:18
16			explain the situation both in the House and in the	
17			media, in particular on Prime Time. The Minister has	
18			consistently tried to highlight the legal constraints.	
19			Useful to do today would be to meet and discuss is	
20			there anything more that can be said to allay the	11:18
21			concerns which have arisen, i.e. approach to the	
22			Commission."	
23				
24			And does that reflect what you were saying in opening	
25			the meeting?	11:18
26		Α.	I'm sure it does. I mean, it was obviously to discuss	
27			the current situation as it was following the	
28			publication and following the leaking of alleged,	
29			transcripts, and I was conscious at that point of the	

1 legal advice I had myself and, it was a meeting to 2 discuss, you know, how we could deal with the situation 3 that had arisen, what information could be put in the public arena, my saying that the maximum information 4 5 possible should be put in the public arena, and so on. 11:19 6 190 Yes. It appears to be then recording the Commissioner, Q. 7 if we go down to the middle of the page, I mean you 8 were obviously conscious of the legal constraints, but you had, by this stage, received the Attorney's advice? 9 10 Yes. Α.  $11 \cdot 19$ 191 11 Q. You had made it clear to the Commissioner that you 12 weren't going to paper the walls of the Dáil with it or 13 disclose it. isn't that right? 14 Α. Yes, I had very clear legal advice about my 15 responsibilities as Minister, yes. 11:19 16 But you were obviously privy to the advice at 192 Yes. 0. 17 this point in time? well, obviously to the short note that was sent over. 18 Α. 19 Now, I understand subsequently that there was a lot 20 more information put on the record at the Commission by 11:19 the legal team for the Garda Commissioner, but this was 21 22 a short piece of information. 23 But just in context, you had sought the 193 Yes. Q. 24 Attorney's advice about disclosing the Commissioner's 25 advice that had been sent to you, isn't that the 11:20 26 sequence? 27 Yes. Α. And the Commissioner hadn't sought that advice 28 194 0. 29 separately, am I right about that?

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1 I don't know where she got her legal advice from. Α. 2 But am I wrong about this, that -- I'm not -- I 195 Q. Yes. 3 don't want to use a term that might be misunderstood by those who hear it, but it certainly wasn't revealed to 4 5 the Dáil that you had received the legal advice with a 11:20 6 request that it be published, from the Commissioner? 7 Well, I was going into the Dáil on the 18th, and I had Α. 8 a clear approach as to my response. But am I right in suggesting that in the 9 196 Q. Yes. subsequent contributions in the Dáil, it wasn't, as it 10 11.20 11 were, made known that the Commissioner had sent you her 12 legal advice with a desire that it would be published 13 if possible? 14 Α. NO. I dealt with it by speaking about my own position 15 in relation to my understanding and the advice I had 11:21 16 about anything being -- I dealt with this as I felt it 17 was appropriate to deal with it when I was in the Dáil. 18 So your contributions then in the House were made 197 Yes. Q. 19 within those constraints about --20 Α. Yes. 11:21 -- the Attorney's advice --21 198 Q. 22 Yes, they were. Α. 23 -- about the damaging precedent of disclosure, 199 Q. 24 etcetera? 25 Α. Yes. 11:21 26 200 And the --0. 27 And also there was another point that was made, that Α. if -- and I think, you know, obviously I had both legal 28 29 and other advice, that if something was to be disclosed

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1			about a commission of investigation it actually needed	
2			a High Court hearing, that was part of the that was	
3			also I was also aware that have.	
4	201	Q.	Yes, that is a restriction in the 2004 Act, that any	
5			evidence	11:21
6		Α.	That's right.	
7	202	Q.	one of the ways in which evidence can be disclosed,	
8			yes.	
9		Α.	That it was neither, if you like, up to myself or the	
10			Commissioner, in fact, that it was a different	11:22
11			procedure, High Court procedure.	
12	203	Q.	Yes, that is evidence obviously. But you were seeking	
13			to be informed, and you were informed, of the	
14			Commissioner's position, without discussing any actual	
15			evidence, isn't that right, at this meeting?	11:22
16		Α.	Overall	
17	204	Q.	Yes. I mean, you weren't discussing and she wasn't	
18			disclosing evidence at the Commission. you were	
19			calling her to account, as it were, or to give an	
20			account of her approach to Sergeant McCabe	11:22
21		Α.	Yes.	
22	205	Q.	at the Commission. Would that be a fair general way	
23			of putting it?	
24		Α.	Yes, I wanted her to put as much information on the	
25			public record as she could, but within the legal	11:22
26			constraints.	
27	206	Q.	Yes.	
28			CHAIRMAN: I was just a little confused about that, and	
29			I am sorry, it was just a reference you made earlier	

on, about five minutes ago, to people finding it 1 2 helpful that a particular very short note from the 3 lawyers was put on the public record. Did you mean at that time or did you mean subsequently? 4 5 Sorry --Α. 11:23 6 CHAIRMAN: Well, as you are aware, the Garda 7 Commissioner said okay, I am not claiming legal 8 privilege in relation to that. 9 Yes. Α. Now, that is this Tribunal, we are talking 10 CHAIRMAN: 11.23 11 about 2016, so it's nearly two years ago. But you made 12 some reference to deputies being happy that the legal 13 advice was available. I didn't understand it or when 14 that was. 15 Oh yes. No, no, sorry, the point I was making was that 11:23 Α. 16 in the Dáil debate on the 25th May, when the Garda Commissioner had made a second statement and when I had 17 18 done a speech to the Dáil outlining as much information 19 as I could, that other deputies said that that was, 20 that was helpful, you know. 11:23 But it still wasn't --21 CHATRMAN: 22 It wasn't, no --Α. 23 It still wasn't the note from the --CHAIRMAN: 24 It wasn't. no. Α. 25 CHAIRMAN: I understand that. I was confused. Thank 11.23 26 you. 27 Yes. Α. And I mean, I don't want to 28 207 Q. MR. McGUINNESS: underestimate the difficulties that both you and the 29

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Department and the Commissioner were in vis-á-vis
 responding to deputies' concerns and senators' concerns
 and public concern and media frenzy, perhaps, but there
 was obviously a public interest in upholding the law
 relating to disclosure of evidence at commissions, 11:24
 isn't that right?

- 7 A. Yes, absolutely.
- 8 208 Q. So from your point of view there was also a public 9 interest in preserving the privilege of legal advice as 10 backed up by advice from the Attorney. But you were 11:24 11 also anxious as the Commissioner was, to disclose as 12 much of her legal strategy as was possible within the 13 constraints, is that right?
- 14 Α. Yes, I mean, I think you are right, that the public 15 interest was to deal with the concerns, to give as much 11:24 16 explanation as possible and to put as much on the 17 record as possible, but, at the same time, I was very 18 conscious of the legal advice that I had, which, you 19 know, obviously there were issues and it is privileged 20 legal advice, but clearly there were issues about 11:25 precedent and Minister for Justice --21
- 22 CHAIRMAN: I think I understand.
- 23 A. Yes. Thank you.
- 24 209 Q. MR. McGUINNESS: Yes. Did the Commissioner tell you
  25 that she was challenging and had instructed her lawyers 11:25
  26 to challenge the motivation of Sergeant McCabe at the
  27 Tribunal?
- A. What she said was, there was a lot of, I think the note
   reflects it, confusion between motivation, integrity

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1			and I think there is another word that was used.	
2	210	Q.	Yes.	
3		Α.	So you know, that was her answer to that at that time.	
4			So she didn't say that she was challenging the	
5			motivation, she said there was a lot of confusion about	11:25
6			motivation and	
7	211	Q.	Well, perhaps we will come to that.	
8		Α.	Yes.	
9	212	Q.	But what is noted here, and you may be able to say	
10			something about the general	11:26
11		Α.	Yes.	
12	213	Q.	accuracy of your special advisers' notes over the	
13			years. Have you found them to be accurate and	
14			generally capturing the major points?	
15		Α.	Well, they would be a personal note that she would have	11:26
16			taken, it wouldn't be seen as a minute as such, it	
17			would be kind of a reminder of maybe a meeting that was	
18			held or	
19	214	Q.	Yes.	
20		Α.	And, you know, special advisers would all take notes	11:26
21			from their perspective, if there was action needed or	
22			so on.	
23	215	Q.	Yes. But obviously you took steps to get these notes,	
24			I think you said, in early January?	
25		Α.	Yes.	11:26
26	216	Q.	And you have considered them	
27		Α.	I found this of relevance when I looked at them.	
28	217	Q.	Did you consider it helpful in conjunction with the	
29			departmental minutes of the meeting which seems to be a	

1 bit shorter? 2 Yes. Α. Just in terms of what the Commissioner is noted then as 3 218 0. 4 saying: 5 11:26 "Commissioner - very restrained both from Commission 6 7 legislation and client confidentiality privilege." 8 And can you confirm that the Commissioner had 9 10 effectively accepted that she wasn't going to get you 11.27 11 to be able to publish the actual legal advice she'd 12 received from her counsel? 13 Well, I mean, that's what that note says there, so --Α. 14 219 Q. But was that her -- had she bowed to the position? 15 Well, I don't know that it was a question of bowing to Α. 11:27 16 anything, but I mean, perhaps on further consideration 17 or maybe taking further legal advice or -- I don't know what brought her to that point, but that would appear 18 19 to be where she was sat at that time. 20 Okay. Well, just as a point of contrast, did she 220 Q. 11:27 21 consult with you when she was deciding to waive her 22 privilege for this Tribunal? 23 NO. Α. 24 221 Okay. Q. NO. It says: 25 11:27 "Very damaging personally and for the wider Garda 26 27 Síochána of all the work had been done. Would love to 28 say a lot of things but cannot. Narrative has changed 29 in the last five days. Leak and counter-leaking not

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helpful. Allegation about two senior officers have lied. Assistant commissioner Twomey seems to have chimed in to examine the report and content, the findings of the report. Need to examine regard discipline procedures despite what the judge says." 11:28

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Does that help your memory as to the general position of the Commissioner?

Well, yes, I mean, I think that she would have repeated 9 Α. at all the meetings that it was a very difficult 10 11.28 11 situation because the O'Higgins Commission had done its work and now you had -- you had various things being 12 13 said, and I think being said on, you know, television 14 programmes and radio programmes and media about the 15 meeting in Mullingar and about the fact that, you know, 11:28 various things were said -- I won't repeat them, but 16 17 various things were said about the behaviour of those 18 two Gardaí and there was also, you know, about her 19 approach down -- her approach at the Commission and 20 that she felt, she felt at that time that it didn't 11:29 reflect that she -- she couldn't deal with it in its 21 22 entirety, but what I was trying to do was get as much 23 information as I could that would give me a sense of 24 confidence in going into the Dáil to explain, insofar 25 as I could, because I didn't have access obviously --11.29 26 it was suggested I should access -- it was suggested in 27 the Dáil by someone or in a Justice Committee, I think, that I should access the transcripts of the O'Higgins 28 29 Commission. I mean, clearly that wasn't -- wasn't

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1 going to happen and it wasn't feasible, and never have 2 So I mean, this was -- it was out of done that. 3 context, but it raised a lot of issues --4 222 Q. Yes. 5 -- that needed to be addressed. Α. 11:29 6 223 Could we skip over the GSOC issue --**Q**. 7 Yes. Α. 8 224 -- and maybe go to the next page, 4932. **Q**. 9 Yes. Α. 10 225 At the bottom of the page -- middle of the page: Q. 11:30 11 12 "Min asked Commissioner her response to the leaked 13 partial transcript. People who are leaking are 14 committing a criminal offence. Cannot engage with that 15 because we are complicit with it by an engagement. In 11:30 16 any commission there is normal legal argument and 17 jousting." 18 19 Is that something you would have said or the 20 Commissioner was saying? 11:30 Well, I think it's under Minister there, so I mean -- I 21 Α. 22 would have been aware, obviously, that to have started 23 leaking two days after the Commission report had been 24 published, you know that that was -- it was actually 25 illegal. 11:30 26 226 Okay. The Commissioner then appears to have been Q. 27 recorded as saying: 28 29 "The approach has always been to fully assist the

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1			Commission "	
2		Α.	Yes.	
3	227	Q.	" helping establishing the facts and the truth.	
4			There are a number of witnesses to the Comission. They	
5			gave their account. Approach to the legal team, one	11:30
6			thing in private, another thing in public re Maurice	
7			McCabe."	
8				
9			That appears to be something attributed to you then.	
10		Α.	well, that was a question.	11:31
11	228	Q.	Yes?	
12		Α.	That is the question I referred to, I put it to her was	
13			she saying one thing, that the accusation was that	
14			there was one thing being said in private and another	
15			thing in public, so that is a question-mark.	11:31
16	229	Q.	Question-mark.	
17		Α.	Yes.	
18	230	Q.	You weren't asserting that?	
19		Α.	Absolutely not. I was saying, you know, are we in a	
20			situation where this is what is being said; that you	11:31
21			are saying one thing in private and another thing in	
22			public, what is your response to that?	
23	231	Q.	It might be suggested that perhaps that was a question	
24			you should have asked at the commencement of the	
25			Commission hearings when the email of the 15th came in?	11:31
26		Α.	Absolutely not. That is a totally different situation.	
27			This is post the publication of the O'Higgins	
28			Commission, this was that was pre, that was when the	
29			Commission was actually sitting and I have already	

1			given you a very, I think I have given my	
2			explanation as to the approach to a commission of	
3			investigation.	
4	232	Q.	Yes.	
5		Α.	This is	11:31
6	233	Q.	well, it might be suggested that the email was a	
7			warning light, perhaps an orange light to maybe speak	
8			with the Commissioner, without interfering in her	
9			conduct of her case?	
10		Α.	But how	11:32
11	234	Q.	You mightn't have to sort of ask this question of the	
12			Commissioner at the end of it?	
13		Α.	well, I think it's totally different period, totally	
14			different time. I mean, if I had started asking the	
15			Commissioner, at the time when she was giving evidence	11:32
16			down at the Commission of Investigation, I mean, if you	
17			follow that through, and you think about the	
18			consequences of that	
19	235	Q.	The Commissioner seemed	
20		Α.	I think it's a really important point. If I was to	11:32
21			have done that, if I was to have brought in, as has	
22			been suggested by a number of people, if I was to bring	
23			in, demand, come in and tell me what is your evidence	
24			down at a commission of investigation and I sought as	
25			Minister to interfere with that, one can only imagine	11:32
26			the consequences of that	
27	236	Q.	Yes?	
28		Α.	in terms of the person that I would do that to, in	
29			terms of their rights, in terms of due process.	

1 237 Q. Yes.

		•		
2		Α.	I mean, if that happened here at the Tribunal, if it	
3			happened at a commission of investigation, that a	
4			Minister was to call in a person who was giving	
5			evidence and to say, I believe you are giving this	11:33
6			evidence in terms of the rights of that person at the	
7			Commission, the defence of their reputation, whoever it	
8			was, if I had interfered, that is a completely	
9			different situation to my asking the question when the	
10			Commission is over.	11:33
11	238	Q.	Yes. And there may well be a lot of validity in that	
12			point about interfering with evidence, but if you are	
13			not interfering with evidence and you weren't being	
14			asked to interfere with evidence it's a question	
15			perhaps of speaking to the Commissioner, not about	11:33
16			evidence, not about her evidence, not about anyone's	
17			evidence but a general approach to a person such as	
18			Maurice McCabe, whom you were both committed to	
19			supporting in many ways? You don't see any issue	
20			there, arising from this question perhaps having	11:33
21			asked it at the beginning of the Commission?	
22		Α.	I don't see any what?	
23	239	Q.	You don't see any issue arising from asking this	
24			question at the end	
25		Α.	No, I don't	11:34
26	240	Q.	when you might have asked it at the beginning?	
27		Α.	No, I don't, because I think it's a completely	
28			different context.	
29	241	Q.	Okay.	

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1 And I think I am in a totally different legal position, Α. 2 I am in a totally different place and I would ask you 3 to contemplate if I had done that at the beginning of the -- when the Commission was underway, the 4 5 consequences of that in terms of my position as 11:34 Minister for Justice, dealing with the Garda -- any 6 7 Garda Commissioner, that I had sought to question by any means the approach they were taking in terms of --8 and it would have been, it would have arisen out of the 9 legal evidence, if I was to do what you had suggested, 10 11.34 11 and I wasn't -- I was not going to do that when there 12 was a commission of investigation. 13 The Commissioner is recorded then replying to 242 Yes. Q. 14 this effectively question, obviously you are raising it 15 as a query, you are not asserting that she is doing it, 11:34 16 in fairness. 17 It's a question. Α. 18 243 It's a question. And it is at the top of page 4933. Q. 19 Yes, yes, that is the line there; malice, integrity, Α. 20 motivation. 11:35 "Commissioner, selective leaks, at no stage now or ever 21 244 Ο. 22 assert that McCabe acted out of malice - is a transcript refers to the above?" 23 24 25 She was saying that that would be evident from a 11.35transcript, is that right? 26 27 I assume. Α. 28 245 "Complete confusion between malice, integrity and Q. motivation." 29

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1 2 And who was she saying -- was she saying any particular 3 person was confused as between these issues? I can only take it as it's written there, that, you 4 Α. 5 know, I assume that's what she's addressed herself in 11:35 terms of the term of reference of this Commission. 6 7 "Commissioner didn't separate whistleblowers out of any 246 **Q**. 8 other witnesses. Treated all witnesses equally." 9 And can you recollect how she was saying that or --10 11:35 11 No, I mean, I think it is as it stands. You know, I Α. presume that is what she dealt with in her own 12 13 evidence. But was she conveying to you that Sergeant McCabe 14 247 Q. 15 wouldn't be treated any differently or specially, he 11:36 16 would be treated the same way as anyone else? 17 well, "treated all witnesses equally". Yes Α. 18 248 The assistant commissioner then seems to be quoted Q. 19 below, if we go down the page: 20 11:36 "when you hire senior counsel the client gives 21 22 instructions to objective, what they wish to achieve -23 it is then up to counsel how they pursue this objective 24 and in this case truth and establish the facts. Senior 25 counsel also represented others, not just Commissioner 11.36 - Commissioner was a witness." 26 27 And that seems to be the end of the discussion about 28 29 the Commissioner's approach, so far as the note goes,

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1			is that right?	
2		Α.	It goes down a bit further, I think, the public	
3			meeting, Police Authority.	
4	249	Q.	Yes.	
5		Α.	Yes. 11:3	37
6	250	Q.	These are all steps that being taken on foot of the	
7			report?	
8		Α.	Yes.	
9	251	Q.	There is a departmental minute, and perhaps we'd look	
10			at that, at page 4825 in the same volume. Have you got $11:3$	37
11			that?	
12		Α.	Yes, I have.	
13	252	Q.	And in attendance here as noted, it says Tánaiste, NW,	
14			KOL, JOC, Marion Mannion, Commissioner, DC Twomey?	
15		Α.	Yes. 11:3	37
16	253	Q.	It coincides with your special advisers' note of	
17			attendance?	
18		Α.	Yes.	
19	254	Q.	"Tánaiste opened meeting. Speaking note prepared by	
20			KOL. Inquired as to attitude and approach of the	37
21			Commissioner at the Commission. T had written to	
22			Commissioner and would like to be able to put as much	
23			on the record at debate next week as is possible within	
24			legal confines. Commissioner responded referencing	
25			that she is very constrained legally under section 11, 11:3	38
26			entitled to the same protection as other witnesses. JT	
27			said the most appropriate place to investigate	
28			allegations is GSOC."	
29				

1 There is then a reference to another person. 2 Α. Yes. "In response to another questions from T --" 3 255 Q. 4 5 That is you as Tánaiste? 11:37 6 Yes. Α. 7 "-- re attitude approach to C of I Commissioner said it 256 **Q**. 8 was fair and balanced as to instructions. Councillor said at no stage did she ever ask counsel to question 9 his malice, etcetera. JT said you engaged counsel to 10 11.38 11 establish the facts. SC then cites the tactics to use. 12 SC represented a number of parties. Commissioner was a 13 witness herself. It was open to parties to question 14 her on any issues they had." 15 11:38 16 Does that help you recollect any -- is there anything 17 further you'd like to say about the context of the 18 meeting or the discussion with the Commissioner? 19 Not really. I mean, she had been very clear as far as Α. 20 I was concerned that her approach -- what her approach 11:39 She was effectively reassuring me of the 21 had been. 22 approach that she had taken, that she wasn't questioning the integrity, that there was no malice. 23 24 that she had behaved appropriately. 25 Yes. 257 Q. 11:39 And then the discussion clearly was, well, we need to 26 Α. 27 put as much of this as we possibly can on the record of the Dáil and from my point of view, particularly, 28 29 within the legal constraints and the advice that I had

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1			got.	
2	258	Q.	Did she make any mention in these two meetings of the	
3			16th or 19th of her conversation with Mr. O'Leary on	
4			the 15th?	
5		Α.	No, not my memory, and it isn't in either minute so	11:40
6			you mean of 2015?	
7	259	Q.	Yes.	
8		Α.	Yes. No.	
9	260	Q.	No. So she didn't put it forward as a feature herself,	
10			to your recollection, that she had spoken with the	11:40
11			Deputy Secretary and sought his general advice	
12		Α.	No.	
13	261	Q.	as to what issues she might take into account	
14		Α.	No.	
15	262	Q.	in instructing her legal team?	11:40
16		Α.	No, I don't believe that that emerged at all in those	
17			meetings.	
18	263	Q.	So you were still unaware of that at this point in time	
19			when these meetings were happening?	
20		Α.	Yes, I would have been, yes.	11:40
21	264	Q.	Would you have been reassured to know from either	
22			Mr. O'Leary or the Commissioner that she had, in fact,	
23			taken those standings?	
24		Α.	Not particularly because I didn't see it as necessarily	
25			that appropriate that there had been that conversation,	11:40
26			so not really.	
27	265	Q.	In any event, it would appear then that obviously the	
28			Commissioner had issued a public statement already on	
29			the 16th, isn't that right?	

1		Α.	Yes.	
2	266	Q.	And then Mr. O'Leary started a draft of a letter that	
3			would eventually become the letter of the 25th May,	
4			sent by the Commissioner to you?	
5		Α.	To the Secretary General.	11:41
6	267	Q.	Yes. Is there any reason why the drafts all started	
7			out as "Dear Tánaiste" and then become "Dear Secretary	
8			General"?	
9		Α.	No, I don't understand how that change took place,	
10			yeah. She would normally correspond with the Secretary	11:41
11			General actually. It would normally be to the	
12			Secretary General.	
13	268	Q.	You have probably seen the emails in which Mr. O'Leary	
14			is congratulated on the first draft by other officials	
15			as producing a tour deforce of a response. It went	11:41
16			through many drafts, and was it considered and adopted	
17			by the Commissioner and became her letter, in any	
18			event, isn't that right?	
19		Α.	I didn't obviously, until I saw this evidence here,	
20			I didn't I don't believe I was copied on any of	11:41
21			those emails at the time. It was very much internal	
22			between officials and some people in An Garda Síochána,	
23			yes. I was not	
24	269	Q.	Your	
25		Α.	copied in any of those.	11:42
26	270	Q.	From your point of view you wouldn't see anything	
27			unusual in close cooperation in ensuring that every	
28			aspect of every relevant matter was reported upon by	
29			the Commissioner in her response to the O'Higgins	

Commission?

- A. Well, I think you would have to see where this had
  arisen from.
- 4 271 Q. Yes.
- 5 In terms of the meeting on the 25th -- 25th May -- no, Α. 11:42 6 sorry, 19th May, on 19th of May, that was to get as 7 much, you know, first of all to raise the questions 8 that I raised with her, which I thought it was important for me to do, it was my decision, it was 9 10 important to hear precisely what she had to say about 11.42 11 her approach at the Commission. Having done that, the 12 next piece then was to see how we could take the issue 13 further, how we could put as much information in the 14 public arena. We agreed at that meeting that there 15 would be contact between the Department officials, 11:43 16 senior officials and An Garda Síochána, to obviously 17 just take that forward in terms of the issues that 18 would -- the way I would have seen that, is the issues 19 that needed to be addressed, you know, the issues about what -- what I could put on the public record, 20 11:43 effectively, about the Commission, given the 21 22 limitations, what I could put on the public record 23 about what the Commissioner's view of it was, and what 24 her approach had been, as far as I understood it at 25 that point, that, for example, the very important range 11:43 of recommendations from Justice O'Higgins and indeed 26 27 that it started out in the Guerin Report, that I needed to take responsibility for. I think I started my 28 29 speech on the 25th, talking about victims, because the

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1 victims were being forgotten in all of this, there were 2 very, very serious issues about the Garda investigations, they were clearly -- that had been seen 3 from Mr. Guerin's report. They let people down, they 4 5 let victims and citizens down, they weren't -- you 11:44 know, there was huge shortages in terms of 6 7 communication between different sections of An Garda 8 Síochána, there were issues about supervision, about the guality of investigations, and so I wanted -- I 9 wanted to put as much information in the public arena 10 11 · 44 11 as I could about all of that. So, for example, I remember discussions about well, how are things 12 13 different? This was post Guerin as well as post 14 O'Higgins, how are things different now? How is 15 training different? What is happening with supervision 11:44 16 in Garda stations? What is the role of sergeants? All of the points. And I had also, I think, at that stage, 17 18 had a report in because I had referred the Seán Guerin 19 Report to the Garda inspectorate, so I had a report in 20 from them as well. So the Police Authority was 11:45 established at this point, this is the other very 21 22 important point, the Policing Authority was established 23 and that meant it just wasn't just within the political 24 arena there would be discussions about this but very 25 importantly, and the reason we had established the 11.4526 Police Authority, was so that there would be an outside 27 independent view of An Garda Síochána, and I thought this was a perfect place to have a serious rigorous 28 29 discussion about the O'Higgins Commission, about its --

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1 about every aspect of it, and, in fact, the Police 2 Authority responded very quickly and I think within two or three days, I think I said this yesterday, they had 3 their first meeting and were planning further both I 4 5 think public and private meetings and were raising 11:45 these issues with the Commissioner. So, I always 6 7 thought that, you know, as I say I spent a lot of 2015 8 doing the legislation for the Police Authority, which was to be reviewed after two years to see if it needed 9 strengthening, but this was also an important part of 10 11.45 11 the way I was thinking during that period when I was doing the order of business in the Dáil and trying to 12 13 get across, I suppose, what the comprehensive approach 14 was to the O'Higgins Commission, as well as dealing 15 with the issues of public concern at that time, which, 11:46 16 you know, were -- we have already discussed what they 17 were in particular.

Yes. Obviously this meeting, and I'm leaving aside any 18 272 Q. 19 issue about the 15th May email, of 2015, but by this 20 time then on the 19th of May of 2016 you had had two 11:46 meetings with the Commissioner, you had had receipt of 21 22 the actual counsel's advice from the Commissioner, you 23 had sought and got an account from the Commissioner of 24 her attitude and approach at the Commission --25 Yes. Α. 11:47

26 273 -- in relation to Sergeant McCabe. And that was given 0. 27 in the presence of Mr. Waters, Mr. O'Leary, Mr. O'Callaghan, Ms. Mannion, the Commissioner herself 28 29

and Deputy Commissioner Twomey. And it doesn't seem to

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1			be obviously you have given your explanation as to	
2			why it's not included in your own statement, you were	
3			obviously focusing on the political email controversy,	
4			would you like to say anything further about why it's	
5			not in your own statement, this level of detail?	11:47
6		Α.	Well, not really, because what I was focusing on, as I	11.47
7		<b>~</b> •	say, very quickly within five days was the controversy	
8			and the whole issue had been around the emails of '15.	
9			I wasn't really addressing the post publication period.	
9 10			And I mean, I wasn't discussing, and I think the	
10				11:47
			Department, we had all taken the view	
12			CHAIRMAN: I think I have that point.	
13	_	Α.	up to the 11th May.	
14	274	Q.	MR. McGUINNESS: I am not going to ask to you comment	
15			on Mr. Waters' statement, but he was present at both	11:48
16			meetings.	
17		Α.	Yes.	
18	275	Q.	Also. Yes. Thank you, Ms. Fitzgerald.	
19		Α.	Thank you.	
20				11:48
21			THE WITNESS WAS CROSS-EXAMINED BY MR. MCGARRY:	
22	276	Q.	MR. McGARRY: Morning, Ms. Fitzgerald. Paul McGarry is	
23			my name. I am one of the barristers representing	
24			Sergeant McCabe. Can I ask you first about something	
25			that you said yesterday in answer to a question from	11:48
26			Mr. McGuinness? I think to be fair if possibly you	
27			could be shown the transcript from yesterday at page	
28			115.	
29		Α.	I don't think I have it.	

1 Is there one here? We will get a copy CHAIRMAN: 2 upstairs. 3 277 MR. MCGARRY: Perhaps if I can ask the question in any Q. 4 event. Mr. McGuinness asked you had you been aware, at 5 line 24 --11:49 6 CHAIRMAN: well, I mean, if we want to do this, let's So we will wait until the transcript. 7 do it properly. 8 MR. McGARRY: I can come back to it, Chairman, when the transcript is here. 9 CHAIRMAN: Well, if we'd known you wanted it, we would 10 11:49 11 have had it for you. 12 MR. MCGARRY: Sorry. 13 So literally, it's only up the corridor, so CHAIRMAN: 14 we will just pause for a minute and it will be here. 15 [TO THE WITNESS] Are you all right, you don't need a 11:49 16 break or anything? I am fine. 17 Α. 4882, whose handwriting is that, 18 CHAIRMAN: 19 Mr. McGuinness? I am sorry, Judge. 20 MR. MCGUINNESS: 11:50 21 Sorry for interrupting, Mr. McGarry. It's CHAIRMAN: 22 the last volume, it's volume 9. If we could have it up 23 on the screen if you wouldn't mind, Mr. Kavanagh. 24 MR. McGUINNESS: They are Mr. Ruane's notes of the 25 meeting, a number of meetings. 11.5126 Sorry, yes, that is all right. Thanks. CHAIRMAN: 27 Because we went through those in a typed copy, I think, 28 didn't we? [SAME HANDED] So you wanted to go on to 29 page?

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278 Q. MR. McGARRY: Yes. 115, please. If you look at, just 1 line 24, you are asked: 2 3 "Had you been aware that there had been an allegation 4 5 made against Sergeant McCabe of an assault?" 11:52 6 7 And you said: 8 "I don't believe I was at that point. The point where 9 I became aware of that was, it was around that, it was 10 11.52 11 when the IRM, when the cases were handed to the 12 Taoiseach, I think that was April. 13 Q. Yes. 14 Α. That was around April '15. And then I became Minister in May '14." 15 11:52 16 That was a mistake, I corrected that earlier. Α. It was actually the first time I would have been aware -- I 17 18 wouldn't have been aware as Minister for Children. The 19 first time I would have been aware was May, when I was Minister for Justice, when I would have got the cases 20 11:52 21 that would have gone to the Taoiseach. My apologies, I 22 said April, it should clearly have been May when I 23 became Minister for Justice. 24 279 So you weren't aware of any suggestion of the Ms. D Q. 25 allegation or anything in relation to Maurice McCabe 11.52before you became the Minister for Justice? 26 27 NO. Α. You hadn't heard mention of it, rumours, swirling or 28 280 0. 29 anything like that?

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1 No, I was -- no, I was Minister for Children so... Α. 2 Before you became the Minister for Justice, you were 281 Q. 3 obviously aware generally of Maurice McCabe, whistleblowers, generally Maurice McCabe in particular, 4 5 isn't that right? 11:53 6 Well in a general way, yes. I mean, obviously the --Α. 7 yes, that was pre the Guerin Report, but the Guerin Report had been established by I think it was the 8 Taoiseach, and obviously the then-Minister for Justice 9 clearly, there were a range of different issues which 10 11.53 11 were in the public domain. 12 Yes. I suggest to you they were very highly sensitive 282 Q. issues, we had issues with regard to former 13 14 Commissioner Callinan and they weren't all related to 15 Maurice McCabe, but there was the appearance before the 11:53 16 Public Accounts Committee, the confidentiality 17 recipient, Mr. Connolly was no longer the 18 confidentiality recipient, the Guerin Report and 19 Minister Shatter was no longer the Minister for 20 Justice, and all of these were connected to a greater 11:53 or lesser degree with Maurice McCabe, isn't that right? 21 22 Yes, I mean, obviously there were quite a number of Α. issues which had arisen, some of which would have been 23 24 discussed in, probably in Cabinet or various 25 initiatives that were being taken and there were Dáil 11.54debates and so on. 26 27 283 And the Protected Disclosures Act was going through the Q. House at the time? 28 29 Α. Yes.

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Yes. And you could argue that on one view, you 1 284 Q. 2 wouldn't be the Minister for Justice on one view, if it hadn't been for Maurice McCabe and the issues that had 3 been raised by him? 4 5 Well, I mean, a situation arose --Α. 11:54 6 CHAIRMAN: Seriously, Mr. McGarry, I really don't want 7 to know the answer to that question. 8 285 MR. McGARRY: Can I suggest to you that after you 0. 9 became the Minister for Justice, we'll see from, you can see from the correspondence that you engaged very 10 11.5411 closely with the whistleblowers' issue and with Maurice 12 McCabe, didn't you? 13 Yes. I did. Α. 14 286 0. Okay. And it seems that you were very careful to 15 ensure that issues relating to Maurice McCabe received 11:54 16 your attention guite guickly, isn't that right? 17 Well, yes, I mean, in the sense that, you know, like a Α. 18 lot of issues, I would have been dealing with in the 19 Department of Justice. I mean, I do want to emphasise that: there were a lot of issues that I would have --20 11:55 would have been brought to my attention absolutely 21 22 immediately or you know, if they needed an immediate decision or whatever. So you know, the issue in 23 24 relation to Sergeant McCabe, obviously was ongoing, you 25 are right, in the sense that to be begin with, and I 11.55 26 think it probably was against departmental advice I met 27 him because I wanted to hear and see, you know, just what precisely the situation he was in. And then, 28 29 thereafter, it was a question of trying to ensure that

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1 the right approaches were being taken, that I was 2 absolutely clear that, you know, the Guards in 3 particular, and the Commissioner, understood the Government's attitude, and my attitude to how 4 5 whistleblowers needed to be dealt with. And that was 11:56 big issue, obviously in an organisation like An Garda 6 7 Síochána where, you know, with their particular ethos 8 and culture and I was aware that I needed to take whatever steps I could, and there were a lot of 9 different steps that I took and the Commissioner also 10 11:56 11 needed to do a lot to turn around the experience of 12 whistleblowers. And you know, that's why, when I got 13 ongoing reports about various aspects of what was 14 happening to whoever it was, that I, you know, wanted 15 to be reassured that every effort was being made to, 11:56 16 you know, to respect whistleblowers, as I would have 17 said publicly, and to put the right procedures in place 18 to make sure that they be dealt with properly. But 19 having said that, obviously to try and make sure that that, you know, percolates across the whole of the 20 11:57 21 organisation, as we know generally when you look at how 22 whistleblowers are dealt with, to make sure that that 23 becomes a lived reality for everyone, takes a lot of 24 work and a lot of initiatives and a change in culture as well. And that's why very quickly, as well, I would 11:57 25 have worked with Ms. Josephine Feehily as Chair of the 26 27 Police Authority to bring in the ethics, the code of conduct. And again, she was very keen that there would 28 29 be that code of conduct and that people right through

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the organisation, you know, would understand how these 1 2 issues had to be dealt with, and of course Transparency 3 Ireland coming in was part of that, legislation was part of that, and attitude of management was an 4 5 important part, and that is why, you know, not to be 11:57 6 saying one thing and doing another. And it seemed, you 7 know, with Sergeant Maurice McCabe, that a lot of 8 initiatives were taken, but you still very often, for him, it arrived at a point where it still -- where he 9 still didn't feel that he was being -- you know, 10 11:58 11 getting -- being dealt with appropriately or issues 12 arose that were, you know, still of concern. 13 But from your perspective, it's clear, I think, 287 Sure. Q. 14 and we had -- I am not going to labour it in any 15 detail, we had this yesterday with Mr. McGuinness, you 11:58 16 corresponded with him, you met him, it's clear from the 17 emails in the Department that when something came in 18 from him, you were told about it very quickly, other 19 people were told about it very quickly and a response went out very quickly, so that you were, I suggest to 20 11:58 you, you were aware of the need to engage with this 21 22 issue and to engage with Maurice McCabe? well, you know, I took --23 Α. 24 It's not a criticism. 288 Q. 25 I took the decision as a new Minister coming in, in the 11:58 Α.

circumstances that I took over the portfolio, that it would be -- it was very unusual for a Minister for Justice to meet with an acting guard in relation to complaints they had made. That was unusual. I did

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1 that to begin with, in order to understand his 2 perspective. And thereafter, then, I got on with the 3 job that I had to do, and I expected the Guards to get on with the job that they had to do, of making sure 4 5 that An Garda Síochána was a place where, if somebody 11:59 was a whistleblower, that it would be dealt with 6 properly and that there wouldn't be consequences for 7 8 the person. So, you know, that was my -- I wanted to meet him, I did that, and then I worked on the various 9 issues subsequent to that, as I understood did the 10 11.59 11 Gardaí.

- 12 And you met him, you met his wife, you became familiar 289 Q. with his story, you I think undertook to inquire into 13 14 the issues that he had raised. And again it's not a criticism? 15
- 16 Sure. Α.

17 290 It's an approach that you took to him? Q.

18 I did at that point because I felt that, you know, when Α. 19 he wrote again to me after meeting me and directly corresponded with me and said -- I didn't -- I didn't 20 12:00 meet him again, but I took up the issues that he had 21 22 raised with me because I -- you know, his letters were 23 very strong at that time, I mean, they were very, very 24 strong, and I felt that they needed a response. Now, I 25 did that through asking the Department to raise it with 12:00 the Garda Commissioner, I raised it directly with her 26 27 myself as well whenever we met, that, you know, just wanted to know, and, you know, I got the response then 28 29 saying these are the -- these are the actions we have

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1 taken to make sure that we are indeed responding. And, 2 of course, every time that I would have heard about how 3 Sergeant Maurice McCabe was being dealt with, I would be -- you know, it would be made clear to me that, 4 5 first of all, there was an understanding of the 12:00 6 difficult situation that he was in, and that, you know, 7 every effort was being made by a variety of people, and 8 named people were being, if you like, allocated to go through the issues and deal with them, and that was my 9 clear understanding that that is what was happening. 10 12.01 11 291 Q. And a number of things happened then post-Guerin. We have already had mention of the IRM that I will come 12 13 back to in a moment. You were a member of the Cabinet 14 subcommittee on Garda issues, isn't that right? 15 Yes. Α. 12:01 16 And in relation to the Independent Review Mechanism, we 292 0. 17 heard detailed evidence about this from Mr. Flahive. 18 and again I think you are aware of it, he talked about 19 the fact that there was a discussion about identifying perhaps cases arising from the IRM that might be put 20 12:01 into the upcoming Commission of Investigation, isn't 21 22 that right? 23 That's right. Α. 24 And Mr. Flahive told us about the fact that, in the 293 0. 25 end, two, ultimately narrowed down to one, out of 320 12.01 26 cases, were suggested initially by the counsel dealing 27 with the IRM as possibly, and the words that were used, were a good fit for the upcoming Commission of 28 29 Investigation; you remember that?

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1 A. Yes.

2 294 Q. Yes. Were you aware of that at the time when that was3 being discussed?

At certain points, I was aware, at a broad level, about 4 Α. 5 the developments of the IRM. Now, what I was 12:02 6 particularly aware of was that when the Commission, the -- during the time when the Commission was being 7 8 investigated, that there was a possibility, because --I think I explained this yesterday, because there was 9 10 so many cases that were coming into the Department from 12:02 11 a whole variety of people - the Taoiseach, the leader 12 of the Opposition, other deputies, the Justice4All 13 group - that we needed a mechanism to deal with that. 14 At the time when the Commission was being established -15 sorry, yes, the Commission - there was a possibility 12:02 16 that some of those cases might indeed need a commission 17 themselves, and, because the Commission was being 18 established, it was thought that that Commission might 19 be the place for them. The first discussion then was a general one, but it quickly came to the point where I 20 12:03 believe the senior counsel said that the only cases 21 22 that they would consider for the IRM to be referred to 23 a commission, those -- the only cases would be those 24 that had a geographic link to the area that Seán Guerin had examined or ones that had a relevance. So that was 12:03 25 26 narrowing it down. But it was never ruled out that 27 there might be other cases that would also need a 28 commission of investigation. As it happened in the 29 final reports, there weren't other cases, but I believe

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1 at the point where we were saying that there might be 2 some that would be appropriate for the O'Higgins Commission, I believe at that point there was probably 3 still some cases that were perhaps waiting further 4 5 information maybe from GSOC or wherever, that might 12:04 have ended up in a different commission of 6 7 investigation. But it became clear that -- and also, 8 the decision was made that this -- if, for example, the Ms. D case needed a commission, that it would be a 9 very -- you know, it would not be appropriately dealt 10 12.04 11 with in the Commission that had already been 12 established. It would be a very strange situation if 13 that had arisen.

14 295 Q. Can I just ask you about that, because Mr. Flahive told us that the provisional conclusion in the report of the 12:04 15 16 independent review council in October 2014 was that, prima facie, it would be a good fit with the O'Higgins 17 18 Commission and that they recommended that the Minister 19 and the Attorney General should discuss the matter with 20 whoever is the Chair, who turned out to be Judge 12:04 That is what Mr. Flahive told us the 21 O'Higgins. 22 provisional conclusion was. Did you discuss the matter 23 with the Attorney and Judge O'Higgins with a view to 24 including it in the investigation? 25 No, no. I didn't discuss anything with Judge Α. 12.0526 O'Higgins. That was -- Judge O'Higgins was dealt with, 27 absolutely, with the -- dealt exclusively with the I would have discussed the IRM with 28 Attorney General.

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the Attorney and there would have been discussions

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1 about, you know, the setting up of it. Not much 2 discussion during the process of it because that was -you know, it was independent, I was just getting the 3 But we did decide at one point that when the reviews. 4 5 summary of cases was being sent out, because, you know, 12:05 6 when I wrote to -- finally wrote to the individuals who 7 had made the complaint, we did a summary of their 8 complaint and we did a response from the IRM to it, and so we gave a summary, and that was -- obviously 9 couldn't go into all of the detail, but the judge that 10 12.05 11 we appointed oversaw the summary that went out. NOW, in terms of the -- I don't believe at the point where 12 13 the decision was being made, when the IRM decided to 14 look again and they were going to look at the Garda investigation file, they decided to do that, and I 15 12:06 16 don't believe I had a discussion with the Attorney. Ι can't be absolutely sure at that -- I don't believe I 17 18 did, because it was -- you know, that was a process, an 19 independent IRM, independent review that was going on. 20 So I then got the final recommendation, you know, that 12:06 there would not be a commission of investigation. 21 But 22 I did say yesterday that I believe that the -- I 23 believe that the Attorney would have briefed the Judge 24 on the findings in relation to that. 25 It's just that in October 2014 there is a very specific 12:06 296 Q. recommendation coming from the independent council that 26 27 it should be discussed, and what I am talking about 28 here is the very specific complaint made by Ms. D.

29 A. Yes.

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1	297	Q.	That should be included in the O'Higgins Commission.	
2		Α.	Sorry, that it should be?	
3	298	Q.	That there should be a discussion about possibly	
4			including it as a good fit within the O'Higgins	
5			Commission.	12:07
6		Α.	I think what superceded that was that the Commission	
7			then decided that they were going to get the Garda	
8			investigation file, they were going to get the Garda	
9			investigation file and take it from there. So I think	
10			that decision then superseded that.	12:07
11	299	Q.	Do you think the Attorney could have raised it with the	
12			Judge at the time?	
13		Α.	I think that's yes, I think it's a possibility, yes.	
14	300	Q.	But as far as you are concerned, you don't recall	
15			or, sorry, you don't think that you had a discussion	12:07
16			about that with anybody before the matter moved on	
17		Α.	Exactly.	
18	301	Q.	and the Garda file was provided?	
19		Α.	Yes, because I think it was ongoing.	
20	302	Q.	I see.	12:07
21		Α.	But she would have known the outcome of it.	
22	303	Q.	If I could just move on to the email contacts on the	
23			15th May that we have heard much talk about. And	
24			again, I am going to ask you to look at the email from	
25			Mr. Flahive. 3482, I think, is the	12:08
26		Α.	That is Volume 6, is it?	
27	304	Q.	Yes, I think so.	
28		Α.	What page is that?	
29	305	Q.	3482. You will be familiar with this passage. It was	

central to a lot of the questions you were asked
 earlier.

3 A. Yes.

4 306 Q. Firstly, I think you accepted that Mr. Quattrociocchi
5 is undoubtedly correct when he says that you probably 12:09
6 initialled it, having had it printed out? That is what
7 he said was standard practice in the office.

A. That's probably -- yes, if I hadn't done it on email, I
would have done it like that.

- 10 307 Q. Yes. We don't have a record of any other -- we don't 12:09 11 have a copy of your note -- or, sorry, the printout, 12 with your initials having noted it. But in any event, 13 I think you said yesterday that you read it and you 14 gave some consideration to it?
- 15 well, you know, I haven't changed in relation to this. Α. 12:09 16 When it was brought to my attention some time ago, I 17 didn't recall the particular email, but when I read the 18 email, I can quite clearly put a broader context on how 19 I would have approached it, or indeed the other email in July, and it would have been the same context that 20 12:10 I'd put on it that I would bring to discussions in the 21 22 Dáil on this or parliamentary questions I was being 23 So that would have -- you know, what I was asked. 24 explaining yesterday is that that would have informed 25 my response to this email or any other email. And, you 12:10 know, it's different being asked in general, do you 26 27 remember an email? But when you actually look at it, then I can give what my, you know, my best thinking 28 29 would have been as to how I would have approached it

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1			when I read it. So that is what I was trying to	
2			explain yesterday.	
3	308	Q.	And you are fairly certain that you didn't discuss it	
4			with anybody else in the Department?	
5		Α.	I am, yes. I mean, I've	12:10
6	309	Q.	All of the evidence from the other officials in the	
7			Department is that they didn't discuss it with you and,	
8			for the most part, didn't discuss it between	
9			themselves.	
10		Α.	That's true, yes.	12:10
11	310	Q.	And I just want to suggest to you, in light of what is	
12			said in it and in light of what you knew about the IRM,	
13			the complaint, and what was being said in public by the	
14			Commissioner and indeed yourself about whistleblowers	
15			and Maurice McCabe, that it must have raised a red	12:11
16			light with you at the time?	
17		Α.	Well, what it did was, it, you know, if as I say, as	
18			I read it now, I can only, you know, give comment to	
19			you, and on reading it now but not I mean, what it	
20			raised was that there was an issue at the Commission of	12:11
21			Investigation that had arisen between the legal teams,	
22			and that, yes, the information that is here, but as I	
23			said earlier, and I know you are asking me about my	
24			attitude at the time, but I think what has emerged	
25			since, that that allegation was not raised at the	12:11
26			Commission, I mean, gives further credence to and a	
27			support to the view that I took that it was not	
28			appropriate for me to be involved, and that's you	
29			know, that's not sort of wanting to distance myself	

from it or it's not about, you know, not wanting to be 1 2 proactive in relation to issues or it's not to avoid, you know, something that clearly was a difficult issue 3 at the Commission. It's based on sound principles, 4 5 it's based on the Commission of Investigation Act, it's 12:12 based on, you know, a policy and an approach to a 6 7 commission of investigation that I think is entirely 8 within the right legal framework, is the right attitude and approach for me, as Minister for Justice, as a 9 politician indeed, to have taken to what was happening 10 12.12 at the Commission, and it's on that premise. And I 11 believe, I certainly don't think there was any 12 13 coordinated approach, you know, to - quotes - not 14 discuss this email. I think the response of the senior officials was within the same frame, and, you know, 15 12:13 16 very credible, and I think, you know, any other understanding of it would not be accurate, is my 17 18 personal view on this. And obviously I've thought a 19 lot about this and considered it and tried to explain 20 as best I can how I would have approached it at the 12:13 time and my understanding of how the officials would 21 22 I mean, having set up a commission have approached it. 23 of investigation, I would want the truth to emerge at 24 it, I would have wanted, you know, everything to emerge 25 from that, and that was my sole approach to this. It 12.13 wasn't about, you know, protecting anybody or it wasn't 26 27 about any other motive other than let the Commission get on with its work and then I'll get the report and 28 29 we will take it from there.

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1 311 Q. But --

3it was you know, my sense was, this is being dealt4with, there is legal teams down there. Now, as I said,5if there had been a judicial review called, I would be6in a totally different position, or if I had been told,7as was discussed with Richard Barrett, that there was a8possibility of a judicial review, then I think I would9be certainly having discussions with officials and with10the Attorney and saying, well, in the event that this11goes in one direction or another. But in the meantime,12the legal teams were getting on with protecting their13witnesses and dealing with the information that was14emerging, and I felt that was, you know, that was the15job of the people in the Commission.16312 Q.18paragraph, it's clear that what is being said by19Mr. Flahive is that the Garda Siochána are raising it20on the basis that they could argue that it's21potentially relevant to motivation, that is the22motivation of Sergeant McCabe. Now, your special23adviser gave evidence to the effect that this email24made him sorry, was unique of what was being said in25it and made him uncomfortable. I am suggesting to you26that it is extraordinary that you wouldn't at least27have spoken to somebody else, Mr. Flahive obviously in28the first instance, as to what is all this about, what	2		Α.	So even if it was a red light to varying degrees or if	
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28 the first instance, as to what is all this about, what	17 18 19 20 21 22 23 24 25	312	Q.	question. But if you look at the second-last paragraph, it's clear that what is being said by Mr. Flahive is that the Garda Síochána are raising it on the basis that they could argue that it's potentially relevant to motivation, that is the motivation of Sergeant McCabe. Now, your special adviser gave evidence to the effect that this email made him sorry, was unique of what was being said in it and made him uncomfortable. I am suggesting to you	
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29 is going on here?	17 18 19 20 21 22 23 24 25 26 27	312	Q.	question. But if you look at the second-last paragraph, it's clear that what is being said by Mr. Flahive is that the Garda Siochána are raising it on the basis that they could argue that it's potentially relevant to motivation, that is the motivation of Sergeant McCabe. Now, your special adviser gave evidence to the effect that this email made him sorry, was unique of what was being said in it and made him uncomfortable. I am suggesting to you that it is extraordinary that you wouldn't at least have spoken to somebody else, Mr. Flahive obviously in	

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1 well, you know, the truth is that I didn't, and I have Α. 2 given you exactly the reason why I didn't, because I 3 was very clear about the approach. And if you read, presumably, there, they are raising the matter, you 4 5 know, in the previous paragraph, and this is reflecting 12:15 6 on it now as opposed to at the time, but it would have 7 informed me at the time as well, it's the allegation 8 had been that a serious criminal complaint against Sergeant McCabe which he had always denied. 9 Now, we actually know, as I say, it didn't arise, so, I mean, 10 12.16 11 that even gives -- I know that is now, but that gives 12 further support that if I had started going down -- you 13 know, doing anything that was interfering with what was 14 happening down there, you know, who knows what the 15 consequences of that would have been. It would have 12:16 16 seemed completely inappropriate for me to do it. So. I 17 mean, I think you have to see it in the context of the 18 approach to a commission of investigation.

19 313 Q. Well --

And there wasn't a discussion, and that wasn't 20 Α. 12:16 because -- you know, there just wasn't a discussion, 21 22 and that is based, I believe, on the fact that it was a commission of investigation. And going to what my 23 24 previous adviser said, I think he made the point that 25 we were very scrupulous, no more than if a court case 12.16 was underway at a particular time or if I was -- there 26 27 was an investigation in GSOC, there were very strict -very strict approach. And he was uncomfortable because 28 29 he thought, why? And it kind of, if you like, it

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1 really reinforces the point, why are we being told 2 about something that is going down -- why is the Minister being told about some internal dealings that 3 are happening down in the Commission of Investigation? 4 5 why is she being told that? That was his 12:17 6 uncomfortableness, that -- because he felt that it was 7 inappropriate; that, you know, why is it coming to the Minister, that this is actually what is happening in a 8 commission. So like if you got a note about something 9 that was happening at a court case, I mean, you just 10 12.17 11 would never get that. It's the same context. 12 Was the case then that you asked yourself, why am I 314 Q. seeing this at all because it's really got nothing to 13 14 do with me? 15 well, no, I didn't approach it like that. I mean, you Α. 12:17 16 know, I imagine that, no more than when I got the other emails, it's not that it's nothing to do with me, it 17 18 was that I don't have a role in it at this particular 19 point, and that is -- I mean it's perfectly consistent with both the policy, the law on the work of a 20 12:18 commission of investigation. And it's -- it's for 21 22 those reasons, it's not for any other. There is 23 no other -- there is no other agenda here from me in 24 relation to this, none whatsoever. No interest in, you 25 know, in pursuing any -- the Commission was doing its 12.18 26 work. 27 315 There is a distinction drawn, if you look at it, in Q. 28 some detail, and there is a distinction, I suggest, 29 drawn between the general strategy or the general

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1 approach being adopted to the very specific agreement 2 at the very end of the email that is referred to, that is Mr. Barrett and Mr. Flahive agreeing that neither 3 the Attorney nor the Minister has a function in 4 5 relation to the evidence a party may adduce. But what 12:18 6 he is talking about in the previous paragraph isn't 7 about necessarily the evidence, it's about the Garda 8 Síochána raising a matter for a particular purpose, that is to say that it's relevant to motivation. 9 But there is a distinction between the two. Do you see 10 12.19 11 where I am coming from? 12 Well, I don't, because if they were raising the matter, Α. 13 their counsel was raising the matter, I assume. 14 316 Ο. It comes up again subsequently and I will come back to 15 it in a moment. 12:19 16 I presume -- counsel is raising the matter, so he is Α. 17 raising it, it's part of his job down at the 18 Commission, I mean, I am assuming, he's raising the 19 matter. I don't see the difference there. Do you now say that there is nothing -- there would 20 317 Ο. 12:19 have been nothing wrong -- sorry, that you would have 21 22 felt constrained in making contact, directly or indirectly, with the Commissioner, and saying what is 23 24 going on? Why are you doing this? What are you up to down there? 25 12.1926 I think it would be completely inappropriate. Α. 27 318 **Q**. I see. Even though you now know that Ms. Ryan records that Mr. Dreelan had said to her on the phone that this 28 29 was political dynamite, even though you -- it suggests,

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1 at the very least it suggests that the things that the 2 Commissioner was doing in public, which is professing 3 support for putting in place mechanisms to assist and aid Sergeant McCabe, was different to what was being 4 5 done behind closed doors at the Commission, knowing now 12:20 6 what you know about all of those things, do you still 7 say it's not appropriate or wouldn't have been 8 appropriate to say, well, what is going on down there? what are you up to? 9

Yes, I feel absolutely consistent about the approach 10 Α. 12.20 11 that I took, that it was -- it was the -- it was the proper approach. And I think the idea that I would 12 13 have, you know, called the Commissioner in on the basis 14 of legal evidence that she was giving down at a 15 commission, would have been political interference at a 12:20 16 level, in regard to a commission of investigation, that 17 would be unacceptable and would have all sorts of other 18 political consequences and, as I said, I would be 19 answering very different questions if I had sought to 20 interfere in a commission of investigation, and set a 12:21 political precedent like that would have led to 21 22 goodness knows what consequences. So I would take the 23 same approach to it now because I was doing it on the 24 basis of the principles I have outlined to you. And Mr. Ouattrociocchi then confirms I think 25 319 Q. 12.21 subsequently, I think it's on the 26th, that you had 26 27 noted it. We don't know exactly when, but I take it it was sometime between the two dates, I think there is no 28 29 doubt about that. In the middle of all this, or not

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1			very long afterwards, we have the contact then in	
2			relation to the GSOC report, the documents in relation	
3			to which we saw for the first time yesterday. You are	
4			aware of that?	
5		Α.	Yes.	12:22
6	320	Q.	Yes. And I think you said, in answer to	
7			Mr. McGuinness, that this was brought to your attention	
8			on two separate occasions. The first was it's at	
9			page 4936.	
10		Α.	Yes.	12:22
11	321	Q.	This is the report from GSOC	
12		Α.	Sorry, what volume is that?	
13	322	Q.	It's Volume 9.	
14		Α.	9?	
15	323	Q.	4936.	12:22
16		Α.	Yes.	
17	324	Q.	This is the report note from Mr. McDermott to	
18			Mr. Quattrociocchi in relation to the GSOC report, and	
19			I think you accepted that you were shown that or you	
20			saw that fairly soon afterwards, isn't that right?	12:23
21		Α.	Yes.	
22	325	Q.	Yes. And then, subsequently, there is a minute drawn	
23			up sorry, not a minute a submission, I think it	
24			is, by Mr. Power, who gave evidence yesterday, on 27th	
25			May 2015, that is at 4941, which you have in fact noted	12:23
26			as having and initialled as having seen after	
27			Mr. Flahive has appended "Minister, for your	
28			information" on the 2nd of June. So again, these are	
29			two further direct contacts with you	

1		Α.	Yes.	
2	326	Q.	which you saw in very, very shortly after the	
3			email of the 15th, in relation to issues concerning	
4			Sergeant McCabe, in the first instance, isn't that	
5			right? The first one refers to Ms. D's complaint.	12:24
6		Α.	The first email?	
7	327	Q.	Yes, the first email on 4936. It's the report, the	
8			GSOC report.	
9		Α.	Yes.	
10	328	Q.	And the second one then after the 2nd of June from	12:24
11			Mr. Power is the one in which he provides the	
12			suggested, I think he said, link between the allegation	
13			dealt with in the GSOC report and the allegation that	
14			had been referred to in the context of the hearings of	
15			the O'Higgins Commission, at the end of the first	12:24
16			paragraph. You have seen all of that?	
17		Α.	Yes.	
18	329	Q.	So just, can I just ask you about the last part first,	
19			the last submission. It seems that that is a summary	
20			prepared by Mr. Power for you, for Mr. Flahive and for	12:25
21			you, of the main points of the GSOC report as he saw	
22			it, is that right?	
23		Α.	Yes.	
24	330	Q.	I think you said in your evidence yesterday that you	
25			read the GSOC report in full?	12:25
26		Α.	Yes.	
27	331	Q.	And that would it be normal for one of your officials	
28			to parse the report, provide you with a one-page	
29			summary of it and then attach it for your information?	

1 It would vary. I mean, there is nothing very abnormal Α. 2 about that, and I think it may be because there was a submission, I think there was -- there was a number of 3 emails, wasn't there? And this was a summary one that 4 5 I think he explained yesterday, I think, he had been 12:25 6 asked to do, am I right, by Mr. Flahive --7 332 Yes. **Q**. 8 Yes, it wouldn't be that unusual. I mean, you would Α. often get a summary of a submission. 9 Submissions would vary in length and you would often have -- officials 10 12.26 11 would pick out key points and highlight those in the 12 first part of the submission to you. But I would -- I 13 would read the report. 14 333 Q. Yes. And you would have read in detail, I think, 15 the --12:26 16 Yes. Α. 17 -- submission by Mr. Power that went up to you? 334 Q. 18 Yes. Α. 19 335 And that is the submission which provides the link, or Q. identifies a link, at the end of the first paragraph, 20 12:26 isn't that right? 21 22 Α. Yes. 23 And at the time that you read it, did that not bring 336 **Q**. 24 back to you the fact that, a very short time before 25 that, perhaps two weeks, you had seen this email about 12.26 26 the O'Higgins Commission of Investigation and a very 27 similar, the same issue? 28 But, I mean, in the sense that it's the same issue, Α. 29 it's the official, you know, referring back to the

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1 original email and just making the point that this is 2 the same case. I don't see that as, you know, 3 particularly -- I mean, he just mentions that it is the I don't see anything unusual in that. He 4 same case. 5 refers simply to the fact that he is going back to the 12:27 6 first email and just saying that, yes, this is probably 7 the same case which, you know, I would be aware of 8 anyway, but he is just putting it in there. I mean, he is not making any -- you know, he is not making any 9 consequent points about that, or anything else. 10 Не 12.27 11 just puts in that this is the same as, you know -- he 12 just makes that statement, the alleged sexual assault 13 was referred to in a particular context during the 14 recent -- yes. Based on the other email. 15 337 I am suggesting to you that when you read that, it must 12:27 Q. 16 have, again, raised a concern in your mind that, well, 17 the alleged sexual assault isn't part of the O'Higgins 18 Commission of Investigation, you knew that, isn't that 19 right? The alleged -- the original allegation? 20 Α. 12:27 21 338 Yes. Ο. 22 Yes. Α. 23 You knew that because that had come through the IRM --339 Q. 24 Yes, of course. Α. 25 -- and there had been the suggestion that it might be a 12:28 340 0. good fit, and that was taken out obviously before you 26 27 discussed it with the Judge? 28 Α. Yes. 29 Or, sorry, you didn't discuss it with the Judge. 341 Q. But

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1 that wasn't part of the O'Higgins Commission of 2 Investigation. So when you read that, did you not say 3 to yourself, hang on a minute, the alleged sexual assault shouldn't be coming up in the context of the 4 5 O'Higgins Commission of Investigation at all? 12:28 6 But of course it didn't, apparently. I mean --Α. Well, we know that now. But I am talking about at the 7 342 Ο. 8 time when you read this? Well, I would have had the same reaction that I had 9 Α. when I got the first email, that, you know, what I was 10 12.28 11 told in the first email, and this is looking back and 12 reading the emails because the -- I would have said, 13 ves, something has arisen at the O'Higgins Commission. 14 That is being dealt with at the O'Higgins Commission. 15 And if anything develops from that, that, you know, 12:28 16 leads to something, I suppose, extraordinary developing at the O'Higgins Commission, then clearly I will --17 18 that will -- that will emerge, either in the report or 19 it will emerge by way of some legal action that people will take from there, but in the meantime, the 20 12:29 O'Higgins Commission is getting -- and Judge O'Higgins 21 22 will deal, as he did, Judge O'Higgins will deal with, 23 you know, whatever emerges at the O'Higgins Commission. 24 Mr. McGarry, would this be an appropriate CHAIRMAN: 25 point to break then? 12.29 26 MR. McGARRY: Yes. Chairman. 27 CHAIRMAN: Thank you. 28

29 <u>THE HEARING ADJOURNED FOR LUNCH</u>.

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1			THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:	
2				
3	343	Q.	MR. McGARRY: Ms. Fitzgerald, just before we broke for	
4			lunch, we were talking about the follow-up emails and	
5			contacts within the Department arising from the GSOC	13:33
6			report.	
7		Α.	Yes.	
8	344	Q.	And I think you accepted that on two separate occasions	
9			you were notified about these issues and we know that	
10			in the second submission that went up to you, which you	13:33
11			noted, there is the link made by Mr. Power. I want to	
12			move on to another short few weeks later, to the	
13			contacts that were made arising from approaches made to	
14			the Garda Commissioner from the 'This Week' programme,	
15			you remember that issue also. 2012 is the page	13:34
16			reference.	
17		Α.	Volume?	
18	345	Q.	Volume 3.	
19		Α.	3. Thank you. What page is that?	
20	346	Q.	2012.	13:34
21		Α.	2012.	
22	347	Q.	Do you see that?	
23		Α.	Yes.	
24	348	Q.	That's the email from Ken O'Leary to you.	
25		Α.	Yes.	13:34
26	349	Q.	And do you remember seeing this at the time, or is it	
27			just something that has been brought to your	
28			attention	
29		Α.	It's been brought to my attention recently, yes.	

350 Q. The first paragraph from Mr. O'Leary identifies the 1 2 fact that it was, he said: 3 "The Garda Commissioner who had instructed counsel to 4 5 adopt an aggressive stance towards Sergeant McCabe at 13:35 6 the O'Higgins Commission. The Gardaí are not 7 commenting." 8 Do you think that when you would have read that at the 9 10 time, that would have again raised a concern on your 13.35 11 behalf, on your part? 12 Well, this was a phrase I think that Ken O'Leary, Α. 13 Mr. Ken O'Leary had used. I suppose in terms of legal 14 proceedings, as Judge O'Higgins said in his final 15 report, being cross-examined, you know, it was 13:36 16 difficult for witnesses, where evidence was being cross-examined. That's post this, I appreciate that. 17 18 And you're asking about this point. Again, I think I'd 19 have to go back and say I would see it all in the 20 context of, you know, that this was happening at a 13:36 21 Commission, and, whatever was happening there, however 22 it was happening, it was something to be dealt with within the Commission. 23 24 well, if you look at the first paragraph, he's telling 351 Q. you about something else, isn't he: he's telling vou 25 13.36 about the fact that there is an issue has arisen that 26 27 the press have got hold of, in relation to Sergeant McCabe being taken out of the traffic unit. 28 So that's 29 got nothing to do with the O'Higgins investigation,

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1			isn't that right?	
2		Α.	Well, I think that Sergeant McCabe thought it had.	
3	352	Q.	Yes. But for the purposes of the O'Higgins	
4	552	ų.		
			investigation, where Sergeant McCabe was stationed had	
5			nothing to do with the terms of reference, I suggest to	13:37
6			you?	
7		Α.	No. But the second paragraph there talks about	
8	353	Q.	Yes.	
9		Α.	that the reason that he was uncomfortable there or,	
10			let me just get the exact phrase, it was I mean, he	13:37
11			says himself, well, apparently, this coincided with	
12			hearings at the O'Higgins Commission, they had been	
13			held in private, etcetera. Apparently, he blamed the	
14			Commissioner for this, though, and said he could not be	
15			more specific as he was bound by confidentiality. So	13:37
16			Sergeant McCabe saw it as connected in to what was	
17			happening at the Commission. So I think in terms of,	
18			you know, my approach to it, that's how I would have	
19			seen it as well, even though, you know, Sergeant McCabe	
20			was saying that it had an impact locally.	13:37
21	354	Q.	But from your reading of the first paragraph, I suggest	
22			to you that it's very clear that the query is: is this	
23			because the Garda Commissioner has instructed counsel	
24			to adopt an aggressive stance towards Sergeant McCabe	
25			at the Commission?	13:38
26		Α.	That's the query.	
27	355	Q.	Yes.	
28		ч. А.	But the query doesn't prove the case.	
29	356	Q.	No, no, what I am asking you is slightly different,	
25	550	<b>۲</b> ۰	to, no, mat i an asking jou is strynery arrierent,	

Ms. Fitzgerald. It's this: When you read that at the time, and I appreciate you don't recall reading it at the time --

4 A. Yes.

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- 5 357 Q. -- but looking back on it now, is it not reasonable to 13:38
  6 suggest that you would have said, oh, hang on a minute,
  7 why is the Garda Commissioner, if it's true, adopting
  8 an aggressive stance, or should I not find out more
  9 about it?
- A. Well, I really would have to go back to the same point 13:38
   that I've made, that it was all in the context of the
   O'Higgins Commission.
- 13 Mr. McGarry, I might just intervene. CHAIRMAN: I'm 14 getting a bit worried about this constant repetition of 15 a query in relation to an aggressive stance. Now, no 13:38 16 one ever put it to Mr. Smyth, or any of the other 17 counsel, that they were in any way aggressive. I have 18 taken the trouble to listen to the tapes, certain 19 extracts from them, to see where we stand. I didn't see anything abnormal about it. So vis-à-vis an 20 13:38 aggressive stance, you know, surely that's a dead issue 21 22 If you want to make it a live issue, it as well. 23 should have been done -- if you want to make it a live 24 issue, it should have been done at the time when 25 Mr. Smyth was giving evidence. 13.39 26 MR. McGARRY: Can I just respond in this way, Chairman, 27 to that, and it's this: Chairman, you have on a number
- 28 of occasions referred to the concept of evidence having 29 to be put in a certain way, and, with respect, I think

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1 we would make the submission that, in this process, 2 which is an inquiry, it's not necessarily the case, and I don't accept that it's going to be true in every 3 scenario, that in order for evidence or for facts to be 4 5 understood by the inquiry or by the Tribunal as 13:39 constituting facts or evidence, that they have to be 6 7 put in a certain way that corresponds to what normally 8 happens in a criminal or a civil trial, and that is because you are tasked, Chairman, with attempting to 9 ascertain, on the basis of the evidence that is 10 13.4011 elicited from all the parties in an inquisitorial 12 process, a non-adversarial contest, what the position 13 is. And if I can perhaps makes this analogy, Chairman. 14 It applies equally to everybody. You'll recall there 15 was a very significant issue with regard to the Garda 13:40 16 Commissioner being asked, through Superintendent Healy, 17 by Ms. Annmarie Ryan, about a consultation on the 18 weekend, you'll recall that issue, Chairman, and nobody 19 put to Ms. Ryan on behalf of the Garda Commissioner that the Garda Commissioner was available all weekend 20 13:40 for that, nobody put to Chief Superintendent Healy that 21 22 the Garda Commissioner was available all weekend. That's perhaps less surprising, given that Chief 23 24 Superintendent Healy and the Garda Commissioner are 25 represented by the same legal team. But in any event,  $13 \cdot 40$ 26 the suggestion -- and then the Commissioner came along 27 and said, well, in fact, no, I would have been available -- if I had known about Annmarie Ryan wanted 28 29 to have a consultation, I would have made myself

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1 available; my diary was busy but not that busy, I think 2 was the tenor of the evidence. So we would like. Chairman, to be able to make submissions in the same 3 context as I think Mr. McDowell referred vesterday to 4 5 the relevance issue, to the fact that because you have 13:41 heard evidence in a particular way or haven't heard it 6 7 in a particular way, doesn't mean that it's not 8 relevant to the issues that you have to determine. And it applies, I think, to a whole range of things. 9 In this particular context, I'm not suggesting to the 10 13.41 witness that it's a fact that the Garda Commissioner 11 12 instructed Mr. Smyth to take an aggressive stance. 13 It's something slightly different, Chairman. I'm 14 asking the witness about the fact that she was told by 15 Mr. O'Leary that the query had been that the Garda 13:41 16 Commissioner had perhaps asked counsel to adopt an 17 aggressive stance, and that she perhaps, having seen 18 that, would have said, well, I need to do something 19 about it or I need to find out about it or I need to 20 talk to Mr. O'Leary or I need to contact the Garda 13:42 Commissioner, or something like that. That's the 21 22 It's not -- it's not -- I don't think it goes context. 23 to the issue of the aggressive stance. 24 CHAIRMAN: No, I appreciate that, and I do understand 25 what you are saying. But if you take another analogy. 13.42Let's suppose somebody is running for office, or 26 27 whatever, and a question is put to that person, didn't you sell cocaine, weren't you a drug dealer when you 28 29 were 18 years of age? So the query has arisen as to

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whether so-and-so, who is a candidate for, I don't 1 2 know, the provost of Trinity College Dublin, was a drug 3 dealer. I mean, where does this end? You know, people just fly out allegations and they stay there and 4 5 everybody says there's no smoke without fire. I mean, 13:42 after all, to make an allegation of sexual abuse 6 7 against somebody, I have mentioned this during the very 8 first module, where it's not provable either way, unlike a murder case where you have a dead body, or a 9 cheque-fraud case where you have cheques and signatures 13:42 10 11 and money going in and out of bank accounts, I mean the 12 aggressive stance, apparently you're trying to elicit 13 that the deputy, Deputy Fitzgerald, should have made an 14 intervention. That is your case, certainly. I suppose 15 then the next question I'd ask is: What should she 13:43 16 have done? But I understand what you are saying. But 17 I think I have made my point --

18 MR. McGARRY: Yes.

19 CHAIRMAN: -- which is, this thing of aggressive stance 20 is merely a question that was asked, and at the moment 13:43 I can't see any evidence of it. And I think I should 21 22 clarify that. But if you wish to say -- Mr. McGarry, 23 if you want to make the case that Deputy Fitzgerald 24 should have intervened, if you want to make the case 25 that the intervention should have been whatever, I'm 13.43 26 certainly not going to stop you. I'm very interested 27 in listening to that. But I think we should end the 28 discussion on that because I am intervening in your 29 cross-examination.

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1 MR. McGARRY: If I can just say very briefly, with 2 I think we would like to make a submission to respect. you on the concept of what's provable and not provable 3 in the context of an inquisitorial process. 4 That. I 5 think, is a different issue, it's a macro issue than 13:44 6 this question. But I'm happy to move on in the context of this. 7 8 CHAIRMAN: No, I appreciate what you say about that. And, Mr. McGarry, I'm very much alive to that, and you 9 will appreciate, as well, that a human being isn't 10 13.44 11 entitled, a human being isn't entitled to think badly 12 of somebody without proof. Now a judge isn't entitled 13 to either. MR. MCGARRY: 14 Yes. 15 That doesn't mean that inferences can't be CHAIRMAN: 13:44 16 raised from A, B, C and D to lead to whatever it is, 17 and I'm alive to that, and I look forward to hearing 18 your submission on that. 19 MR. McGARRY: Yes, Judge, but you have to hear all the 20 evidence. 13:44 21 CHAIRMAN: No, you want to argue with me. NOW. 22 Mr. McGarry, I really want to hear your questions. Ι 23 have made my point, you have made your point, and let's 24 move on. 25 MR. McGARRY: All right. 13.4426 What I am suggesting to you is, Deputy Fitzgerald, that 358 Q. 27 this is now certainly the third time that you have been 28 told, in an email or in a formal note, that an issue 29 has arisen at the Commission with regard to Sergeant

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McCabe and the way in which his -- or the way in which
 the Commissioner was dealing with him, isn't that
 right?

Well, you know, questions would have arisen in the Dáil 4 Α. 5 on many, many, occasions, I mean, in terms of 13:45 parliamentary questions about the O'Higgins Commission, 6 so there would have been many, many occasions where I 7 8 would be responding to questions about the O'Higgins Commission, whether it's, you know, as I said, whatever 9 the number of emails, and the principal point remains 10 13.45 11 the same. And just to say that in -- not to return to 12 this, but the query wasn't about an aggressive stance, actually, that is a phrase that apparently was used by, 13 14 I understand by Mr. Ken O'Leary, but the query was 15 different. But what has actually happened is that it 13:45 16 has been again and again said that because this word 17 was here, that I knew about an aggressive stance. SO 18 the point being whether it was once, twice or how many 19 times that an email, and it's -- you know, in relation to the GSOC, it's arbitrary enough whether Martin Power 13:45 20 put in that, Mr. Martin Power put in that phrase, he 21 22 did, and I respond to the questions that you asked about it, but, yes, I mean, it is -- this is the email 23 24 of the 4th of the 7th. Yes, it is. But as I say, the 25 query is a little different. 13.4626 359 And there's a follow-up email on the same day, I think, 0. 27 that evening, 2015, from Mr. O'Leary to you, 28 clarifying, in the first instance, that the query came 29 from somebody different. Do you see that?

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1 Yes, I do. Α. 2 360 Q. And then in the second paragraph he seems -- he says: 3 "While there may be a technical argument made that his 4 5 reference to what counsel raised rather than what the 13:46 witness says in evidence may not be covered by that. 6 7 you'll appreciate it will be completely inappropriate 8 for you to comment." 9 I suggest to you that Mr. O'Leary seems to be drawing a 13:46 10 11 distinction between the methodology or the approach and the actual evidence that's to be offered, isn't that 12 13 correct? 14 Α. Yes. And, in fact, when I took advice much later on in 15 relation to these points, I mean my advice was that 13:47 16 it's going to be extremely difficult to draw a 17 distinction between the two. 18 361 And that's again another email referring to the same Q. 19 issue? 20 Yes. Α. 13:47 21 362 I believe on the same day, that again you say that you Q. 22 now have been reminded about and you have seen. When we move forward to 2016, the issue becomes a very live 23 24 political issue, I think it's fair to say? 25 Yes. Α. 13:47 And we've seen all of the documentation that the 26 363 0. 27 Department has provided. There doesn't seem to be any reference anywhere in 2016 to any of these emails or 28 discussions or notifications that took place between 29

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May and July 2015?

2 Yes, I think I commented on that insofar as I could. Α. Τ mean, there were these emails, there was also lots of 3 other places, particularly in the Dáil, where there 4 5 would have been, you know, questions about Sergeant 13:48 Maurice McCabe and about various other whistleblowers 6 7 and statements made and order of business as well, and, 8 you know, topical issues and so on. This would have been a very regular occurrence. So my point would be 9 that when you're doing a briefing post the publication, 13:48 10 11 there's -- you know, it was very much looking at, well, 12 where are we at now, and people clearly didn't go back 13 to '15 and to some emails. These emails have got huge 14 prominence now, obviously. But in terms of, if you 15 like, their place in terms of the approach that both I 13:48 16 and the Department were taking to the O'Higgins 17 Commission, you'd have to see them in that context, and 18 then when you get the briefing in '16 it's very much 19 about, you know, I suppose it is rather broad policy about the approach and the issues, and, in fact, of 20 13:49 course, because of the leaked transcripts and what was 21 22 in the public arena at that point in '16. We addressed those issues, insofar as we could, with the -- in the 23 24 first instance, obviously, within the Department, 25 having a discussion about how we could implement and 13.4926 work through the recommendations in the O'Higgins 27 Commission, and then, of course, the public controversy that arose and trying to get as much information as 28 29 possible that I could put on the record. And that was

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1 the focus, not the ins and outs of the O'Higgins 2 Commission, because we didn't know about that. So, you 3 know, if you see these emails in that context, the transcripts, you know, weren't available, rightly, you 4 5 could not contextualise in any way the leaked 13:49 6 transcripts, and so we were dealing with that situation 7 and wanting, you know -- remember, as well, this was a 8 time of gangland murders, where confidence in the -- we were setting up, just had agreed a couple of weeks 9 previously to set up a new armed response unit, the 10 13.50 11 whole question of the safety and security of citizens was absolutely to the fore, confidence in the Gardaí to 12 13 deal with that situation was really important, the 14 Government had made a decision, you know, contrary to 15 maybe -- well, I mean, they had made a decision to put 13:50 resources in to deal with that, so there's a broader 16 context as well of confidence in policing, and 17 18 particularly in the area where the murders were taking 19 place. So, I mean, in terms of confidence in An Garda Síochána at that point, that was very important as 20 13:50 well. But, you know, I equally interrogated the 21 22 approach at the Commission so that I could understand it as well as I could, within the constraints that were 23 24 operating, as you can see from the meeting of the 25th. 25 I think the issue came to the fore; you'd had the 364 0. 13.51 report for a couple of weeks, and then on the 11th 26 May -- 12th May, there was a query from Mr. Clifford, 27 and then it became a big issue --28 29 Α. Yes.

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365 -- and the Commissioner has described it as a vortex. 1 Q. 2 There was an awful lot of activity, clearly. We can see some records on the file. 3 But what I'm asking you is, did nobody, in the context of those discussions 4 5 with the officials in your Department, did nobody say, 13:51 6 ah, hang on a minute, do you remember last year there 7 was this stuff about the approach being adopted or 8 suggested approach being adopted in a number of contacts, the one from Mr. Power in the original email 9 and the one in July, the 'This Week' programme? 10 13.51 11 Α. well, to the best of my knowledge, no, and the reason 12 for that -- well, I can only say, when you ask me the 13 question what I think, the way I would respond to it 14 and try and explain it is that that was 15 pre-publication, what had happened, clearly whatever 13:52 16 had arisen in emails at that time, the O'Higgins 17 Commission had got on with its work, had dealt with 18 whatever had occurred at the Commission, Judge 19 O'Higgins had published a report, hadn't referred to anything untoward, you know, happening at the 20 13:52 Commission, hadn't made any point about either -- you 21 22 know, this approach that had been taken - in fact, from 23 my reading, said that the Commission had gone well. 24 And that is the situation then. So it would have been 25 like going back to the beginning of the O'Higgins 13.52 26 Commission. I'm not saying that they might not have 27 been referenced; they could have been, but they But my explanation would be that we were at a 28 weren't. 29 year later, at a totally different point, where, you

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1 know, it was -- the report had been published. 2 366 Q. Yes. And it seems certainly from -- the evidence that 3 the Garda Commissioner gave was that it was something that she was obviously very concerned about, she was 4 5 being asked about it at every moment - I suspect you 13:53 6 probably were, too - she was extremely concerned to try to ensure that you expressed confidence in her. 7 8 Yes. Α. would that be a fair summary of it? 9 367 Q. Well, that would appear from her evidence at the time. 10 Α. 13.53 11 368 Yes. Q. That my interview on 'Prime Time' would have been seen 12 Α. 13 as not expressing confidence, but actually I think 14 there were some media queries in that evening, I think 15 I remember, where we said yes, we had confidence, 13:53 16 because the Government had never -- neither I nor the 17 Government had ever not expressed confidence in the 18 Commissioner, or never invoked, you know, the 19 legislation relevant to that. There was no guestion of But I understand from what I've read now and 20 that. 13:53 what I've heard, that, from her perspective -- you 21 22 know, that I read what she had to say. But, I mean, I 23 was coming at it more from the point of view of, how do 24 we put -- how do we restore -- how do we put as much 25 information in the public arena about this as we 13.5426 possibly can within the constraints I have been advised 27 that I have to observe, and that was the approach that I took to it. 28 29 In the immediate aftermath of those queries, you had a 369 Ο.

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1 meeting with the Commissioner on 16th May. We've heard 2 about this earlier on. This is the meeting that is recorded in the notes of Ms. Mannion, which we were 3 provided with for the first time yesterday, and up 4 5 until that point you'll appreciate that a number of 13:54 6 other people who were at the meeting, certainly one, 7 two I think gave evidence here, and it had been said, 8 certainly said by everybody, that there didn't seem to be a record of that meeting, but we now have a record 9 of the meeting from Ms. Mannion. Prior to that 10 13.55 11 meeting, at page 4801 --12 That's? Α. 13 In fact, 4802, the next page. 370 Q. Volume 9. 14 Mr. Quattrociocchi is telling a large number of people that "the Tánaiste will be meeting the Garda 15 13:55 16 Commissioner today at 5:30". And then the items to be 17 discussed, the first item is the O'Higgins Commission Do you see that? 18 report. 19 Yes. Α. And then on the previous page then there's the 20 371 Ο. 13:55 follow-up to that chain. Mr. Power, at the bottom of 21 22 the page, asks Ms. Connolly "to assemble all the 23 material we used in the last week." 24 Have you any idea what material he's talking about that was used in the last week? 25 13.56 26 I would imagine that it's everything to do with what I Α. 27 would have used, what I would have said in response 28 to -- let me just check. This is the 16th, is it? Ιt 29 would normally refer to any public queries I'd

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responded to, if the Dáil was sitting, parliamentary 1 2 questions, order of business, notes that might have been provided to the Taoiseach in relation to these 3 issues - these were very topical issues at that point -4 5 the O'Higgins, gangland and industrial relations, there 13:56 were big challenges in each of those areas that 6 7 particular week. So it would be -- that would be a 8 normal enough request. Mr. Power said that the material that he's talking 9 372 Q. about is the material contained in the briefing 10 13.56 11 document starting at page 4803, the lengthy briefing 12 document. 13 Yes. Α. 14 373 Ο. You'll see that he's asking Ms. Connolly to put the material into a Word format. 15 13:57 16 Yes. Α. 17 374 But we don't have the material that existed before it 0. 18 was allegedly put into that format, we don't have the 19 material. 20 I would imagine that would have been just sourced from, Α. 13:57 vou know, whatever had been -- I don't remember now if 21 22 the Dáil was sitting, you know, but that would have 23 been put together from probably a fairly wide variety 24 of sources. I mean, that was the 16th May. 25 Yes. 375 Q. 13.57 So it would have been any of the information, any work 26 Α. 27 the Department had done on the O'Higgins Commission of Investigation from publication. Obviously I had 28 29 done -- I think I had done a door-step on the 11th May,

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I had done an interview with RTÉ when I was in Geneva 1 2 on the day that I launched the report, the 11th May, I 3 did a direct interview from there, about the launch of the O'Higgins Commission. I was going to London the 4 5 next day. I came back on the Monday -- I came back on 13:58 6 the Friday evening. So it would have been, you know, 7 bringing together the work that had been done in the 8 Department up to that point, and, you know, it was to do with a briefing for me. You know, it's really an 9 aide-memoire as opposed to anything else. 10 13.58 11 376 Q. It's an aide-memoire about only one of the issues that 12 you were proposing to discuss, isn't that right? If 13 you look at Mr. Quattrociocchi's email on page 4802, he 14 says: 15 13:58 "Items to be discussed are as follows: O'Higgins 16 17 Report, gangland, industrial relations." 18 19 And then if you look at the briefing document that's 20 prepared, starting at page 4803, it's entirely to do 13:58 with the O'Higgins Report. 21 22 That's right. And I hadn't particularly noticed that, Α. 23 but it may be that I would have had -- because of what 24 was happening, I think there was a murder on the 25 previous, I think it was the Tuesday, it may just have 13.58 been that I had other documentation in relation to 26 27 those issues or -- I don't -- I can't -- I'm sure there were briefing documents on those issues as well, but 28 29 I'm not sure. Maybe they are available, I'm not sure.

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1			There might have been different briefings on each of	
2			the documents.	
3	377	Q.	Yes.	
4		Α.	Or each of the areas, I should say, the areas, the	
5			industrial relations and gangland.	13:59
6	378	Q.	And we had a note we have a note of the meeting that	
7			took place that evening, and subsequently you received	
8			an email from the Garda Commissioner directly and this	
9			is at page 4217. Do you have that?	
10		Α.	What volume is that?	13:59
11	379	Q.	Volume 8.	
12		Α.	Volume 8. Yes.	
13	380	Q.	You see on that page	
14		Α.	Yes.	
15	381	Q.	at the top, this is an email sent directly to your	14:00
16			Oireachtas	
17		Α.	Yes.	
18	382	Q.	email account from the Garda Commissioner. Would it	
19			have been normal for the Garda Commissioner to	
20			communicate with you directly, without going through	14:00
21			the officials?	
22		Α.	NO.	
23	383	Q.	So this would have been	
24		Α.	Yes.	
25	384	Q.	very unique?	14:00
26		Α.	It's the only one, yes. It's the only one.	
27	385	Q.	It's the only one. So she says:	
28				
29			"I understand you may have to make a statement this	

1 morning and I enclose a draft for your consideration." 2 3 And then she is enclosing the advice of the legal team. And in the second email on the bottom of the page which 4 5 is headed -- sent two minutes later, it's headed: 14:00 6 7 "Draft material that may be of some use to you this 8 morning." 9 The Garda Commissioner in her evidence said that what 10 14.01 11 she was, in fact, doing there was not drafting a 12 statement for you, but, in fact, giving you some facts 13 that you might want to use in a statement. When you 14 look at what's being said, do you agree with her assertion that that is what she was doing? 15 14:01 16 Well, I can't -- I mean, I can't second-guess what she Α. 17 was doing, but certainly, you know, my statements were 18 worked on in the Department, and you can see when I 19 went in to the order of business the next day, the 20 approach that I took, which is distinctly different. 14:01 21 So --22 386 Yes. Q. 23 -- she gave her evidence on that, so I won't --Α. 24 You didn't, in any event, take on board her draft 387 Q. 25 statement when you issued the statement? No? 14.01 26 Well, I was always responsible for whatever I said in Α. 27 the Dáil and I took full responsibility for that. 28 Yes. 388 Q. 29 And that is what I always did, and, you know, that was Α.

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my approach, based on my own assessment of the
 situation.

3 389 Q. And, of course, this was in the context of a
4 particularly fraught, I think, political time, more so,
5 perhaps, I suggest, for the Garda Commissioner than for 14:02
6 you, because she was getting door-stepped and getting
7 asked about these things all the time, isn't that
8 right?

Well, she gave her evidence about that. But clearly, 9 Α. as Minister for Justice, I was concerned, because this 10 14:02 11 was being raised again and again in the House, and I --12 as I said, I've explained the broader context to you as 13 It was extremely important that a decision was well. 14 taken on how to approach this period and this issue and 15 there was a sense of uncertainty around and I wanted to 14:02 16 address that as best I possibly could in terms of whatever information I could gather, both from the 17 Garda Commissioner and making my own assessment of the 18 situation and what was required. We were, I think, 19 just into the first week of -- the first week or the 20 14:03 second week of a new Government. There were these 21 broader, very serious issues, that the Gardaí were 22 23 dealing with as well. But notwithstanding those, I 24 still had to deal with, you know, even though they were 25 obviously -- and I didn't know the context of the 14.03 transcripts, I couldn't, I couldn't assume they were 26 27 accurate, I couldn't assume anything about the context in which they had been first of all raised in the 28 29 Commission or why they had been leaked or anything like

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that, they were just there, and the issue needed to be 1 2 dealt with. So I had to ask the Garda Commissioner, 3 you know, for her response to that. And she -- as I said, she gave her response and was very clear that she 4 5 wanted the O'Higgins Commission -- obviously that she'd 14:03 6 cooperated fully with it, but she wanted it to arrive 7 at the truth of the situation, and that was her whole 8 intention, and so on. We've, I think, gone into the detail of what she said, that there was no -- that 9 there was confusion between -- obviously I didn't know 10 14.04 11 precisely what she meant by there being confusion 12 between motivation, integrity and credibility, but what 13 she said was that she never believed that Sergeant 14 McCabe was acting out of malice and that she did not 15 question his integrity, and that's what she told me 14:04 16 when I very directly asked her about it. 17 I think you're moving on. That's the meeting of the 390 Q. 18 19th, of which we did have a note. The 25th as well, yes. 19 Α. And you discussed that earlier with Mr. McGuinness. 20 391 **Q**. 14:04 21 Yes. Α. 22 And there is a departmental, I think, minute of that 392 Q. 23 meeting at page 4825, Volume 9. I think this was the 24 meeting that you described earlier as, I'm trying to recall the exact word used, "difficult" might be the 25 14.04right word? 26 27 Well, it was very direct. Α. 28 393 I can understand that, Deputy Fitzgerald. Can I just Q. 29 ask you, in the context of that meeting, again present

1 at that meeting were the Commissioner, Mr. O'Leary and 2 Mr. Waters, did nobody at that meeting say at any 3 stage, well, this came up and we talked about it in May of last year when there was a brouhaha at the 4 5 Commission about the stance to be adopted, there was no 14:05 mention of that at all? 6 7 No. And I suppose you would have to see that in the Α. 8 context of the current situation, in May '16, where there was a whole lot of controversy on the table, 9 where there were a lot of issues to be dealt with, 10 14.0511 where the O'Higgins Commission had reported, and whatever the issues that had arisen back in 2015 that 12 13 are referenced, as you now say, in the email, the 14 emails, they had been dealt with. We'd got -- if you 15 like, we'd gone beyond that point. We'd got to the 14:06 16 point where there was publication, where the Judge had 17 not said anything at all about these issues. So. no. 18 nobody kind of went back there, because we were dealing 19 with the current issues about the publication and, as I said, my approach, you know, pre -- during the time 20 14:06 that the Commission was meeting, clearly, I mean, it 21 22 was in a totally different situation once the report 23 was published. So, I mean, the answer to your question 24 is, as far as I'm aware, and it isn't reflected in any 25 minute, nobody went back to talking about what had 14.0626 happened a year previously at the beginning of the 27 O'Higgins Commission, and I think that is 28 understandable in a way. I can understand you raising 29 the query. But it's understandable; we were at a

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1 totally different point in time, as I've said, where 2 the O'Higgins Commission had been published, where 3 there was no comments about anything untoward in terms of the behaviour of legal teams, as far as I could 4 5 read. 14:06 6 394 I don't want to be unfair to you, and I suppose you can Q. interpret this in a number of ways, but just so that we 7 8 are clear, and I was going to ask you this in the context of what you mentioned earlier about the 9 confusion identified by the Commissioner between the 10 14.07 11 concepts of malice, integrity and motivation, because I 12 suggest, and it was suggested I think to the 13 Commissioner, she suggested that, well, you could 14 possibly suggest that he was acting out of a good 15 motivation, which I have to suggest to you makes no 14:07 16 But just to clarify one issue: sense. In the 17 O'Higgins Commission report at paragraph 3.4, the Judge 18 concluded, and it's just one line, he said --19 Yes. Α. -- "Some people wrongly and unfairly cast aspersions on 14:07 20 395 Ο. Sergeant McCabe's motives." 21 22 23 So technically it's not correct to say that he didn't 24 refer to it at all. 25 Α. Yes. 14.07 He did say that it was wrong and unfair for people to 26 396 0. 27 cast aspersions --28 Α. Yes. 397 29 -- on Sergeant McCabe's motives. **0**.

Yes, I realise that he said that, but he didn't -- I 1 Α. 2 mean, he didn't go on to attribute that, or to, you 3 know, take it up as a point about how everything had been conducted, is my understanding of the report. It 4 5 was just a comment in the early -- I think it's in the 14:08 introduction, it's a comment, but it's not dealt with 6 7 in any substantive way by the Judge at that time. AS 8 far as I'm aware, and he does make the other points about the conduct of the Commission and, you know, 9 10 thank people. But I'm aware that he said that, all 14.08 11 right, but it wasn't gone into in any detail. But I 12 suppose I saw that as, you know, really a support for 13 Sergeant McCabe from the Judge, that there was no 14 question of attacking, you know --15 CHAIRMAN: Well, I mean, there's the previous paragraph 14:08 16 as well, you know, Mr. McGarry. Some of the complaints 17 made by Sergeant McCabe have been upheld in this 18 report, especially in respect of the quality of the 19 investigations examined by the Commission, other 20 complaints made by him have been proven to be 14:09 21 overstated or exaggerated, some were unfounded and some 22 have been withdrawn. And then it goes on to say some 23 people, not parties, wrongly and unfairly have cast 24 aspersions, and he says Sergeant McCabe has performed a 25 genuine public service at considerable personal cost. 14.09MR. McGARRY: Absolutely, Chairman. 26 CHAIRMAN: There it is. 27 28 MR. McGARRY: What we are talking about here now is a very specific issue, which is the issue that you're 29

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1 inquiring into, which is the motivation issue, and 2 that's the issue that was the subject of the political controversy in 2016 and that's the issue that the 3 witness was giving evidence about, and whilst 4 5 Mr. Justice O'Higgins made certain findings in relation 14:09 to the substance of certain complaints, his comment in 6 7 relation to the unfair and wrong aspersions being cast 8 on Sergeant McCabe's motives don't impinge upon the substance of those complaints at all. 9 So the issue that we're canvassing, and it's the issue 10 398 Q. 14.09 11 that you, Deputy Fitzgerald, were talking to the 12 Commissioner about in your meeting on the 19th May 13 2016, was this issue about motivation, and all I was 14 doing was pointing out to you that, in that particular 15 context, in that very specific context, Mr. Justice 14:10 16 O'Higgins had concluded that it was wrong and unfair to 17 do so. Do you accept that --18 But he didn't attribute it, isn't that right? Α. 19 399 Well, do you accept that if the Commissioner had not Q. adopted the strategy that she adopted, or that if 20 14:10 somebody had said, stop, this is the wrong way to go, 21 22 that we mightn't have got to the stage where 23 Mr. Justice O'Higgins would have had to make a finding 24 on that at all? On the motive? 25 Α. 14:10 26 400 Yes. 0. 27 well, it could have been any one of the other. Α. I mean. it could be any of the witnesses. I mean, as I say, 28 29 it's not clear who Judge O'Higgins is referring to, but

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1 I assume -- I mean, I don't know about the internal 2 workings of it, but I assume it could have been any one 3 of a number of any witnesses. There were guite -- I mean, there were a lot of different parties represented 4 5 there, so it could have been other people who were 14:11 6 querying that, I don't know. And it's not clear from 7 the O'Higgins Report who it was referencing. 8 MR. McGARRY: Thank you, Deputy Fitzgerald. 9 Thank you. Α. 10 14:11 11 MS. FRANCES FITZGERALD WAS CROSS-EXAMINED BY 12 MR. DIGNAM: 13 14 401 Ο. MR. DIGNAM: Deputy Fitzgerald, my name is Conor 15 Dignam. I appear on behalf of An Garda Síochána --14:11 16 Yes. Α. 17 402 -- including former Commissioner O'Sullivan. Q. And I 18 just want to ask you questions in a few discrete areas. 19 If I could start, I suppose, at the end, at the 20 post-publication period. 14:11 21 Yes. Α. 22 403 And work our way back to 2015. I think you've had a 0. 23 long political and public life. I take it that you've 24 observed and experienced many political controversies 25 during your career. Is it fair to say that in these 14.12 26 weeks, from about the 11th May 2016 to late May, there 27 was a raging controversy about what had happened and 28 what was said to have happened in O'Higgins? 29 Yes, there was. Α.

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404 Q. I think Ms. O'Sullivan described it as a vortex which
 was engulfing her and others, you probably read that in
 the transcripts --

4 A. Yes.

5 405 -- of her evidence. And she described it in very vivid 14:12 Q. terms in her evidence. 6 I don't need to open those to 7 But the Chairman has her evidence. Can I take it you. 8 that part of that controversy was that (a) there was a huge amount of discussion about, I think as you put it 9 in your evidence early this morning, restoring public 10 14.12 confidence in An Garda Síochána? 11

12 A. Yes.

13 406 And former Commissioner O'Sullivan said the same thing Q. 14 in her evidence. Would you describe that as a core or 15 central concern of yours at the time? 14:13 16 I mean, I had a number of concerns. First of Yes. Α. 17 all, I was concerned about the controversy that had 18 arisen and the transcripts and how that could be 19 addressed. Because even though, as I've said, I didn't 20 know the context of them, they were generating an awful 14:13 lot of comment about the O'Higgins Commission, about 21 22 how the Commissioner had behaved, about how Sergeant McCabe had been treated, and there was an awful lot of 23 24 implications made and a lot written and said at the time. And the Commissioner described it as she 25 14.13described it. Equally, I would have been -- so I 26 27 wanted to, you know, I wanted to be as clear as I could 28 be in relation to that, both from a legal point of view 29 and from the point of view of whatever the Garda

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1 Commissioner could explain about that, in the face of 2 what was, you know, a huge interest from the media and indeed the public and a lot of assumptions being made 3 about everyone's behaviour really in relation to the 4 5 O'Higgins Commission. But I was equally concerned or, 14:14 you know, it was an issue at the same time, given the 6 7 broader situation, there was an IR situation and there 8 was a very, very serious gangland situation, which the Commissioner had responded I thought very ably to, and 9 10 had asked during -- began during the election campaign, 14:14 11 but had asked for an Emergency Response Unit and 12 overtime, and so on. There was a lot of implications 13 at that time as to how to manage that situation. It 14 was very challenging and it was, you know, very 15 So there was the point about the Gardaí intense. 14:14 16 needing to get on with their work in relation to 17 managing that issue, as absolutely best they could. 18 And there was a huge concern at Government to give them 19 whatever resources they needed in order to deal with And the resources hadn't been there 20 that issue. 14:15 previously. It was really important to respond to what 21 22 was going on. And, as I say, a sort of bubbling IR 23 issue as well. So, yes, there would have been -- there 24 would have been an issue about, you know, confidence in 25 law and order and security and criminal activity and 14.1526 gangs and dealing with that. So that was parallel to 27 what was happening as a result of the O'Higgins Commission and the leaked transcripts. 28 29 Yes. And just that last point that you mentioned, I 407 Q.

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think you dealt with that in your evidence this morning also, that you had a serious concern in the midst of this maelstrom of this partial leaking of the transcripts from the O'Higgins Commission in those days --

14:15

Α.

Yes.

6

7 -- or around the 11th May 2015. I think part of that 408 0. 8 controversy, am I correct in saying, was also that there were demands for the Commissioner's resignation? 9 Yes, I think that was -- she had been appointed 10 Α. 14.1511 obviously by an open competition just a couple of 12 months earlier to the permanent position of 13 Commissioner of An Garda Síochána, and yes, I think 14 there were -- I do seem to remember that there were. 15 409 I'm not sure whether you have had an opportunity to Q. 14:16 16 read Mr. Flahive's, the transcripts of Mr. Flahive's 17 evidence, but he gave evidence as to the significance 18 of another -- of a resignation or retirement of a 19 Commissioner of an Gardaí so shortly after the retirement of the previous Commissioner. 20 14:16 Well. that's true. But at the same time, I mean, I 21 Α. 22 obviously wanted to, as I say, interrogate the issue as 23 much as I could. But, I mean, that was the context. 24 It was a new Government. It was a Commissioner who had 25 just been appointed, who was dealing with very 14.1626 significant issues. But nonetheless, the issues about 27 the O'Higgins Commission that had arisen, they needed to be dealt with as well. But yes, there were calls, 28 and that continued over most of her time as 29

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1			Commissioner.	
2	410	Q.	Yes. And as well as demands for the former	
3			Commissioner's resignation, I think you also said in	
4			your evidence this morning that there also very vocal	
5			demands for information	14:17
6		Α.	Yes.	
7	411	Q.	about what had happened in the O'Higgins Commission?	
8		Α.	That's right.	
9	412	Q.	And I think you gave evidence this morning that you	
10			asked the Commissioner to, as you put it, put as much	14:17
11			information into public as possible?	
12		Α.	Yes.	
13	413	Q.	Yes.	
14		Α.	Yes.	
15	414	Q.	And that seems to have been a refrain in your	14:17
16			interactions with the Commissioner?	
17		Α.	Yes. I mean, I think that would have made yes,	
18			obviously as much as we could, and certainly from my	
19			point of view, as much as I could within legal	
20			constraints, as much that would, when I went to speak	14:17
21			in the Dáil on the 25th, that I could, you know, be	
22			as well, first of all, I had to satisfy myself	
23			that I had had, you know, a very upfront discussion	
24			with the Commissioner about her approach and that I saw	
25			her face to face and discussed it. That was the first	14:17
26			point. And then that within the legal constraints,	
27			yes, you know, can you explain as much as you can	
28			within the legal constraints, that, you know, certainly	
29			from my point of view, were there, and within the	

1			confines of the Commission of Investigation where you	
2			do have to go to the High Court if you want to put the	
3			information in the public arena. Yes, so there was a	
4			request for as much information as possible.	
5	415	Q.	And is it your impression that, in response to that	14:18
6			request, the former Commissioner was willing to provide	
7			as much information as she was legally entitled to	
8			provide?	
9		Α.	Yes.	
10	416	Q.	This was the controversy that was the context and	14:18
11			issues that were arising	
12		Α.	Yes.	
13	417	Q.	in the controversy in that middle period in May	
14			2016. And is it fair to say that they were shared	
15			concerns to the extent that you know what was	14:18
16			concerning the former Commissioner, were they her	
17			concerns also?	
18		Α.	Shared concerns about the range of items I've outlined?	
19	418	Q.	Yes.	
20		Α.	Well, yes, I think, you know, obviously she would be	14:18
21			concerned about confidence in An Garda Síochána and her	
22			own position, obviously, and she seemed to be quite	
23			concerned about that that week, more than I probably	
24			would have realised, actually, but having read what	
25			she had to say. Yes, I mean, they were shared	14:19
26			concerns, obviously, because they were about very	
27			important issues. I mean, her approach to	
28			whistleblowing was being questioned and her approach to	
29			Sergeant Maurice McCabe was being questioned at the	

1 Commission. It was a very difficult situation, as she 2 said to me when I met her, in terms of, I mean, I recognise, of course, that -- I'm not for a moment 3 saying that the whole situation hadn't been difficult 4 5 for Sergeant Maurice McCabe either. You know, I am 14:19 6 conscious of all of those things. But they were shared 7 concerns, yes. 8 419 And is it fair to say or do you accept that an Q. 9 additional concern of hers was to have an expression of confidence from you, as Minister, in that period of 10 14.20 11 time? 12 I mean, that seems to have been arisen, as I say, Α. Yes. 13 in particular on the 17th, that seemed to be an issue. 14 But, as I said, I mean, the Government nor myself were 15 never -- we had never not expressed -- you know, we had 14:20 16 always expressed confidence in the Garda Commissioner, 17 so had hadn't changed. But nevertheless, there was a 18 context in which what had arisen needed to be discussed, but yes. 19 20 I think you mentioned earlier on this morning in your 420 Q. 14:20 21 evidence that -- the way questions were put to you on 22 the 'Prime Time' programme --23 Yes. Α. 24 -- on the evening of the 17th May. Now, unfortunately 421 Q. 25 that doesn't appear to be available on the RTÉ website, 14:20 so we haven't been able to, at least in recent days, 26 27 been able to check the description of how the questions 28 were put to you --29 Α. Yes.

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-- on the evening in question. But in any event, the 1 422 Q. 2 Commissioner, the former Commissioner has given her evidence that the impression she had at least following 3 those questions being put and your responses was that 4 5 there was some doubt about your confidence in her. 14:21 6 Α. Yes.

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In other words, I think what she said was, CHAIRMAN: that you restrained from saying 'I have full confidence in the Garda Commissioner' or 'I have confidence in the Garda Commissioner', isn't that the issue, Mr. Dignam? 14.21 11 MR. DIGNAM: Yes.

12 Well, I did -- that programme was available just, you Α. 13 know, within the last, I don't know, two weeks or so. 14 I did look at it again just to remind myself about it. 15 And, you know, the context, as I say, in which that --14:21 16 there was a lot of discussions about the Mullingar meeting, about various -- about the two Gardaí and 17 18 whether they -- you know, what approach they had taken 19 to that meeting, there was quite a lot of questions asked about that, and I didn't know what approach they 20 14:21 had taken to it. I did very much focus on the 21 22 constraints in relation to a leaked transcript. Ι 23 focused on the legal situation that I was in. And the 24 final question to me was, you know, if a Garda Commissioner had done A, B or C, if a Garda 25 14.22Commissioner had done, you know, had done -- I'm trying 26 27 to think exactly how it was framed, but it was very hypothetical. And in that context, I refused -- you 28 know, would you have confidence if a Garda Commissioner 29

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1 had done certain things. And, you know, I felt, very 2 strongly, when I was asked that question, that I could not respond to a hypothetical situation about what a 3 Garda Commissioner might or might not have done. Now, 4 5 other people might have dealt with it differently. 14:22 6 That's the way I dealt with it. And as a result then, 7 it was deemed, I think, by some media commentators and 8 maybe perhaps by -- I don't know what the Commissioner felt about it, I think she was concerned, but I wasn't 9 10 asked directly, do you have confidence in the Garda 14.22 11 Commissioner now? If I had been, I would have said 12 yes. 13 CHAIRMAN: Was it a somewhat extreme question, like if 14 the Garda Commissioner murdered his mother would you have confidence in him? Or what was it? 15 14:23 I think it was more if a Garda Commissioner had, you 16 Α. 17 know, undermined -- it was to do with what they 18 believed had happened. 19 CHAIRMAN: It was directly related, obviously, to 20 the --14:23 It was linked to the O'Higgins Commission. 21 Α. 22 CHAIRMAN: Yes. 23 And, you know, if a Garda Commissioner had deliberately Α. 24 undermined or, I just can't remember the exact detail 25 of the way the question was put, but it was making an 14.23implication about how a Garda Commissioner might have 26 27 behaved. And I felt --28 So it was a perfectly proper question. If CHAIRMAN: 29 the Garda Commissioner had been very unfair to a member

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1			of the Gardaí	
2		Α.	Yes.	
3			CHAIRMAN: would you have confidence in such a	
4			person? The answer to which would, I presume, probably	
5			be, well, you would certainly have questions about it. $_{14}$	:23
6		Α.	Yes, yes. But what I said was that it was so	
7			hypothetical because it was clearly linked, you know,	
8			to the leaked transcripts and to what had happened at	
9			the O'Higgins Commission that I responded the way I	
10			did. But it wasn't to imply no confidence in An Garda 14	:23
11			Síochána in the Commissioner.	
12	423	Q.	MR. DIGNAM: No. And I think, in fact, you're	
13			correct	
14		Α.	Yes.	
15	424	Q.	Deputy Fitzgerald, in that the programme does seem $_{^{14}}$	:24
16			to have been available on the website up until at least	
17			5th January.	
18		Α.	Yes, I did watch it.	
19	425	Q.	I'm not sure when you had occasion to watch it. But in	
20			any event, the Commissioner has given her evidence that ${}_{14}$	:24
21			the impression that she had	
22		Α.	Yes.	
23	426	Q.	was that there was some doubt about your confidence	
24			in her.	
25		Α.	Yes.	:24
26	427	Q.	And I think you will accept, no doubt, that where there	
27			is a doubt about the Minister for Justice's confidence	
28			in the Garda Commissioner, a very serious situation has	
29			arisen?	

2428Q.No.3A.The intention was actually to try and deal with the questions that were being asked. And it was a difficult situation, so and it was very14:246specifically you know, the questions were very specific that evening.14:248429Q.And in any event then, you had a meeting on the 19th May?14:2410A.Yes.14:2411430Q.And I think ultimately confidence was expressed14:2412A.Actually, that night I think there were a number of media queries, the night after I did 'Prime Time', and I understand that my own press adviser, Stephen, reiterated that we had confidence. Because as I say,14:28	1		Α.	That wasn't the intention.	
4questions that were being asked. And it was a5difficult situation, so and it was very6specifically you know, the questions were very7specific that evening.8429Q.And in any event then, you had a meeting on the 19th9May?10A.11430Q.And I think ultimately confidence was expressed12A.Actually, that night I think there were a number of13media queries, the night after I did 'Prime Time', and14I understand that my own press adviser, Stephen,	2	428	Q.	NO.	
5difficult situation, so and it was very14:246specifically you know, the questions were very7specific that evening.8429Q.And in any event then, you had a meeting on the 19th9May?10A.11430Q.And I think ultimately confidence was expressed12A.Actually, that night I think there were a number of13media queries, the night after I did 'Prime Time', and14I understand that my own press adviser, Stephen,	3		Α.	The intention was actually to try and deal with the	
<ul> <li>specifically you know, the questions were very specific that evening.</li> <li>429 Q. And in any event then, you had a meeting on the 19th May?</li> <li>A. Yes. 14:24</li> <li>430 Q. And I think ultimately confidence was expressed</li> <li>A. Actually, that night I think there were a number of media queries, the night after I did 'Prime Time', and I understand that my own press adviser, Stephen,</li> </ul>	4			questions that were being asked. And it was a	
7specific that evening.8429Q.9And in any event then, you had a meeting on the 19th9May?10A.14:2411430Q.10And I think ultimately confidence was expressed12A.13media queries, the night after I did 'Prime Time', and14I understand that my own press adviser, Stephen,	5			difficult situation, so and it was very	14:24
<ul> <li>8 429 Q. And in any event then, you had a meeting on the 19th</li> <li>9 May?</li> <li>10 A. Yes. 14:24</li> <li>11 430 Q. And I think ultimately confidence was expressed</li> <li>12 A. Actually, that night I think there were a number of</li> <li>13 media queries, the night after I did 'Prime Time', and</li> <li>14 I understand that my own press adviser, Stephen,</li> </ul>	6			specifically you know, the questions were very	
<ul> <li>9 May?</li> <li>10 A. Yes.</li> <li>11 430 Q. And I think ultimately confidence was expressed</li> <li>12 A. Actually, that night I think there were a number of</li> <li>13 media queries, the night after I did 'Prime Time', and</li> <li>14 I understand that my own press adviser, Stephen,</li> </ul>	7			specific that evening.	
10A.Yes.14:2411430Q.And I think ultimately confidence was expressed1212A.Actually, that night I think there were a number of1313media queries, the night after I did 'Prime Time', and1414I understand that my own press adviser, Stephen,	8	429	Q.	And in any event then, you had a meeting on the 19th	
<ul> <li>11 430 Q. And I think ultimately confidence was expressed</li> <li>12 A. Actually, that night I think there were a number of</li> <li>13 media queries, the night after I did 'Prime Time', and</li> <li>14 I understand that my own press adviser, Stephen,</li> </ul>	9			May?	
<ul> <li>A. Actually, that night I think there were a number of</li> <li>media queries, the night after I did 'Prime Time', and</li> <li>I understand that my own press adviser, Stephen,</li> </ul>	10		Α.	Yes.	14:24
13 media queries, the night after I did 'Prime Time', and 14 I understand that my own press adviser, Stephen,	11	430	Q.	And I think ultimately confidence was expressed	
14 I understand that my own press adviser, Stephen,	12		Α.	Actually, that night I think there were a number of	
	13			media queries, the night after I did 'Prime Time', and	
15 reiterated that we had confidence. Because as I say, 14:25	14			I understand that my own press adviser, Stephen,	
	15			reiterated that we had confidence. Because as I say,	14:25
16 the Government were never at a point where they were	16			the Government were never at a point where they were	
17 saying that they did not, either I or the Government	17			saying that they did not, either I or the Government	
18 were never at a point where we were saying we did not	18			were never at a point where we were saying we did not	
19 have confidence in the Garda Commissioner.	19			have confidence in the Garda Commissioner.	
20 431 Q. And I think that's the context, would you agree, Deputy $_{14:25}$	20	431	Q.	And I think that's the context, would you agree, Deputy	14:25
21 Fitzgerald, for Ms. O'Sullivan's email on the morning	21			Fitzgerald, for Ms. O'Sullivan's email on the morning	
22 of the 18th May?	22			of the 18th May?	
23 A. Yes.	23		Α.	Yes.	
24 432 Q. These concerns, your request for information?	24	432	Q.	These concerns, your request for information?	
25 A. Yes.	25		Α.	Yes.	14:25
26 433 Q. The fact that she had the impression that there was	26	433	Q.	The fact that she had the impression that there was	
27 some lack of confidence or possible lack of confidence	27			some lack of confidence or possible lack of confidence	
28 in her, that she then forwarded the email on the 18th	28			in her, that she then forwarded the email on the 18th	
29 May to you, at approximately nine o'clock on the 18th	29			May to you, at approximately nine o'clock on the 18th	

May?

2 A. Yes, it was the overall situation.

3 434 Q. If I could then ask you just to turn your mind back to
4 2015. First of all, you'll accept, Deputy Fitzgerald,
5 that the Gardaí are accountable to the Minister for 14:26
6 Justice?

7 A. Mm-hmm.

8 435 Q. And is it correct to say, as we've heard other people
9 say in evidence, that there are close contacts between
10 An Garda Síochána and the Department of Justice?
11 A. Yes.

14.26

12 436 Q. Yes. And is it correct to say that it's not unusual 13 for An Garda Síochána to notify or to inform or advise 14 the Department of Justice if they become aware of an 15 issue which may become of public interest or public 14:26 16 concern or public controversy?

17 I mean, what I would say is that there are a lot Α. Yes. 18 of very appropriate contacts between the Department of 19 Justice and An Garda Síochána. And I think when I was asked at the beginning of my evidence about those, they 14:26 20 cover a very wide -- appropriately cover -- if you look 21 22 at the description on the web of the role, for example, of the head of policing, you know, the relationship of 23 24 An Garda Síochána to the Department of Justice and to 25 the section that deals with policing, there is, you 14.27 26 know, a huge amount of engagement. Now, it's 27 appropriate engagement, across a whole range of issues. 28 It's very, very detailed. I think it's often 29 misunderstood, that, you know, it's inappropriate. But

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1 I would just make the point that, in terms of setting 2 up the Policing Authority, that this is linked to this That is not to say that -- and the view I 3 auestion. took and the Government took, and the previous 4 5 Government had taken, is that in terms of policing in 14:27 the country and the role of An Garda Síochána, it would 6 7 be a very good development to have another independent 8 body who would also, where the Gardaí would -- where there would be an overview of policing, where public 9 meetings would be held, where there would be 10 14.2711 accountability and where, you know, clearly, in the 12 Policing Authority Bill, we laid out the role. SO I 13 was of the view that it was actually the right direction to go in to -- and it was a shift in 14 15 relationships, just to make this point. It mightn't 14:28 16 seem that relevant, but I think it is. In the sense 17 that to make sure there was another body, and that 18 would inevitably, and part of the discussions in 2015 19 were about the change in the relationship that that would necessarily lead to, between the Department of 20 14:28 Justice and An Garda Síochána. 21 But notwithstanding 22 that, there would still be a very wide range of areas 23 where there would be detailed contact and where the 24 Commissioner would be in a position, where it was 25 appropriate, to inform, you know, on a very regular --14.2826 a daily basis, actually, events. So, for example, 27 security, clearly a very important area where there 28 would be ongoing briefings between -- and information 29 exchanged, between the Commissioner and the appropriate

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1 departmental staff.

2 437 Q. Commissioner O'Sullivan, as you know, her phone records
3 show phone contact with the Department --

A. Yes.

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5 438 -- on the 15th, and indeed Mr. O'Leary has given Q. 14:29 evidence of phone contact. Commissioner O'Sullivan 6 7 says that she has no specific recollection, but that 8 she would have been phoning to see if there's anything she should know when making her -- that she should take 9 into account in making her decision as to the approach 10 14.29 11 that should be taken; secondly, because she knew that 12 an issue had arisen between lawyers in the Commission 13 and there was a possibility that that would become a 14 matter of public comment and she wanted to inform the Department of that. That was her evidence or her 15 14:29 16 explanation as to why there would have been phone 17 contact in the afternoon of the 15th May. You seemed 18 to say earlier on in your evidence that you consider 19 that phone contact to have been inappropriate? 20 Did I use the word "inappropriate"? Α. 14:30 21 439 Yes. Ο. 22 well, I suppose what I -- I can only say that I Α. Okay.

A. Okay. Werr, I suppose what I == I can only say that I
had a very clear view about the Commission of
Investigation. My reflection, you know, on it, was
that it was -- and I think I also said when I spoke 14:30
about this, that Mr. O'Leary made the point that he was
very conscious of the boundary, if you like, so that's
more the kind of point that I was making, that clearly
there were boundary issues that arose, inevitably.

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1	440	Q.	Yes.	
2		Α.	Now, from a public interest point of view, in terms of	
3			saying this may come to attention, that's a	
4			different you know, that may well have been part of	
5			the discussion as well.	14:30
6	441	Q.	Yes.	
7		Α.	And that's quite appropriate.	
8	442	Q.	It might assist you, Deputy Fitzgerald, Mr. O'Leary	
9			considered it to be a colleague to colleague	
10		Α.	Yes.	14:31
11	443	Q.	imparting of information?	
12		Α.	Yes.	
13	444	Q.	But he did, in fairness, say that the Department	
14			couldn't have a role in advising or directing?	
15		Α.	And I totally recognise that.	14:31
16	445	Q.	Yes.	
17		Α.	And I totally recognise the integrity of the approach	
18			that he took to it. And, you know, I can only assume	
19			that the Garda Commissioner was also aware of that.	
20			And, you know, I do accept the description of it	14:31
21	446	Q.	Yes.	
22		Α.	that it was colleague-to-colleague. But I was	
23			trying to say that you know, I suppose when I saw it	
24			first, I was aware of the kind of boundary issues that	
25			inevitably would arise.	14:31
26	447	Q.	Yes. So do I take it then that in fact, I think the	
27			phrase you used was that it was "not appropriate" as	
28			opposed to "inappropriate". But can I take it that	
29			your concern about appropriateness was the content or	

1			the possible crossing of a boundary	
2		Α.	Yes.	
3	448	Q.	rather than the phone contact itself?	
4		Α.	Oh, yes, it was, absolutely. It was completely to do	
5			with and you could see that Mr. O'Leary was also	14:31
6			conscious of that and made it very clear.	
7	449	Q.	Yes.	
8		Α.	And, you know, he made it very clear. So, yes.	
9	450	Q.	And I think Mr. Flahive, just for the purpose of	
10			completeness, in his evidence he was asked the question	14:32
11			whether it was an illegitimate source of information,	
12			and he said: no, I never regarded it as such.	
13		Α.	As what?	
14	451	Q.	As an illegitimate source of information. Then just	
15			the final area that I wanted to discuss with you,	14:32
16			Deputy Fitzgerald, is, earlier in your evidence you	
17			were dealing with your contacts with Sergeant McCabe, I	
18			think starting, and you might correct me if I am wrong,	
19			I think starting in 2014?	
20		Α.	That's right.	14:32
21	452	Q.	And I don't propose to take to you the documents, I	
22			don't think it is necessary, they've already been	
23			opened to the Tribunal. But you received, I think, an	
24			email from Sergeant McCabe in which he was raising	
25			concerns about	14:32
26		Α.	Yes.	
27	453	Q.	workplace issues and he also raised concerns about	
28			an article in the 'Garda Review'. That is at page	
29			3441, for completeness. And I think it was on foot of	

1			those contacts that you then wrote to the Garda	
2			Commissioner?	
3		Α.	Yes.	
4	454	Q.	Because I think you said in your evidence	
5		Α.	Yes, yes.	14:33
6	455	Q.	that you had concerns that Sergeant McCabe wasn't	
7			being supported and you wanted to be sure that he was	
8			being supported and would be supported. And you wrote	
9			to the Garda Commissioner, I think it was the 24th	
10			February.	14:33
11		Α.	Yes.	
12	456	Q.	I think it was the 24th or 25th February.	
13		Α.	Okay.	
14	457	Q.	And the initial reply you received was - it's at page	
15			3435 of the booklets. That was dated, I think, the	14:33
16			same day or the following day?	
17		Α.	Yes.	
18	458	Q.	And it was suggested to you that the speed of response,	
19			the speed of dealing with an issue, can be evidence or	
20			illustrative of how serious an issue is being treated.	14:34
21			I think you'll accept that that was a speedy response?	
22		Α.	Yes.	
23	459	Q.	From the Garda Commissioner?	
24		Α.	Oh, yes, I would.	
25	460	Q.	Yes. Then you received a letter from the sorry, you	14:34
26			received a Section 41 report	
27		Α.	Yes.	
28	461	Q.	from the Garda Commissioner	
29		Α.	Yes.	

-- to the Secretary General on the 20th March 2015. 1 462 Q. 2 Yes. Α. That's at 3419. And you described that in your 3 463 0. 4 evidence as a very full response and giving a very 5 large amount of detail. 14:34 6 Yes. Α. 7 464 Did you take reassurance from that report as to the Ο. 8 steps that the Garda Commissioner was taking to support Sergeant McCabe in his workplace? 9 Yes, I did. I mean, obviously Sergeant McCabe had 10 Α. 14.34 raised a number of serious issues. 11 I wanted to see 12 what was being done in relation to those. I got a 13 letter back on the 20th March, as you say. It was very 14 detailed. I mean, it outlined a whole range of 15 initiatives that were being put in place to deal -- my 14:35 16 read of that was that they were being put in place very 17 seriously, in a professional way, to deal with the 18 various concerns that Sergeant Maurice McCabe had 19 raised. There was a variety of actions which I think 20 were important in terms of assigning different people 14:35 with responsibility to deal with the complaints, to 21 22 give people, you know, targeted jobs to do in relation 23 to the different aspects of it, and then there was the 24 bringing in of an IR, HR person, in the person of 25 Kieran Mulvey. So I was reassured because I felt that, 14:35 26 well, you know, I was being told that this was being 27 done, there were different people, I think Sergeant McCabe had been asked to nominate a person that he felt 28 29 he could speak with, and then I got the letter. Ι

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1 think the letter from Sergeant McCabe to me was 2 So, given the range of subsequent to that. 3 initiatives, I was hoping that those would bear fruit and that they would help to deal with the issues that 4 5 Sergeant McCabe had raised. And that it was a -- you 14:36 know, certainly it seemed to me at that time that it 6 7 was a reasonable and straightforward and clear 8 description of the actions that were being taken to deal with the concerns which he had. And, of course, 9 having met Sergeant McCabe, I also knew that, at that 10 14.3611 point, he was very concerned about the penalty points 12 issue, rightly, as I said, rightly raised. I think 13 many people felt it had been dealt with, and he raised about six or seven issues that hadn't been dealt with 14 and that needed to be, according to his knowledge of 15 14:37 16 it, and I think at that point, or maybe a little 17 earlier, he was brought into the Professional Standards 18 Unit to work with the guards internally, because he had 19 said to me he would like to be part of the reform process that was going on. So at that point, yes, I 20 14:37 mean, it was a -- you know, in my view, a fairly 21 22 comprehensive response to the issues. And subsequently Sergeant McCabe said that, yes, he felt he could see 23 24 some change in relation to the seminars that were being 25 held locally on -- I think that was on the penalty 14.37 26 points issues, and in relation to the management in 27 Mullingar, and that he was happy going to work at that 28 point.

29 MR. DIGNAM: Thank you.

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1			MS. FRANCES FITZGERALD WAS EXAMINED BY MR. MCCANN:
2			
3	465	Q.	MR. McCANN: Thanks very much, Ms. Fitzgerald. I just
4			have three areas which I want to discuss with you. So,
5			first of all, we might look again at the email dated $_{14:37}$
6			15th May 2015, and it's at page 745. So it's Book 1
7			part 2, or 1B, page 745. It's in various places, but
8			that is where I have it, please.
9		Α.	Yes.
10	466	Q.	So, Ms. Fitzgerald, just to be as clear as we possibly $_{ m 14:38}$
11			can be about the receipt of this email, is it your
12			evidence that you received you received the email
13			obviously by email, I mean it was sent to your email
14			address. Are you telling the Tribunal that you would
15			have read it as an email on a 14:38
16		Α.	Yes, more than likely, yes. I would have first read
17			it, more than likely.
18	467	Q.	More than likely.
19		Α.	Because I would have scanned all my emails and been
20			looking for ones that I needed to take action on 14:38
21			perhaps over the weekend or immediately. So, I mean,
22			the most likely is that I read it on an iPad
23	468	Q.	Yes.
24		Α.	over the weekend, or my phone.
25	469	Q.	Yes. And then I think again but you didn't reply $_{14:39}$
26		Α.	No.
27	470	Q.	"noted"?
28		Α.	Yes. I would often you know, because of the amount
29			of material that would be coming in, what I would be

1 inclined to do was deal with the ones that needed a 2 decision or action immediately, you know, immediate 3 decision, on the Friday afternoon or -- that was Friday, deal with those immediately. And then other 4 5 ones that were, for example, you know, for information, 14:39 6 and unless I decided otherwise, having read them, I 7 would go back to those, and then I would at that point 8 usually send a further email to my private secretary saying just to kind of, if you like, clear the email 9 10 that had come, that I was satisfied that it was for 14.3911 information only. 12 471 Yes. Q. But, you know, for some emails that would come for 13 Α. 14 information only, clearly I would decide that maybe I 15 wanted, you know, a meeting or a further discussion --14:39 16 472 Q. Yes. 17 -- or whatever. So I still, you know, made a decision Α. 18 in relation to them. 19 473 Yes. Do I understand the evidence to be, you would Q. have perused the email on a device of some kind? 20 14:40 21 Yes. Α. 22 A computer device, and then you would have read it 474 Q. 23 again --24 Yes, yes. Α. 25 -- when Mr. Quattrociocchi -- I'm sure I got the 475 Q.  $14 \cdot 40$ 26 surname wrong. 27 Or I might have read it myself again if I was doing Α. "noted" on the iPad. 28 Yes. 29 Q. Yes. And, I mean, we spent I think an hour between 476

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1 today and yesterday, just under an hour, discussing the 2 email with Mr. McGuinness and Mr. McGarry. How long do you think would you have given this email when you 3 first read it or when you second read it -- or in the 4 5 event of a second time, how long would you have spent 14:40 reading it, do you think? 6 7 Well, I think given my approach to the issue, to the Α. 8 O'Higgins Commission, I mean, as I say, this is me looking at it now and you asking me what my approach 9 would have been, I mean I would have -- my normal 10  $14 \cdot 40$ 11 pattern would be obviously to read through the email, 12 to see was there anything that I -- you know, I'd be 13 taking in the information obviously. I'd be assessing 14 it and deciding was there something that I needed to 15 do, and, you know, I would take whatever amount of time 14:41 16 that it took to think about it. And this one I probably, as I say, because I didn't note it at the 17 18 particular time, I'd probably go back to it again and 19 relook at it. And I suppose I would have been 20 conscious particularly that both the Attorney General's 14:41 office and my own official, you know, had clearly said 21 22 that there wasn't a function. 23 477 Yes. Q. 24 You know, we agreed it's a matter for the Garda Α. 25 Commissioner, who is being legally advised.  $14 \cdot 41$ 26 478 Yes. 0. 27 So that would have impacted on me as well. Α. So you may have read it once on-line, you may have read 28 479 **Q**. 29 it once in hard copy?

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1 Α. Yes. 2 And you would have read it carefully? 480 Q. 3 Yes. Α. And then if we just look at the content of the email 4 481 0. 5 again to try and clarify -- I mean, I'm not making any 14:42 6 complaint, to be absolutely clear, about the questions 7 you were asked by either party. But just would you 8 think it's a little artificial to isolate, for example, the first sentence in paragraph 4, which reads: 9 10  $14 \cdot 42$ 11 "Richard wanted to let me know that counsel for the Garda Síochána had raised an issue in the hearings, an 12 13 allegation made against Sergeant McCabe, which is one 14 of the cases examined by the IRM." 15 14:42 16 Do vou think it's a little artificial to take that 17 sentence out and give it scrutiny in isolation from the 18 rest of the email? 19 Well, yes, I mean, I think you'd obviously have to read Α. 20 the whole thing. 14:42 I think then if you read the rest, so if you read 21 482 Yes. 0. 22 the very next sentence, there's a clarification about 23 what the allegation is, isn't that correct? 24 Yes. Α. 25 And the clarification is that the allegations concerns 483 0. 14.42 the investigation? 26 27 Yes, the investigation by An Garda Síochána. Yeah. Α. 28 484 And then as we further work through the next paragraph, Ο. 29 you'll see, would you agree, that Mr. Flahive has again

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1			refined his message and that he's now bringing it down,	
2			that it's potentially relevant to motivation, isn't	
3			that right?	
4		Α.	Yes.	
5	485	Q.	This is the second sentence.	14:43
6		Α.	Yes, yes, potentially, yes, that's a presumably.	
7	486	Q.	And then you'll see that, again as you have explained,	
8			the email is book-ended by for information only and	
9			that the Department has no function in the matter,	
10			isn't that right?	14:43
11		Α.	Yes, that's right.	
12	487	Q.	Is there anything further you want to say about this	
13			email to the Tribunal Chair?	
14		Α.	Well, I suppose it's not so much about the moment where	
15			I got it, but I can just say, I mean obviously having	14:43
16			seen what has emerged here at the in the evidence so	
17			far, that there was a series of discussions about it.	
18			I would note, and I don't know whether it's considered	
19			relevant for me to say it now or not, but just perhaps	
20			just to say it, that I did note that when and if	14:43
21			this is not appropriate, I'm sure the Chair will tell	
22			me.	
23			CHAIRMAN: There's lots of things that have happened	
24			that have not been appropriate, so carry on, please.	
25		Α.	But Ms. Annmarie Ryan, when she gave her evidence, she	14:44
26			did say, very clearly, that she certainly wasn't	
27			raising the original allegation. So, you know, when I	
28			look at the email now in that context	
29			MR. McCANN: Yes.	

1 A. -- it casts a different light on it.

2 488 Q. Yes.

- A. And also then the conversation between Mr. Dreelan and
  Ms. Annmarie Ryan and Mr. Richard Barrett, as I've said
  already, the question of judicial review came up. 14:44
  489 Q. Yes.
- 7 But when that arrived to me -- so the only point really Α. 8 I would make is that, by the point it got to me, you know, it is what it is, obviously. But there was a lot 9 of different conversations, which at the time I did 10 14 · 44 11 not -- you know, clearly they were conversations 12 between people about the O'Higgins Commission, which, 13 appropriately, I was not involved in.
- 14 490 Q. If you were to go back in time, knowing what you knew
  15 then, would you make the same conscious decision not to 14:44
  16 take any further action or not to take any action on
  17 foot of this email?
- A. Well, I -- yes, on the basis of what my approach was,
   not just to this email, because it's not just about
   reaction to this email or the other email, it's about 14:45
   an approach in total to the O'Higgins Commission.
- 22 491 Q. Yes.
- A. And my views, which I think, I hope I've explained,
  that how I saw what was happening at the Commission -492 Q. Yes.

 $14 \cdot 45$ 

A. -- and what was the appropriate role for a Minister for
 Justice in relation to a Commission of Investigation,
 where every party was represented, where there was a
 judge presiding over it, what my role was in relation

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1 to that.

<ul> <li>would be extraordinary, then clearly I would be the</li> <li>first to discuss it with the Attorney and with my</li> <li>officials.</li> <li>494 Q. Yes. I think it follows from that, that even if you</li> </ul>	: 45
<ul> <li>where it was appropriate for me to be involved, which</li> <li>would be extraordinary, then clearly I would be the</li> <li>first to discuss it with the Attorney and with my</li> <li>officials.</li> <li>494 Q. Yes. I think it follows from that, that even if you</li> <li>knew then everything you know now, you would take</li> <li>the you would make the same response to this email?</li> <li>A. Well, you know, in my view, it was the correct approach</li> <li>for me, as Minister for Justice, to take to a</li> </ul>	: 45
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<ul> <li>8 officials.</li> <li>9 494 Q. Yes. I think it follows from that, that even if you</li> <li>10 knew then everything you know now, you would take 14</li> <li>11 the you would make the same response to this email?</li> <li>12 A. Well, you know, in my view, it was the correct approach 13 for me, as Minister for Justice, to take to a</li> </ul>	
<ul> <li>9 494 Q. Yes. I think it follows from that, that even if you</li> <li>10 knew then everything you know now, you would take</li> <li>11 the you would make the same response to this email?</li> <li>12 A. Well, you know, in my view, it was the correct approach</li> <li>13 for me, as Minister for Justice, to take to a</li> </ul>	
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A. Well, you know, in my view, it was the correct approach for me, as Minister for Justice, to take to a	: 45
13 for me, as Minister for Justice, to take to a	
14 Commission of Investigation, and it had both a	
15 legislative base and it had a policy base, and it was 14	:46
16 the correct approach, you know, politically and every	
17 other way.	
18 495 Q. Then if we just turn to the July emails briefly, the	
19 July email thread. So this is on page starting on	
20 page - bear with me for one second - 2012, so that is 14	:46
21 Book 4, I think. Is it Volume 4? Sorry,	
22 Ms. Fitzgerald, I think it's in Volume 3, sorry about	
that, page 2012. Sorry about all the moving between	
24 heavy folders, which are easily knocked over. So	
25 Volume 3, page 2012, please. 14	: 47
A. Yes. Sorry, that is the last one. 2012?	
27 496 Q. 2012 in Volume 3.	
28 A. Yes.	
29 497 Q. So, Ms. Fitzgerald, you'll see there that the first	

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1 page on page 2012 is the email dated 4th July 2015 from 2 Mr. O'Leary to you, and I think your evidence, just to 3 be absolutely certain about it, is that Mr. -- in using the phrase "aggressive stance", Mr. O'Leary is 4 5 referring to what he understood the question from RTÉ 14:48 6 to be, rather than the description of what was actually 7 happening? 8 That's my understanding. Α. 9 498 Yes. Q. The question was different from RTÉ. 10 Α.  $14 \cdot 48$ 11 499 And then if we just track through the pages to page Q. 12 2015, you see then Mr. O'Leary gives a clarifying 13 email --14 Α. Yes. 15 500 -- later on that evening and he says that he got it Q. 14:48 16 wrong, that the RTÉ journalist wasn't Mr. Ó Mongáin, it was in fact Mr. Burke, isn't that right? 17 18 Yes. Α. 19 501 And attached to that email was the actual -- on page Q. 2016, was the actual query from RTÉ, on page 2016. 20 14:48 21 Yes. Α. 22 So, in fact, you had Mr. O'Leary's characterisation of 502 **Q**. 23 the question --24 Yes. Α. -- in the first email, and in the second email you had 25 503 0. 14.49a further clarification from Mr. O'Leary, but you had 26 27 also the actual question which RTÉ had raised, and that 28 was --29 It was very directly about the O'Higgins Commission. Α.

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1	504	Q.	Yes.	
2		Α.	And the events at the Commission.	
3	505	Q.	Yes. And the issue was that the Garda Commissioner	
4			the question was, that counsel for the Garda	
5			Commissioner raised questions over the motivation of	14:49
6			Sergeant McCabe for bringing certain matters regarding	
7			alleged Garda misconduct. And there was no mention of	
8			the word "aggression" in the actual query from RTÉ?	
9		Α.	No. And as I say, there's been much reporting that I	
10			was aware of an aggressive stance, because those words	14:50
11			were used.	
12	506	Q.	Yes.	
13		Α.	But they were not the original query.	
14	507	Q.	Yes.	
15		Α.	Those words were used by Mr. O'Leary.	14:50
16	508	Q.	Mr. O'Leary.	
17		Α.	Yes.	
18	509	Q.	And again, in retrospect, are you happy that you dealt	
19			with the July email thread appropriately	
20		Α.	Yes.	14:50
21	510	Q.	and correctly?	
22		Α.	Yes.	
23	511	Q.	And that you stand over your	
24		Α.	Yes.	
25	512	Q.	response?	14:50
26			CHAIRMAN: So vis-à-vis the query from RTÉ or the query	
27			from anybody else, RTÉ had not asked was there an	
28			aggressive stance?	
29			MR. McCANN: Yes, exactly, Judge or Chairman.	

1 So it was his interpretation to say if you CHAIRMAN: 2 -- I suppose it was a, I don't know, a wrestling term 3 in the context of a journalistic query. MR. McCANN: Yes. 4 5 Which seems to be perfectly --CHAIRMAN: 14:50 6 MR. MCCANN: Exactly. 7 CHAIRMAN: -- balanced in the statement. 8 MR. MCCANN: Yes. CHAIRMAN: 9 Okay. Thank you, Chairman. 10 MR. MCCANN: 14.5111 513 If we then just look at the documents we were looking Q. 12 at yesterday. That's in Volume 9 then, Ms. Fitzgerald, 13 starting at 4936, so Volume 9, 4936. So I'll just be 14 asking you to look at 4936 and then I'll be asking you to look at 4941. So just, it was put to you this 15 14:51 16 afternoon by Mr. McGarry that on two separate 17 occasions, I think referring to these matters and 18 making it -- suggesting these were two additional 19 circumstances in which information was given to you 20 about the O'Higgins Commission, if we look at 4936, 14:52 this is, in fact, a communication about the GSOC 21 22 investigation, isn't that right? 23 Yes. Α. 24 And its only connection with the O'Higgins Commission 514 Q. 25 is that the complaint of Ms. D is common to both, isn't 14:52 that right? 26 27 Yes. Α. 28 Or was potentially common to both? 515 Q. 29 Α. Yes.

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516 Q. And similarly, that's the only connection, apart from a 1 2 further sentence at 4941, the submission from Mr. Power dated 27th May 2015, that's at 4941, that, again, is 3 concerning the GSOC investigation, isn't that right? 4 5 Yes, it is, yes. It's an update. Α. 14:52 6 517 And do you think that the tentative in passing Q. 7 reference by Mr. Power to "the alleged sexual assault that was referred to in a particular context during the 8 recent additional hearings of the O'Higgins 9 Commission," do you think that added anything to what 10 14.53 11 you've received in the email dated 15th May 2015? 12 Well, you know, I don't know why Mr. Power put it in Α. 13 there, but it obviously was a Ms. D allegation, it was 14 a report from GSOC, he put it in, but, I mean, I don't think it's of particular significance there that it was 14:53 15 16 I think he just decided that because -- I put in. 17 think he was, at this point, more aware of the cases in 18 the IRM, and he, at that point, was probably linking it 19 back more to the Ms. D allegation than he had originally. I think that is what he said yesterday. 20 14:53 But, I mean, you heard his evidence, so I don't think 21 22 that it -- you know, it was a comment he decided to put 23 But the main purpose, clearly, was the GSOC, was in. 24 the GSOC -- the update on the GSOC investigation. As I 25 say, the context in which I received that would be that 14:54 26 we already had -- I was very clear about what the DPP 27 had decided about the allegation, that there was no reason whatsoever to take it forward. 28 29 518 0. Yes.

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1 That it had been investigated. The IRM had said it had Α. 2 been investigated properly and did not need a 3 commission of investigation or any -- they were absolutely satisfied, while making some recommendations 4 5 to the guards about how it had been dealt with. And 14:54 then I had the GSOC independent statutory inquiry about 6 7 the allegation as well. 8 519 Yes. And then just on a final area to explore briefly Q. 9 with you, I mean obviously the position of Sergeant McCabe is important. Did you understand -- did you 10 14.5411 understand that he believed that you were treating him 12 correctly while you were Minister for Justice? 13 Well, I suppose he's better asked that, in a way. Α. But 14 all I can say is that --15 520 I might have to ask him in due course. Q. 14:55 16 All I can say is that when I dealt with him initially Α. 17 and met him and his wife Lorraine, clearly we took up 18 the issues and he was satisfied at that point. I think 19 he does make reference to that in meetings with other 20 people, that he felt, I think in -- but obviously it's 14:55 for him to comment on that. 21 22 521 Q. Yes. But in August '16, I think, in conversation with a 23 Α. 24 document that is available to the Tribunal and in March 25 '17, that he did make some comments about the way I had 14:55approached him --26 27 522 Yes. Q. -- and his wife. They were positive. 28 Α. They were positive comments? 29 523 Q.

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1 But as I say, that's more for him to Α. Yes. 2 contextualise those than for me. 3 MS. McCANN: Exactly. Thank you very much, Ms. Fitzgerald. Mr. McGuinness may have some further 4 5 questions for you. 14:55 6 7 MS. FRANCES FITZGERALD WAS RE-EXAMINED BY 8 MR. MCGUINNESS: 9 MR. McGUINNESS: Yes, Ms. Fitzgerald, just two matters. 14:55 10 524 Q. 11 Mr. Dignam, on behalf of the Commissioner, was asking 12 you about his client's phone call with Mr. O'Leary on 13 the 15th. 14 Α. Yes. 525 15 And he, I think, was suggesting and was seeking your Q. 14:56 16 view as to the appropriateness of that, and you appear to have agreed with him, that, leaving the issue about 17 18 the content of the Commission's proceedings in terms of 19 evidence aside, that it was appropriate for the Commissioner to ring Mr. O'Leary and discuss the issues 14:56 20 that they discussed, is that your view? 21 22 Well, I think what I said was that if it was from the Α. 23 point of view about a broad kind of comment about the 24 O'Higgins Commission, that, you know, a very broad 25 comment, that you know -- or if he was doing it -- if 14.56 26 the Commissioner was doing it in terms of the, you 27 know, the, if you like, the public interest, something might arise about this, that, you know, I could 28 29 understand that, but not in terms of, you know,

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1 anything to do with legal strategy or anything else 2 So it's a very -- it would be a that was happening. 3 very fine line, as indeed I felt the whole discussion between Mr. O'Leary and --4 5 526 Yes. Q. 14:57 6 -- the Commissioner was. Α. 7 527 well, obviously the important thing was, and you saw **Q**. 8 this in Mr. O'Leary's statement, that he wasn't stepping over the boundary of deciding anything for the 9 Commissioner or --10 14.57 11 Absolutely not. Yes. And he made that clear. Α. 12 But if it was appropriate for the Commissioner to ring 528 0. him and for him to set the boundaries and yet have a 13 14 discussion about what matters she might take into 15 account in making her decision, would you agree that it 14:57 16 would have been appropriate for him to tell you about 17 that? 18 Well, I mean, I think he had a decision to make. Α. Ι 19 mean, it wouldn't have been inappropriate for him to 20 But he made a decision that, given our tell me. 14:57 approach to the O'Higgins Commission, that he -- and 21 22 having had a conversation, as I understand from the 23 evidence, with Michael Flahive, that he was satisfied 24 that, you know, I was being advised both from the 25 Attorney General's office from Richard Barrett and from 14:58 the senior official in the Department, that there 26 27 wasn't a role for me, and of course that would be my 28 own -- like, I would be bringing my own independent 29 judgment to bear on that advice as well.

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1	529	Q.	Okay.	
2		Α.	That he was satisfied that, in terms of the	
3			appropriateness of what I was being told, that that	
4			was that it was being dealt with by Michael Flahive.	
5			But, of course, at that point I did not know,	14:58
6			obviously, until I read the transcripts about that	
7			whole series of conversations.	
8	530	Q.	Yes.	
9		Α.	But I can understand why he decided that the email from	
10			Michael Flahive to myself would cover the issue, would	14:58
11			deal with it.	
12	531	Q.	All right. And just the only other matter; Mr. McCann,	
13			your counsel, was asking about the volume of emails,	
14			et cetera.	
15		Α.	Yes.	14:58
16	532	Q.	And the private secretary, Mr. Quattrociocchi, gave	
17			evidence about that, and he helpfully provided his note	
18			that he was reading from, and it's at 4947 in Volume 9.	
19		Α.	Yes.	
20	533	Q.	I'm not sure have you seen that. I hope it's in there	14:59
21			for you. It's probably the last page. It's on the	
22			screen.	
23		Α.	Yes.	
24	534	Q.	He's detailing the volume of emails in this week of the	
25			11th May to 15th May.	14:59
26		Α.	Yes.	
27	535	Q.	And has documented that he received 540 emails, and	
28			that's over 100 a day, 108 a day on average.	
29		Α.	Yes.	

1	536	Q.	And then that, in the same period, only 48 would be	
2	550	ų.	sent, or were sent to you and your advisers. So it	
3			doesn't seem to be an overly huge number of emails per	
4			day?	
5		Α.	But of course I'd be receiving other emails as well	
		Α.	directly from officials to that address.	14:59
6 7	F 7 7	0	-	
	537	Q.	Is that right?	
8		Α.	Yes.	
9	538	Q.	So this doesn't document the emails sent to you?	
10		Α.	I don't think it would be the it wouldn't be the	15:00
11			totality of emails sent to me. And also, of course,	
12			I'd also be conscious of emails that were going into	
13			the to other general addresses and would you	
14			know, there would be conversations about other ones as	
15			well.	15:00
16	539	Q.	Yes. Well, they mightn't necessarily be all destined	
17			for you, those info@justice.ie?	
18		Α.	No, not necessarily. I would still be responsible for	
19			them.	
20			MR. McGUINNESS: Okay. Thank you, Ms. Fitzgerald.	15:00
21				
22			MS. FRANCES FITZGERALD WAS QUESTIONED BY THE CHAIRMAN:	
23				
24	540	Q.	CHAIRMAN: I just have a few questions, please, Deputy.	
25			First of all, I wanted to ask you, you may have read	15:00
26			the email of the 15th May 2015 on whatever device you	
27			were carrying?	
28		Α.	Yes.	
29	541	Q.	CHAIRMAN: It's called a device nowadays as opposed to	
23	741	ų.	Chained a device nowadays as opposed to	

1			a phone.	
2		Α.	Yes.	
3	542	Q.	CHAIRMAN: So what kind of size are we talking about	
4			there?	
5		Α.	My iPad.	15:00
6	543	Q.	CHAIRMAN: Right. So that's kind of A4 size?	
7		Α.	Yes.	
8	544	Q.	CHAIRMAN: There or thereabouts. All right. Despite	
9			having read something, for instance, because it's gone	
10			to your email account, is it always the procedure	15:01
11			within the Department that things are printed out that	
12			are for your attention so that you also see a hard copy	
13			later on?	
14		Α.	At that time it was. I think after 2015, I think it	
15			was done more by e-submission and, you know, clearing	15:01
16			on-line.	
17	545	Q.	CHAIRMAN: So it certainly wasn't a paperless office at	
18			that stage?	
19		Α.	At that stage, no.	
20	546	Q.	CHAIRMAN: Okay. The second thing was, you've been	15:01
21			asked a number of questions in relation to the phone	
22			call by the Garda Commissioner to your official, Ken	
23			O'Leary. I think you may be aware of the principle	
24			that, well, you could call it phone a friend, to use a	
25			colloquial expression, that people, if they have a	15:01
26			worry on their mind, it may be that they have a chance	
27			to meet with a pal who they trust and discuss matters	
28			in any social setting, or it may be that they might	
29			give that person a phone call. Now, in the event that	

1 it were to be the case, and I'm not saying that it was 2 the case, but I'm afraid this is another hypothetical 3 question, that the Garda Commissioner had particular trust, let's say, in the intelligence or judgment of 4 5 somebody in the Department of Justice and therefore 15:02 6 phoned them up in order to get a heads-up, as you might 7 say, or to chat the matter through, would you have 8 regarded that as being unfair or incorrect? Well, I suppose the way I'd respond to that: 9 Α. not necessarily, but I would have thought that, you know, 10 15.02 11 my understanding of -- well, I would have expected that 12 Ken O'Leary, Mr. O'Leary would deal with it in a 13 professional manner, and I think he did. So even if it 14 was, you know, a particular -- if they had a 15 particularly, you know, good relationship, and, as you 15:03 16 say, it was more a sounding-out kind of exercise by the 17 Commissioner, I think he would obviously -- my sense of 18 it would be that he would be dealing with it in a 19 professional manner as opposed to a friend, he'd still -- but, yes, she may have felt -- well, I won't 20 15:03 say what the Commissioner might have felt. But. you 21 22 know, I would still -- it was a professional 23 relationship, at the end of the day. But perhaps, as 24 you say, in terms of a particular confidence about 25 scoping out the general issues as opposed to the 15.0326 particular issues, that may well have been the case. 27 547 Q. CHAIRMAN: Yes. Well, am I to take it from that that what you are saying is that even if it were to be the 28 29 case that, let's say, the Garda Commissioner or

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1 somebody else in a position of responsibility for which 2 Justice has ultimately to answer, has a good working 3 relationship with somebody in Justice and actually trusts their judgment as a sound woman, a sound man, 4 5 and actually rings them up apparently for a chat, 15:04 6 nonetheless, even if there is a chat, which you 7 wouldn't object to, the matter has to be dealt with 8 officially and professionally, and if it has to be brought to your attention, it should nonetheless be 9 brought to your attention. There's no such thing, in 10 15.0411 other words, as an off-the-record chat with an 12 official, is that what you mean? 13 Well, I would have thought that it would be dealt with Α. in a professional way and whatever needed to be done, 14 would be done. But, as I say, I do believe, but 15 15:04 16 Mr. O'Leary has answered for himself, that he was very clear about the boundaries. So whatever the basis of 17 18 the call, he was still very clear about the boundaries 19 that he needed to explain. 20 Now, another matter that was raised was 548 CHAIRMAN: Ο. 15:04 that the Garda Commissioner wasn't available 21 this: 22 over a weekend. Now, the Garda Commissioner made a 23 statement, which is in those volumes there, saying that 24 she was available that weekend. So anybody could have 25 asked her that question, who wished to ask her that 15.05It wouldn't come as a surprise. But did you 26 auestion. 27 find that she was available, a kind of person who would make herself available? 28 29 Α. Yes.

549 CHAIRMAN: Or what was your experience? 1 Q. 2 Well, my experience was that she was very responsive to Α. 3 issues, and very quickly, you know, whatever the issues of the day, if the Department -- if I asked the 4 5 Department could we find out, you know, and often it 15:05 6 wouldn't necessarily be directly with the Garda 7 Commissioner, it would be with, you know, her office, 8 or whatever. Yes, I mean, I have to say she was. 9 550 CHAIRMAN: All right. Q. 10 Α. Yes. 15.0511 551 CHAIRMAN: I appreciate that may be a stupid question Q. 12 in the context of the fact that you're her boss. 13 No, but yes, she was, she was available. Yes. Α. 14 552 Ο. CHAIRMAN: Okay. There's just two other matters then. 15 There's been reference to the selective leak, and 15:05 16 obviously it's been necessary to read, for us, the 38 17 days of the transcript to try and identify places where 18 an issue may be raised, how it is raised, the manner in 19 which it is raised, etcetera, and I think Ms. Leader, in opening this, has read all the relevant bits out. 20 15:06 Are you sure that you were so constrained - I'm not 21 22 questioning now the honesty of your answer in that 23 regard - under Section 11 of the Commission of Inquiry 24 Act 2004, in relation to getting the rest of the 25 transcript and perhaps having someone read it the way 15.06the Tribunal did? 26 27 well, I did --Α. 28 553 Because you've mentioned that the only Q. CHAIRMAN: 29 avenue was a High Court application.

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1 I was very -- you know, my advice was that the Α. Yes. 2 transcripts were effectively -- I mean, the approach in 3 the Department certainly, and my understanding, was that the transcripts of a commission were absolutely 4 5 under lock and key and that you would -- you know, the 15:07 6 only way would have been to take a very serious legal 7 action to access those. 8 554 Yes. So there's a principle in a case Q. CHAIRMAN: called Desmond v. Glacken, where, if a minister is 9 entitled to get something, the minister is also 10 15.0711 entitled to communicate what they're entitled to get, to another minister. Now, leave the legal twists and 12 13 turns of that out of it. but was there no way under the 14 Act that you could have got the entire transcript and 15 then perhaps got advice on the matter as to putting 15:07 16 things in context? 17 Well, I was -- you know, my advice at the time was that Α. 18 was really out of bounds. 19 555 CHAIRMAN: Yes. Q. That the idea of accessing the transcripts was 20 Α. 15:07 21 certainly not something that I could do --22 556 CHAIRMAN: Yes. Q. 23 -- at that time. Α. 24 557 CHAIRMAN: Okay. Q. 25 No avenues were suggested to me, how I might do that. Α. 15.07And it seemed -- I think a number of times, when I 26 27 spoke in the Dáil as well, I would have said that, you 28 know, the idea that I would go and, if you like, re-run 29 a particular part of the Commission as a Minister,

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particularly, we'll say, let's take the piece about the leaked transcripts, that did not seem open to me at all.

- The last matter I wanted to ask you about I 4 558 0. CHAIRMAN: 5 think was this whole thing of, forgive a kind of a male 15:08 6 sporting term, a game changer, this question was asked 7 of Ken O'Leary, and he said, look, I knew there was an 8 allegation against Maurice McCabe, or at least this is what I said to him, I knew that there was a ruling by 9 the Director of Public Prosecutions that this does not 10 15.08 11 amount to a sexual assault, it doesn't amount to an 12 assault at all, even if there were no issues as to 13 credibility. Now, did you actually know the text of 14 the DPP's letter of, I think, the 5th May 2007? Had 15 you ever actually read that letter in the context of 15:09 16 this? 17 I don't believe that the -- I'm not absolutely sure, Α. 18 but I don't think the DPP's original letter was
- 19available in the Department. It might have been made20available to the IRM.

15:09

15:09

21 559 Q. CHAIRMAN: Yes.

A. And maybe in that context. But I may have seen it inthat context.

24560 Q.CHAIRMAN: Yes. And did you sit down and read the25file?

A. Yes, I would have. The IRM file? Yes.

27 561 Q. CHAIRMAN: No, no, I mean the original investigation 28 file?

29 A. No, no, no.

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1 562 Q. CHAIRMAN: You didn't?

2 A. Never. That was very much within the IRM.

- 3 563 Q. CHAIRMAN: Yes. Because in doing that, I suppose, you
  4 get a good sense of the whole thing, and that's the
  5 only way, in effect, to make sense of it? 15:09
- 6 A. Yes.

29

7 564 Q. CHAIRMAN: And again it's not a criticism.

- 8 A. I don't believe I did, yes.
- CHAIRMAN: Mr. O'Leary said the following; he said, 9 565 Q. look, in the event that it had come to my attention 10 15.09 11 that counsel for the Garda Commissioner had been 12 instructed by the Garda Commissioner to actually accuse 13 Maurice McCabe of sexually assaulting a child, that 14 would have put an entirely different complexion on it, 15 it would have brought it to a completely different 15:10 16 level and he would have gone in to you straightaway. 17 Now, obviously that never happened. But were you to 18 have -- were that to have been the information that was 19 put before you, would you have reacted differently or thought about matters differently or --20 15:10 well, if that situation had arisen, effectively what 21 Α. 22 you would have a Garda Commissioner doing is bringing 23 up an issue that had been dealt with by the DPP, that 24 had been dealt with by the Independent Review Mechanism 25 and GSOC, which she would have been aware of, I think, 15.1026 at that point, if the dates are right, and that would 27 be a very extraordinary situation. If an allegation that had been disproved by -- you know, was not taken 28
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as -- that there was any basis to it, and the Garda

Commissioner was doing that, that would be a totally different situation, and I imagine if that happened at the Commission of Investigation, that I believe that there would be a different note going from the CSSO to the Attorney and there would be different issues being raised, and at that point then there would be a different discussion.

8 566 CHAIRMAN: And which arising out of that is, I Q. wouldn't, I suppose, be any kind of a lawyer if I 9 didn't know about Cabinet confidentiality, and I'm not 10 15.11 11 asking you to breach that, but it's become increasingly 12 stark every time I read paragraph (e) that I have been 13 required to investigate whether false allegations, 14 plural, of sexual abuse were inappropriately relied on by Commissioner O'Sullivan to discredit Maurice McCabe. 15:11 15 16 Now we know that didn't happen. But where did the 17 notion that anybody had made false allegations of 18 sexual abuse and put them to Sergeant McCabe at the 19 O'Higgins Commission ever come from? If you can't 20 answer that, don't answer it. But I'm just tending to 15:12 wonder why is it there? 21

22 well, it's very hard to say exactly where it Α. Yes. 23 arose from. But it seemed to be -- it seemed to be an 24 innuendo that, you know, was around, and that -- in 25 terms of, I think there may have been, there may have 15.1226 been some media coverage in relation to it, and I 27 suppose there perhaps was confusion between the investigation into the Ms. D complaint, which was about 28 29 the investigation as opposed to the original

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1			allegation. But certainly we felt that it needed to be	
2			in the terms of reference	
3			CHAIRMAN: Yes.	
4		Α.	because it had arisen from all of this.	
5	567	Q.	CHAIRMAN: Sure. Even if that were so, why is there a	15:12
6			plural on it?	
7		Α.	The plural is?	
8	568	Q.	CHAIRMAN: "False allegations of sexual assault". I'd	
9			just better get the exact words.	
10		Α.	Yes.	15:13
11	569	Q.	CHAIRMAN: I'm sorry, just give me a second to look	
12			back at it. "False allegations of sexual abuse".	
13			Allegations.	
14		Α.	Yes. Well, it was allegation. That may be that may	
15			be referring to a sense of it being out there with	15:13
16			other people, the allegation. But you're right, it is	
17			only about, clearly only about the allegation.	
18	570	Q.	CHAIRMAN: Yes. But I'm required to investigate into a	
19			number of, it could be from anything to two to God	
20			knows, the awful cases that have been seen in the	15:13
21			courts	
22		Α.	Yes.	
23	571	Q.	CHAIRMAN: where there is you know, and the	
24			swimming or the swimming case or the gymnastic case	
25			in America recently. It's rarely one. Why the plural,	15:13
26			do you know? And if you don't know, you don't know.	
27		Α.	I mean, I would have taken advice on the terms of	
28			reference at the time. And I can't I can't say on	
29			that.	

	Α.		
	A.	Thank you.	
		THE WITNESS THEN WITHDREW	
			15:14
		MR. McGUINNESS: Chairman, the next witness is Mr. John	
		Barrett.	
		MR. JOHN BARRETT, HAVING BEEN SWORN, WAS DIRECTLY	
		EXAMINED BY MR. MCGUINNESS:	15:14
		CHAIRMAN: Mr. Rogers, you're representing Mr. Barrett?	
		MR. ROGERS: That's right, Chairman.	
		CHAIRMAN: And you are here, yes. Thank you. I don't	
		mean you weren't here, but you are here in place in the	15:15
		event that anything arises.	
		MR. ROGERS: I am, Chairman, yes.	
		CHAIRMAN: Thank you.	
		MR. McGUINNESS: Mr. Barrett's statement is to be at	
		Volume 5, page 2967 of the Tribunal papers. I should	15:15
		say that Mr. Barrett's statement obviously deals with	
		other matters which aren't being dealt with by the	
		Tribunal at the moment, so his evidence is obviously	
		confined to what is under consideration at the moment.	
		He understands that. I'm just saying that for the	15:15
		benefit of other parties also.	
572	Q.	Mr. Barrett, I think you're the Executive Director of	
		Human Resources and People Development at An Garda	
		Síochána?	
	572	572 Q.	<ul> <li>Barrett.</li> <li>MR. JOHN BARRETT, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MR. MCGUINNESS:</li> <li>CHAIRMAN: Mr. Rogers, you're representing Mr. Barrett? MR. ROGERS: That's right, Chairman.</li> <li>CHAIRMAN: And you are here, yes. Thank you. I don't mean you weren't here, but you are here in place in the event that anything arises.</li> <li>MR. ROGERS: I am, Chairman, yes.</li> <li>CHAIRMAN: Thank you.</li> <li>MR. MCGUINNESS: Mr. Barrett's statement is to be at Volume 5, page 2967 of the Tribunal papers. I should say that Mr. Barrett's statement obviously deals with other matters which aren't being dealt with by the Tribunal at the moment, so his evidence is obviously confined to what is under consideration at the moment. He understands that. I'm just saying that for the benefit of other parties also.</li> <li>572 Q. Mr. Barrett, I think you're the Executive Director of Human Resources and People Development at An Garda</li> </ul>

1 Yes, I am. Α. 2 And I think you've held that position since October of 573 Q. 3 2014? October 3rd, yes. 4 Α. 5 574 October 3rd. And just very briefly, what does that Q. 15:15 embrace? 6 7 The HR and PD organisation embraces everything from the Α. 8 Garda Training College at the educational and development end, through to at point of initiation, all 9 matters touching the administration of people, from 10 15.16 11 their recruitment to their management of pensions, all 12 the activity in relation to the management of bullying 13 and harassment, grievance policies, people-related 14 policies right across the spectrum of a 16,000-person 15 organisation. 15:16 16 Yes. And I think that can be very complex job. 575 Q. 17 well, there are many elements to it. Α. 18 576 Yes. Q. And it's --19 Α. And just in terms of Sergeant McCabe and the O'Higgins 20 577 Ο. 15:16 Commission, I think you had no direct dealings with 21 22 Sergeant McCabe prior to 2015? 23 That's correct. Α. 24 And I think that in February of 2015 you were appointed 578 Q. by the Garda Commissioner to act as interlocutor or 25 15.1626 principal point of contact between Sergeant McCabe and 27 An Garda Síochána? Yes, that's correct. The correspondence dealing with 28 Α. 29 that was of the 23rd February.

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1	579	Q.	Yes. And that wasn't under the Protected Disclosures	
2	575	۷.	Act or under the preceding confidential regulation,	
3			nothing to do with that at that time?	
4		Α.	No. It dealt with the fact that Sergeant McCabe, it	
5		<b>A</b> •	was made clear to me, had been the he had made a	15:17
6			protected disclosure in August of 2014, prior to my	15.17
7			time.	
8	580	Q.	Yes.	
9	500	Q. A.	But that I would deal with him with the full spectrum	
10		Α.	of supports from the organisation for where he was at	
11			that particular point in time.	15:17
12	581	0		
13	201	Q.	Yes. Can I ask you to look at Volume 5, just to see	
_			where you came into the picture vis-à-vis Sergeant	
14 15			McCabe.	
15		Α.	Sure.	15:17
16	582	Q.	Volume 5, page 3004. The Tribunal has heard that the	
17			Commissioner met Sergeant McCabe the previous August,	
18			the Minister had met Sergeant McCabe in October, the	
19			Tribunal has seen quite a degree of correspondence back	
20			and forward, but this was the first meeting of the	15:18
21			Commissioner with Sergeant McCabe after the	
22			establishment of the Tribunal. But I think you weren't	
23			at that meeting, is that correct?	
24		Α.	No. My apologies are noted on the 12th February.	
25	583	Q.	Yes. And did you receive the minutes of this meeting?	15:18
26		Α.	Truthfully, I think I received them only in advance of	
27			this particular meeting.	
28	584	Q.	Yes.	
29		Α.	This particular Tribunal. But I would have been aware	

1			of the meeting.	
2	585	Q.	Yes. And I think have you seen Mr. Ruane's notes of	
3			the meeting also?	
4		Α.	In the context of the Tribunal also, yes.	
5	586	Q.	All right. I suppose I'm just introducing this to see,	15:18
6			as it were, did you catch up with what had happened at	
7			the meeting?	
8		Α.	Yes. I mean, all of the participants that were at that	
9			meeting would have become known to me subsequently as ${\tt I}$	
10			began to deal with Sergeant McCabe.	15:19
11	587	Q.	Now, it would appear that Sergeant McCabe corresponded	
12			directly with the Commissioner on the 22nd February,	
13			and if you could go to page 3007, I think you became	
14			aware of that at that time, is that correct?	
15		Α.	That's correct.	15:19
16	588	Q.	And you were, I think, appointed by the Commissioner on	
17			the 23rd February, is that correct?	
18		Α.	That is correct.	
19	589	Q.	And if we just turn to page 3013, you can see that.	
20		Α.	Yes.	15:19
21	590	Q.	And I think you were directed there to liaise with	
22			Assistant Commissioner Fanning, Chief Superintendent	
23			O'Brien, I think he had been appointed as a point of	
24			contact, is that correct?	
25		Α.	Yes, Chief Superintendent O'Brien had been dealing with	15:20
26			a series of some 14 issues that had been raised by	
27			Sergeant McCabe in 2014.	
28	591	Q.	Yes.	
29		Α.	And he had progressed that work.	

Yes. And I think you were asked to contact Sergeant 1 592 Q. 2 McCabe. isn't that correct --

3 That's correct. Α.

4 593 -- to arrange a face-to-face meeting. Now, if we just 0. 5 go back to page 3012, I think Sergeant McCabe was 15:20 6 informed about this at the same time. is that correct? 7 He received an email from Frank Walsh That's correct. Α. 8 from the Commissioner's office advising him that I would be in contact or that I had been directed. 9 Yes. And I think at page 3015, the Minister was 10 594 Q. 15.2011 absent, but the Commissioner spoke to Mr. Waters, it 12 would appear, and was informed of the fact that you 13 were going to make contact with them, isn't that 14 correct?

- 15 That is correct. Α.
- 16 595 Okay. And I think at page 3016 we see also on the 23rd 0. 17 February that the Secretary General of the Department 18 was being told by the Commissioner of the nomination of 19 Chief Superintendent O'Brien in the matter and your 20 appointment was referred to also.
- There are some other pieces of correspondence 21 Yes. Α. 22 that are worthy of note in this particular chain that 23 go back to earlier in January. There were several 24 pieces of correspondence from Sergeant McCabe to the 25 Minister, the Commissioner, etcetera, and this forms part of that chain. 26
- 27 596 Yes, yes. And they raised inter alia concerns of Q. Sergeant McCabe about a publication and some 28 29 individuals who were alleged to be harassing him in --

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#### Gwei Malon (Stenograpi Service Ltc.

15:21

15:21

15.21

1 Correct. There were two streams to this: the Α. 2 publication piece from the 'Garda Review' and the 3 issues of workplace harassment. 4 Yes. And the Tribunal has seen those and they have 597 0. 5 been referred to. 15:22 6 Yes. Α. 7 In terms of what was being put in place at this stage 598 **Q**. 8 all of it related to an assessment of Sergeant McCabe, the concerns that existed in relation to his employment 9 and around the issues he had raised arising from a 10 15.2211 variety of concerns, isn't that correct? 12 Yes. There was a cornucopia of issues that Sergeant Α. 13 McCabe had raised in correspondence. There had been 14 meetings involving Mr. Costello, there were two 15 meetings in January with Deputy Commissioner Twomey, at 15:22 which Sergeant McCabe attended. There were a series of 16 17 concerns that nothing was happening with any great 18 speed to address these concerns. 19 599 Yes. And Sergeant McCabe, for his part, was both Q. entitled to, and did, make inquiry and protest that 20 15:23 nothing was happening, at different stages? 21 22 Yes. And there was a frequency to the correspondence, Α. 23 sir, in January and early February 2015. 24 Yes. And if we look at perhaps Volume 6, page 3435, we 600 Q. 25 see that the Commissioner was writing to the Minister 15.23 in response to a letter from her concerning Sergeant 26 27 McCabe's latest email, which had been addressed to both I think we looked at that email with the 28 of them. previous witness earlier. 29

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1 This is a considerable piece of correspondence, Α. Yes. 2 it's 11 pages. It, in effect, is a Section 41 response from the Commissioner --3 Yes. 4 601 0. 5 -- to a letter of the 25th February which the Minister Α. 15:24 6 wrote to the Commissioner seeking an urgent reply in 7 relation to the concerns raised by Sergeant McCabe. Yes, yes. And the Commissioner I think replied on the 8 602 0. same day and was able to tell the Minister you were 9 10 actually meeting Sergeant McCabe on that day? 15.2411 Yes. Α. 12 And I think you met him in the Shangan Buildings, it's 603 Q. called, up in, I think, Garda HQ? 13 14 Α. The Shangan Building in Headquarters, that's correct. 15 604 And if we just go back to Volume 5, page 3042. Q. I'm 15:24 16 sorry, this is slightly later. I will just come back 17 to it in a minute. But you met Sergeant McCabe and you 18 made extensive notes of the meeting, and they're at 19 page 3019 onwards. What's the date of the meeting? 20 CHAIRMAN: 15:25 21 MR. MCGUINNESS: It's 25th February. 22 It's the same date we were back there. CHAIRMAN: Yes. It's the same date there. 23 MR. MCGUINNESS: 24 Yes. Α. 25 Chief Superintendent O'Brien was there as the nominated 15:25 605 0. officer. 26 27 Yes. And this was my first time meeting Sergeant Α. McCabe. Chief Superintendent as he was then, he's now 28 29 an assistant commissioner, Barry O'Brien, had prior

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1			experience in engaging with Sergeant McCabe, so he was	
2			the point of introduction between Sergeant McCabe and	
3			myself.	
4	606	Q.	Yes.	
5		Α.	And there were, in effect, three meetings on that day. ${}_{15}$	5:26
6	607	Q.	Yes. We've seen the minutes of that. And the second	
7			meeting was a meeting with the Commissioner, is that	
8			correct?	
9		Α.	well, it's actually the third meeting.	
10	608	Q.	The third meeting there?	5:26
11		Α.	There was a little short pre-meeting before Barry and I	
12			went.	
13	609	Q.	A briefing?	
14		Α.	A briefing, indeed.	
15	610	Q.	Briefing session, as such?	5:26
16		Α.	Indeed, correct.	
17	611	Q.	In any event, you met Sergeant McCabe at that time.	
18			And just from the point of view of these minutes, it	
19			may or may not be important, but you sent these minutes	
20			to the chief administrative officer at a slightly later ${}_{15}$	5:26
21			period, I think on the 10th March, is that correct?	
22		Α.	I think it's even later, I think it's about yeah, I	
23			think it is 10th March. My apologies, you're right.	
24	612	Q.	Perhaps we will just confirm that if you have any	
25			doubt. At page 4186 of our papers, which is Volume 6. $_{15}$	5:26
26		Α.	4186. Which volume?	
27	613	Q.	I am sorry, I think it's probably Volume 7.	
28		Α.	Volume 7. Yes, March 10, that is my note.	
29	614	Q.	And just to confirm that that is the same minutes of	

1			the same meeting from the 25th, if we go to the next	
2			page?	
3		Α.	Yes.	
4	615	Q.	That is. All right.	
5		Α.	The 10th March then.	15:27
6	616	Q.	Okay. And I think you've seen Mr. Ruane's notes, they	
7			have been provided to you?	
8		Α.	Yes. We saw them yesterday or the day before.	
9	617	Q.	Typewritten notes.	
10		Α.	Yes.	15:27
11	618	Q.	And there's no discordance, I think?	
12		Α.	There's no discordance. In fact, I think it helps	
13			paint the picture of the day, and it was a particularly	
14			important set of engagements. Barry O'Brien, Assistant	
15			Commissioner Barry O'Brien and I met in Cyril Dunne's	15:27
16			office at about two o'clock with the Commissioner and	
17			Mr. Dunne. There is no minute of the meeting. It was	
18			a short briefing as to what we could expect - I had not	
19			met Sergeant McCabe at this point in time - as to what	
20			we could expect in the meeting.	15:28
21	619	Q.	Yes.	
22		Α.	And we were anticipating that he would attend, as he	
23			had two previous meetings with his solicitor,	
24			Mr. Costello. And I was given certain understandings	
25			of things that I would and should expect to happen at	15:28
26			the session where the three of us were to sit down, and	
27			they are actually referenced or some of those	
28			expectations are referenced in Mr. Ruane's note of the	
29			post-meeting which took place in the evening when the	

1			meeting that we had in the Shangan Building concluded.	
2	620	Q.	Yes. And you're at that meeting as well?	
3		Α.	I'm on the telephone.	
4	621	Q.	Yes.	
5		Α.	So I'm participating in the meeting, but I'm doing so	15:28
6			from my car.	
7	622	Q.	Yes. In any event, as far as Sergeant McCabe was	
8			concerned, you were anxious to establish, and did	
9			establish I think, cordial relations with him?	
10		Α.	Yes.	15:28
11	623	Q.	And you went I think you met sorry, I think you	
12			became aware that one of the planned items was a visit	
13			to meet Sergeant McCabe at home with his wife, with	
14			Chief Superintendent O'Brien?	
15		Α.	That involved one of my senior staff, Chief	15:29
16			Superintendent Tony McLoughlin and Barry O'Brien.	
17	624	Q.	Yes.	
18		Α.	That flows from one of the meetings that Sergeant	
19			McCabe and Séan Costello had with John Twomey in	
20			January. I did not attend that meeting. I think it	15:29
21			was 6th March.	
22	625	Q.	6th March, yes.	
23		Α.	I wasn't at that session.	
24	626	Q.	All right. I know. But did you see the minutes of	
25			that in due course?	15:29
26		Α.	Truthfully, I don't think I did. I knew it was taking	
27			place as a meeting. And if I've seen them, I've only	
28			seen them in the context of this Tribunal.	
29	627	Q.	All right.	

But Tony McLoughlin and Barry would both have given me 1 Α. 2 a view on it. And Sergeant McCabe himself would have taken me through. 3 It was a very cordial meeting and it took place in the McCabe home. 4 5 628 Yes. In any event --Q. 15:30 Sorry, Mr. McGuinness, forgive me for being 6 CHAIRMAN: 7 confused, it's my fault and not yours. There's lots of 8 statements from Mr. Dunne -- sorry, I beg your pardon, from Mr. Barrett, and they're long. The 2pm meeting 9 which was to scope out on the 25th February '15 what 10 15.3011 are the kind of issues that need to be discussed, I'm 12 just wondering, because of the reference to other 13 people, who was actually at that meeting? 14 Α. Yes. Chairman, if I can assist. 15 I think it seems to have been Cyril Dunne, CHAIRMAN: 15:30 16 Barry O'Brien and yourself? And the Commissioner. 17 Α. 18 CHAIRMAN: Is that it? 19 And the Commissioner. It was a brief meeting. Α. 20 But you said you met in the Commissioner's CHAIRMAN: 15:30 office. You didn't say you met --21 22 No, we met in Cyril Dunne's office on the ground floor Α. 23 of the front -- what is called the front block, so that 24 we could walk across and meet the visiting party, as we 25 anticipated, because we had anticipated that 15.3026 Mr. Costello would be present, and the front gate 27 involves a gate-post where Sergeant McCabe was waiting for us when we left that session. 28 29 MR. MCGUINNESS: But in any event, this isn't a meeting 629 Q.

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1 where you're suggesting that Mr. Dunne said anything 2 inappropriate? 3 Α. No. The meeting was a helpful briefing for me as somebody who had not met Sergeant McCabe before. 4 5 630 Yes. Q. 15:31 6 But there were a number of things said and, you know, I Α. 7 think they're perfectly understandable. I was told 8 that I should be cautious because I may well be recorded. I was told that the meeting may last 9 probably 45 minutes to an hour. I was told to expect 10 15.31 11 that Sergeant McCabe would be somewhat furtive if he 12 was faced with difficult questioning. And I had some 13 issues, as you've seen, from the correspondence from 14 superintendent Walsh, as to what I should deal with at 15 this meeting. There were two elements that I was 15:31 16 specifically tasked to address in my meeting with 17 Sergeant McCabe. 18 Now, I suppose just in context, you weren't, and 631 Q. Yes. 19 you've never been, as it were, an attested member of 20 the force? 15:31 21 NO. Α. 22 And you hadn't participated in any form of 632 **Q**. 23 investigation of any kind in relation to anything in 24 connection with Sergeant McCabe's complaints --25 Α. NO. 15:32 -- relating to other matters? 26 633 0. 27 I'm reading myself into the history of this --Α. 28 634 Yes, of course. Q. 29 -- before I meet him, but --Α.

You probably didn't know, or did you know, that 1 635 Q. 2 Sergeant McCabe, I think in one of his documents, even, 3 which came to be produced before the Commission, he said he had 70 recordings? 4 5 Yes. Α. 15:32 6 636 And presumably when you were told of this possibility **Q**. of recording, you didn't know about that, did you? 7 8 NO, I did. Α. You did? 9 637 Q. I mean, this was already in the public domain, 10 I did. Α. 15.32 11 if you consider back to the 'Today Tonight' programme, the release of the tape, the correction of Minister 12 13 Shatter's statement to the House. I was aware of 14 recordings in other cases also. 15 638 All right. Well, in any event, it seems that you were Q. 15:32 16 being asked to consider to -- if you were going to ask 17 him any questions, to deal with him sensitively? 18 Yes, but to be mindful of these things. And my Α. 19 reaction -- and I don't think this meeting in any way 20 was unhelpful or in any way intended to create an 15:33 impression in my mind. I simply asked that I be 21 22 allowed make up my own mind from the interaction I 23 would have with him. 24 Well, in any event, did you come to learn of a 639 Yes. Q. 25 letter that the Commissioner sent to the Minister on 15.33 26 the 20th March? The Minister had required another 27 report in relation to how the Commissioner was dealing 28 with Sergeant McCabe as an employee, what was she doing 29 as an employer.

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1 Sir, I was aware that on the very day we're talking Α. 2 about, the 25th February, there was a request from the Minister that arrived that day. This might account for 3 some of the urgency with which this was being dealt 4 5 with. 15:33 6 640 Yes. Q. 7 which asked for essentially an urgent update on how the Α. 8 matters raised by Sergeant McCabe were to be dealt with, and I think that informed a lot of the, I 9 suppose, investment of time of the most senior staff in 15:34 10 11 the series of meetings that I'm talking about. 12 Yes. But I'm just bringing you forward now to page 641 Q. 3029 of the book. 13 14 Α. Yes, sir. 15 642 The Tribunal has seen this on a number of occasions. Ο. 15:34 16 And this is the Section 41 report. 17 Yes, sir. Α. 18 643 And you've seen that, obviously? Q. 19 I have. Α. 20 644 And it summarises the supports and the actions that the 15:34 Q. 21 Commissioner was taking. If one goes to page 3039, you 22 will see those there. 23 Yes. Α. 24 And you're obviously referenced there in a number of 645 Q. those bullet-points, isn't that correct? 25 15.34That's correct. 26 Α. 27 646 Okay. And were they all accurate, as far as you were Q. 28 concerned? Well, the best way I can describe the interregnum 29 Α.

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1 between the meeting on the 25th and when this letter 2 was sent to the Secretary General, is that there was an 3 intensive amount of activity from many parties, me included, but many others also, in essentially seeking 4 5 to craft a set of solutions --15:35 6 647 Yes. Q. 7 -- to the concerns raised by Sergeant McCabe. Α. Yes. And that was all appropriate. 8 648 Ο. Indeed. 9 Α. 10 649 Now, just on one point, did you offer -- you Q. Yes. 15.3511 obviously knew of the establishment of the Commission? 12 Yes. Α. 13 And did you offer any advice to the Commissioner about 650 Q. 14 how it might be appropriate to deal with them in the context of the Commission? 15 15:35 16 No. I didn't, sir. It was external to the entire Α. 17 preparation for the Commission, bar a very peripheral 18 engagement through one of the chief superintendents and 19 mv staff. 20 So, I mean, can I be clear that you weren't involved in 15:36 651 Q. 21 any consultations or preparation of any type --22 NO. Α. -- in connection with the Commission? 23 652 Q. 24 Not at all. And my brief and focus was to --Α. 25 essentially to ensure the organisation responded to the 15:36 26 concerns in writing in those articulated by Sergeant 27 McCabe. 28 Yes, yes. 653 Q. 29 Around the areas of harassment in the workplace, around Α.

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1 the areas that he had called out to the Taoiseach, the 2 Minister --3 654 Yes. Q. -- the Commissioner and others. 4 Α. 5 655 All of the existing concerns, wherever they had arisen Q. 15:36 6 or however they had arisen, and they would have been 7 dealt with, and that was your area? 8 That was my --Α. You'd no responsibility, as it were, in relation to 9 656 Q. preparation for the Commission? 10 15.3611 No, none. Α. 12 Now, those interactions with Sergeant McCabe appear to 657 0. 13 have been positive, in the sense that it would appear 14 that, if one goes to page 3045, Sergeant McCabe is 15 writing in to the Commissioner in relation to working 15:37 16 conditions. 17 CHAIRMAN: If you wouldn't mind just giving me the Is that the 14th April '15? 18 date. 19 MR. MCGUINNESS: That's the 14th April. 20 So it's a wee bit after this. CHAIRMAN: 15:37 21 MR. McGUINNESS: Yes, 14th April. 22 CHAIRMAN: Thank you. 23 MR. MCGUINNESS: Now, he's raising concerns there, but 658 Q. 24 he seems to have had some improvement in his working conditions in Mullingar there. He raises other issues. 15:37 25 26 And were they still being addressed in terms of the 27 other complaints? 28 Absolutely. Α. 29 659 Q. Yes.

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1 On the 10th -- or 10th to the 15th March, we ran a Α. 2 series of seminars run by Dr. Gerry McMahon in the Mullingar station, which is a divisional regional 3 headquarters, for all the staff on the whole Dignity at 4 5 Work programme within An Garda Síochána. At that point 15:38 6 in time, 14 April, I had had a number of engagements 7 with Sergeant McCabe. The very first engagement that 8 you referred to earlier, Mr. Marrinan [sic], was one where I asked him to vest trust and also to desist from 9 10 writing salvos of correspondence to the Minister, the 15:38 11 Commissioner, Taoiseach and others. And I got a very 12 unequivocal response from Sergeant McCabe, which I very 13 much appreciated. I asked him that we should not 14 conduct our business in the media, I didn't want to 15 read about myself, and I thought we could do our 15:38 16 business without any of that preceding noise, and he honoured that immediately. 17 But what are we talking about now? 18 CHAIRMAN: I mean, 19 I'm sorry, I'm just not following, Mr. McGuinness. 20 Again, it's my fault. Is it some meeting we're talking 15:39 Because we were on a letter and now suddenly 21 about? 22 we're on a meeting. 23 we're on a letter of the 14th April. Α. 24 CHAIRMAN: And that is Mr. McGuinness, by the way. 25 Sorry, Mr. McGuinness. My apologies, my apologies. Α. 15.3926 660 MR. McGUINNESS: You were confirming to the Tribunal 0. 27 that --Between the original meeting of the 25th February and 28 Α. 29 the date of this letter where he notes improvement in

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1			the workplace.	
2	661	Q.	Yes.	
3		Α.	Chairman, many of the initiatives that we were talking	
4			about	
5	662	Q.	Yes.	15:39
6		Α.	were being implemented.	
7	663	Q.	Yes.	
8		Α.	And the engagement that we had set out to have, at that	
9			initial meeting in the Shangan Building, continued.	
10	664	Q.	Yes. But what I am concerned at now is, in April	15:39
11			and if we could take page 2969 of your statement up, at	
12			the bottom of the page.	
13		Α.	2969.	
14			CHAIRMAN: I still don't know what is the meeting?	
15			What is the date of the meeting? Or what meeting?	15:40
16			Where are we talking about? And again, I'm sorry, it's	
17			not your fault, Mr. McGuinness. I just simply don't	
18			know.	
19			MR. McGUINNESS: Yes. No, that is what I am going to	
20			ask the witness to deal with.	15:40
21		Α.	Yes, sir.	
22	665	Q.	In this part of your statement, you refer to the	
23			following:	
24				
25			"Prior to the commencement of the O'Higgins Commission	15:40
26			hearings"	
27		Α.	Yes.	
28	666	Q.	" at the conclusion of a meeting in the office of	
29			the chief administrative officer, Cyril Dunne,	

1			Mr. Dunne asked me to remain in his office after the	
2			other attendees had left and with reference to Sergeant	
3			McCabe and said we are going after him in the	
4			Commission."	
5		Α.	Yes.	15:40
6	667	Q.	Now, when did that meeting take place?	
7		Α.	On or about the 13th May.	
8	668	Q.	13th May?	
9		Α.	Correct.	
10	669	Q.	Right.	15:40
11			CHAIRMAN: Is there a date in the statement?	
12			MR. MCGUINNESS: And how do you place that?	
13			CHAIRMAN: Sorry, Mr. McGuinness, in the statement is	
14			there a date?	
15			MR. MCGUINNESS: No, no.	15:40
16	670	Q.	Mr. Barrett, the statement you provided to the	
17			Tribunal, obviously it was furnished and greatly	
18			received in April 2017.	
19		Α.	Yes.	
20	671	Q.	But how do you place this meeting as of the 13th May?	15:41
21		Α.	The	
22	672	Q.	You haven't done so in a statement to the Tribunal?	
23		Α.	Okay.	
24	673	Q.	That is the first issue.	
25		Α.	I do need to clarify this.	15:41
26	674	Q.	Yes.	
27		Α.	When we forwarded this in, as you point out, April of	
28			this year, which was a very early period after the	
29			establishment of the Tribunal, we had an anticipation	

1			that we would be invited to come meet with you.	
2	675	Q.	Yes. You're using a "we", I mean	
3		Α.	Well, my legal team.	
4	676	Q.	Your legal team, yes. Obviously you're giving	
5			instructions as to what happened and when they	15:41
6			happened, and they are all coming, obviously, from you?	
7		Α.	Yes.	
8	677	Q.	How is it that you were, as it were, not in a position	
9		•	to specify when the meeting was in April and that	
10			you're telling us now exactly when it was? I don't	15:42
11			mean to be rude about this, I'm trying to find out.	
12		Α.	No. And let me absolutely clear	
13	678	Q.	Yes.	
14		Α.	I am doing this having looked at the chronology of	
15			correspondence that I hold, I am doing this from	15:42
16			looking at diary entries. I am, sir, being totally	
17			honest with you when I say that if I had it all over	
18			again, I would have made a very detailed and	
19			contemporaneous note of what was a comment, which, at	
20			the time that I received it, just seemed odd, relative	15:42
21			to the work that had been put in from mid-February to	
22			that date in May.	
23	679	Q.	Yes.	
24		Α.	And I didn't, and I didn't understand it, quite	
25			frankly, until after the fact, until some time later.	15:42
26	680	Q.	You've answered one of my questions. You didn't make a	
27			note of it at all?	
28		Α.	No, I didn't, I didn't. And, you know, its	
29			relevance and while the comment I found shocking	

1			because it jarred with what was a cottage industry of	
2			activity around seeking to improve the working	
3			conditions in Mullingar.	
4	681	Q.	Yes.	
5		Α.	Seeking to deal with the issues.	15:43
6	682	Q.	Yes.	
7		Α.	And I was centrally involved in those. This jarred	
8			with it.	
9	683	Q.	You don't doubt, I take it, that all of those efforts	
10			were genuine?	15:43
11		Α.	Absolutely. And I can say this: I took the brief from	
12			the Commissioner, I think I dealt with it	
13			authentically. I threw myself into it because I saw	
14			the opportunity to really make a very visible change	
15			here.	15:43
16	684	Q.	Yes. But what was the nature of this meeting that you	
17			had been at with Mr. Dunne? Was it connected to the	
18			Commission?	
19		Α.	No, it wasn't. It was at the tail end of a meeting on	
20			another topic entirely in Mr. Dunne's office, and he	15:43
21			said it to me as I was leaving, and I turned to him and	
22			I said "you must be joking me".	
23	685	Q.	Well, I was going to ask you indeed what your response	
24			was. I mean, you say in your statement:	
25				15:43
26			"I indicated my shock and dismay that such an approach	
27			would be taken in the O'Higgins Commission."	
28		Α.	Yeah.	
29	686	Q.	Are you telling the Tribunal you simply said "you must	

1			be joking"?
2		Α.	Well, I might have introduced an expletive in the
3			middle of that, and I do apologise for it.
4	687	Q.	And was anything else said by Mr. Dunne?
5		Α.	It was a decision I was being informed of. I was
6			effectively being told of something that I had no line
7			of sight on, as I was walking out the door.
8	688	Q.	Well, can we take that stage by stage? The question I
9		•	asked was, did Mr. Dunne say anything else to you?
10		Α.	The meeting we had was not in the context of O'Higgins 15:44
11			at all. This was just a point of information. And I
12			worked closely with Cyril Dunne, he was my line boss,
13			we were dealing with a whole series of issues at that
14			point in time, and my memory of it, and I do, you know,
15			accept, with hindsight, I should have taken a detailed 15:44
16			note of this and perhaps even protested more strongly.
17			I didn't understand what it meant.
18			CHAIRMAN: Did you protest to anybody?
19		Α.	Well, I went and looked at the terms of reference of
20			the O'Higgins Commission afterwards, but I didn't make $_{15:45}$
21			any protest beyond that. I just simply said Cyril, you
22			must be joking me.
23	689	Q.	MR. MCGUINNESS: Well
24		Α.	Its significance became much more visible to me about
25			two weeks later or whenever. 15:45
26	690	Q.	Mr. Dunne had no function in the preparation for the
27			Commission, isn't that right?
28		Α.	Mr. Dunne was
29	691	Q.	He's a civilian?

1		Α.	Yes. He was the chief administrative officer.	
2	692	Q.	Yes. He had a role there which was unconnected, as it	
3			were, with policing in the strict sense or he was never	
4			a uniformed officer at all?	
5		Α.	Not at all, no.	15:45
6	693	Q.	And he had no involvement in any of the issues in the	
7			Commission, is that not right?	
8		Α.	Well, the way that work is assigned in the organisation	
9			is very project-based at a senior level. Cyril would	
10			have sat with three others at the apex of the	15:45
11			organisation. And so, matters of that gravity and	
12			magnitude would certainly be considered by what is	
13			called the executive. And I would imagine that the	
14			O'Higgins Commission would have warranted discussion	
15			and review in all of the weeks as we ran up to it. So	15:46
16			I think, you know, he would have had a much more	
17			broader line of sight than I had. I did not have any	
18			of the preparatory issues on O'Higgins and I knew that	
19			there was a considerable amount of energy going into	
20			that; meetings that people were attending from all	15:46
21			quarters of the organisation, in preparation of	
22			O'Higgins, working on discovery and quite a lot of	
23			energy went into those preps. I would have been	
24			conscious of those meetings though I was external to	
25			them.	15:46
26	694	Q.	I mean, this remark is made, you don't note it,	
27			apparently Mr. Dunne says nothing else.	
28		Α.	Yeah.	
29	695	Q.	You say you must be joking, you don't record it, and	

1 you don't report it to anyone, is that right? 2 Well, I have to be honest and say, at the time it Α. 3 didn't have the significance that it had a week or ten 4 davs later. 5 696 Yes. Q. 15:47 And you know, I recall it because personally -- and you 6 Α. 7 know the record that you've walked me through, sir, is correct, but there were significantly more numbers of 8 activities in the window between the 25th February when 9 I first met Sergeant McCabe and the middle of May. 10 In 15.47 11 that three months, there's even emails that I think you have on record from St. Patrick's day when I'm writing 12 13 it people like Ken Ruane, Cyril Dunne around the Ciaran 14 Mulvey terms of reference, as we're seeking to get 15 Ciaran Mulvey engaged. 15:47 16 697 Yes? Q. 17 Tony Kerr was in reviewing our written policies, Α. 18 Dr. Gerry McMahon was in dealing with issues of 19 presentation and bullying and harassment. So there is 20 this kind of frenetic activity going on and I'm very 15:47 much at the centre of the rehabilitation piece of that. 21 22 Yes? 698 Q. 23 And then, in something that jarred with this --Α. 24 Yes? 699 Q. 25 -- I am told, something that is out of the blue and Α. 15.4826 doesn't accord -- and the reason, the reason, sir, that 27 I responded as I did was simply because it didn't make sense why that would be the case. 28 29 well, you obviously didn't take it as a serious issue, 700 Q.

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1 could I suggest that? 2 Yes. Α. Because if you thought your three months' work was 3 701 0. 4 going up in smoke arising from some intended course of 5 action, I mean surely you would have done something. 15:48 I can only say with the benefit of hindsight I would 6 Α. 7 have done a very different kind of protest and minuted 8 that discussion. And probed it. But I didn't. And you know, I'm presenting to you the truth. 9 You seem to have characterised the remark as being a 10 702 Q. 15.4811 decision that was being conveyed to you, but did 12 Mr. Dunne ever say anything to that effect? 13 I took it to be, you know, we're going after him in the Α. Commission to be a decision. And I didn't understand 14 the import of it until some time later. 15 15:48 16 I beg your pardon, Mr. McGuinness, again a CHAIRMAN: 17 decision by who? 18 Well, it would be the executive of the organisation Α. 19 would make a decision of that order. It would have to 20 be blessed --15:49 What kind of order? 21 CHAIRMAN: 22 Well, something as serious as that in relation to the Α. 23 O'Higgins Commission. The O'Higgins Commission was a 24 very significant event. So if I can put the 25 sensitivity of all of these matters in some kind of 15.49context. Commissioner Nóirín O'Sullivan was appointed 26 27 on the 25th November 2014 --28 All right. Sorry, I wasn't asking you to go CHAIRMAN: into that and I think it's not helpful for me to 29

1 interrupt, Mr. McGuinness, please carry on. 2 703 MR. McGUINNESS: You've seen Mr. Dunne's statement, I Q. 3 take it? I have. 4 Α. 5 704 In which he doesn't -- he says he's certain he never Q. 15:49 6 said that; we are going after him in the Commission. 7 He says: 8 "That was certainly not my understanding." 9 10 15.5011 Even though he was not involved in the O'Higgins 12 Commission he had no basis on which to say anything 13 like that. His understanding of the approach by Garda 14 management was very much focused on establishing the 15 truth. Did you have any discussion with Garda 15:50 16 management about what their intention or objective was 17 to establish in the Commission through the 18 representation of the organisation at the Commission? 19 My assumption was precisely that; that the Commission Α. 20 would in effect be the one to be the arbiter of what 15:50 complaints raised by Sergeant McCabe. 21 22 705 I have actually asked a slightly different Q. Yes. 23 question rather than your assumptions. Did you have 24 any discussion with Garda management about what their 25 intention or objective was to establish --15.5026 Specifically about intention, no. I was involved Α. 27 obviously with people like Fergus Healy and various other people who were very busy doing things in 28 29 preparation for the Commission. These people would be,

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1 you know, in areas of headquarters that I would come 2 across frequently. I was external to the process --3 706 Q. Yes? 4 -- and other than their good endeavour --Α. 5 707 Yes? Q. 15:51 6 -- and the kinds of, you know, how are you getting on Α. 7 question --8 708 Yes? Ο. 9 -- the philosophy or the approach wasn't something they Α. would have discussed with me. Nor should they. 10 15.5111 709 Q. But did you contemplate yourself that Sergeant McCabe's evidence couldn't be tested or challenged --12 13 Truthfully. Α. 14 710 Ο. -- or looked at by the Commission or by any party 15 against whom he had made a suggestion? 15:51 16 I had a very naive view at that point in time that Α. 17 these matters would be addressed by the Judge and that 18 he would make some findings as to what was the factual situation. And you know my impression was the matters 19 20 would be put before him and judicially there would be 15:51 some kind of findings made as to what was true and what 21 22 wasn't. 23 I'm not suggesting it was your job or duty to do this, 711 Q. 24 but you hadn't studied presumably the Commissions Act or the terms of reference or the Commissions rules or 25 15.51procedures? 26 27 Α. No, I hadn't. I saw the statutory instrument when it came out in February and I took note of that and I took 28 note of the terms of reference and I went back and 29

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1			looked at those again after the conversation with	
2			Cyril.	
3	712	Q.	And had you any understanding of how the hearings were	
4			structured under the Commission's rules	
5		Α.	No, I hadn't.	15:52
6	713	Q.	or what documents were to be circulated?	
7		Α.	No. And this is part of the	
8	714	Q.	I'm not criticising you.	
9		Α.	No. I never set foot in the door of the Commission	
10			itself and I wasn't concerned about how it was going to	15:52
11			conduct itself. It was obviously skilled and capable	
12			in what it was given to do.	
13	715	Q.	Yes. In terms of the Commission, did you have some	
14			interaction with Sergeant McCabe after Superintendent	
15			Murray's report came on the 19th May? Did you see that	15:52
16			report?	
17		Α.	Yeah. The chronology is clear. I'm asked to reengage	
18			with Sergeant McCabe in a piece of correspondence from	
19			Superintendent Frank Walsh who was the Commissioner's	
20			secretary	15:53
21	716	Q.	Yes?	
22		Α.	on or about 14th or 15th May. It's in that week I	
23			think, Mr. McGuinness. And so, I'm asked to reengage	
24			and effectively ensure that from a welfare perspective	
25			particularly	15:53
26	717	Q.	Yes?	
27		Α.	that Sergeant McCabe is contacted, and I do that.	
28	718	Q.	Yes. And obviously, presumably you weren't in a	
29			position to investigate, or didn't feel it appropriate	

1			to do it, what had happened at the Commission?	
2		Α.	No. And I was unclear as to what precisely my best	
3			reports ultimately about what happened in the	
4			Commission emerge much after the fact.	
5	719	Q.	Yes?	15:53
6		Α.	At the time it was not known to me in terms of the	
7			gravity or seriousness.	
8	720	Q.	I think later you engaged with Sergeant McCabe about	
9			after the publication of the report	
10		Α.	Yes.	15:53
11	721	Q.	and later, you reported on that and we've seen	
12			minutes of that.	
13		Α.	Yes.	
14	722	Q.	But that's dragging us into another issue.	
15			CHAIRMAN: Are we talking about 2016?	15:53
16			MR. MCGUINNESS: Yes.	
17		Α.	Yes.	
18			CHAIRMAN: 2014, '15, May 2016.	
19			MR. MCGUINNESS: Perhaps you would answer any questions	
20			anyone else might have.	15:54
21			CHAIRMAN: Yes. Well, I think why don't we leave it	
22			there and	
23			MR. DIGNAM: Chairman, just before we rise.	
24			CHAIRMAN: Yes.	
25			MR. DIGNAM: We have a slightly strange situation where	15:54
26			Mr. Dunne was due to give evidence I think in fact on	
27			the first day of this module, due to his personal	
28			arrangements, Mr. Barrett for the first time in the	
29			witness box has mentioned that his placing of the date	

of the meeting, which as you know there's no reference 1 2 to any date in his statement, is based on a diary entry 3 and chronology of correspondence, I wonder if he has that documentation and he might provide it to the 4 5 Tribunal. 15:54 MR. MCGUINNESS: 6 Perhaps I should ask a couple of 7 supplementary questions. 8 723 How did you place it on that date of the 13th May? Ο. 9 There is -- I looked at a series of emails. So let me Α. begin by saying this: My belief is very clearly based 10 15.54 11 upon having to establish the date with some certainty. 12 So to answer the question I've just been asked, I went 13 and examined what was in my email archive. I had a 14 meeting with Mr. Dunne and the Commissioner on or about 15 that date -- on that date. And it's after that meeting 15:55 16 I believe this comment is made. And you know I should 17 have with the benefit of hindsight, I accept your point entirely, made a detailed note. I didn't. 18 19 724 Are you saying the Commissioner was at this meeting Q. 20 with you and Mr. Dunne --15:55 The original meeting at which we were discussing a 21 Α. 22 different set of issues. This was all the tail end of it where Cyril asked me to stay on in his office and 23 24 deal with matters. 25 I'm not sure -- I may have picked that up wrong but are 15:55 725 Q. 26 you saying that the meeting on the 13th involved a 27 meeting between you and the Commissioner and Mr. Dunne? 28 The core meeting was. And then I stayed back. Α. Yes. In his office? 29 726 0.

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1		Α.	In his office.	
2	727	Q.	And who else was present?	
3		Α.	That's it. That was just a brief session at which I	
4			was called over from my office, I live in a different	
5			building.	15:55
6	728	Q.	Yes. But the meeting had nothing to do with the	
7			Commission?	
8		Α.	NO.	
9	729	Q.	No. Okay. Thank you.	
10				15:55
11			THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:	
12	730	Q.	CHAIRMAN: So, the position in relation to	
13			correspondence, you didn't note it at the time, in	
14			relation to diary entries or whatever, have you got	
15			anything to assist in that regard?	15:56
16		Α.	I can give you my paperwork sir. I'm genuinely it's	
17			not my form. I'm genuinely disappointed in myself that	
18			I didn't make a more detailed note of it. It's not how	
19			I generally conduct myself.	
20	731	Q.	CHAIRMAN: Did you talk to anybody about it at the	15:56
21			time?	
22		Α.	I didn't.	
23	732	Q.	CHAIRMAN: At the time?	
24		Α.	At the time, no, I didn't. I talked to people	
25			subsequently about it but not at the time.	15:56
26	733	Q.	CHAIRMAN: You mean a year later?	
27		Α.	Oh yes.	
28	734	Q.	CHAIRMAN: Two years later?	
29		Α.	Weeks and months later. As it became significant. And	

1			you know at the time	
2	735	Q.	CHAIRMAN: What are we talking about?	
3		Α.	My first discussion around this would be probably in	
4			the six weeks or two months after when the whole issue	
5			began to emerge in full technicolour.	15:56
6	736	Q.	CHAIRMAN: And what did you say to who?	
7		Α.	My first correspondent was Chief Superintendent Tony	
8			McLoughlin, who is a member of my staff.	
9	737	Q.	CHAIRMAN: And you wrote to him?	
10		Α.	No, I didn't write to him. I would have had a	15:57
11			conversation with him about it.	
12	738	Q.	CHAIRMAN: One can have a conversation about	
13			something	
14		Α.	I didn't write to him, Chairman.	
15	739	Q.	CHAIRMAN: that doesn't necessarily I mean,	15:57
16			having a conversation about a car is one thing, having	
17			a conversation about a Rolls Royce may be a different	
18			thing. So, did you tell him that Mr. Dunne had said	
19			this?	
20		Α.	He verifies that I did and I spoke to him about it in	15:57
21			advance of giving evidence. I haven't a date for it,	
22			sir. I can only tell you that it's on or about the	
23			13th May and I can show you my	
24	740	Q.	CHAIRMAN: No. I'm talking about Chief Superintendent	
25			McLoughlin.	15:57
26		Α.	Oh, the chief superintendent was some time thereafter.	
27			Tony is	
28	741	Q.	CHAIRMAN: Well, I mean, some time thereafter is the	
29			length of a fishing line.	

1		Α.	Truthfully, I can't give you that date either. And I	
2			wouldn't have volunteered it if in truth, I don't	
3			have a date or a minute of the meeting of the 13th, I	
4			believe it to be that day.	
5	742	Q.	CHAIRMAN: I'm not talking about that. I'm talking	15:58
6			about telling Chief Superintendent Tony McLoughlin.	
7		Α.	He came to me, sir, and he said that I did raise it	
8			with him and I don't know what his date on that is or	
9			whether he has one.	
10	743	Q.	CHAIRMAN: How can he know about raising it	15:58
11		Α.	Because we talked about	
12	744	Q.	CHAIRMAN: with you unless you had previously raised	
13			it with him?	
14		Α.	Yes. He says I did and that's how it is that I am	
15			reporting this to you. And I was talking with him in	15:58
16			advance of coming here to give evidence.	
17	745	Q.	CHAIRMAN: When?	
18		Α.	In the last number of days I said Tony, did I raise	
19			this with you and he said	
20	746	Q.	CHAIRMAN: And he said?	15:58
21		Α.	He said yes, you did.	
22	747	Q.	CHAIRMAN: Raise what?	
23		Α.	The meeting at which Cyril said to me that you know	
24			we're going after him in the Commission, that I had	
25			made reference to that.	15:58
26	748	Q.	CHAIRMAN: Right.	
27		Α.	But again, I am very short on specificity and I do not	
28			want to pretend I have it, because I don't. I should	
29			have made a minute of that reference when it was given	

1 And I didn't. to me. 2 749 And the guery that was addressed to me on CHAIRMAN: Q. 3 behalf of the Garda Commissioner and certain members of the Gardaí and Mr. Dunne was, well, what documentation 4 5 you have that might help to put any kind of context on 15:59 6 this, and do you have any documentation? 7 I have an email which talks about the meeting that I Α. 8 had with the Commissioner and Mr. Dunne. CHAIRMAN: Well again, I don't think there is any doubt 9 750 Q. about the fact that you did have several meetings with 10 15:59 11 the Commissioner and Mr. Dunne. I mean, you would have 12 had, I presume, several a year? 13 Yes. Oh, several a week in many cases. And I would Α. 14 met Mr. Dunne perhaps two and three times a day. 15 751 CHAIRMAN: Why the 13th May then? Q. 15:59 16 Because that's when I believe this information was Α. being relayed to me. It's in that week. 17 18 why do you say it was in that week? 752 CHAIRMAN: Q. 19 Because I think that is the week in which he told me --Α. 20 I would have been conscious that there was only a 16:00 number of days between being told of this and then 21 22 realising from, you know, what emerged that there was a 23 contention around the issues that transpired at 24 O'Higgins. It wasn't a lengthy period of time before 25 this became visible. I never sat in O'Higgins, I never 16:00 sat foot in the actual room where it was taking place, 26 27 but it was shortly thereafter that this became clear to 28 me, that this had significance, greater than I imagined 29 at the time. No more than that kind of thing.

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1	753	Q.	CHAIRMAN: Did you know that the O'Higgins Commission	
2			was beginning on the 14th May?	
3		Α.	Yes. There's a series of correspondence between myself	
4			and Sergeant McCabe on that. My text messages I think	
5			are with the Tribunal.	16:00
6	754	Q.	CHAIRMAN: So it was at the very time that counsel were	
7			consulting in relation to matters that you say Cyril	
8			Dunne said this to you?	
9		Α.	He said it to me shortly before the Tribunal commenced	
10			and I know from my exchange of	16:01
11	755	Q.	CHAIRMAN: Okay. Well, why do you say the very day	
12			before the Tribunal commenced, 13th May?	
13		Α.	Because that's the email that triangulates to that	
14			discussion, I believe, in my record.	
15	756	Q.	CHAIRMAN: You said sometimes you have several meetings	16:01
16			a week	
17		Α.	Yes.	
18	757	Q.	CHAIRMAN: with these three people; yourself,	
19			Mr. Dunne and the Garda Commissioner?	
20		Α.	With Cyril Dunne	16:01
21	758	Q.	CHAIRMAN: Why that particular day?	
22		Α.	I have done in the absence of having a	
23			contemporaneous note of this, I have sought to try and	
24			prepare such that I can demonstrate where I was and	
25			what I was doing in the days coming up to the	16:01
26			commencement of the Tribunal. I have texts that are	
27			going back and forth to Sergeant McCabe; he tells me	
28			the Tribunal is commencing or the Commission is	
29			commencing. And in that week I believe that Cyril	

1			Dunne said this to me.	
2	759	Q.	CHAIRMAN: Well, a belief is one thing	
3		Α.	No, no	
4	760	Q.	CHAIRMAN: knowing about it is a different thing.	
5		Α.	I know.	02
6	761	Q.	CHAIRMAN: Why do you believe that? What is your	
7			belief based on?	
8		Α.	My belief is based on how I reacted to it. It was a	
9			visceral reaction because	
10	762	Q.	CHAIRMAN: I keep asking you the question why do you 16:	02
11			believe that it was on this date this happened, and I	
12			keep asking that question.	
13		Α.	well, let me present the documentation, sir, to the	
14			Tribunal that relates to the email that I think refers	
15			to the meeting at which at the end of Mr. Dunne said $16$ :	02
16			this to me.	
17	763	Q.	CHAIRMAN: I'm not sure that's going to help very	
18			much	
19		Α.	Okay.	
20	764	Q.	CHAIRMAN: if, as you are saying, you have several 16:	02
21			meetings a week with the two persons in question. I	
22			still come back to why are you saying it was the very	
23			day before the Tribunal began? What places it in your	
24			mind that day? Look, I know this is the kind of	
25			question that lot of witnesses are asked, and I don't $_{^{16:}}$	02
26			want unnecessary material coming into the Tribunal.	
27		Α.	Sure.	
28	765	Q.	CHAIRMAN: And you appreciate you've an obligation in	
29			any event to furnish relevant material to the Tribunal.	

1 A. Yes.

2	766	Q.	CHAIRMAN: Sometimes people will answer that question	
3			very smartly by saying well, yes, I know it was that	
4			day because it was my birthday or my wedding	
5			anniversary. That's the only question I'm asking you.	16:03
6			Now, are you in a position Mr. Dunne sorry	
7			Mr. Barrett, to identify what materials, emails, diary	
8			entries, or whatever, which can rationally or	
9			reasonably assist in placing that date and perhaps the	
10			date you say you had a conversation with Chief	16:03
11			Superintendent McLoughlin for the first time and	
12			mentioned this matter to him? Are you in a position to	
13			supply any such	
14		Α.	Yes. I'm in a position to supply the email that	
15			references the 13th May.	16:03
16	767	Q.	CHAIRMAN: But in what context?	
17		Α.	In the context that that is date sir	
18			CHAIRMAN: I think you might supply that, but I think	
19			look, if we just end this discussion now.	
20			Mr. Dignam, your query is in relation to materials and	16:03
21			that's what I have been trying to focus on, but perhaps	
22			not very helpfully, from anybody's point of view.	
23			MR. DIGNAM: Chairman, I'm sorry if I raised a hare.	
24			CHAIRMAN: No, you haven't raised a hare. It's	
25			important. Can you help as to what you think you may	16:04
26			want?	
27			MR. DIGNAM: Well, what Mr. Barrett said in direct	
28			response to a question that was asked by Mr. McGuinness	
29			when he asked him how did you place the date how did	

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you place the meeting I think is how Mr. McGuinness 1 2 correctly put it, and Mr. Barrett's direct response was 3 that it was on the basis of diary entries and chronology of correspondence. 4 5 CHAIRMAN: Yes. 16:04 6 MR. DIGNAM: It turns out now that there are no diary entries and there's no chronology of correspondence, 7 8 there's one email entry of a meeting which is completely unrelated. 9 Let's wait and see. Mr. Barrett, are there 10 768 CHAIRMAN: Q. 16.0411 diary entries that would help? 12 I have put together -- and this is, I make it plain, I Α. 13 put this together for the benefit of understanding the 14 activity of the various things that I was involved in, 15 so as I can answer chronology to this Tribunal. And I 16:05 16 have examined the diary entries that I have, and I have 17 examined the correspondence and I believe --18 769 Let's just split it up into pieces, if you Q. CHAIRMAN: 19 don't mind. Do you have diary entries that you think 20 can assist with regard to the evidence you've given 16:05 against Mr. Cyril Dunne? 21 22 I have a single email to the point. Α. CHAIRMAN: First of all, can we just deal with: 23 770 Do you **Q**. 24 have diary entries that you think can assist in 25 relation to what you say about --16.05Specifically in relation to this regard I think the 26 Α. 27 diary entries perhaps will not be as helpful as I would In the day of the 13th I certainly 28 like them to be. had a meeting, I believe it's at that meeting --29

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1	771	Q.	CHAIRMAN: Would you mind giving your diary to	
2			Mr. Dignam.	
3		Α.	No difficulty.	
4	772	Q.	CHAIRMAN: And there's no private in it, is there?	
5		Α.	It's largely, it's an electronic diary, it's very	16:05
6			you know it is what it is.	
7	773	Q.	CHAIRMAN: Do you have it with you?	
8		Α.	No, I don't. I will get it. I will make it available.	
9	774	Q.	CHAIRMAN: Can you make it available on a memory stick?	
10		Α.	I can.	16:06
11	775	Q.	CHAIRMAN: Can you perhaps be here at nine o'clock in	
12			the morning and make it available on memory stick?	
13		Α.	I will indeed, sir.	
14	776	Q.	CHAIRMAN: Yeah. Secondly, you say there is email	
15			correspondence which helps at least to focus on the	16:06
16			date.	
17		Α.	I have an email to that effect, that Cyril and I met on	
18			that date with the Commissioner.	
19	777	Q.	CHAIRMAN: I know. We keep coming back to this. You	
20			certainly did	16:06
21		Α.	Yes.	
22	778	Q.	CHAIRMAN: meet on that date. I wouldn't doubt it	
23			because you say there are occasions where you'd meet	
24			him several times a week, but that doesn't really help	
25			very much.	16:06
26		Α.	I understand. So let's be absolutely clear, I am	
27			saying that I have, through reconstruction, concluded	
28			that that's the date. But let's be clear as to the	
29			issue itself	

CHAIRMAN: If you wouldn't mind just picking out the 1 779 Q. 2 email that you think --3 It's an email. Α. 4 780 CHAIRMAN: -- are relevant to that. Again put them on 0. 5 memory stick, give them to Mr. Dignam in the morning at 16:06 nine o'clock and then he can look at them and go 6 7 through them. And it's from that, that you draw the 8 conclusion in terms of the chronology that it points in that direction? 9 10 Α. Yes. 16.0711 781 CHAIRMAN: And makes you certain it was the 13th May Q. 12 2015? 13 I believe it to be 13th. Α. 14 782 0. CHAIRMAN: Your belief has to be based on something. 15 Yes. And I will provide that. Α. 16:07 16 Your belief is that? 783 CHAIRMAN: Q. 17 That comment was made on the 13th May 2015. Α. 18 Maybe if you just download whatever emails 784 Q. CHAIRMAN: 19 provided they're -- I don't want private emails about, 20 I don't know, anything to do with health or dogs or 16:07 family or anything else like that, in relation to 21 22 contacts with Mr. Cyril Dunne and meetings with 23 Mr. Dunne and the Garda Commissioner, let us say in the months of March, April, May, and June of 2015. Would 24 25 you mind doing that? 16.07I will see what I can do. 26 Α. 27 CHAIRMAN: Yes. Was there anything else I could assist 28 with, Mr. Dignam? 29 MR. DIGNAM: Thank you, Chairman.

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1 CHAIRMAN: Is that enough?

2 Mr. Barrett is really the only arbiter of MR. DIGNAM: 3 that. Chairman. It's he who has identified documents, or that he was to rely on to identify documents, but I 4 5 take it that he will provide any relevant ones or any 16:08 ones that may be of assistance to the Tribunal. 6 7 CHAIRMAN: Okay. Does that arrangement suit? 8 MR. DIGNAM: Yes, Chairman. 9 Mr. Rogers, do you have any comment or CHAIRMAN: assistance you could offer on this? 10 16.08 11 MR. ROGERS: No, I have no comment. 12 CHAIRMAN: You're happy enough with that; that's the 13 right approach? 14 MR. ROGERS: I have no comment. 15 CHAIRMAN: Well, are you happy it's the right approach? 16:08 16 I am quite content, Judge. MR. ROGERS: 17 CHAIRMAN: Thank you very much. Just one other thing, 18 There's been reference to a Garda review Mr. Dignam: editorial perhaps and if it's possible to get a copy of 19 that I would just like to see it, in the context of a 20 16:08 cornucopia of issues, which means the horn of plenty or 21 22 joy, which this hardly was, but in any event. 23 MR. McGUINNESS: We have copies of that. 24 CHAIRMAN: You have. I'm sorry I didn't see it so far. 25 Thank vou. 16.08 26 27 THE TRIBUNAL THEN ADJOURNED UNTIL FRIDAY, 2 ND FEBRUARY 2018 AT 10:00AM 28 29

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